

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
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BOSTELMAN: OK. Good morning. Welcome to the Natural Resource Committee. I'm Senator Bruce Bostelman from Brainard, representing the 23rd Legislative District. I serve as Chair of the committee. The committee will take up the bills in the order posted. This public hearing today is your opportunity to be a part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifiers sheets that are on the table at the back of the room. Be sure to print clearly and fill out, fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify, but would like to indicate your position on a bill, there are also white sign-in sheets back on the, back on the table. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly and loudly into the microphone. Tell us your name and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducers opening statement, followed by proponents of the bill, then opponents, and finally, by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer, if they wish to give one. We will be using a five-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have one minute remaining, and when the red light indicates, you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with importance of the bills being heard, it is just part of the process as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your, or copies of your testimony, please bring up at least ten copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be a cause for you to be asked to leave the hearing. Finally, committee procedures for all committees states that written position papers to be included in the record must be submitted by noon, the last business day before the scheduled hearing on that particular bill. Only acceptable method of submission is via the Legislature's website at Nebraska Legislature.gov. You may submit a written letter for the record or testify in person at the hearing. If you submit a written letter, you cannot testify here in person. You cannot do both. Written position letters will be included in the

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Rough Draft

official hearing record, but only those testifying in person before the committee will be included on the committee statement. I will now have the committee members with us today introduce themselves, starting on my far left.

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

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

SLAMA: Julie Slama, District 1, Otoe, Johnson , Nemaha, Pawnee and Richardson Counties.

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

BOSTELMAN: And on my far right.

JACOBSON: I'm Senator Mike Jacobson, District 42, representing Lincoln, Logan, McPherson, Hooker, Thomas and three-fourths of Perkins County.

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

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

BOSTELMAN: Senator Moser also serves as Vice Chair of this Committee. Also assisting the committee today to my far, to my left, is legal counsel, Cyndi Lamm, and to my far right is our committee clerk, Laurie Vollertsen. Our pages for the committee today are John Vannes and Ethan Dunn. Thank you both for being here this morning. With that, we'll begin today's hearings with LB567. I turn the hearing, the committee over to Vice Chair Moser.

MOSER: We going five minutes?

BOSTELMAN: Five minutes.

MOSER: Senator Bostelman, you're welcome to open on your bill.

BOSTELMAN: Thank you. Good morning, Vice Chairman Moser and members of the Natural Resource Committee. My name is Bruce Bostelman, B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. I am here

today to introduce LB567, which has two main components. The first portion of the bill strikes language that prevents any high level manager of a district from running for the Board of Directors of another district. Specifically, a high level manager of a rural electric association is disqualified from running for the Board of Director of a public power district, unless they resign or take a leave of absence. As you are aware, running for office is costly and forcing people who want to serve the public to give up their source of income, drives away those who might consider running. Why does this need to be changed? Ten of the NRDs members are members of and receive their power at wholesale from Tri-State Generation and Transmission Association, which is headquartered in Westminster, Colorado. Two more are members of Rushmore Electric Power Cooperative headquartered in Rapid City, South Dakota. Currently, a person who resides in Nebraska and is a high level manager of Chimney Rock Public Power District who receives its, its power wholesale from Colorado is prevented from running for the Board of Directors of NPPD. Similarly, a high level manager of Burt County Public Powers, who is not in OPPD, who is not in OPPD service area, is disqualified from running for their board of directors. Simply put, this change will allow a high level manager of one district to be qualified to run for a board position of another public power district. The second component of the bill adds a definition of reliable or a liability. I want to point out that this is not, it's not a new standard for an electric supplier. Section 70-1001 was drafted in 1963 with an emphasis on adequacy in transmission. Since 1963, the term "reliable" has become more prevalent in the public and in the energy electricity industry conversations. LB567 seeks to give a basic and uniform understanding of the term when discussed. The bill also amends a section of the load and capability portion of 70-1025(3). The new section allows the Power Review Board to request information to be included in the annual report as long as the request is feasible and can, and can be performed at a reasonable cost. Please note that I have worked with both Public Power and the Power Review Board on this portion of the bill. Therefore, I urge, I urge the committee to move the bill to General File and I'll take any questions you may have.

MOSER: Questions for Senator Bostelman? Oh, I'm sorry. Senator Brandt.

BRANDT: Thank you. Vice Chair Moser. Thank you, Senator Bostelman, for bringing the bill. Because I'm a little confused, initially had thought we were trying to keep them off the board, but basically you're removing a restriction so that they can run for the board, is that correct?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

BOSTELMAN: Correct.

BRANDT: OK. Thank you.

MOSER: Senator Hughes.

HUGHES: Thank you, Senator Moser. Why were they prohibited in the first place?

BOSTELMAN: Sorry. Say that again.

HUGHES: How come they were prohibited in the first place?

BOSTELMAN: It came back a few years ago. There was a general manager at Norris Public Power District that wanted to run and refused to recuse, or to resign or leave the board and so this bill came up. I mean, this, this was then enacted.

HUGHES: So how do we make sure that doesn't happen again, I guess, or, like--

BOSTELMAN: Which portion?

HUGHES: Well, because you said it was put in originally because someone from the Norris Public Power was on and he wouldn't recuse himself because he must have had a conflict of interests. How do we ensure--

BOSTELMAN: He wouldn't resign or leave the office.

HUGHES: Uh-huh.

BOSTELMAN: Right. I don't think there's a conflict of interest.

HUGHES: OK. So it shouldn't be a big (INAUDIBLE).

BOSTELMAN: No, that shouldn't be there. The thing was, was Gage County, for whatever reason, didn't want that specific general manager.

HUGHES: It was a targeted thing--

BOSTELMAN: All it was a--

HUGHES: --on one person.

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Natural Resources Committee February 2, 2023
Rough Draft

BOSTELMAN: --targeted at one person at that time.

HUGHES: So it really, this is bad legislation, shouldn't have been in here in the first place. Thank you.

MOSER: Senator Fredrickson.

FREDRICKSON: Thank you, Vice Chair Moser. I had a question to kind of follow up with that as well. I'm curious, is, for these board positions, do we have, is there currently a shortage of folks who are applying for these board positions or a shortage of expertise where we would need to have folks on multiple?

BOSTELMAN: Well, you know, it's an elected position, so for those who run for the board, it's up to the public to run, except for these two individuals, manager and assistant manager. Anyone else in that, in that REA can run but those two.

FREDRICKSON: OK.

BOSTELMAN: They would provide some technical expertise that currently lacks on, on the board that, that's not there now. I think of the, I don't know whether it's 14 or 16 members or more that serve. There's one person that has any real expertise and that person is, owns a solar company in Central City and he sells power to NPPD.

FREDRICKSON: Mm hmm.

BOSTELMAN: So if that's not a conflict of interest, you know, I don't know why we're precluding general managers from running or their assistant. So I think there's a need for, you know, I don't know if there's a lot of, I don't think there's a lot of people, a lot of general managers wanting to because a lot of them will, will defer to their board. The board let's them, then they may run. But I don't know that there's a lot, I just think that they should have the opportunity and not be disqualified just because of their position.

FREDRICKSON: Sure. Thank you.

BOSTELMAN: And especially, especially when they're not buying power from the board that they're wanting to run on.

FREDRICKSON: Right. Thank you.

MOSER: Senator Cavanaugh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
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Rough Draft

J. CAVANAUGH: Thank you. Vice Chairman Moser. Thank you, Senator, Chairman Bostelman, for bringing this bill and its conversation. I've got questions about the other parts, but since we're talking about this part now, I'll stick to it. So the scenarios you laid out are folks who are not buying power from NPPD, right?

BOSTELMAN: Correct.

J. CAVANAUGH: So, and that, that does strike me as a distinction between somebody who's a customer of, of a utility and somebody who's not in terms of that conflict of interest question. Would you entertain the possibility, I mean, there is a way to craft it and say if you, if you work for a utility who's not buying from them, that would be a discussion.

BOSTELMAN: Sure. So my, my response to that would be, you have Nucor Steel, you have Cargill, you have UP, you have a lot of, you know, the number one purchasers of power in the state. Their presence, you know, their senior managers can sit on the board of directors. Is there a conflict of interest there? LES, the presidency of LES can sit on, on the city council. Is there a conflict of interest there? If you're a businessman in a city, if you're a contractor within a city that's doing business for the city, is there a conflict of interest there? They all are allowed, so could you carve out those 12? Sure. But I'm again, I'm going to come back to, if we have a lot of individuals already serving on boards that potentially have a conflict because they're either generating and selling to the public power district already, and we've had that on OPPD. We had two lobbyists, two lobbyists that represented large generators that sat on the board, passed power purchase agreements that actually favored those companies, and transmission lines actually favored those companies, so if those people can sit on the board, then why can't a general manager who has working knowledge and skills and has more knowledge than the one person or two people that's sitting on the boards now? You know, what's the worst thing that may come, a conflict of interests so they want to lower the rates for their people? I mean, that's what they, you know, I don't know that's such a conflict of interest for folks. You know, I don't see that.

J. CAVANAUGH: So, I mean, for one, a lot other folks you mentioned, they're retail customers, not wholesale customers, right?

BOSTELMAN: Say that again.

J. CAVANAUGH: All of those companies you mentioned are retail customers--

BOSTELMAN: Sure.

J. CAVANAUGH: --not wholesale customers. But, and then the other part of that, to me, you're listed a whole bunch of other people that maybe we should consider and maybe we should go the other way and say these are people who shouldn't be allowed to serve on these boards. I mean, you articulated some good points there, but that's not an argument to then allow somebody else on that maybe would cause further problems.

BOSTELMAN: Well, I think it just goes to show the point historically of who, who in the public has been able to serve, what companies can serve. So we are very narrow and, and this is very narrow. And I'm not sure why a general manager or assistant manager would be disqualified when any other member and even a board member, even a board member on that REA can serve potentially. So I think this really was put into statute because of one individual at one point in time and I just think that that needs to be corrected.

J. CAVANAUGH: And in terms of the second part, so you strike out the part about the employees of high level place, why do we leave in the part about then the governing bodies of municipalities? What's, what's the argument to keep that prohibition in there?

BOSTELMAN: Where are you at?

J. CAVANAUGH: It's, uh, line 20 on page 2. A member of the governing body of any one of the municipalities within the area of the district may not serve on the original board of directors under Section 70-603.

BOSTELMAN: OK. What page are you on? I'm sorry.

J. CAVANAUGH: Page 2.

BOSTELMAN: OK, on the line 20.

J. CAVANAUGH: Line 20 is the beginning of the part that gets left in. So no person who's a full-time employee of your district, uh--

BOSTELMAN: Good point. Maybe we should strike those. Strike that as well.

J. CAVANAUGH: Just an oversight, I guess.

BOSTELMAN: Sure. No, I mean, you know, the thing is, is, and I brought a bill, you know, a couple of years ago about this and this is really about trying to, one is, I don't think it's right that we narrowly remove those individuals. The other one is, is, is that they're not on the generation side, right? They're on the transmission and distribution side. They know the inner workings of things. They know, they've got some working knowledge and some good that we don't have exist anywhere else. So why, why do we want to disqualify those individuals from having the opportunity if they want to, to run? Again, the public still has to hire, hire, still has to vote for them. Someone has to elect them. So let the public, you know, let the voters decide who should or shouldn't.

J. CAVANAUGH: And of course, I, I appreciate that point and I'm always sensitive to the, what the public say. But we do make qualification determinations for specific reasons for a lot of offices, right? We do say and we have residency requirements and we have exclusionary requirements. You and I can't work for the university or the state of Nebraska, right, because of the inherent, and the state of Nebraska is a huge organization. We're on the Natural Resources Committee. We don't have oversight over the university, but just because we're members of the Legislature, we can't--

BOSTELMAN: So.

J. CAVANAUGH: --teach at the university. So we've made those kind of determinations about just generally the conflict, inherent conflicts in supervision, in relationships on other, other elected boards that we preclude, I guess.

BOSTELMAN: Well, I guess, and I hear you. My comment to that being is, what is the conflict exactly? What, what's the conflict that they're going to bring? And I'm not sure that I'm fully understanding when people says there is conflict. What is that conflict? Is a conflict that they may purchase power from that entity? Well if it is, and they recuse themselves just like anyone else. You just, you're just not part of that conversation. I mean, that's what, you know, that portion is for, is to be able to do that. But again, we're providing that knowledge that currently doesn't exist. And I think that's important as we continue to build out different types of energy across the state, whatever it might be. You know, these are people that want help in understanding what requirements those are, understanding how that happens and what's needed. And I think, you know, we're missing a

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Natural Resources Committee February 2, 2023
Rough Draft

part, an opportunity here to have that knowledge base to be present and when we silence that, I think that's doing a disservice.

J. CAVANAUGH: Thank you.

MOSER: Other questions from the committee? Senator Jacobson.

JACOBSON: Well, I guess I just weigh in on this as well. It seems to me that, that the point that Senator Bostelman was making is one that I concur with. I think that when you start dealing with, first of all, this is on the generation side, not on the transmission side. And so having that expertise, you could almost make the case that you need a certain number of people on that board that possess that expertise. We don't have that required, but who's going to have that expertise to be able to come and serve on that board? And it's an elected board. And so those are the two pieces that I see that are material here. And I don't know, Senator Bostelman, am I missing the point here, but it seems to me the voters can elect them, they're done. This is not an appointed position. And it would seem to me also we're talking about the generation side as opposed to the transmission side and so it's hard to find where the conflict is at. Is that basically your point?

BOSTELMAN: Yeah, for the most part, I think it is. I mean, it's, it's a local thing and still their, their board is going to have a say. I mean, that board of directors or that general manager is going to say, you know, whether you're going to run or not. And if that general manager says, I don't care what you say, well, that board can say, OK, well, then have a nice day, you're no longer employed with us. So if the board doesn't think there's conflict of interest, why are we disqualifying them?

MOSER: I have a question, Senator Bostelman So the president of power district that buys power from NPPD would be able to serve on NPPD's board under your bill?

BOSTELMAN: An REA that would, yes. Mm hmm. And there's 12 of them that don't. There's 22 that do. There's none that, that would necessarily be OPPD.

MOSER: There are 22?

BOSTELMAN: REAs that would probably, that exist that might, that work with NPPD.

MOSER: Oh, it could be any one of those 22. Yeah, that's irrelevant.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

BOSTELMAN: And I think, and I think NPPD will be testifying shortly too and, and I think you can probably ask them if they feel--

MOSER: Well--

BOSTELMAN: --there's a conflict.

MOSER: --I just wanted to see if I was following the discussion. We've been through this so many times, it's kind of starting to swirl in my brain here that I can't keep straight what we're, which way we're going. So the board members don't have any executive power. I mean, they couldn't enter an edict that favored their power district over anybody else's.

BOSTELMAN: No.

MOSER: Their meetings are public.

BOSTELMAN: Correct.

MOSER: Their agendas are public.

BOSTELMAN: Correct. And they're one vote of however many it sells.

MOSER: Well, I think, but they, do they have variable rates for different power districts?

BOSTELMAN: You'd have to ask--

MOSER: Or does NPPD charge everybody the same rate?

BOSTELMAN: You would have to ask.

MOSER: That would be an important question.

BOSTELMAN: Yeah.

MOSER: OK. Other questions? Oh, yes. You're not done yet.

J. CAVANAUGH: Well, I wanted to go back to my original questions before we started on those. Thank you, Mr. Chairman. Thank you.

MOSER: I'm sorry. Yes.

J. CAVANAUGH: Well, my original question I wanted to ask about the definition section, actually. So there's the "reliable" you add into

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

Section 2 and then the definition of "reliable, reliability". And I just generally wanted to ask, I couldn't find the word reliability anywhere. I didn't know if there was--

BOSTELMAN: Well, that's a term that when we have people come before the committee, they talk about rely on reliability, interchange the word, so.

J. CAVANAUGH: OK.

BOSTELMAN: You know, when we did our hearings on Erie, when they came in the presence of boards and CEOs, they talked about reliable, reliability and so that's the term.

J. CAVANAUGH: So there's--

BOSTELMAN: And this is only a definition and it's not a standard. So it doesn't deal with generation at all. All it talks about, all this is, is a definition for reliable or for reliability. That's it.

J. CAVANAUGH: OK. So I just wanted to make sure that I wasn't missing that it was because when we put a definition in here, it usually references to you look, you find that word in the statute somewhere. You say, OK, this is what it means. But there's no place that reliability appears that I could find.

BOSTELMAN: Sure. And on page 4, page 26, reliable or reliability means, page 4, line 26 is where that definition is. And that definition came in between meetings with myself and public power. So this isn't my definition, it's their definition.

J. CAVANAUGH: Oh, OK.

BOSTELMAN: Agreed upon definition.

J. CAVANAUGH: But that was, I wanted to, I wanted to make sure I wasn't missing anything.

BOSTELMAN: Sure.

J. CAVANAUGH: And reliable was in that location that you added it on page 2. Does it appear anywhere else? I guess I'm just trying to capture in my mind, as Senator Moser pointed out, swirling around in my mind here where this definition may be applied, if it's only this one section or if there are other places that it might.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

BOSTELMAN: Just the definition.

J. CAVANAUGH: Just applies to Section, what is 70-1001, which is where the definition is out of there. OK. That's what I wanted to know. Thank you.

MOSER: Other questions? Thank you, Senator. Anyone here to speak in support of this bill? If others are going to testify, please come forward and grab a seat toward the front of the room so when your turn comes, we'll shorten the dead space between testifiers. Good morning and welcome.

JOHN McCLURE: Good morning, Vice Chairman Moser, Chairman Bostelman and members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm executive vice president and general counsel for Nebraska Public Power District. Since some of you are new to this committee and new to the Legislature, I want to thank you for serving both in the Unicameral and on this committee. I want to give you a brief overview of NPPD to begin with. NPPD is the largest electric utility in the state in terms of generation and transmission facilities. We are primarily a wholesale power supplier to other public power districts, cooperatives and municipal utilities. We also are the retail provider for 77 communities in the state, crossing the state from Plattsmouth to Scottsbluff. Our chartered territory covers all or parts of 84 of the state's 93 counties. NPPD owns and contracts for diverse generation resource mix, including coal, nuclear, natural gas, hydro, wind and solar, and a small amount of oil and diesel that we use for peaking purposes. This diverse generation mix allows us to provide reliable and affordable energy to our wholesale and retail customers. We benchmark our wholesale prices with over 800 consumer-owned utilities around the country, and it has been among the lowest cost quartile for the last two calendar years. 2023 begins the 10th year of stable rates for our wholesale customers and the sixth year of no wholesale rate increases. While our physical facilities are critical to our mission, it is our people who ultimately make the difference in safely, reliably and affordably serving our customers. This is true of all public power utilities in the state. I'm here today in support of 560, LB567. I want to thank Chairman Bostelman and the committee legal counsel for working with us to find common ground. LB567 is the product of efforts from last year to address the issues which fell short of resolution. However, LB567 was introduced with improvements from last year's language in LB1057, and we were afforded the opportunity to continue working on the language. Chairman Bostelman has already described the three significant features of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

bill. First, removing a narrow and relatively recent prohibition. It was enacted in 2015 on a few individuals seeking a seat on a public power district board. Second, providing a definition of reliability for the article, for Article 10 of Chapter 70, which are the statutes governing the Nebraska Power Review Board. Third, adding language regarding the Power Review Board's ability to seek certain information as part of an annual load and capability report prepared for the Power Review Board by representatives from the Nebraska Power Association, which is the association of Nebraska's electric utilities. We believe the changes in LB567 are reasonable and again, appreciate the willingness of Chairman Bostelman to consider changes as we worked together toward the final language in the bill. I'm happy to address any questions you may have and urge you to advance LB527.

MOSER: How about the question whether any customers pay different rates when they buy power from you?

JOHN McCLURE: Yes. NPPD has what's called at wholesale, a general firm power service rate. That is a uniform rate that is charged to all of our wholesale customers.

MOSER: So if I'm on your board and I run a power district that buys power from you, I have to pay the same rate as everybody else.

JOHN McCLURE: Correct.

MOSER: And I can't get my buddies together and say, hey, get me a better deal.

JOHN McCLURE: Under chapter 70, Section 655, our board is required to charge rates that are fair, reasonable and nondiscriminatory. And so we can't charge either at wholesale or at retail a rate unless it is appropriate for the class of customers receiving it and it's uniform.

MOSER: So if you juggle the books, you'd be in all kinds of trouble, you're saying.

JOHN McCLURE: That would not be a good thing.

MOSER: Yeah. Do retail customers pay the same rate across the state?

JOHN McCLURE: Yes. Our retail rates and again--

MOSER: In all those little towns or whatever, they are all at the same rate.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

JOHN McCLURE: All of NPPD's 77 retail towns, there's a rate for residential class customers because the cost of serving residential customers has unique characteristics, characteristics. Then you have commercial rates and those apply to commercial customers, maybe a grocery store or a small business and that's, that's a different rate. Again, it's based on the cost of service. And you'll find that all the utilities in the state who take that similar approach, it's very common across the country to have residential rates that reflect the cost of serving those residential customers. Commercial rates, and you may have different categories because a grocery store with a higher demand for electricity may have a different rate, but any other customer that fits that commercial category--

MOSER: That class all gets the same rate.

JOHN McCLURE: --gets that rate. And then you have industrial rates. So like a Nucor Steel, it's a different rate.

MOSER: Do you charge demand charges to power districts?

JOHN McCLURE: Yes.

MOSER: So they, there's like a minimum that that they have to pay, but those don't vary.

JOHN McCLURE: The, the, there is a demand charge reflecting the demand of that utility on wholesale basis so--

MOSER: Well, you need to have a certain--

JOHN McCLURE: --it may vary. It may result in a different rate. If you have one utility that has a certain type of customers and they have what's called a high load factor year round, their cost per unit of electricity will be lower than some customer who only uses electricity at limited times. But it's all based on fairly charging for the cost of the facilities and the use of the energy.

MOSER: OK.

JOHN McCLURE: And it won't take me long to get beyond my rate expertise, I admit.

MOSER: Well, that's--

JOHN McCLURE: I believe you're a rate expert.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

MOSER: No, these are just questions I think that people would--

JOHN McCLURE: Sure.

MOSER: --wonder. Maybe not everybody thinks like we do, I don't know. Senator Slama.

SLAMA: Thank you, Vice Chairman Moser. So thank you for being here, Mr. McClure. It is wonderful to be on the Natural Resources Committee. I think Senator Bostelman did a wonderful job of outlining the need, and I think I've seen it, too, in recruiting knowledgeable people who are willing to run on these boards. And a question that's been raised and I think Bostelman, Senator Bostelman handled it really well. You've addressed it partially. Could you speak to the potential conflict of interests with GM serving on the board?

JOHN McCLURE: I'd be delighted to. First of all, I think it's important and it's been noted, this is an extremely small group of people that have been excluded. By statute, it says you have to have the title, Chief Executive Officer, President, Vice President, Chief Operating Officer, Chief Financial Officer, General Manager or Assistant General Manager. If you have that in your title, you can't run for a public power district board, but you could have the title of manager of finance or manager of operations and have great expertise. They're not prohibited today. So we've taken a very small group of individuals and said, they can't run. As far as conflict of interest, and it's been alluded to by Chairman Bostelman, we have 11 elected directors on our board and we have had situations where for a very specific issue or vote of the board, there was a conflict because of the employment of the individual. And we just have a brand new board member on who last month recused himself from an issue. He owns a small business and that business has done business within NPPD. He recused himself from a vote we took on that. So I think that there would be potentially very limited circumstances where if a general manager or assistant general manager of a power district who happens to be our wholesale customer was on our board, there could be a handful of cases where they need to recuse themselves. But overall, I don't think that would be the case. And already today, as I said, there could be an employee of that power district elected to our board under current law. Another point that was alluded to by Senator Cavanaugh was the language about municipalities. That goes back to the original formation of the boards. If you look at the language carefully, it probably could be taken out as language that doesn't matter anymore. We're not forming new public power districts. And my

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

point is there's no similar exclusion for municipal officials who could be elected or run for our board. And, and so, again, to carve out a small group when we don't with all the municipal representatives that we serve in saying you're not eligible, it just doesn't seem fair. And one other clarification that Senator Hughes brought up. In the case of the individual we spoke about, that individual was never elected to our board, simply ran, and that caused this reaction. Ran before 2015. The prohibition was put there in 2015. I haven't looked at all the history, but public power districts were originally created by this body in 1933, and I'm not aware that there was a prohibition before that. And so again, I just think it's a very narrow issue that there might have been an overreaction to it at the time. And I think this is an appropriate change to put the law back where it was.

SLAMA: Yeah, absolutely. And I really do appreciate that comment. I mean, in the Legislature when it comes to conflicts, it's, you can report it. You don't have to recuse yourself on any vote and I don't know of a lot of senators who might have their property taxes cut by (INAUDIBLE), you might say, who recuse themselves from that vote or even report a conflict. So I appreciate how narrow this issue is and the value in having somebody with such an in-depth knowledge that could serve on the board that we're currently excluding. And so I appreciate you clarifying that. Thank you.

MOSER: Other questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman, and thank you, Mr. McClure, for being here. I just noticed that I have my NPPD coffee mug. (LAUGHTER) I would suggest anybody to recruit--

SLAMA: Hold on. I don't have one of those.

J. CAVANAUGH: Have you toured Cooper Nuclear?

SLAMA: It's my, my dad worked there for 36 years.

J. CAVANAUGH: That, that's not an answer.

SLAMA: Like ten times.

J. CAVANAUGH: We're not supposed to question each other, sorry.

SLAMA: Yeah.

J. CAVANAUGH: But anyway, so I appreciate that conversation you just had with Senator Slama. That was interesting, informative, and appreciate you answering my question. I'm going to go back to my question I asked Senator Bostelman about the reliability. So this is the definition. He basically said this was your definition or worked on the definition for reliability, I guess. Do you have any comment about the definition?

JOHN McCLURE: Yes, there was, there was proposed language back in LB1047 from last year, and we had some issues with that. We thought it could be improved. We worked with the Senator and legal counsel and improved it. And I don't want to, I just want to clarify something about the applicability. Reliable and reliability is actually buried in statute, in a statute in Article X. So there, it's not standing by itself. There, there is a reference to reliable and reliability. So it, it does make sense to have a definition, as Chairman Bostelman pointed out, because of questions that have raised, what does reliability actually mean? And, and so we now have a definition and we have a statute where both reliable and reliability are used.

J. CAVANAUGH: In those other places where it appears in the statute, how have they been interpreted before?

JOHN McCLURE: I don't know that there's ever been, you know, there's been no litigation over it. I think the language we have is, is, is very close to the standard that's out there for the industry. We added a little additional language to provide some context, but, you know, we're comfortable with that definition.

J. CAVANAUGH: The language in the statute, you're talking about.

JOHN McCLURE: Yes.

J. CAVANAUGH: OK.

JOHN McCLURE: Yes.

J. CAVANAUGH: And then that last part about the reporting requirement, what, I mean, has the Power Review Board asked for information from NPPD that you guys were unwilling to provide?

JOHN McCLURE: Well, again, our industry is undergoing change, as you all know. And the load and capability report, I believe, has been in place since the 1980s. It was a statutory requirement that this be done. It's a, it's a study that's done by the industry and provided to

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Natural Resources Committee February 2, 2023
Rough Draft

the Power Review board so that they can see on a longer term basis in the aggregate for the state, how are we set up in terms of power supply and expected demand for electricity? Well, there's been changes and the Power Review Board began asking some questions. Chairman Bostelman began asking some questions and I think executive director, Texel, will be following me to talk more about this. There's been a parallel effort between the Power Review Board and the industry to create some additional areas that the Power Review Board wanted in this load and capability report that's prepared annually, and that's all been worked out. And that was, the genesis, I think, for LB1047 last year. Part of it was to address that. It's been addressed. The language now in this bill is good language that makes it clear that the Power Review Board has authority to request additional information as part of getting the load and capability report to make sure it contains information that's valuable to them in their important role that they play.

J. CAVANAUGH: So, I guess I'll ask my question a different way then. So, do you feel that this language is necessary for you guys to be able to comply? Are they asking questions that you don't think that you can answer? Or are you refusing to answer questions because you don't think they have the authority to ask for it?

JOHN McCLURE: I think there's good back and forth between the Power Review Boards. If they ask additional questions of the industry, the industry steps up and provides the information. Again, we all are subject to, you know, public records and we want to be responsive to the Power Review Board, because I believe if I had all my colleagues from the industry up here, we would be saying we want to be open about what we're doing, why we're doing it and transparency is very important for the public power sector.

J. CAVANAUGH: And I'm with you on that. I appreciate it. Thank you.

MOSER: Other questions? I have a couple. So if I was a solar power nut, rephrase that, that's a hidden, I could run for the NPPD board.

JOHN McCLURE: As, as--

MOSER: Or any public power board.

JOHN McCLURE: The requirements to run for a public power district board are to be a, a citizen in the, either the district if it's an at-large election, or in the subdivision. For NPPD, we have 11

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

different subdivisions. So to run for our board, you have to be qualified, you have to be a resident of the--

MOSER: But if you have a bias, you can still run for the board.

JOHN McCLURE: You're (INAUDIBLE) to have any opinion, you, you know. There's, there's no screening for viewpoints or opinions for a public power district board member. That's up to the citizens who--

MOSER: But, but their core beliefs could affect the way they vote.

JOHN McCLURE: Absolutely.

MOSER: And they could be interested in solar power. They could be an irrigator. They could be a wind power advocate.

JOHN McCLURE: Every person who comes to an elected office brings their experience. But I also think, I would say this about our board. We've had, in my opinion, board members who have come with certain preconceived notions. And as they learn more about our business and how things work, I've seen them moderate in what their viewpoint was. And I think that's, you know, we all have that experience.

MOSER: Yeah, you see, I think you see that in the Legislature. You know, a lot of people come in thinking they're going to change the world and the world is all going to revolve around them. And then once they get here, they figure out that we've had 130 years of writing laws and most of them have worked out to be adequate, so. Any other questions? And sorry for you being the first testifier, you get all the questions. Thank you.

JOHN McCLURE: Thank you.

MOSER: Any other closing comments, are you comfortable?

JOHN McCLURE: Thank you. I am comfortable.

MOSER: OK, great. Next supporter, please.

CHANCE BRISCOE: Good morning, committee members. My name is Chance Briscoe, C-h-a-n-c-e B-r-i-s-c-o-e, and I reside in Chadron, Nebraska. Today, I'm here to testify on behalf of the Nebraska Rural Electric Association, which represents 34 public power districts and electric cooperatives throughout the state. Together, more than the 1,000 dedicated employees of the NREA serve 240,000 meters across the state

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

and more than 87,000 miles of line. I'm also here as a Nebraska resident who is directly impacted by this bill. Thank you to the committee for hearing my testimony today in support of LB567. While my testimony is in support of the entire bill, I will focus my time today on the first issue LB567 addresses. In 2015, the Legislature moved the ability for a high level employee of a public power district to serve, removed the ability for a high level employee of a public power district to serve on the board of directors of any other public power district. While I reside in Chadron, my place of business is in Hay Springs, where I am the general manager of Northwest Rural Public Power District. I've held this position for the last nine years and have served rural electric utility companies for the last 20 years as office manager and chief financial officer at utilities in South Dakota, Missouri and Colorado. Under current statute, I am designated as a high level employee who is employed at a public power district, and I'm barred from serving on the Board of, of Nebraska Public Power District. As a resident of Chadron, where I'm a retail customer of NPPD, I have a vested interest to serve on the board of NPPD, just as every other NPPD customer in Chadron is eligible to do. When LB177 passed in 2015, it was argued that it could be a conflict of interest for a manager from a rural public power district to sit on the board of directors of its wholesale power supplier. First, Northwest Rural PPD, where I work, does not give its power from NPPD. Northwest is one of six rural utilities headquartered in Nebraska that purchases wholesale power from Tri-State Generation and Transmission, headquartered in Colorado. So even if there was a possible conflict of interest, it would not exist for me. Secondly, I do not believe that a high level employee who is served at wholesale by NPP does represent a conflict of interest and should be precluded from serving on their board. These managers are knowledgeable about public power and utility operations. They have a real stake in the decision that NPPD board makes. As much as 70 percent of the cost of retail power to rural customers is the cost of their wholesale power. These high level employees are exactly the type of individuals that should be encouraged to serve on a utility board. While I'm not a lawyer and haven't consulted a lawyer to get a legal opinion, I do believe that 7619 as currently written is unconstitutional prohibiting somebody like me, an otherwise eligible candidate from representation on a publicly elected board of directors. LB567 would correct this discrimination currently applied in the statute. That concludes my testimony, and I'd be willing to take any questions you may have. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

MOSER: Questions from the committee? I have one. Do you think that the perspective of the head of a power district would have a different, have, would be different than somebody who comes in, who may be a green power advocate or a solar power advocate?

CHANCE BRISCOE: Well, I would hope not. Yeah, the mission statement--

MOSER: I would hope it does.

CHANCE BRISCOE: Well, I would hope everybody would be--

MOSER: You would need the business balance--

CHANCE BRISCOE: I mean--

MOSER: --to the people who think with their heart.

CHANCE BRISCOE: Sure.

MOSER: I mean, that's kind of my question, my comment about advocate a certain power being a nut. I mean, somebody who has a passion for it and it's so internal to them that it goes beyond the empirical evidence that supports, you know, what you do.

CHANCE BRISCOE: Right. So the mission statement of almost every utility, every distribution utility in the state is something like to provide safe, reliable at the, safe, reliable power at the lowest reasonable cost. Following that mission statement, everybody should, I think, be in favor of that. So whether you're for green power or not, you should still have that core position to provide low cost, reasonable power, safe and reliably. So to that extent, I would hope that everybody would be aligned in that same position and we are in alignment with NPPD about that, that purpose, that mission for the company. But ultimately in practice, in reality, yes, you could absolutely have divergent opinions on, on how to supply that power where that power comes from.

MOSER: OK. Thank you. Other questions? I appreciate your testimony. Anybody else to speak in support? Welcome.

TIM TEXEL: Vice Chairman Moser and members of the Natural Resources Committee, my name is Tim Texel, T-i-m, last name is T-e-x-e-l, and I'm the executive director and general counsel for the Nebraska Power Review Board. And the Power Review Board is a state agency with primary jurisdiction over electric suppliers in the state of Nebraska.

And the board met last Friday at our public meeting and authorized me to testify in support of, in particular, Section 4 of LB567. Section 4 is the one that adds the language dealing with the annual load and capability report in current statute, Section 70-1025. I would clarify this was not brought at the board's request, but we are supportive of this provision. The board has no concerns about Sections 2 or 3 that deal with the term reliability. The board didn't see it as our agency's issue, but we don't have any problem with that provision. It's a good definition. I did help last year and this year working with the utilities and Senator Bostelman on that definition. But my board did not advise me to testify specifically in support of that provision either. In response to Senator Cavanaugh's question, I believe reliable or reliability does appear in two other parts of Chapter 7 in the Article X, but they're little-used statutes, and my recollection is they deal with wholesale arrangements. So I had to do a search for them. They're not prevalent in our usage. They're very prevalent in the use of that term. I agree with the previous testimony, Senator Bostelman, the term is used all the time when discussing electric industry issues, not very much in the statutes at this point. Two places in wholesale parts that are rarely used right now and that might change with this bill, but. And I would note the board has no position at all about the public power district director issues in Section 1. We have no stake in that and no position on that section at all. Regarding Section 4 of the bill, the load and capability report, Section 70-1025 currently states that the annual load and capability report will be prepared by the representative organization designated by the Power Review Board. Many years ago, the Power Review Board designated the Nebraska Power Association as the representative organization. I believe that's what the statutes anticipated when they were created for us to do was, it was created for us two decades ago choose the trade organization that represents all the utilities, and that's the Nebraska Power Association, or NPA. On several occasions prior to this year, the board has asked the NPA to include additional information in its load and capability reports. We didn't do it very formally. It was at our meetings when they gave the presentation on the report and my board asked them to add additional information on such like a carbon free and net zero, how they're going to meet that if they're going to get offsets or close facilities, so we asked them for additional information on that. And the NPA has been very gracious, very good at working with us of answering, you know, adding those additional information requests. Since the statute sets out what is required to be in the report, the board, though, has no statutory authority technically to require the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

NPA, arguably even request the NPA to add additional information. So I think Senator Bostelman's bill does make sense because technically we may not have the authority to ask for additional information because it's beyond our explicit statutory authority. So that's why my board is in favor of this section. And I think arguably, too, the NPA could decline to do some work. That's never happened and I want to be clear, we've worked very well with them. They've been very good at working with us on additions. This year as a result of the board's concerns on resource adequacy, in particular following the winter storm Uri issue in February 2021, the board requested the NPA to provide additional information on eight additional issues in the report. I gave to the page a copy of our letter to the NPA this year that sets out eight. There's a couple of additional ones. We encapsulate all the requests we've made in the past in that list, but there's eight new ones. You know, we're asking for such things as what facilities or how many by capacity or number have dual fuel capabilities. If one fuel isn't available, something happens, can they switch to the other fuel in a situation like winter storm Uri. So we ask those type of questions in those eight. It was negotiated with the NPA and their joint planning subcommittee is the entity that prepares it for us for the NPA and then ultimately presents it to the board. And we worked with them to make sure we weren't overburdening them because their engineers take time to do this and we want to make sure it's not overly, overly costly or what we're requesting is not really feasible. So with that, I think that's what I wanted to provide. I think this will ensure that we do have that ability to request additional information. My red light is on. So thank you.

MOSER: OK. Senator Brandt.

BRANDT: Thank you, Vice Chair Moser. Thank you for your testimony. I'm new to the committee.

TIM TEXEL: Welcome.

BRANDT: Thank you. So the Power Review Board, all the positions are appointed by the Governor, is that correct?

TIM TEXEL: Appointed by the Governor and confirmed by the Legislature.

BRANDT: Are there any restrictions on membership from the board? Do you have to have a general manager from an association or an engineer, so this could be all laypeople on the board?

TIM TEXEL: It's designed to be a lay member board and we have a requirement or a limitation that you can't have been a elected official or a member of the utility for a, well, an employee of a utility for four years preceding. So there has to be a separation, so I assume so there's no bias. And then we don't have a geographical requirement for our membership, but there has to be one attorney, one accountant and one engineer on our board. It doesn't specify electrical engineer or anything like that. And there's no trade industry requirement that we have somebody, we right, right now have some experience on the board, which is very helpful, but there's not a requirement.

BRANDT: So then the, is it just electrical power or do you deal with other?

TIM TEXEL: We only deal with electric utilities. We don't deal with other on utilities or industries.

BRANDT: So you have oversight over the regional utility like Norris Public Power, LES and also over the generators like OPPD and NPPD?

TIM TEXEL: Yes, all 160 or so power suppliers in the state of Nebraska we assess and we have various jurisdiction over them, depending on what they're doing.

BRANDT: On your request here, number 8, chart showing statewide field diversity coal, diesel, hydro, landfill gas, natural gas, nuclear, solar, wind and storage batteries. Would it be possible to get a copy of those charts? I would be really curious what those capacities are currently in the state of Nebraska.

TIM TEXEL: We won't have them for a while because this requested them it put it in the annual report. We usually see the report and approve it in the August, July, August, September time frame, so we wouldn't have it until this next summer.

BRANDT: Is that something that this committee could have access to?

TIM TEXEL: Oh, sure. It's a public report. We get the report. It's, I believe we provide it to the Clerk of the Legislature, if I remember correctly. We have to provide that to them electronically. It's available and we could certainly give it to the members of the committee.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

BRANDT: At least in my instance. I think maybe some of the other members would like to see that. If you could put our names on your list, I would appreciate it. Thank you.

MOSER: Any other committee questions? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser, and thank you, Mr. Texel, for being here. This is interesting. So I'm going to start with, circle back to my first question about where reliable and reliability. So you're saying two other places so this should put it up to three spots in statute you think.

TIM TEXEL: That's my recollection.

J. CAVANAUGH: I'm not going to hold you to that, but.

TIM TEXEL: That's what I recall, yes.

J. CAVANAUGH: So in the two spots that you referenced, do you have a perspective on whether this definition would change the interpretation of those sections of statute or how they are implemented?

TIM TEXEL: I'd have to look at them again. Like I said, my recollection is that they're dealing with wholesale power and I'd have to look if, if this would specifically help with that statute. I mean, it's always helpful to have a definition. You know, ask an attorney. If you have a term to have a definition, it's always inherently helpful. They aren't statutes that are used a lot by the board or the industry and like I said, I had to do a search for them to find the two terms, but they are there. And I hope that's responsive to your question.

J. CAVANAUGH: And the reason I'm interested in this is I'm one of those people who really loves definitions in statutes, but when you have an after the fact definition that then can apply to other sections of statute, we need to, if we're going to pass this bill, this is going to apply to all those other references and maybe not necessarily intentionally.

TIM TEXEL: If you're--

J. CAVANAUGH: That's why I'm trying to toss out where other places this may implicate this, not in this piece of paper.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

TIM TEXEL: Sure. And I can appreciate that. You might be getting at is, are there unintended consequences to other definitions. I don't believe that would be a problem in those sections. No. My, what I recall those sections, this definition would only be helpful to those two uses. It wouldn't be harmful or unintended consequences that I remember. We, you know, I went through a search when we were last year coming up with the definition to see those type of issues. And I don't, I didn't find any negative problem with those.

J. CAVANAUGH: OK. Thank you. Can I ask another question?

MOSER: Sure.

J. CAVANAUGH: So, I know you came basically to testify in support of the, the later section about giving your board new authority or, well, clarifying your authority. I guess my question is, in terms of these kind of questions, have, are any of these folks giving you push back, are they saying that they don't need to answer these additional questions.

TIM TEXEL: In Section 4 on the load and capability report?

J. CAVANAUGH: Yeah, the load and capability report.

TIM TEXEL: No, that's, you know, I want to be clear. The NPA has always been good at working with us. We have asked, I think, about three times in the past, possibly four, for additional information. You know, how many units are over sixty years old. My board was concerned with all the particular peaking units and some of the (INAUDIBLE) when they're getting up that old. We want to know just how many are there in that category, things like that. And they've always been good at working with us. As I said, technically, since the statute says what's to go in the report, I'm not sure we have the legal authority to ask for more in the report. It would be nice to clarify that we do, because I think some of this information, as Mr. McClure said, the industry is changing from when we were created, my board was created in '63 and some of these additional requests I think are helpful to my board so we get a good picture and probably helpful to the committee. So I think it'd be good to clarify we have the authority, but the NPA has never balked and said we're not going to do this or we don't want to with us, no.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

J. CAVANAUGH: Has anybody expressed concerns that when you ask these questions, they would be more comfortable answering them if you had the authority, if they had, it was clear in statute?

TIM TEXEL: We didn't specifically address that in my conversations with the utilities. So you'd have to ask them if anybody feel that way. They haven't expressed it to me.

J. CAVANAUGH: OK. Can I ask another question?

MOSER: Sure.

J. CAVANAUGH: Thanks.

MOSER: We're enjoying this.

J. CAVANAUGH: It's always fun. The great thing about Natural Resources is questions beg more questions and so then ask more questions. I know you're not here to testify about the removal of the prohibition on employees, but the discussion about the power of Review Board made me think about it. So how many members are in the Power Review Board?

TIM TEXEL: Five.

J. CAVANAUGH: Five. And there is a prohibition in the Power Review Board that a current employee or someone who was an employee in the last four years of an electric generator cannot serve on the Power Review Board.

TIM TEXEL: Right.

J. CAVANAUGH: Would you--

TIM TEXEL: And I think an elected official like a senator wouldn't be eligible for four years likewise.

J. CAVANAUGH: Four years, so I couldn't serve.

TIM TEXEL: I believe that's correct. Yes.

J. CAVANAUGH: Would you, and you stated you thought because of, you thought that was in there for some reason, which was, I think you said.

TIM TEXEL: Well, I'm somewhat speculating. I assume it's to make sure there's a separation so there's no bias by that person for a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

particular utility. I assume that was part of the reason for that. I wasn't around in '63 in this capacity, but I assume that was part of the reason.

J. CAVANAUGH: And not to put you on the spot, but since we're talking about eliminating that requirement for electric generators, boards and elected boards, would you be comfortable if we eliminated that prohibition on the Power Review Board's board?

TIM TEXEL: I guess my board doesn't have a position on that we, we, what I will say is sometimes there's people like that were retired general managers or retired employees from, from a rural district or from another district, you know, NPPD. And they can't come on the board and after four years, it has been an issue sometimes with we lose that experience because they go off and golf and play with the grandkids and they decide, I don't really want to take on this other kind of, lot of work. And so they don't apply again and they can't for the first four years. So it does create some restrictions where a small board, you know, we aren't well-known publicly. We can usually fill the attorney member and the engineer member, but it's the account member and the two lay members, sometimes there's not a lot of people signing up to do it and you restrict it when you don't let those people with the institutional knowledge that would really be good, to come on. So I don't want to get into support or opposition to Section 1, but from the board's perspective, that has come up before and we've talked with the industry about maybe tweaking that first statute that four years is a long time with the people who know the industry and have that experience, and they could always recuse themselves if their former district came up and they felt like there was a conflict or, you know, appearance of a conflict.

J. CAVANAUGH: OK. Thank you.

MOSER: Senator Jacobson.

JACOBSON: Well, I think, to follow up on Senator Cavanaugh's last point here, it seems to me that the Power Review Board is appointed position as opposed to an elected position.

TIM TEXEL: Yes.

JACOBSON: I think that's a material difference. I think the Power Review Board, as you've stated, does require certain expertise, attorney, various people on that board have to have possess a certain

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

expertise to be appointed by the Governor as well. And then the, and I would agree with you that it would seem to me, although you're not speaking one way or another in terms of determining who can serve on that board, I think that probably that four years is a long time for that expertise. I, I do have concern about the lack of expertise on boards that require that expertise. And unfortunately, you have to look at people that have served on boards and been involved in industry, in that particular industry. I serve on the Banking Committee. I bring a significant amount of banking expertise. There will be conflicts at times that will come up. Senator Slama mentioned earlier, you know, we're all as, as members of the Legislature are going to vote on bills that will cut property taxes. And guess what? Our property taxes go down, too, or cut income taxes. Our income taxes go down too. Social Security, which, by the way, I qualify. So yeah.

MOSER: Oh, I'm surprised.

JACOBSON: Yeah, I know, I don't look it. I know I don't look that old, but yeah, here I am. So I do think it's important we keep that in mind. And, and I think the material difference, as you indicated, is a year in appointed board, appointed by the Governor and there's specific expertise that they're looking for, which distinguishes a little bit from maybe the bill that we're talking about today.

TIM TEXEL: It is helpful to have some industry knowledge. I don't know you'd need all five members, but for example, we had Dennis Grennan just went off the board yesterday when Kristen Gottschalk was, took her oath of office, but he used to be the manager for Gerald Gentleman Station, the largest facility, generator in the state.

JACOBSON: Great facility, I might add.

TIM TEXEL: And, you know, and he's got decades and decades of experience in the industry. There's a wealth of institutional knowledge, of industry knowledge. It was very helpful to have him on when we were doing hearings particular, even when we were, he was one of the two board members who were working out with the NPA what would be in this letter. When you have somebody with that kind of experience, it's just enormously valuable to my board. The lay members are important too, because they don't have any biases and they can make that decision and we're kind of a lay board. But boy, when we have a technical issue, I'm not, I don't have any electrical background other than my experience at the board and not electrician

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

or anything like that or an engineer, it's very helpful to have that experience on our board, so I would agree.

JACOBSON: Thank you.

MOSER: OK. Thank you. Other questions? I just had a couple of questions about the Power Review Board. Do the Power Review, Review Board members get paid?

TIM TEXEL: They get a per diem, \$60 a day, unless it's the one who is the regional state committee designee that the Southwest Power Pool, that person gets \$250 a day because they've got a great amount, much more workload. So several years ago we got it increased to \$250 because they're doing many times the work that the others are doing, going to Southwest Power Pool meetings all the time.

MOSER: And the Power Review Board regulates territory between power districts.

TIM TEXEL: Yes, we're the repository for the service areas and any disputes dealing with those areas.

MOSER: So if somebody, if some boundary changes--

TIM TEXEL: We have to approve.

MOSER: --somehow then you have to look at how those power districts pay for that property or that customer that they lost. And then if there's a question who customer they're supposed to be, you guys regulate all those sorts of things.

TIM TEXEL: Yes. Particular the one you're bringing up now would be like an annexation. And the, usually the rural district around the municipal system that would lose the territory, if there's a dispute and they can't work out how much they get paid for the loss of facilities and customers, then that would go to my board. And we've done that occasionally, one of our duties. And any time they change a service area for any reason or trade a customer or customers, we have to approve that. So we're the repository for those agreements.

MOSER: Well, you could see where there might be a dispute, I mean.

TIM TEXEL: Oh, yes.

MOSER: There could be big customers in an area that got annexed into a city and inside the city it might be Loup Public Power and outside the city it might be Cornhusker Power. And so everybody would be fair, but, you know, there could be big, it could have a large monetary difference in their business.

TIM TEXEL: Oh, yes. We've had disputes dealing with ethanol plants and cold storage facilities. Very large loads like that can be very important. And public power works pretty well together, but they do have disputes and that's part of what my board was created to do.

MOSER: Do you look at the mix of power generation, the different types?

TIM TEXEL: Not specifically. That's one of the things we're kind of wanting to do with the additional information in load capability report. But we look at each individual facility when it comes to us as a hearing and whether there's a, there's a public amenities, a necessity. So that might come into it, but it's a need for the facility. We don't specifically look at, at, there has to be a certain mix. No, we don't do that. It's whether they, whether this facility meets their needs for that utility and their customers.

MOSER: OK. Thank you very much. Any other questions? Thank you for your testimony.

TIM TEXEL: Thank you.

MOSER: Anybody else in support? Is there anybody here to speak in opposition to this? Anybody here to speak in opposition? You broke the rule of not sitting in the front row.

JOHN HANSEN: Well, I'm sorry, Mr. Vice Chairman. I thought there was just going to be a lot of other folks come up and testify in favor first, and I didn't want to take their chairs. Good morning. My name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. So to my way of thinking, this particular bill really does have three different components. Two of those components, I would contend, make good logical sense and, and sort of could be an argument made that they are similar and deal with subject matter that are, is related. But really the first section of the bill is why we are opposed. And so in our view, we think that there is a conflict of interest between the manager of an entity whose job is to buy power and then distribute it and retail it. So the wholesaler is the buyer

and they historically have different ideas and different views and, and historically. Then say, for example, the generator and the, the seller of power. So there is, there is a buyer and seller conflict in our view. So our organization has a long history in the development of cooperatives. So we've developed more cooperatives nationally than any other organization, urban or rural, in the country and in the case of Nebraska, our organization has organized over 400 cooperatives. There isn't anybody else that's remotely close in, in that world. And so this issue has played out, and the arguments are very similar to the arguments or the governance structure of two of the largest farmer-owned cooperatives in America. One was farmland that allowed managers on their board for all of this, the same rationale and reason they have all the expertise, etcetera. And the other cooperative, which is the, now the largest cooperative farmer-owned cooperative in the country, did not allow managers on the board and there was a reason for that. It's because at the end of the day, and that is a Farmers Union organized cooperative. So CHS, Cenex Harvest States, both Farmers Union entities that were created is, that we wanted to make sure that the affinity and the ownership and the control stayed in the hands of the folks that were the ultimate, you know, the farmers that were the, the point of the exercise to serve their interests. And so it's not insignificant that at the end of the day, with all of that additional expertise that farmland had on their board, they managed to run that cooperative in the ground and it went broke and it is no more. And they did a huge disservice to the owners because there was all of that owner equity went, which was a substantial amount of money went down the drain with it. So governance does matter. In our view, there's, you know, there's conflict of interest and there's the perception of conflict of interest just as propriety and impropriety. So in terms of a perception, I don't think and I could be wrong, and of course, my good friend, John McClure, is sitting here behind me, he could maybe know the answer better than me. But in the, in the history of, of NPPD, I don't think that there was ever a REA manager that ran for the board or served on the board. Its like different sets of knitting. And so there was never that, that, that didn't happen until the manager of the Norris Public Power District ran. Our membership was very upset about it. Mr. Pollard was not elected and so LB177 came forward to address the issue. And I think that there's been a conflict, and I think that the issue has been addressed. And I would, I think that there is no great harm or no great foul and I think that what we're doing now works very well. And if it ain't broke, I don't think we ought to fix it. And with that

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Natural Resources Committee February 2, 2023
Rough Draft

idea and my testimony, I'd be glad to answer any questions, if you have any.

MOSER: I have a question, I guess. So a power district could buy their power from somebody else other than NPPD. Say they're in an NPPD service area. They could buy power on the open market and then NPPD might have to transmit it to them, they might be required to, but they could only charge for the transmission, not for the raw power itself.

JOHN HANSEN: I think that's true.

MOSER: Yeah, well, we're two unknowledgeable people talking about something we--

JOHN HANSEN: Well, I, when I'm sitting in front of John McClure and he's in my back--

MOSER: I don't think anybody can testify twice, so--

JOHN HANSEN: No.

MOSER: --he's just going to have to sit there and grin or frown.

JOHN HANSEN: But yes, and I believe that that is the case now.

MOSER: And that's something that you think might be a conflict.

JOHN HANSEN: Well, I, from a governance standpoint, I think that keeping the public in public power is an important thing. So in co-op world, for example--

MOSER: But they still have to be elected.

JOHN HANSEN: Sure, exactly.

MOSER: Now, were those co-op guys elected?

JOHN HANSEN: The managers, I'm not sure in, in terms of--

MOSER: Our members of their co-op would elect them to represent them on the board, right?

JOHN HANSEN: I, you, I have exceeded my expertise relative to the--

MOSER: OK.

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Natural Resources Committee February 2, 2023
Rough Draft

JOHN HANSEN: --to how far--

MOSER: Nobody else cares but you and I.

JOHN HANSEN: Other thing, but in terms of affinity, affinity is important. And so the public perception is important. So the public, you know, we keep saying for, for folks in co-op world that you, you're not just a buyer, you're not just a customer, you're an owner. We say the very same thing about public power. We want citizens to think like owners. We want citizens to be involved. We want them to have the final say and control, because when you lose the affinity, then, you know, that is the the forerunner to the demise of the cooperative. And we believe some of the same principles apply to public power. We are, our organization had a lot to do with the formation of public power. So if you think about it, it's like a publicly-owned cooperative in a way and consistent with our cooperative development. So public power is something we care about very much.

MOSER: OK. Other questions? Well, I always pick him first, so I'm looking over here. Senator Brandt.

BRANDT: Thank you, Vice Chair Moser. Thank you, Mr. Hansen, for appearing today. Like Vice Chair Moser said before, the big difference is the co-op is a closed group that votes on these members. And when we had managers, when I served on the co-op board, farmland example is a great example. Half of them had to be managers, half of them were directors from other associations, and just the membership voted on them. As opposed to our public power districts, these people are running for public office just like all these senators did. This is a, don't you see that being a huge difference in that they have to run an election, they have to shake hands, they have to put yard signs out there. And ultimately, it's the people, people that decide whether that individual's electable, choose a board and judge his qualification.

JOHN HANSEN: Well, yeah, And I, I, I understand, you know, and I'm sympathetic to the question. Ultimately, voters will decide, but also voters will also look at structure and make decisions about whether or not they think that there's a conflict of interest or whether or not something is as straight up as they think it should be. So in this particular case, and in 2015, there's a lot of voters who thought it was a conflict.

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Natural Resources Committee February 2, 2023
Rough Draft

BRANDT: Yeah. And they didn't--

JOHN HANSEN: They, they didn't vote for it. I mean, he had all the qualifications.

BRANDT: So the system worked, like we all hope it will work, correct?

JOHN HANSEN: In that case, yes, it did.

BRANDT: OK.

JOHN HANSEN: But I, I go back one step further and say there was also a public perception that developed, which is useful to know.

BRANDT: All right. Thank you.

JOHN HANSEN: Sure.

MOSER: Other questions? Seeing none. Thank you very much for your testimony.

JOHN HANSEN: You bet. Thank you.

MOSER: Any other opponents?

AL DAVIS: Good morning, Senator Moser, members of the Natural Resources Committee, I'm going to hand this letter out and sort of chop around from thing to thing. So, so one of the things that struck me when I read this bill was particularly the fact that we're still excluding these municipal leaders. Let me first say, my name is Al Davis, A-l D-a-v-i-s--

MOSER: Thank you.

AL DAVIS: --representing the Nebraska Sierra Club. So one of the first things that jumped out at me was, well, here we are back with this question of the REA managers maybe serving on the board of NPPD, but we're still excluding municipal leadership. And all I can say when I look at that is that (INAUDIBLE) must have come out of the REA office. So, you know, where is the drumbeat in, in the public for this change? I agree with what Senator John Hansen said about conflict of interest. I think it's pretty obvious that that could happen. The board member of the NPPD and OPPD are privy to certain privileged information, neither of them to make effective decisions, and one focused on the interests of the firm, on the whole, on whose board they serve. The

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Natural Resources Committee February 2, 2023
Rough Draft

information might include the location of new infrastructure, information relating to the pricing of power, etcetera, and those things could be used to manipulate what's done within the district. I'm hopeful that that wouldn't happen, but I think it's a possibility. So if an entity came to NPPD and said, we want to develop something, a business model, let's just say in Hyannis, well, we'll say in Broken Bow, and someone from the Broken Bow REA board was sitting on the NPPD board, they would have information that might steer that business to their community or somewhere else.

MOSER: Inside information that they might leave to somebody.

AL DAVIS: I appreciate that, Senator Moser, opinion. So I think that's a concern. I don't think that we can solve that by putting this back, striking this from the record. I just don't think we should do that. I'm going to move on then a little bit to the, to the definitions. And this came to me on the phone just a little bit ago. I was considering not testifying here, but so we have these definitions of an adequate and reliable electrical service, and we define reliability as the aggregate electric power of consumers at all times. And the problem with that language in my, from my perspective is it's inexact. You mentioned this, Senator Cavanaugh, that you couldn't find definitions and I couldn't either. So I had a note this morning from someone, and I'm just going to kind of read that to you if you'll bear with me. So here are some attaching, supporting documentation in opposition to the inclusion of the new definition of reliability included in this bill. The definition proposed in LB567 does not match language identified by FERC or NERC, which is the North American Reliability Corporation related to the subject. It doesn't seem prudent to create a standalone definition for the state that is not in alignment with national language, especially for a topic this complicated. I attach an NERC document that defines reliability. It's a bit dated, but I couldn't find anything newer. I pasted this definition below too. The worry that I have with LB567 in the way it is written is that it uses the word "supply" instead of "meet". It could be interpreted that an electric service provider must be able to supply an adequate amount of electric power on their own without being able to rely on power purchase agreements, power markets, customer-owned generation, which could be solar, but could also be backup diesel generators or demand side management and load control methods to achieve reliable operation. That interpretation would be very problematic for every electric utility in the state. So I think we really need to research these definitions a little more if we're going to advance this bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

Again, the Sierra Club is in opposition to doing so, and I'll take any questions, although this is a little bit above my pay grade.

MOSER: And what's the perspective of your friend that texted you that information. I mean, are they an attorney, are they a--

AL DAVIS: Just someone who's very knowledgeable in the industry.

MOSER: So you're representing that as your testimony in--

AL DAVIS: Yes.

MOSER: OK. Question?

AL DAVIS: I had solicited some information. When I looked at the bill earlier, I thought this was a repeat bill from last year. So I didn't read the whole thing. When I sat down to read it last night, I was concerned. So I reached out to some folks that I worked with, and this is the answer that I got.

MOSER: OK. Questions from the committee? Let's take Jacobson first.

JACOBSON: Thank you, Mr. Davis.

MOSER: Senator Jacobson.

JACOBSON: Thank you. Thank you. And, Mr. Davis, thank you for your testimony today. I, I guess my question is, when it deals with conflict of interest, let's face it, we all have a conflict of interest. All of us every day have a conflict of interest when we serve on a board. That, that is a, you know, we mention this issue of getting inside information and being able to act on that in terms of where a new site might be proposed or something like that. So, so then do we take any information involved in economic development across the state and say, you can't serve on these boards because you could take that inside information and act on it? You know, I think at the end of the day, we all really, as we go on various boards, you know, really many cases, we sign a code of ethics or if nothing else, we abide by a code of ethics. I still have a lot of concern about a lot of these. Again, if the public is going to elect people, they'll get to see where they work, what they do, what their history has been. I am concerned that I do think expertise does matter. I do think that bringing expertise on city councils, bringing expertise on county boards, all of those things really help them be better at what they do and better, better stewards of taxpayer dollars. And, and I really

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

kind of see the same thing here. You know, I, I, as it relates to the reliability issue, I guess it's an interesting question. And again, I enjoy Senator Cavanaugh's questioning because I think we want to dig as deep as we can on that to make sure that we're not doing something that's going to be in conflict with where we need to be, but I also understand that this question has been out there for quite some time, though. What is reliability because it gets used a lot. So I don't know whether you've got any other thoughts in terms of what we should be doing with reliability. Should we be doing something different in the definition or what would be your recommendation in terms of how we deal with the reliability question?

AL DAVIS: I think that the points that were made by the piece that I read to you were pretty valid. If our definition doesn't really square up with other definitions of what reliability is in the country, I think we might have problems. So I think we should look at those definitions that might be coming down from FERC or, or NERC.

JACOBSON: Do you have, did this individual, do you, are you aware of what this FERC definition is?

AL DAVIS: I can get that for you.

JACOBSON: Yeah, I think it might be helpful.

AL DAVIS: Sure.

JACOBSON: Yeah. All right. Thank you.

MOSER: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. Thank you. Mr. Davis. Always good to see you and appreciate you being here and I really do appreciate the point you raised about the privilege information. And I guess Senator Jacobson and I are like, ying-yang on this issue, it sounds like. So and it made me think about some of the things that Senator Bostelman raised in his opening about all of these other folks who maybe are eligible to serve and have this sort of monetary benefit interest in these issues. And that, that particularly made me think maybe we should be going the other way on this and saying, if you are in any industry that interrelates with these, I just want to see what your thought was about, maybe we should take a look at expanding the prohibition as opposed to retracting it.

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Natural Resources Committee February 2, 2023
Rough Draft

AL DAVIS: Oh, maybe it should be, maybe it should be vetted. Maybe that question should be vetted a little more thoroughly. I mean, so we've got, we've got this whole issue of the REA taking the REA element out of it, but leaving the municipal piece in. I don't understand that and Senator Bostelman made a reference to maybe we should eliminate that too. I don't, I think that I'll say this about expertise, which is a great thing. But if you end up with a number of people who all have expertise in the same field, they're boxing themselves in and they're not looking outside the box. So sometimes I think it's better to have a very diverse board. I think you have a stronger board when you do that. I don't know if that answered your question.

J. CAVANAUGH: I appreciate that. I mean, obviously we've got a difference of opinion about some of these issues, and I think that helps us get to the core of the issue here. And a diversity of opinion is important. Expertise, I think is important. But I think fundamentally the question is what's the justification for the prohibition? And then the question becomes, if the justification is this sort of monetary benefit that's derived or some kind of special interest, shouldn't that extend to which things, I mean, 2015 is not that long ago, but this, you know, we've had in those intervening seven years a much more solar wind generation installed in the state by private industries who are having power purchase agreements. And those folks, whoever runs those businesses, would not be prohibited, right?

AL DAVIS: Right.

J. CAVANAUGH: And so I guess that's where my mind goes is saying, I see that, I see some of the value in what we're talking about here, but I also wonder then applying that logic, it should be more expansive to exclude others who are similarly situated but not contemplated in the statute and.

AL DAVIS: I would agree with that.

J. CAVANAUGH: OK. Thank you.

MOSER: Other questions? Do you object to reliable and reliability being used interchangeably or do you object to the definition of those two terms together?

AL DAVIS: I think--

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Natural Resources Committee February 2, 2023
Rough Draft

MOSER: It seems to me that--

AL DAVIS: I don't think that we've adequately defined them.

MOSER: Either one. So it's not the fact that one could be interchangeable, used with the other word and substantially change anything.

AL DAVIS: Right.

MOSER: But you just aren't concerned that, you're concerned that the definition is not consistent with what the definition is?

AL DAVIS: Well, any, any time we end up with an ambiguous definition of something, we, we end up with uncertainty and uncertainty--

MOSER: Leads to litigation.

AL DAVIS: Litigation, yeah and I think we need to avoid that.

MOSER: So it's the, the definition you don't think is this specific or is universal to the rest of the world.

AL DAVIS: Correct.

MOSER: OK. Other questions? Thank you.

AL DAVIS: Thank you.

MOSER: Always nice to see you.

AL DAVIS: Thank you.

MOSER: If you're not here, I wonder what you're thinking about.
(LAUGHTER)

AL DAVIS: Someone has to talk the bill.

EDISON McDONALD: Hello. My name is Edison McDonald. E-d-i-s-o-n M-c-D-o-n-a-l-d, representing GC ReVOLT. We're a small and midsize renewable energy developer. And I'm here today to testify in opposition. I won't repeat the comments of Mr. Hansen and Mr. Davis that I think were pretty spot on, but a couple of pieces that I did want to add. Number one. Senator Moser talked about the importance of looking back at the history and that this body has been around for a long time and it has reasons why it does things. Looking back at the

history on this bill, it passed out of committee, 7-1, not a big, Government Affairs Committee, interestingly, not out of Natural Resources. Then also it passed the body 47-0. So I think that's a strong statement saying that just seven years ago, your colleagues saw this as something that required no debate that we should move forward with. The second piece is in regards to those conflicts. I've served on a lot of boards and I think there have been some good points brought up. You know, you can go and say, I need to abstain from this vote. And I think that that abstention is such an important tool, but I think that it's different depending upon how much you're contracting or how much you're working with an entity. So if you're going and you're providing cleaning services, premium services to NPPD, not really a concern. That's a, you know, smaller portion. But when it comes to a utility, if you're talking a significant amount of your business coming from that, I think that that's a different case and it's hard to say that every decision doesn't really impact you. And then the last piece that I wanted to talk about is the definition around reliability. I think that that definition really doesn't take into account our small and mid-scale producers, so lots of our clients. And I think while the intent may be to create the reliability, I would argue that, for example, in this it doesn't well take account for some of the other benefits and it doesn't take into consideration batteries in particular and the impact that those can have. And so, you know, during the cold snap, none of our clients lost power. But the definition of reliability may not necessarily line up with that and it may say that having solar energy isn't as reliable. So I think that's a concern. I do think that defining that reliability is important, but that needs to be happening over a longer period of time. And I think before we go to the definition of reliability, we need to really look more expansively at our rate systems and structures. This industry really lives and dies with these little changes. I know that we've seen, you know, for instance, after you get past the 1 percent cap on net metering, multiple different tools have emerged. So under net metering, you may have a project that pays back in 6 to 12 years. But then there's another tool called net billing. Well, with that, you're going to increase your payback to about 18 to 20 years. And then Norris has a new method called Buy/Sell that jumps that up to 50 years. So I would urge the community caution because these little things, little shifts in like a definition around reliability can be highly problematic. And I think that that needs an interim study really having a larger conversation with public hearings, with more stakeholders involved. And with that, any questions?

MOSER: Questions from the committee? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. And I really, I wasn't going to ask any questions, but you made me think of something, so. OK. So you heard my questions to Mr. Davis about expanding the prohibition. And you represent some folks who would maybe be in that category of folks who would expand to be prohibited from serving on a board. And then, of course, you're talking about net metering made me think there are these different discretionary types of interconnections that go to this particular industry that you're representing. Don't you think that having somebody from that industry, ability to serve on a board would potentially be a conflict because the board, saying Norris, setting this standard that you articulated that it's unfavorable. Somebody could run for the Norris board that works in that industry and potentially change that contract structure to their own benefit or to their industry's benefit.

EDISON McDONALD: Yeah. And, you know, so to that question, I live in the Norris district actually, so great example, and I've definitely considered running for the Norris board. I think, you know, it again, depends significantly on how much interest, but I think overall we do need to look at an expanded definition as to how we really look at those conflicts. I think if I were to run, I would set some really high standards for myself as to those, you know, ethical decisions as to where it fits in. But at the same time, I think also there, there are some good questions to be looked at there. And I think that that expansion of who should be prohibited, including potentially myself, should be part of a larger conversation. And I don't think that that's something that we've really had good dialogue on.

J. CAVANAUGH: Thank you.

MOSER: Senator Jacobson.

JACOBSON: Thank you. Vice Chairman Moser. I guess I would go back. We had an earlier testifier, a proponent, Mr. Briscoe, who is the general manager of Northwest Rural Public Power District. He's prohibited today under the statutes from running for the NPPD board, but has no business relationship with the NPPD. Why should he be prohibited?

EDISON McDONALD: Yeah, and I think that, that's definitely a better case. And I think in other parts of this that you could go and limit out. I think that would be something that would be good to look at. I think also Director Texel was talking about how they go and have like

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Natural Resources Committee February 2, 2023
Rough Draft

a four-year wait period. I think that's another thing to look at. But again, I think those are conversations that need to happen over a longer period of time and probably are more fit for the Government Committee.

JACOBSON: I would also raise the question that as you've testified today and talked about a number of subject matter that most lay people probably have no clue what you're talking about, and yet the question becomes whether you should be on a public power board of any kind. And, and yet it seems to me that's the very people that we need to have involved on these boards to, who understand these issues and can speak, I think, intelligently about those issues. So there's a lot to think about here, but I can tell you that I get concerned about boards and I'm not going to pick out anyone in particular, but I do get concerned at times when we look at major companies that are being governed by board, boards of directors who have limited expertise, business or otherwise. And then we wonder why those companies do not perform well or ultimately fail. And that's where my concern lies, so.

EDISON McDONALD: Yeah, and I--

JACOBSON: But I appreciate your testimony.

EDISON McDONALD: Yeah, I think that's a, that's a fair point and a fair question. You do always have that balance, you know, of how much you're going to really focus on preventing kind of that over, overpowering of a handful of industry individuals versus are you going to have that technical knowledge? I just point to, you know, committees like this. You don't have the technical expertise in this area. Banking does bring some, some benefits and especially in terms of financing. But also you've got a legal counsel who can help to walk you through those issues.

MOSER: OK. Senator Brandt, you have a question?

BRANDT: Thank you, Vice Chair Moser. Thank you, Mr. McDonald, for your testimony today. You started off on reliable and reliability. I sense that your concern is that it would possibly discriminate against renewable energy. Could you expound on that?

EDISON McDONALD: Yeah. And, and I do have to qualify. I think some of it is a bit unclear, which is part of why I'd rather have us have an expanded conversation on rates first and really breaking down all the pieces that go into rates. And I think the other thing that is more

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

clear is definitely that it's not designed to take into account battery systems, which is becoming a larger portion of our market.

BRANDT: I think, I'll just read you the first sentence on page 4: Reliable or reliability means the ability of an electric supplier to supply the aggregate electrical power and energy requirements of its electrical consumers in Nebraska at all times under normal operating conditions. I, how, I think they did a pretty decent job of being very inclusive of those eight or nine different generating capabilities, whether it's coal, natural gas, wind, solar, hydro, nuclear, it doesn't--

EDISON McDONALD: What about batteries?

BRANDT: It doesn't. It's--

EDISON McDONALD: Do that--

BRANDT: It says aggregate, electrical, electric power. And I think the intent here is to include all forms of generation into the aggregate and then let that board decide amongst themselves what's working and what's not. It's how I, how I read the statement.

EDISON McDONALD: Yeah, and I, and I could be wrong, I guess the way that I read it was talking more about the production at any given time. And so then with the battery, you would have that energy that would be sitting on the side. And then also, you know, I think that normal operating hours piece, I think that that kind of could toss up some things. So I, you know, there's a possibility it could be right. It could not cause any problems, but I don't think that we have enough information to clearly say that. And I think, I would be very interested to see how this would actually play out at a utility level and how that definition would be included within their rates.

BRANDT: OK. I'm willing to take another look and, and review it just to make sure that I'm interpreting this correctly. So, thank you.

EDISON McDONALD: Thanks.

MOSER: So I have a question. So you live in the Norris area and so you are eligible to run for the board?

EDISON McDONALD: Yep.

MOSER: Even though you've got a perspective of green power.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

EDISON McDONALD: Yep. And as I said, I mean, there are questions.

MOSER: And their rules regulate how your members are paid for the electricity they generate. And you could have a vote on how that power is compensated for.

EDISON McDONALD: Yeah, it's true.

MOSER: So that wouldn't, might be a bigger conflict of interest than the manager of a power business serving on NPPD's board.

EDISON McDONALD: I mean, my thought is, for me, again, going back.

MOSER: Well, I'm not talking about you, I'm not trying to--

EDISON McDONALD: Yeah, just to use, just to use as an example. But I think you the example would be when I talked about that conflict, talking about how much conflict when it comes to my interest, very teeny, tiny. When it comes to the interests of somebody who's sitting on another, or who's sitting on the NPPD board, who's the director of a local, that could be far more significant.

MOSER: Yeah, it would, well, it'd be a larger number, but it may be less relevant to the person who I mean, it may not personally affect him at all, where it, this might affect you, even though it's a small amount, it could be 100 per cent for you.

EDISON McDONALD: Mm hmm.

MOSER: So the difference in how power companies compensate customers who generate their own power, some of the power is credited to them. The excess power that they put into the grid is credited to them at retail rates. So that might be seven or eight cents a kilowatt. And then in some cases, the power districts only compensate them for excess energy at the wholesale rate, which might be two or three cents. So that's what he's talking about. You know, that he feels his power district is not giving as much credit for the power that those customers generate and put into the grid. In the defense of the utility, they can buy power all day long for two or three cents, you know, why would they want to pay seven or eight cents for excess power? And it may happen when they don't need power. Be kind of like the banking world. You know, why would they pay retail rates for CDs that, and then go around, turn around and loan that money out at the same rate, that wouldn't make sense. They could borrow money at a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

lower rate, you know, on the market and mark it up and, and make a profit.

EDISON McDONALD: Can I make a little explanation there?

MOSER: Oh, sure.

EDISON McDONALD: So, so generally, what's happening in those utilities after they cross the 1 per cent, is that going from you buy retail, you sell retail. Then that net billing that most utilities are doing, that's where it goes to the example you were talking about. Norris is actually taking it to a new step and they're shifting where the meter is to your side. So they take 100 per cent of the energy upfront, take all the benefits of the energy savings, but then we don't get back the same amount. So basically, they take all of your energy, take those energy savings, and then sell back to you only at that avoided cost. So that's where, you know, you really see a shift in how that impacts you.

MOSER: Well, we're getting a little bit--

EDISON McDONALD: Yeah, sorry, we're getting offside, but I just wanted to make sure that was clear.

MOSER: Yeah. Yeah. And my paraphrasing may or may not be perfectly on point, so. All right. Other questions? Thank you very much for your testimony. Anybody else to speak in opposition? Anybody to speak in the neutral?

LASH CHAFFIN: Good morning, Vice Chairman Moser, Chairman Bostelman, members of the committee. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I represent the League of Nebraska Municipalities. I want to bring a little bit of clarity to that issue of, of municipal officials in the the election. The, if you look closely that, the section dealing with municipalities refers to governing bodies. In not every case, but the vast majority of the cases in Nebraska, that's going to be an elected official. I will say elected officials serving on other elected boards is a much different policy consideration than staff members serving on elected boards and yes, that language as, as general counsel McClure indicated, is old language that dates back to the origins of Consumers Public Power District. The way that that's actually dealt with in law, in state law is in Chapter 32. There are, there are laws dealing with serving on multiple board, local boards. So I think that's a bit of a red herring, that discussion of the

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Natural Resources Committee February 2, 2023
Rough Draft

municipal governing bodies. Even though it looks like it's tied to it, but it really isn't. Also, I think the, Senator Bostelman's concepts behind removing the, the barrier, that, that, this isn't a philosophical discussion. This concept exists throughout local government in Nebraska in ways not necessarily affected by this bill. The rural electric staff members have served as city council members numerous times, is, just without even asking anybody. The mayor of Stromsburg for years was the general manager of Polk Public Power District. The mayors of Sargent and Ord for years were, were staff members at the, at the Rural. Electric Public Power District and, and all of, all three of those entities. And there's many more too. The mayor of Kearney is a, is a staff member, many of whom you probably know had been a staff member at NPPD for years. And so this relationship exists. City staff members serve on, on NRD boards regularly. And, and, and so Senator Bostelman's concept exists on the street today and typically, you hate to simplify things. It's always a good, been a good relationship when, when someone from the role of the mayor of Stromsburg for years. You know, his employer was, they were committed to making sure that the local economy was strong, just like the Stromsburg City Council. You know, they shared a lot of goals for moving their city forward. The, it's typically an employer who's willing to give the staff member time to deal with issues that the other local government body might have. They understand that local government is complex and it takes a lot of time. So I would say, this isn't necessarily a philosophical discussion. In other ways, this relationship that Senator Bostelman was pushing for exists. In almost every case over my 30 years with the League, it's been a very positive relationship, and I think it's probably something that should be encouraged. That was truly neutral. But nonetheless, I was testifying neutral, but.

MOSEER: OK. Any questions for Mr. Chaffin? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser and thank you, Mr. Chaffin, for being here. So just to clarify, would it be bad if we eliminated that paragraph or?

LASH CHAFFIN: I think it probably would be neutral.

J. CAVANAUGH: OK.

LASH CHAFFIN: I think the concept is probably dealt with in a different way in Chapter 32. There's a, and this is a whole another

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Natural Resources Committee February 2, 2023
Rough Draft

issue, but there's high office and low office and I don't recall if power districts are high office or low office, but there's--

MOSER: And you can't enroll in two right offices.

LASH CHAFFIN: Correct. Correct. Yes. I didn't school myself this morning on it, but that's, that is correct. That is the concept, yes.

J. CAVANAUGH: Thank you.

LASH CHAFFIN: I think, I think essentially it's neutral. It's, and there is a bit of a slight difference in it's a couple governing bodies of, municipal electric utilities aren't necessarily elected, but it's the vast majority of the, of them are, so.

MOSER: OK. Other questions? Thank you for your testimony.

LASH CHAFFIN: Thank you.

MOSER: Thanks for being a frequent flier. OK, anybody else in the neutral? All right, Senator Bostelman, you're recognized to close.

BOSTELMAN: Thank you, Vice Chairman Moser. Thanks for all testifiers coming in today and the conversation we had and the questions you had. I think they're good questions that things to do. I think there's a lot of misunderstandings what the bill does and what the bill sets out to do from the testifiers. First of all, I'll try to go through a couple of those and then we can talk further if anyone has any questions with me past that. As Mr. McClure said, there are specific guardrails, I would say in setting rates and that for what they have to follow in statute. So there are guardrails in place already to ensure what the board members can and can't do and how they may, may or may not influence that. So strictly speaking to a conflict of interest and the first portion of that, I would say that I think those guardrails are in place already to address that. Another comment in one of the things was, this was something that the REA brought to me. They didn't bring it to me. This is, this is something I've been working on myself the past couple of years, several years. So this is, this is my, my view of, of what needs to be changed in the statute. We had no conflicts prior to 2015.

MOSER: Nobody raised a conflict.

BOSTELMAN: No, there was no conflicts. There was nothing there. So Mr. Hansen supported the bill in 2015, too, for this legislation to enact

to disqualify those individuals. And I think that was pretty much all based on an individual itself. I think there are some conflicts there with that individual that was going on within Norris drove that more than anything else. I think testimony that was stated is pretty clear that there's a lot of other boards and commissions that have people sitting on them that you would call a conflict. Senator Jacobson mentioned himself. Again, it's an elected position. I would think the board of directors on that REA would have a say whether you can or cannot run, whether you should or should not. And if they feel that person shouldn't, then they can remove that person from that position. And if that person feels that's wrong, I guess that's what could happen, but I think those guardrails, those safety things, if you will, those concerns can be addressed in that fashion. I think there's a difference and I think Senator Brandt brought that up fairly well in that there's a difference between a co-op and a political subdivision. There's completely different how those people are hired, how they're elected. I'm not so sure that that co-op would have the same statutory requirements that we do on our public power and our political subdivisions. I think we're talking apples and oranges there completely. And the letter from the Sierra Club, it says, all employees, it refers all employees of the REA should be disqualified. I don't agree with that. I don't think so. Again, I don't think there's that conflict of interest. I really would like to know what the precipitous is behind this. You know, the general manager or the assistant general, CFO, whoever it is, has statutory guidelines they have to follow and they can recuse themselves for anything that comes in. And we've had numerous occasions setting up current public power district boards on past, or generator supplier of power are allowed to sit on the boards but we don't have a problem with that. So if you start eliminating those, start numbering those, where do you start and where do you stop? I'm not sure we can name all of them. So again, the first portion of the bill that's really, I think is, is something we need to consider because I think it's addressed both in statute and on the boards of NPPD and OPPD and within the REAs themselves. Regarding the reliability portion of this. This is interesting. The NERC standard that Mr. Davis read, I had it in my bill last time and he opposed it. This, sorry, it's not a standard. This is a definition. And we're getting confused between standards, definitions. What Mr. Edson said, Edmund, Edison said is, he was concerned about the different types of generation. Reliability is a definition, it's not a standard. When you start doing that, that's when you get into a standard. And I think there's some, just some confusion on what this does. Public power and I have sat down over the last two years working

on this. So any of those type of concerns, conflicts, I mean, they raise those concerns. That was a big red flag. You cannot create a standard, right? What are you doing? Are you doing the definition? Are you creating the standard? Creating the definition only. We're not saying who can generate what power, when and where. That's not what it does. It just says if you are going to come before a committee or be on (INAUDIBLE), where reliable, reliability gives a general basis for understanding where it is. As I said, we had the NERC definition in statute before, in my bill before, and that was opposed. So we've worked a long time. Public Power has worked a long time with us on this. The language we have in here, I think Senator Brandt again, was hit the nail on the head in the adequate, including all sorts of, if you go that route. But again, it's not a standard, right? It's definition. Two different things. That one was probably a hard thing for me to overcome two years ago to understand what they were saying. That was one of those things is like, and you ask me, Senator Cavanaugh, when we had the bill last time, is this a standard or what is this? What are you trying to do? It's not, it does not, it does not change any type or challenge or make any difference on any generation source within the state. It doesn't. It just provides a definition. That's a standard. I think Senator Moser also had a good point in that any of these REAs at any time when their contracts are up, can buy from anybody, any generator in the country. Some of these are buying from Bismarck, North Dakota. Some of them during Uri, I think we're buying from power from somewhere down the southeastern part of the United States. If you remember, those were ones that had those high utility rates because they stepped down, did that. So again, I think, I'll be glad to have further conversations with those who want to have them on the committee. You know, we've worked, I've worked two years with this. I worked two years with public power to address their concerns. The same concerns I'm hearing from, from you all to make sure we're not going there, we're not doing those things. So with that, again, I want to thank all of those who come in and testified today. I think that's a, that's a good opportunity for us to talk about this. We did do a lot of work on the interim discussing this, going back and forth, how things should be worded. And you have a bill in front of you, so with that, I'll close mine.

MOSER: OK. Thank you, Senator. Committee have any final questions? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chair. Thank you, Chairman Bostelman. Thanks for the closing. It is helpful. It's always very helpful conversation. Just, you know, kind of your point about if the REAs

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Natural Resources Committee February 2, 2023
Rough Draft

don't want somebody to run, they can obviously fire them. I, that makes me think it cuts both ways. If somebody runs and they get elected and they're sitting on a board and they don't do something that the REA likes, their job could be in jeopardy. And so we're putting somebody in a bad position and--

BOSTELMAN: That would be their decision to run, just like yours and my decision on every bill that we vote on, everything that we take up, every position we have. You know, that's a question that, that could come across. You know, we, we get reelected. So, you know, we have to run. I don't think there's any, you know, any position of any CEO president, the decision that they make, if their board doesn't like it, they can be removed.

J. CAVANAUGH: And what about the question, you know, this whole conversation about they can go buy power from somebody else when the contract comes up. That makes me think of what Mr. Davis said about privileged information. And so when we're talking about future contracts and things like that, I know, as Mr. McClure said, there's a set rate and things like that. But when you're on the inside of the one setting the rate, you do have some preferential access to information that maybe puts you in a position to negotiate a different contract on the outside and leave, right? So isn't there a concern about somebody operating in an industry having access to privileged information that perhaps the other REA managers wouldn't have, or other?

BOSTELMAN: You know, I think that question I want to ask Mr. McClure about. Let's visit with him about that, because I'm not so sure that would happen, because I'm, I think the statutory guidelines may cover that, but I'm not for sure. So I would like to have that conversation. If we could have that conversation and then we'll understand that better.

J. CAVANAUGH: Sounds good.

BOSTELMAN: Yeah.

J. CAVANAUGH: All right, thank you.

MOSER: Further questions? I think we've gotten to the point we're all looking forward to.

BOSTELMAN: So lunchtime?

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Natural Resources Committee February 2, 2023
Rough Draft

MOSER: Yeah. We had one letter in favor and two letters of opposition. And with that, that will close our hearing on LB567. Thank you all for attending.

BOSTELMAN: OK. Good afternoon, everyone. Welcome to the Natural Resource Committee. I am Senator Bruce Bostelman from Brainard, representing the 23rd Legislative District, and I serve as Chair of this committee. The committee will take up the bills in the order posted. We have a confirmation/gubernatorial appointment and one bill this afternoon. This public hearing today is your opportunity to be a part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green trans-- testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill out completely-- fill it out completely. When is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify, but would like to indicate your position on a bill, there are also white sign-in sheets back on the table. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We will be using a five-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have one minute remaining and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It's just part of the process as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least ten copies and give them to the page. Please silence or turn off your cell phones. Verbal, verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees states that written position letters to be included in the record must be submitted by noon the last business day before the scheduled hearing on that particular bill. The only acceptable method for submit-- of submission is via the Legislature's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

website at nebraskalegislature.gov. You may submit a written letter for the record or testify in person at the hearing, but not both. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included in the committee statement. I will now have the committee members with us today introduce themselves starting on my left.

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

SLAMA: Julie Slama, District 1: Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

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

BOSTELMAN: And on my far right.

BRANDT: Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster Counties.

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

MOSER: Mike Moser, District 22. It's Platte County and parts of Stanton County.

BOSTELMAN: Senator Moser also serves as the Vice Chair. Also assisting the committee today, to my left is our legal counsel, Cyndi Lamm, and to my far right is our committee clerk, Laurie Vollertsen. I believe this afternoon our pages are Trent Kadavy and is it Landon Sunde?

LANDON SUNDE: Yep.

BOSTELMAN: Thank you. Thank you both for being here today. With that, we will begin today's hearings with our first gubernatorial appointment and our only one, Mr. Donald Batie, is it? And it's a reappointment. I believe it's to the Natural Resource Commission, is that right?

DON BATIE: Correct.

BOSTELMAN: Yes. Welcome.

DON BATIE: Good afternoon, Senator Bostelman and members of the Natural Resources Committee. My name is Don Batie, D-o-n B-a-t-i-e. I live and farm northeast of Lexington on an irrigated corn/soybean/wheat farm. I was reappointed by Governor Ricketts last fall to the Natural Resources Commission for-- it would be my third term on the commission. Just a little bit about me. I have been farming my entire life. Like I said, it's an irrigated farm. Our ground has been on my-- some of the farm ground has been our family since 1873, 150 years ago when my great grandparents emigrated from England, and has been irrigated since 1894. So long history of irrigation in our district. I was appointed first to the Natural Resources Commission after the Unicameral adopted LB1098 in 2014 establishing the Water Sustainability Fund. And my position, I represent agricultural interests, which is obviously a very broad area. But the Water Sustainability Fund is now the biggest game in town with the Natural Resources Commission. Currently, the Unicameral appropriates about-- approximately \$11 million a year to the Water Sustainability Fund, which our planning-- our Natural Resources Commission has grants that we distribute the money then across the state grants. The first year, the 2014-15, was a very busy year. I've been on the rules committee all eight years and that first year, we spent most of the time writing the rules to distribute the fund as well as the guidelines and the application form. Since then, we have added eight rounds of applications for the Water Sustainability Fund. We've granted approximately \$95 million to projects across Nebraska. This goes all the way from Nemaha County to Cedar/Knox County up in the north. You go west to Dundee County and you go up into the Scottsbluff area. So we've, we've covered geographically most of the state, including everything-- we have projects inside Omaha and clear down in the-- like I say, Dundee County, one of the lowest population counties in the state. So we, we cover both urban and rural areas. The Legislature did-- does have a number of things on the water sustainability that we're trying to address, both water quantity and water quality and also flood control. And so we have all types of projects that cover those areas. I do know that there's-- quite a few senators have some concerns about the scoring system used by the environmental trust. I can't comment on the trust. I can, however, tell you that our system is different and if any-- you would like more information about how our scoring system works, I would be glad to explain that to you since I helped write the rules for it and have been on the scoring committee for four of the eight years. So with that, I will close and be open to questions from senators.

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Natural Resources Committee February 2, 2023
Rough Draft

BOSTELMAN: Thank you very much for coming in today. Are there questions from committee members? Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you, Mr. Batie, for appearing today. So exactly how is Nebraska's scoring system different from other states?

DON BATIE: Well, the Water Sustainability Fund, when the Unicameral set this up, they created 15 categories that we have to follow. And I can't verbally tell you all 15 categories, but these 15 areas that is in the statute, we rank. And so the whole process goes is that we take applications once a year. We currently take-- well, applications will start coming into Department of Natural Resources on the 16th of March until the end of March, till the last half of March. The staff will then review the, the applications and the legislation-- the statute has set some minimum standards that these applications must meet. And the staff and Director Riley go through them and make sure they meet these the minimum standards, that they're fiscally sound, financially sound and feasibly-- feasible. And Director Riley could explain more if, if you need more answers on that. But once he's ruled that they have met this baseline standard, then they come to the commission and we establish a scoring committee. There's 27 members on the, the Natural Resources Commission. We have ten members on the scoring committee with two alternates and those ten go through those applications and spend a great deal time. Usually it takes three or four days at minimum to go through the applications. And when working on the rules, we decided of those 15 criteria that the statute lays out, we felt eight of them were probably more important than the other seven. And so the first eight questions, you either get a 0, 2, 4, or a 6 score from the members. The questions 9-15 get a 0, 1, 2, or 3. So each of the scoring committee members goes through and scores individually at home. Don't talk to anybody else. They score it individually. We get in, get together as a group and we review the applications as a group because maybe one of the scoring committee members didn't really fully understand the project. And so we can explain-- maybe I know more about the project than somebody else. So we'll, we'll have a little give-and-take talk about it, allow people to adjust scores if they wish at that time, and then we lock the scores down and then we average the scores. And so it's-- with ten scoring members, it's real simple. If it gets, you know, an average of 1.5, well then we round it to a 2. If it gets a-- the, the hard part is, is if it's, like, say a 3. Well, does that go to a 4 or does it go to a 2? Then we have to decide because we make sure it has end up-- each score has to be a 0, 2, 4, or 6 for the first eight questions and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

a 1, 2, 3 for the remainder. So we come to an agreement. Basically, it's whatever the group average is. That's what the score is. And then when we're all done, then we rank them after the year end. We do have a division. We decided that we would separate out small projects. Projects less than a quarter-million dollars are ranked and scored separately than large projects which are over a quarter-million. We've had projects that have requested up to, I believe, \$8-9 million. And then when we also then-- the funds that we get from the Unicameral, the first 10 percent is designated in statute to go to a combined sewer project, which in Nebraska, the only combined sewer project is in the city of Omaha. It's extremely large project they have and so they get the first \$1 million. Then on our own-- on our rules, we set up that the next 10 percent go to small projects. So any projects that are less than a quarter-million, there's another \$1 million roughly that goes to them. And so we'll rank those projects and wherever there is a-- usually, we look for a natural break in scoring. If there's like a three or four or five point break and that's about where our money runs out, that's where we draw the line. And then we get into large projects. And one of the things that we have put in our rules is that we can fund all the money that we have got that year and we can partially fund one project that-- utilizing the money from next year. As an example, this last year, the-- one of the projects we got was from Cedar/Knox County, the rural water, and it's an \$8 million request. Well, we had \$4.5 million left on our balance when we got down to them. We did approve the Cedar/Knox project, realizing that the first \$3.5 million out of the appropriation that you will vote on this year will go to that project right off the bat. But we only can do that with one project and only one large project. And so there's no manipulating the scores to say someone is in or out. We're very, very open about the scoring and, and try to be very fair.

BRANDT: All right. Thank you very much.

BOSTELMAN: How many members are there?

DON BATIE: There's 27 members on the commission; 13 of the members are elected by the natural resource districts. They-- each district, there's-- of the 33 in NRDs, they merged them into watershed units so there's 13 areas. They elect those. Governor appoints 14 members. And we have a wide variety of members, everything from sportsmen to groundwater irrigators, service irrigators, public power districts, municipal, public, cities, everything else. The fun thing is, especially after we've been in this now eight years in, we have to actually go back and look on the list to see who-- are they an NRD

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Natural Resources Committee February 2, 2023
Rough Draft

person or are they a MUD person or are they a public power person? Everyone on there has a firm desire to protect Nebraska's water and we all have the same goal. We all work together very seamlessly. We rarely have any major disagreements.

BOSTELMAN: Are these four-year terms?

DON BATIE: This was a-- the Governor-appointed terms are four-year terms. We run from June 1 to May 31.

BOSTELMAN: Senator Hughes.

HUGHES: In your opinion-- first of all, thank you, Senator Bostelman. Thanks for coming all the way-- you said from Lexington, right?

DON BATIE: I'm from Lexington, yes.

HUGHES: Very good. I will be there on Valentine's Day because Seward plays Lexington that night. But anyway, side note. What, in your opinion, is the greatest challenges facing Nebraska with our water supply and sources?

DON BATIE: I see two challenges. I'm going to broaden it to two.

HUGHES: Yeah.

DON BATIE: We have-- one is water quantity and that's an ongoing battle that we've been battling for years and years is on the water quantity that we-- all the natural resource districts are working to become not over appropriated to be more status quo so that we're not over using our water. And I'm proud to say that Nebraska is the only state in the Union that has that policy that we will not overuse our water. It'll be there for our descendants. The second big problem is water quality, specifically nitrates. We're seeing more and more communities brought in applications for water nitrate issues. And where we live in the Central Platte NRD, that-- which runs from basically Dawson County through Chapman, we've worked with high nitrates in our groundwater for over 30 years. And that's a probably-- we realized first because our groundwater is, it's shallow. It's-- much of our district has two to five feet of soil between the surface and the groundwater. So any extra-- excess nitrogen that's been applied to the fields gets into the groundwater very, very quickly. And so we've realized this issue a number of years ago and Central Platte NRD was extremely proactive on trying to protect our groundwater. We have nitrogen management classes that farmers are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

required to take. Fall application of nitrogen is highly regulated. If your nitrate levels are high enough, you have to do a lot more reporting to the NRD about things and so it's helping. The thing is, it's a long-term solution because the nitrates-- different excess nitrogen that leached deep from my-- when my father was farming, that nitrogen is still in the ground and, and get into your district. I foresee there's going to be a lot of nitrate issues maybe in 50 years because the nitrates are there. They're in that vadose zone, which is between the surface and the groundwater. It's slowly working down. We don't know how much nitrogen there is because it's extremely hard to measure that in the vadose zone. I see that's going to be a extreme issue in the future. And, you know, incidentally, if the Unicameral wants to give additional money to the Water Sustainability Fund, I know we can use it. Typically, we have-- usually about only half the projects that have applications are-- we are allowed to-- able to fund because we've run out of money before-- of quality projects before we can fund them all, yeah.

HUGHES: Can I ask one follow-up to that? So with that statement, do you allow-- like, so you, you get through half the projects, There's still another half. Will you let them roll over to the next year's--

DON BATIE: They have to reapply.

HUGHES: They do have to reapply.

DON BATIE: But they can-- but the reapplication can be as simple as just refile it again.

HUGHES: Yeah.

DON BATIE: Typically-- and the, the staff will work with the applicants about, you know, OK, in your application, this was a weak area on the scoring. Look this over. I think you could do a better job of writing this. And so they'll work with the applicants about how to improve their application. And we've had a number of them that reapply and get funded the second year. The Papio NRD, unfortunately their project-- they have a flood control project on the Papio and it was right below the line getting paid in '21 and it was right below the line getting paid in '22. And, and it's a good application, it's a good project. It's just that it has just been under by about two points is all from the next application and hopefully this next round, they'll get funded.

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Natural Resources Committee February 2, 2023
Rough Draft

HUGHES: Thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: I guess I have a couple of questions. First, I'd just like to ask-- you talked about the size of the board. You got some that are appointed by the Governor, some that are elected. I assume the elections are along the different watersheds that, that are elected. Are there any other restrictions other than living within that watershed that would prohibit someone from running for election to serve on this board?

DON BATIE: No and even though they're elected by the NRDs, you do not have to be a member of the NRD board of directors-- any of the NRD board of directors.

JACOBSON: What if, what if you were the director or work for one of the NRDs, say the manager of the NRD. Does that prohibit you from being on this commission?

DON BATIE: No, it doesn't. What it would do--

JACOBSON: And that's really-- I don't need a lot, but--

DON BATIE: Because it's just-- first of all, the Governor could appoint you in, in a position. But from an NRD, we have members that could be. The other thing is on the scoring, I want to-- do bring up that statute does state very specifically that if you are a board member or a-- an employee of one of the project's sponsors, whether it's an NRD, a city, community, whatever, you must abstain from all discussion--

JACOBSON: Right.

DON BATIE: --and voting and so that has happened.

JACOBSON: A follow-up question has to do with nitrates. And obviously, this is a huge issue and we're very much aware of the, the-- that challenge and recognize that a big part of this issue dates back, you know, 30, 40 years ago from-- and, and clearly, there's practices that may still be curbed today, but for the most part, a lot of what's-- the sins of the past are still going to become worse. So with that in mind, I guess as you start looking at projects, are we going to start focusing more on tackling the nitrate issue? Will that rise to the top in terms of some of these projects being targeted?

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Natural Resources Committee February 2, 2023
Rough Draft

DON BATIE: I think it will. And again, as a-- from a commission standpoint, we don't control who makes applications so we kind of have to deal with what applications come in. But it's very clear, the statute and our rules, we put water quality-- drinking water quality gets a lot of press. I mean, the-- a lot of the six-point questions deal with quality of water. And so if they're working on a water quality issue, they typically get very high on the funding list because of that, because we recognize it's a-- that's a serious issue and it's also a very expensive issue.

JACOBSON: Yes. Thank you.

BOSTELMAN: Other questions from committee members? Seeing none, thank you, Mr. Batie, for coming today.

DON BATIE: Thank you for coming. And if you have any further questions, just reach out to us and we'll be glad to get your staff any information you want. Thank you.

BOSTELMAN: Thank you, sir. Anyone like to testify as a proponent for the gubernatorial appointment of-- reappointment of Donald Batie, please step forward. Any proponents? Seeing none, any opponents to the reappointment of Donald Batie to the Natural Resources Commission? Any opponents? Seeing none, anyone like to testify neutral capacity? Seeing none, that will close our hearing on the gubernatorial reappointment of Mr. Donald Batie to the Natural-- Nebraska Natural Resources Commission. Thank you, Mr. Batie, for coming in.

MOSER: OK, now we'll open the hearing on LB723. Senator Bostelman, you are recognized to open.

BOSTELMAN: Thank you, Vice Chairman Moser. Good afternoon. Good afternoon, Vice Chairman Moser and members of the Natural Resources Committee. My name is Bruce Bostelman, spelled B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. I'm here today to introduce LB723 at the request of the Governor. LB723 creates the Public Water and Natural Resources Project Contracting Act. The purpose of the act is to provide the Department of Natural Resources the ability to utilize innovative contract delivery methods, enabling greater efficiencies and best practices currently not available to the-- through the department. The Legislature has previous-- previously granted the authority to utilize these project delivery methods to other departments and agencies such as the Department of Transportation, Game and Parks and political subdivisions, NRDs,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

municipalities, counties, school boards. LB723 simply grants the same authority to the Department of Natural Resources. Specifically, the act establishes a procurement process for three delivery methods: design-build, progressive design-build, and the construction manager-general contractor contracts. The first method, design-build contracts, are the first method allowing for one single entity to work under a contract with a project owner to design and construct the project. The system provides for the design and construction services to be contracted by a single entity, the design-builder. The second, progressive design-build the contracts, are similar to design-build contracts, but it allows a project owner to select a contractor prior to developing a baseline design, enabling collaboration during the earliest stages of project development. The third, construction manager-general contractor contracts, allow for the project owners to engage a construction manager during the design process to provide constructability input. All three alternative methods are intended to reduce the overall costs and construction time. The bill further authorizes the department to hire an engineering or architectural consultant and assist-- to assist with the development of project performance criteria, request for proposals and any other services requested by the department in relation to a project. In addition, department-- the department may enter into private-- public-private partnership delivery methods for projects under this new act. If such an agreement-- arrangement is made, DNR must provide a report annually to this committee on the project. LB723 requires the department pay a stipend in an amount that is at the discretion of the department to qualify design-builders that submit proposals but are not selected. This would give the department ownership of the intellectual property contained in the proposals. Finally, I've handed out AM232, which is a cleanup amendment for the bill that removes references to Chapter 39 and it also replaces the Director-State Engineer with Director of Natural Resources and strikes the Appropriation Committee reporting requirement. With that, I will attempt to answer any questions you may have and if I'm not able to answer them, Director Riley will be following me with additional information regarding this bill. Thank you, Vice Chairman Moser.

MOSER: Questions for Senator Bostelman from the committee? Well, I think we'll let this evolve into whatever it is. Thank you. Anybody here to speak in support of this bill? If you're planning to testify, please come forward and sit in the front row so you're ready to come up and testify. Welcome.

TOM RILEY: Thank you, Senator Moser. So I provided a written copy of my testimony and another summary of these alternative project design methods that the page will be providing to you. So good afternoon, Vice Chair Moser and members of the Natural Resources Committee. I'm Tom Riley, T-o-m R-i-l-e-y, Director of the Department of Natural Resources. Governor Pillen asked that LB723 be introduced specifically to meet the need of the department for facilitating contracting for large-scale natural resource projects promulgated and funded by the Legislature last session. The 2022 Session enacted multiple laws directing the use of newly appropriated state funds: Perkins County Canal, water project developments-- or I'm sorry, the Perkins County Canal Project Fund, which was LB1015, and the JEDI fund, LB1023, for critical and time-sensitive public water project developments requiring contracting by the department. While the department was given all the necessary authority to carry out these mandates, the department cannot utilize design-build, progressive design-build or construction manager-general contractor contracting methods, which you heard Senator Bostelman describe, which have already been specifically authorized for the Nebraska Game and Parks Commission, the Nebraska Department of Transportation and most political subdivisions. These parallel existing authorities are codified in the State Park System Construction Alternatives Act, Transportation Innovation Act and the Political Subdivision Construction Alternatives Act. None are currently available to the department, though, for potential time- and cost-saving opportunities they afford to the state. LB1023 is modeled primarily on the contracting components of the Transportation Innovation Act, building roads and canals, lakes and similar processes. So the flexible contracting methodologies authorized for-- in the 2016 act for use by the Department of Transportation are a good match for the Department of Natural Resources as well. The bill's purpose is simple: provide the department enough flexibility in project delivery methods in order to obtain the best value for the state. It does not provide any funding, nor does it create new opportunities for other government entities to expand their taxing or bonding authority. The fiscal note shows no discernible impact to the state budget, agency budget or operating cost. It does not conflict with the state's pay-as-you-go funding budgeting approach. It does not conflict with the existing state contracting requirements for competitive bidding. It does not replace typical design-bid-build contracting. That is the traditional method for letting state contracts, but does allow the department to have the appropriate contracting alternatives to expedite project completion while fighting cost inflation, thus saving state funds. Perhaps the most important

thing for the committee to understand is how and why these construction contracting methodologies and delivery methods work and why they have advantages for large-scale complex projects. The design-build piece and the construction manager-general contractor piece is critical if we want to shorten the construction time for large projects. The public-private partnership piece is important because the Legislature established those expectations of the department in LB1023 last session. These tools are not controversial. They've been used in almost every state and they're best suited for the larger and more complex projects when time is critical. Inevitably, changes and adjustments must be made during large, longer duration builds. Design-build contracting tends to limit the changes and mitigate cost delays. The new authorities provided in LB1023 will be critical to the most efficient implementation of projects that the Legislature has asked our agency with completing and are critical for shortening the duration of the construction period, which ultimately reduces costs. Perhaps the construction world-- in the construction world and any other context, time is money and there's a clear benefit to the state in controlling costs. The design-build concept is neither new nor is it experimental. It was available to us-- it was not available in Nebraska until the passage of LB960 in 2016 for DOT and in 2018 for Game and Parks, but it was available and used in most states earlier than that. Design-build has been used on every type of project in the transportation sector for roads, highways, bridges, rail, building, pipelines, canals, even environmental mitigation. LB723 requires the department to publish detailed guidelines for contractor qualifications, the RFP process, and standards for evaluating proposals and work. If enacted, the bill, in Section 20, would authorize the department to utilize a public-private partnership delivery method with contracts awarded through competitive bidding as limited rules and regulations department must promulgate by July 1, 2024. The general idea is that through the partnership, you're working with your team, you address the constructability issues upfront instead of finding out after you left the project there are big problems. It can potentially reduce the costs because typically your greatest savings are going to be in the front end of a project when you have the most ability to make changes to that project. I want to bring one tactical note on this bill to your attention. The bill has introduced some requirements for amendments that you heard Senator Bostelman talk about in the statutory references to Transportation Innovation Act, which was largely the context for this bill. And I believe you all have those now. Finally, I'd urge you to have this

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Natural Resources Committee February 2, 2023
Rough Draft

bill on General File and if you have any questions or comments, I'd be happy to answer those. Thank you.

MOSER: Questions from the committee? Senator Slama.

SLAMA: Thank you, Director Riley, for being here today. I appreciated your testimony because I think it's maybe the one time I'll ever use construction law and that semester of my life I can never get back. But can you just translate for the committee what design-build is and how it differs from the normal state process for these types of projects?

TOM RILEY: Sure. So maybe I'll start with the ladder. So traditionally, in most of my career, a designer/an engineer takes on a project. We go through the design. We certainly work to see what kind of methods contractors are using, but you do that irrespective of working with the contractors. You prepare the design and specifications for the customer. And once that's ready to go, we provide that and bid that out for contractors and contractors would then respond to that set of plans and specifications, provide a cost, those type of things. And then you would make a selection of a contractor at that time. The nub of this type of delivery method is it allows you to introduce that contractor to the, to the system earlier in the process and especially on a bigger project. Engineers, designers, we keep up on everything, but it's when you're in the field and actually building something that folks are at best to help you decide that maybe there's a better way, a better way to sequence something, that it's a better time to make purchase of a large piece of the project, for example, fuel costs and those kind of things. So it allows that opportunity to do that earlier in the process before the design is all wrapped up.

SLAMA: Solid. And LB960, that was the bill regarding the South Beltway, right?

TOM RILEY: So my recollection is that was what was kind of wrapping around the specifics for it. I think it gives the Department of Transportation authority to use it in other places as well.

SLAMA: Fair enough. All right, thank you very much.

MOSER: Senator Jacobson.

JACOBSON: Yes, thank you, Vice Chair Moser. Senator Riley [SIC], thank you for being here and I want to thank Senator Bostelman for bringing

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Natural Resources Committee February 2, 2023
Rough Draft

this bill. Obviously, I've been involved in a number of construction projects as a lender and, and I've seen how this process can be very, very advantageous for the very reasons you stated: significant time savings, but also significant cost savings. It seems to me that as we start looking at a lot of these projects that are out there today, being able to nail down that contractor early on that's going to help build the project, has the capacity to build the project and then have them work simultaneously with the design of that project is, is really kind of a no-brainer. And I think the South Beltway is a good example of how that really was a-- quite a successful project. So I'm assuming this is what you'll be using for the Perkins County Canal, assuming that, that that does move forward and, and you try to utilize it there in particular.

TOM RILEY: Yeah, certainly that's one of the projects that we identified and it would be good to have that tool in the toolbox of-- it makes sense to apply it so it's a good time to add that to--

JACOBSON: I'm just making assumption it's the highest, highest priority project you're going--

TOM RILEY: That's, that's, that's correct.

JACOBSON: Got it. Great answer.

TOM RILEY: And maybe just a follow-up to that and something that Senator Slama talked about, the construction industry, just like many, is really focused on innovation and changes in technology. And so having that timeline compressed, if you can, and taking advantage of that is really going to be important in terms of time and usually time is, is money.

MOSER: Senator Brandt.

BRANDT: Thank you, Vice Chair Moser. Thank you, Director Riley, for speaking today. So 100 years ago, I used to work in engineering and do projects and we were required by my companies to get three bids upfront so that we always knew we were getting the best deal for our company. How does this system ensure that the taxpayers in the state are getting the best deal?

TOM RILEY: So certainly you're always looking for the best price for a project. You also want the highest and most qualified people to do your work too. So the way that we see those kind of efficiencies of savings is to be certain that the design takes into consideration

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

components that are changing. I mentioned the various innovations, technology, those kind of things. So it really allows to do that. So your cost savings is really in that piece. This doesn't really change the fact that we would still solicit from and for multiple contractors before we made that selection to get the best value and price in that sense as well, Senator.

BRANDT: So traditionally, there's probably a limited number of contractors out there that can handle-- let's use the Perkins County Canal. You've got a new entity out there competing against two old-line companies and they come against your low bid. How do you guys handle that?

TOM RILEY: Well, most of this is really set up to be qualification based, taking advantage of, of certainly those components. And we'd always go back-- and I'll maybe give you my own experience in the kind of lowest-bid piece. You get a low bid, something, something doesn't look right. As the designer and engineer, the first thing you do is you go back and be certain that they understood the plans and specifications for the project to be certain that there isn't something like that, that you might not get a project that is the quality for you-- for which you need. The reality is that this process would be similar to the typical design-bid-build in that you have protections built in for the state for something. If you had a product or quality that didn't meet the specifications, you'd have a way to go back and deal that-- with that in the bonding process or, or otherwise.

BRANDT: So, I mean, if you have a half-million-- billion-dollar project like that, I imagine the, the bid documents are going to be this thick. There's going to be a significant cost to all the bidders on the project. And I know Senator Bostelman mentioned about a stipend to be determined. Is that for the losing bidders to get compensated for all the work they did?

TOM RILEY: So that, that stipend component that we, we kept is really to capture any type of innovation that a bidder might have and maybe they don't meet the rest of the things. It might be useful for the state that we can still employ into the process. So that would be at our discretion whether or not it's worth providing said stipend. It's not an automatic process. And part of that will go through the rule building component to lay out how we bid that.

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Natural Resources Committee February 2, 2023
Rough Draft

BRANDT: Because I do know there's concern about bidders on really big projects that they won't bid the project because of the, the time and effort on their engineering staff to put this together only to come in second place. And in a way, sometimes it discourages companies from bidding. Do you agree with that?

TOM RILEY: So I'll speak from my, my years in consulting that sometimes you don't bid on a project because it's really-- doesn't quite fit you. It could be a big lift depending on the size, scope. But if you think you can provide the highest quality and the best price for a customer, you're usually going to do it. And I don't think this at all would reduce that competitive advantage to have a competitive environment to allow people to come in and bid on our project.

BRANDT: All right. Thank you.

TOM RILEY: You're welcome.

MOSER: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser, and thank you for being here, Director Riley. I was going to ask you somewhat similar questions so I had one other question about the public-private partnership. So this is modeled on-- you said DOT and a couple others. Did they have a public-private partnership portion or is this specific because of the lake and those sorts of things?

TOM RILEY: So the question about public-private partnership is that bill did have or that act does have that component within it. However, because of the-- LB1023 does specifically talk about it, we wanted to capture that piece within this, this bill as well.

J. CAVANAUGH: So it's, it is specific to the fact that we're give-- we gave you authority over a project that would have-- contemplate a public-private partnership. Sorry. I got a little distracted there by-- Vice Chair Moser put me in charge so you're all on trial.

TOM RILEY: Oh.

J. CAVANAUGH: So what I was-- generally, my question, I guess, so I guess I will ask if anybody else has any other questions.

JACOBSON: We're not adjourning, are we?

J. CAVANAUGH: I mean, now that I'm in charge, we'll see what happens.

JACOBSON: I would have a question.

SLAMA: Second.

J. CAVANAUGH: Oh. Senator Jacobson.

JACOBSON: Director Riley, I guess could you help me on, on this project or similar-- like Perkins County Canal. Having served on the airport authority in North Platte, I remember when we would do major bidding projects. We first had to go out and solicit bids for design and they, they gave us bids and gave us examples of their work and then we had to select from them. And the bids were basically, here's what we can, here's what our credentials are; no cost, just credentials. And then we had to select from that who had the best credentials. And then once we selected the best credentials, then they'd come back with here's what, here's what we're going to bid it at. And then based upon that, if the bid was in line with what the Feds agreed and looked over and said, yeah, or the Department of Transportation said, yeah, those are in line, then you either accepted or you went back and said, we want to kick them out and go back to somebody else. That was the safeguard. And then the same thing happened when we actually got the project itself. So I'm curious as to how-- for example, something like the Perkins County Project, how would you-- the canal project, how would you, how would you see that process unfolding in terms of design or in terms of who the players would be?

TOM RILEY: Sure. That-- and that's, that's a great question. If I had a lot of time, I would be our designer and put this thing together ourselves. We just don't have that full staff. So currently we're in the process of bringing on board a designer in the fashion you described, that it's based on qualifications. We'll work with them to find an overall cost that makes sense for the project and allows us to be efficient and flexible in any changes. So this process, we would still have that design team on board, but we'd also likely bring on then, if we employ this, a contractor in one of the methods that are laid out in this summary page that I provided to allow us to get them that innovation and flexibility for the construction side. Usually, what you'll find, in my own experience and many times when I pitched a project, your designers, your engineers, they're all qualified to do the, do the job. It's who you want to work with, who has time to do the job, maybe to your-- Senator Brandt's question. You got to make

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

sure that these folks have the time to get the job done for you. And, you know, who do you work with and how do you have the best relationship? Because it is about a relationship, it's about a trust and that's how you get the best value and product out of any design.

JACOBSON: And I'd assume, just like with the South Beltway project, you had two major contractors who, who partnered up to bring the expertise to get that done as well. And, and depending on the size of the project, that could very well be the case here too, I'd say.

TOM RILEY: No, that's a, that's a good comment. Likely it would be. I would say it really-- this will not restrict the ability for smaller companies to be part of this because any type of large project like that, a civil project, you're going to always have different specialties and groups and others that are going to be part of the general contractor's team so to speak.

JACOBSON: All right. Thank you.

TOM RILEY: You're welcome.

MOSER: Senator Brandt.

BRANDT: Thank you, Vice Chair. I guess the reason I'm maybe a little more cautious than I used to be-- and it isn't your department, it's what happened over at HHS with the foster care situation where we had five low bidders and three dropped out and all of a sudden, we have a crisis in the state in foster care because we're down to two because the state held them to their bids. And then Saint Francis, you could write a book on what we did wrong with Saint Francis and, and how that transpired. And I would really hate to see that kind of thing happen to another department like NDOT or DNR or one of the other ones. So I guess I'm just expressing caution that we vet our vendors and there's no doubt that you will do that because this is a different animal than what they faced over there. But I think there's a lot of taxpayer caution in the Legislature right now because of what happened in, in those two situations.

TOM RILEY: Understood.

BRANDT: OK, thank you. Well, I think I understand what you're talking about, but in, in the original design-bid-build, the old world, you decide what project you want. The engineer would design something for you-- of your, of your own hire. You hired them. And then they come up with the probable cost and then you build it and you build it pretty

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

much the way it was designed. But sometimes, you get along in the project and all of a sudden you say, wow, you know, if we had added a third floor instead of making it so wide or, you know, if we had changed the spacing or the, the length of some beams or something, we could save a lot of money. And then you have to have change orders and you've already selected a contractor. And is it fair to the other bidders who didn't bid the same thing? And so you get into a quandary. So that's the other side of it. Then you've got the side that Senator Brand's talking about, once you get connected with a contractor, if he goes bad, how do you fix it?

TOM RILEY: Well, the traditional method of design-bid-build, it doesn't really afford you the collaboration with the industry and your biggest cost, which is the construction costs. So this process allows you to, to bring in and hopefully avoid really the scenario that you laid out that every designer, every engineer is trying to make sure they've accommodated all those, all those pieces that they don't think are going to affect the project. But sometimes we, we make mistakes. And a lot of times, that happens during the construct-- construction project or you're down the road and you have to go all the way back to the beginning. Maybe you redesign something and then have to have a change order, as you've laid out. On a bigger project, the-- and the projects that we've been discussing here today, this kind of delivery methodology, that's really where you can get your cost savings and time savings. It helps you hopefully identify those things by collaborating with the contractor and be able to have those things squared away upfront so you don't have the, the incident that you laid out.

MOSER: So if you interview, say, three companies before you begin and you like some part of one company's design, you can't use that without compensating them because that design is their property, right?

TOM RILEY: So that could, that could--

MOSER: So is that the reason for that stipend?

TOM RILEY: If they've identified something specifically as intellectual property, that's where the stipend piece would come in.

MOSER: Yeah, that's what I was getting in.

TOM RILEY: Yeah, yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

MOSER: But, but if I draw a building plan and as-- or develop some ideas as part of the bidding process, that would be mine unless you hired me to do the work or unless you paid for that plan, and then you collaborate with somebody else who had something else you liked to build it, right?

TOM RILEY: Yeah, typically, until you're-- you as owner, in this case the state, engages with that firm and then it's yours.

MOSER: Yeah, yeah. Questions? Thank you very much. Appreciate your-- it's one of your shorter testimonies.

TOM RILEY: Well, thanks for having me and your consideration for this as well.

MOSER: Thank you for coming.

TOM RILEY: And as always, available to answer any questions if you might have them later on.

MOSER: Thank you. Anybody else to speak in support?

KENT MILLER: Good afternoon. Senator Moser, members of the Natural Resources Committee. My name is Kent Miller, K-e-n-t M-i-l-l-e-r. I am general manager of the Twin Platte Natural Resources District. I am testifying today for the Twin Platte Natural Resources District and I am also testifying for the Nebraska Association of Resources Districts. The Twin Platte Natural Resources District supports LB723. The Nebraska natural resources districts, on January 24, during the annual NARD legislative conference voted unanimously to support LB723. The reason I wanted to testify today was specifically that LB722 [SIC] will help expedite the building of the Perkins County Canal and that's been referenced here earlier today. We-- for the last 40 years, beginning in the 1980s, I have been promoting that Nebraska utilize the provisions of Article VI of the South Platte Compact and to build the Perkins County Canal. The majority of the South Platte River in Nebraska is within the Twin Platte Natural Resources District. I have been observing the development occurring in the front range of Colorado and their desperate need for water. I enthusiastically applaud and thank Governor Pillemer for supporting and funding in his budget the Perkins County Canal Project. This is the right time and Nebraska cannot wait any longer. It is essential to the economic prosperity, health and welfare of the people of the state of Nebraska and to the environmental health of the entire Platte River Basin

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

across Nebraska to protect Nebraska's full entitlement to flows on the South Platte River, as provided in the South Platte River Compact. The Twin Platte Natural Resources District has extensive requirements in our integrated management plan that was required by the Legislature in 2004 for conjunctive management of groundwater and surface water for the overappropriated Upper Platte Basin in Nebraska. These regulatory burdens will increase if South Platte River flows continue to decrease. I'm emphasizing that because Nebraska must protect the flows that Nebraska is now receiving in the South Platte River and LB723 helps do that, helps expedite that project, helps build that project. As noted earlier, a design-build contract is subject to a best value-based selection process. I am a licensed professional engineer in Nebraska and I understand the benefits of a design-build contract. They work very well, as Director Riley has discussed with you earlier. LB723 requires rules and regulations setting forth criteria that protect the public and the benefit-- and benefits the state of Nebraska. Again, LB723 will be very beneficial to expedite the building of the Perkins County Canal, which needs to happen as soon as possible. And that's specifically why I wanted to be here today because this legislation will help expedite and build that project. Thank you.

MOSER: Thank you. Does the committee have any questions for the testifier? Senator Brandt.

BRANDT: Thank you, Vice Chair Moser. Thank you, Mr. Miller, for your testimony. When you said you were an engineer, I guess I've, I've just got one quick question that it did not, did not--

KENT MILLER: Oh boy, you want me to remember from way back when I--

BRANDT: Well, it's been a while for all of us. I was going to ask Director Riley on design-build, how does the financing component work on that?

KENT MILLER: Boy, you better have, have Director Riley come back and answer that. I'm a licensed professional engineer because I'm a-- have a master's degree in engineering, but I've been the Twin Platte NRD manager for the last 45 years.

BRANDT: Well, the reason I bring that up is when we talked about design-build-- I think it was our first year here-- that we passed for the South Beltway, the major advantage of that was that the state could get that project built in two and a half and three years as

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

opposed to eight years because the financing was carried by the contractor. Is that your understanding of how a design-build project would work?

KENT MILLER: No. That, that is not my understanding. But again, I'm not an expert. I, I've-- probably the best I've observed design-build contracts is I'm also a member of the Mid-Plains Community College Board and we've had many projects in our community college on design-build. But boy, I don't know the specifics.

BRANDT: All right. Thank you.

MOSER: I think that the state has appropriated the money to build the canal. So financing may not be an issue--

BRANDT: On that project.

MOSER: --in this point. There could be other issues. Senator Slama.

SLAMA: Thank you, Chairman-- Vice Chairman Moser. I think the-- and I-- correct me if I'm wrong here-- the difference between design-build and design-bid-build is you get the efficiencies in design-build by having the design and the builder all come from the same shop and consider each of those proposals that are personalized rather than the state or another designer or entity putting together the design, putting it out for bids, and then having a separate entity, construction wise, go from there and take on that project based on that outside design. Does that sound like where we're getting the efficiencies from design-build versus design-bid-build?

KENT MILLER: Yeah, I think you have a very good understanding of that. I don't-- the only comment I would make, as you said, from the same shop.

SLAMA: Yeah.

KENT MILLER: Because the, the, the designer and the contractor could very well be different entities--

SLAMA: Yep.

KENT MILLER: --but they are collaborating together but they are not necessarily the same company.

SLAMA: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 2, 2023
Rough Draft

MOSER: OK. Other questions? Thank you. I appreciate your testimony.

KENT MILLER: Thank you.

MOSER: Next supporter, come forward, please.

ALEX LINDEN: Good afternoon.

MOSER: Welcome.

ALEX LINDEN: Vice Chairman Moser and members of the Natural Resources Committee, my name is Alex Linden. That's A-l-e-x L-i-n-d-e-n and I'm the government and public relations manager for the Central Nebraska Public Power and Irrigation District, headquartered in Holdrege. Central is the owner-operator of Kingsley Dam and Lake McConaughy and operates the state's largest hydropower and irrigation project. I'm here this afternoon testifying on behalf of Central in support of LB723, introduced by Senator Bostelman. As the largest hydropower producer and irrigation water provider in Nebraska, Central is familiar with the construction, operation and maintenance of large water projects. The practice of contracting has been advancing over the years and today, in addition to traditional methods of design-bid-build, many complex projects these days are developed through alternative approaches such as design-build, progressive design-build and public-private partnerships. Central and several other public entities already have these approaches available to them. As the state begins to get more directly involved in the development of major water projects, with the potential South Platte Canal being just one example, it would be appropriate to give the Nebraska Department of Natural Resources access to these same alternatives, allowing for these projects to be completed in a timely, well-designed and constructed and cost-effective manner. For these reasons, Central supports LB723. Thank you for the opportunity to testify and thank you, Senator Bostelman, for introducing this bill. With that, that's my testimony and please be kind with any questions. I'm definitely not an expert.

MOSER: Questions from the committee? Well, seeing none, thank you for your testimony.

ALEX LINDEN: Thank you.

MOSER: Anybody else in support? OK, is there anyone here in opposition to this bill? Anybody want to speak against this bill? Seeing none, is

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Natural Resources Committee February 2, 2023
Rough Draft

there anyone in the neutral mode that wants to testify in the neutral?
Seeing none, Senator Bostelman, you're welcome to close.

BOSTELMAN: Thank you, Vice Chairman Moser. Just one thing in here, rules and processes have to be developed with this also. So partially to answer your comments, Senator Brandt, if you go to page 4, line 23, Section 5, talks about the department can hire an engineer or consultants. And then if you go to pay-- that's on page 4, line 23, Section 5. Then if you go to page 5, Section 6 talks about setting out the guidelines. But more specific, I think, to your comments in that line 11, talks about qualification shortlisting. So kind of pre-approving, pre-identifying those who can do this type of work so we don't run into the situation like you're talking about. We have people pre-qualified, companies pre-qualified then come in to do it. And that's really what this is about is to take large projects, not every proj-- large projects and engage, you know, from the beginning. And then the contractors come sort of different. The different-- the three different methods have three different times you-- people will come together and work instead of designing it, then doing a contract, you know, bidding it out, then start to work, then figure out what needs to be changed, then change it. This brings that together upfront at different times to make that process a lot cleaner, a lot smoother, reducing costs, more efficient, getting the job done quicker. With that, I'd take any other questions you may have.

MOSER: Well, not that you're qualified to answer this question, but I recall from the days of using this when I was mayor that there was a guaranteed maximum price. Which of the different modes allows for a guaranteed maximum price? Do any of these?

BOSTELMAN: You know, you're right. I don't know the answer.

MOSER: OK.

BOSTELMAN: But with that, we will find out.

MOSER: If there was a safeguard against--

BOSTELMAN: I will--

MOSER: --having a runaway cost--

BOSTELMAN: The director certainly can--

MOSER: Yeah, we can talk after.

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BOSTELMAN: In a few, but I-- sorry.

MOSEER: We're not going to Exec.

BOSTELMAN: I don't have the answer to that one, sorry.

MOSEER: Yeah. You know, sometimes a little knowledge is dangerous. OK, I guess that will close our hearing. We had no letters of opposition or support. Is that correct? OK. Thank you very much for coming today. Appreciate you attending our hearing.