

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

KELLY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the 27th day of the One Hundred Eighth Legislature, First Session. Our chaplain today is from Senator Halloran's district, Pastor Eddie Goff, New Hope Baptist Church, Hastings, Nebraska. Please rise.

PASTOR GOFF: Let's pray. My father, this morning, we come before you. Just thank you, Father, for this beautiful Monday morning you've given us just to enjoy your creation. Father, we ask you today that as we look out and we see the hurting people today, God, that you would just put your hand upon these, your Nebraskans. Father, this United States. Father, we're thankful this morning for the men and women that stand, stand strong, Father, to put their lives on the line each and every day for us, that we can stand here and do what we're doing this morning. Father, we ask that you put-- protect them, our first responders. Lord, we not only ask you protect them, but Father, we think about their families. And Father, they only not serve themselves, but they serve with their families. We ask you, Father, at the end of the day, that they would be able to return home safely from their tour of duty today. Father, I thank you for this Chamber right here. And these men and women that stand and do what they've been called to action to do. Father, I pray you give them unity. God, I pray that you give them discernment as they do the job that they're here to do. Father, we love you. We just thank you so much for who you are and what you've done for us and we ask you today that we might do something that would serve you and glorify you and we ask you it in Jesus' precious and holy name. Amen.

KELLY: Thank you, Pastor Goff. I recognize Senator Sanders for the Pledge of Allegiance.

SANDERS: Please join me on the Pledge-- for the Pledge of Allegiance. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

KELLY: Thank you. I call to order the 27th day of the One Hundred Eighth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: There's a quorum present, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

KELLY: Thank you. Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections this morning.

KELLY: Thank you. Are there any messages, reports or announcements?

CLERK: There are, Mr. President. Your Committee on Urban Affairs, Chaired by Senator McKinney, reports LB33 to General file. Additionally, your Committee on Revenue, Chaired by Senator Linehan, reports LB28 to General File with committee amendments. Additionally, notice-- excuse me, a report from the Referencing Committee for approved gubernatorial appointments from Friday, February 10, 2023. Amendments to be printed: Senator Raybould to LB194; Senator Holdcroft to LB730; and Senator John Cavanaugh to LB753. A priority bill designation from Senator Dorn designating LB562 as his personal priority for the session. Senator Dorn, priority bill, LB562. That's all I have at this time, Mr. President.

KELLY: Thank you, Mr. Clerk. Senators, Senator Machaela Cavanaugh would like to recognize our doctor of the day, Joe Miller from Omaha. Please recognize Dr. Miller. Mr. Clerk, first item, please.

CLERK: Mr. President, first item on the agenda, a committee report from the Natural Resources Committee concerning a gubernatorial appointment to the Department of Environment and Energy.

KELLY: Senator Bostelman to open.

BOSTELMAN: Thank you. Good morning, Mr. President. Good morning, Nebraska. Good morning, colleagues. The, the Natural Resource Committee held a confirmation hearing on January 25, 2023, to consider the gubernatorial appointee, James Reed Macy. Mr. Macy is a reappointment to Director of the Nebraska Department of Environment and Energy to serve beginning January 5, 2023. The mission of the Department of Environment and Energy is to protect, preserve and enhance Nebraska's air, land, water and energy resources. To accomplish this responsibility, the department enforces rules and regulations, encourages pollution prevention and offers compliance assistance to businesses, businesses and individuals. The NDEE specifically manages air programs, which include air quality, air permitting, air grants, planning and outreach and air compliance and enforcement. The department also manages land programs, including integrated waste management, waste planning and aid, RCRA and

Superfund. Director Macy lives in Gretna and has served as director for the past eight years. He is also past president of the Environmental Council of the States and currently cochairs the ECOS, the environmental justice working group. Director Macy appeared in person at the hearing and the committee voted 7 to 0 with one present, not voting to advance his confirmation. With that, I encourage your green vote for the confirmation of Director Jim Macy. Thank you.

KELLY: Thank you, Senator. I recognize Senator Blood.

BLOOD: Thank you, Mr. President. I stand in strong opposition to this appointment and I understand that today we are talking about somebody's livelihood, but I am really hoping that you start looking at the handouts that we're giving. They couldn't get them done-- even though I came down at 9:30-- fast enough to get them out to you. So start looking at those as they are dropped off at your desk. We need to have a long discussion-- so get comfortable-- about Mr. Macy's appointment because you heard the job description just now from Senator Bostelman, who I do respect-- and I'm sorry, Senator Bostelman, but this has to happen today. And I feel that Mr. Macy has not been doing his job in a way that benefits Nebraskans. Now, if you've been under a rock, maybe you're not aware of the AltEn plant in Mead, Nebraska, which is located in Saunders County, which is actually located in Senator Bostelman's district, and there was an outlier ethanol plant. Because I want to put on record that the rest of our ethanol plants are pristine. They're good stewards when it comes to our environment. But this ethanol plant took in neonicotinoid-coated seeds. Neonicotinoids are banned in many countries for a reason. and they made ethanol with this neonicotinoid-coated seed. Now, as you know, there's a byproduct called wet clock-- wet cake, which is very nutrient dense. You can feed it to cattle, you can apply it on your land, but not when it's got poison in it. And so nobody wanted that wet cake. They tried a couple times, by the way, and then it was kind of reeled back in. And so they decided to make a giant pile of it the size of Memorial Stadium. Think about that. If that was in your backyard-- can I have the gavel, please? I want people to listen and there's too much chatting. And so-- they're still chatting anyway. And so think about if that was in your own backyard, this giant pile of neonicotinoid-coated seed that had nothing underneath it, nothing on top of it. And what does it do in Nebraska? We've got rain, we've got wind, we've got heat. Where did those chemicals go? Well, they went to Mead, Nebraska, and the surrounding county. They went into our waterways, they went into our air. They killed animals, they killed insects, they killed the environment. And so, of course, NDEE

immediately stepped in and took control. Not really. Instead, what we did, we cited them 12, 13 times and we never pulled the trigger. We never pulled the trigger. We didn't shut them down until everything was done, said and done for. And then, of course, we had a water main break which made more of the cost-- toxic chemicals go out and about in the environment. And if you've been reading the most recent science, which by the way, we couldn't cough up only about \$1 million to help with the science and the research when they really needed \$10 million. You'll see that they are finding it in the water, in the land and in their houses. We know that just south of that plant is a pond that's been in a family for generations that is now known as a dead pond. There's no fish. There's no amoeba. They can't swim in it. They can't take their grandkids out in it. And why can't they do that? Because the AltEn plant in Mead, Nebraska. And who oversees these things in Nebraska? NDEE and--

KELLY: One minute.

BLOOD: --who's in, in charge of NDEE? Jim Macy. Now I'm handing out eventually, if they get to it on the copier, a timeline to walk you through from the very beginning to some of the most current issues of how NDEE failed to do their jobs and do it well. And I'm going to keep talking until I know people are actually listening. And if you're voting just to vote yes, then you haven't done your research because these appointments are important to Nebraskans. And if you're OK with making Nebraskans collateral damage, then go ahead and vote green. But if you feel a responsibility to Nebraskans, that part of NDEE's job is to protect them and to protect their families and protect their homes and protect their farms, then you need to listen because we're in talk about this for a while. Thank you, Mr. President.

KELLY: Thank you, Senator Blood. Senator Ibach would like to recognize some guests in the north balcony: Megan Boldt, Marley Boldt, Mya Boldt, and Merritt Boldt; all cousins and from Lincoln, Nebraska. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President, and thank you, Senator Blood, for the beginning of the conversation. I do think this is a very important topic and I do think-- so I, I've basically said I want to at least explain my votes on everybody who's come out of the committees that I've been part of for confirmations and so it's a part of my continued commitment to doing that. But this is a unique conversation. Mr. Macy has been the head of NDEE for a number of years and as Senator Blood correctly pointed out and handed out these fliers

has overseen what was a catastrophe in the last several years at the AltEn plant in Mead, Nebraska. And so I've had conversations with Mr. Macy and some of them have been very contentious conversations. We've had-- actually had some more pleasant ones in recent times. And I appreciate his stated objective going forward, but in the hearing, I asked him questions that kind of get to the things that Senator Blood was talking about and one of them is about the need to have more of a sense of urgency in these situations. And one of the problems that happened in Mead was, as Senator Blood pointed out, there was a lot of citing, but not shutting down and not taking the, the most action that could be taken. There was a point in which the-- it was unclear about how the plant got authorization to use these treated seeds. And there was a bit of obfuscation, I would say, in terms of who had approved that process. But when it comes to these sorts of things, environmental catastrophes, they-- and contamination of people's lands, their livelihood and their health-- and I don't know if-- I haven't-- I apologize, Senator Blood. I haven't read these two articles you handed out yet. But I assume that maybe the one that's going around now is about the ongoing medical health studies that University of Nebraska Medical Center has undertaken and is a demonstration of the long-term effects of this sort of dereliction in terms of, of acting with urgency. The longer that an environmental hazard goes on, the more damage that can happen. And what happened at AltEn was they shouldn't-- first off, they shouldn't have been given approval to start using treated seed in ethanol production. They were given that approval and then, once it was discovered, were not shut down immediately. But then you fast forward, it's discovered that they are basically condensing poison on their property and then continuing to store it there. And then that wasn't cleaned up fast-- quickly either and then we had, if everybody remembers, a catastrophic release in the winter with water running out into the waterways surrounding AltEn, the plant in Mead. And things like that-- so there-- there can be harm that could be caused by inaction or perhaps lack of knowledge on the front end. But once you know about something, you have an obligation to act quickly. And so that's, that's what we're talking about here is that NDEE needs to operate with a sense of urgency. It needs to take the concerns of the people in the community seriously and needs to demonstrate to those people that they are acting with urgency and taking their concerns seriously. And that's-- one of the things that happened here in Mead was that the folks there, a lot of them didn't feel like they were being heard, didn't feel like their concerns were being taken into consideration and didn't feel like NDEE was taking as much action as they could. Now, the Legislature has

passed, since this initially happened, a bill that bans the use of treated seeds in ethanol production, which would prevent this from starting. The Legislature has passed a bill--

KELLY: One minute.

J. CAVANAUGH: --thank you, Mr. President-- that would allow NDEE to shut down, come in and shut down these plants more quickly. And I guess I'll have to push my light to get back on to make my further comments about this. But as Senator Blood pointed out, this is, this is one that needs to be paid attention to. I know a lot of the folks who have been here are aware of the situation that happened in Mead. And I'm sure the folks who just got elected at least read about it. But it is-- this is part of this conversation. It needs to be-- you need to be-- make sure you're paying attention to the issues here before you make a decision, however you're going to vote on this-- on the appointment of Mr. Macy. I think you need to make sure you are thinking about this and considering how we want all of our agencies to act in their oversight capacity going forward. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator Moser, you're recognized to speak.

MOSER: Good morning and thank you. The Mead plant was certainly an ecological mess and the response to the actions there had to be measured against what the state legally can do. It was most certainly headed, headed toward litigation. And if the state came in and made demands that were not legally authorized, we could possibly shift some of the loss from the operator of the plant to someone else. It could have affected the people's expenses. It could have just made it a more-- give it-- given more reasons for litigation, more problems. The NDEE was working with the state's attorneys, trying to figure out what they could do to try to straighten that out as quickly as they could. And I think in this case, Mr. Macy learned something out of this process and I think he tried to do the right thing and it turned out to still be an ecological mess. They are working at cleaning it up as we speak and it's going to take some time. But I don't think a different director of NDEE would have changed the situation and who would we have that has more experience in this area than Mr. Macy? He's the choice of the Governor, he's the choice of the committee and I think we should approve him and move on. Thank you.

KELLY: Thank you, Senator Moser. Senator Machaela Cavanaugh, you are recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. I have concerns about Mr. Macy's appointment or reappointment as well. I haven't decided yet how I'm going to vote, but I am inclined to at least not be-- be present, not voting for this appointment. I went to Mead for a town hall that Senator Blood organized. I don't recall now how long ago that was, but what I do recall was getting out of the car and almost vomiting from the smell. It was in a church, I believe, and there were many county board members present and community members sharing their stories of how this all has gone and it was nothing short of heartbreaking. And at that time, then Governor Ricketts had not even visited the community. Senator Blood had put this together because the community had been basically ignored. And I think that that falls directly on the shoulders of the director of NDEE. It was a very upsetting situation, hearing about the water quality and the illnesses, the lack of the state showing up for investment in improving any of it. It didn't really receive the state or national attention that it should have. I'm very grateful to Senator Blood for continuing to bring this up and to be a champion for that community. They certainly deserve to have all of our attention on this issue. We're seeing a rise in pediatric cancer in this state and there's a lot of factors involved in that. And if the director of, of NDEE isn't doing everything within his power and purview to ensure that our environment is safe for our children, then I don't think that they deserve a rubber stamp reappointment. I think this is a really important conversation to have. I've seen that Senator Blood has passed out numerous materials this morning, articles, some dating back to 2001. She's asked us, colleagues, this morning to engage on this issue. I hope that we do. It's really quite concerning what has happened in Mead, Nebraska, what has happened at the hands of a company that has gone unchecked by the state. And it is our job to take the time to have a conversation about this and it is our job to pay attention. And it is not disrespectful to engage in this conversation; it's actually disrespectful to not. We are talking about the health and future of our children in a community that is frankly dying as a result. So I hope that everyone-- there's four articles I see here, one from December 2001, a year and four months ago, all the way up to ones as recent as last week. So-- and the one from last week is about the charging for emails from the state, which again, should raise concerns in this body that the state is charging

KELLY: One minute.

M. CAVANAUGH: --the public to gain information about what is happening within the state. I find it extraordinarily disheartening that the state continues to charge for these types of things that are in the best interest of the public to be clear and transparent. Forty-four thousand dollars for emails to find out what's happening to our children is ludicrous and I hope that the Supreme Court decides in favor of our public media on this issue. I will yield the remainder of my time to the Chair and get back in the queue. Thank you.

KELLY: That's your time, Senator. Thank you, Senator Cavanaugh. Senator Halloran would like to recognize three guests under the south balcony: Pastor Eddie Goff, Steven Dillman and Mike Sidlo. Senator McDonnell, you're recognized to speak.

McDONNELL: Thank you, Mr. President. Good morning, colleagues. I rise in support of, of Director Jim Macy. I've had an opportunity to work with him over the last six years and the idea of trying to strive for perfection, but demanding it is two different things. And I believe there has been some mistakes made that if you would talk to him, he would recognize, and the idea of how does he improve his performance going forward because I know he has-- his heart's in the right place to serve the citizens of Nebraska and work with the Legislature. So I rise in support of, of Director Macy and I yield the remainder of my time to Senator Bostelman. Thank you, Mr. Speaker.

KELLY: Senator Bostelman, that's 4:10.

BOSTELMAN: Thank you, Mr. President. Thank you, Senator McDonnell. I just wanted to say a few words here as we continue the discussion on the floor. First and foremost, myself and the community of Mead take this very seriously, as well as does the Director, Director Macy, They've taken this very seriously. We have worked together with the community significantly over the last couple of years. If you want to know exactly what has been done, the amount of work that's been done, the amount of effort and time that's been put into this, you can go out to NDEE's website. There's a website. There's all the information on it, exactly what's been happening. The progress report, if you want to come look at it, I've got it sitting here on my desk from February 21, 2021 to '23 of all the work that's been done. Remember a couple of things as we worked through this situation, as it came to come to, to our attention, if you will, that the director had a voluntary compliance statutory obligation that he was following. I'm not defending, I'm just trying to put facts to you on the table so you're aware of it. He had a 81-1510 gives a director of voluntary compliance

mandate by the, by the-- this body. He was working through that. He was doing that. If you had a operator at AltEn that chose not to follow the requirements or the, the notices that, that the DEE was giving them, I think that's part of what we're seeing in the litigation right now from the State Attorney General's Office. We're following through. That's what that court case is about. The process was approved by the local planning commission, the county planning commission at the time. The treated seed at the time was allowed; what wasn't allowed was the, the use of the distillers grain if it still had a residue. a chemical residue on it and that fell under Department of Ag. And as I worked through this, as we were involved with this, that was where we were able to stop the material being applied to the ground was through the Department of Ag, the labeling process. The, the digester's bill, I want you to understand also, EPA has been involved with this the entire time. The EPA has been involved as an oversight on, on the local, DEE, on all the actions that they've done. DEE has been on site weekly. They've had meetings with the community leaders monthly, if not more. Currently, they're going through the remedial action plans. The one for water has already been held. The next one we expect to see is on the solid materials to be coming out. AFRG is doing this. The six seed corn companies are doing this at their cost. And again, the EPA has been involved. EPA has watched over this. The cleanup is ongoing and continuous.

KELLY: One minute.

BOSTELMAN: And it's something I think you need to under-- to make sure you understand. Again, process has been and is following statutory guidelines, following cleanup that needs to be done, getting those parties involved on a voluntary basis to clean it up. And I think that as it continues to go, that, that the site will be cleaned up and it's a matter of working through the process to make that happen. Thank you, Mr. President.

KELLY: Thank you, Senator Bostelman. Senator Blood, you're recognized to speak.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I've already seen one senator look at the pile and throw it in recycling. I really hope you're looking at what's at your desk. That's really unfortunate if you're letting people get in your ear instead of really doing your research today. So I'm going to start talking about some things that have been said on the floor. We are waiting for the timeline to come up. We have a timeline, a long timeline that shows

you that this company was not compliant and NDEE did nothing but continue to, to slap them on the wrist. So if that's doing good business, then we need to discuss about a lot of other businesses that, that we come out against here in, in the Legislature. So Senator Bostelman talked about the six seed companies, at their cost, that were doing the cleanup. Of course they're doing the cleanup because they're complicit, because they knowingly knew what was going to be going on with this seed while AltEn bragged about taking in 98 percent of the United States' waste seed at their location. They made a big profit because they became a dump site of this seed. And by the way, for those of you that still read the newspaper, look at the front page of the Omaha World-Herald. What happened? Now the seed companies are suing AltEn to try and get their money back for the cleanup because, you know, they're such nice guys. They were cleaning it up for free. That's not what's going on, friends. We talk about voluntary compliance, that it was the owners that were ignoring the fact that we knocked on their door 12, 13 times and said, knock it off. Now imagine you were drunk driving. Do you think that you'd be allowed to be stopped 12, 13 times and your license never taken away? Not likely. Now, imagine if you were poisoning the environment. How many times do you get on that? Go to some of the video that's available. They had employees that did not have the correct protective equipment on that would be crawling around in that, that poisonous dust. And you know how they cleaned them off? With an air hose. We talk all the time about being pro-life in this state. What we know about neonicotinoids is that a lot of the young women there are going to find out that they can't get pregnant when they become adults. We're going to see children with cancers and brain tumors, skin cancers, all kinds of maladies because we decided to wait for them to do the right thing and stop doing what they were doing. And we are complicit in the fact that we helped that, Senator Moser. Senator Moser, you fell for the, oh, we're in litigation and we can't really talk about it or do anything. And that, that was make believe because this, this is our big catastrophe in Nebraska. This is our Flint, Michigan. And we know that while we were in-- ready to litigate, which by the way, we still haven't pulled the trigger on. If you look online, what's been, been put up, it's been almost two years and nothing has been done by Nebraska. But boy, we sure rush when it's a federal issue. We rushed on the on the mask mandate, but we can't get our butts in gear to protect the citizens of Mead, Nebraska. But meanwhile-- and I know because I'm in the watchdog group that helped bring this to light-- that that company was selling off equipment, that that company continued to find ways to make money instead of paying for the

cleanup. And now, of course, the federal-- a federal judge-- we had to get it out of Nebraska, right? A federal judge said that now AltEn can't get rid of any of its, any of its--

KELLY: One minute.

BLOOD: --items. But we know that they've been paying hundreds of thousands of dollars in wages over the last two years since this happened. Basically over and over and over again, they screwed us over and it's OK because Nebraskans are the collateral damage. It's OK that your water, your homes, your air has been poisoned. It's OK that you had animals die. It's OK that you're going to have cancers and brain tumors and lose your babies because, hey, we're in litigation. That's OK. We know what we're doing is best for Nebraskans and what's best for Nebraskans is not making a big deal out of it because it's big business. And in this case, that's more important than your life or the life of your children or the life of your pets or the life of your livestock or the water that you drink or the air that you breathe or the tomatoes that you plant in your garden that you take home to eat. Mr. Macy could have learned--

KELLY: That's your time, Senator. Senator Walz, you're recognized to speak.

WALZ: Thank you, Mr. President. I yield my time to Senator John Cavanaugh.

KELLY: Senator Cavanaugh, 4:50.

J. CAVANAUGH: Thank you, Mr. President. Thank you, Senator Walz. So I'm trying to just sort of pick up where I left off, but continue on. Been a lot of things around here, we can, we can take something and we certainly can point out how badly our response to Mead has been and we can talk about all of those things. We can also talk about how this is an example of how we want this institution to run, the institution being the Department of Environment and Energy. And what the style of leadership is that that-- that is represented by this case study. And so that's what I've talked to Mr. Macy about in my concerns with him and I've expressed them to him directly and in hearings and publicly. And-- but it's important that we all have that understanding when we are deciding the vote here. And so, Senator Blood is doing an excellent job of pointing out all of the failings that have happened in Mead as a result of inaction. And the department, in the person of Mr. Macy and others, have a lot of times avoided taking accountability

for that inaction by pointing to things like a lawsuit, like pointing to not having statutory authority. And we did give them greater statutory authority going forward, although it sounds like they haven't used any of it yet in any of these instances. But my issue has always been that they do not appear to use or be willing to use the maximum amount of their authority, that they are not willing to act with a sense of urgency to shut down, to clean up, to, as Senator Blood was just talking about, make sure that their-- that the assets are not being sold out from under us so that we can't recapture some of the money that we're out as a result of the remediation efforts that we're undertaking. Of course, this company, AltEn, is an example of a bad actor, but the purpose for a supervisory regulatory agency is not just to interact with the good actors. It is to act quickly and with resolve against the bad actors to protect the people of the state of Nebraska. And in the renomination of Mr. Macy, he had several letters of support from industry, from industry groups who have had a very good experience working with him. They had a very good-- they, they all had nothing but good things to say even about when they-- the department engaged in oversight of their particular business and which is-- it sounds nice on the surface. It sounds great: has a great relationship with the regulated industry, has-- does great. Everybody has good, good interaction. And I'm a strong believer in having good interactions with people, even in an adversarial situation. Those of us who have been criminal defense attorneys like my rowmate with an "R--" forgot to clarify that the last time I said it, "R" rowmate. And I have found that you can have an adversarial relationship as is necessary in these sorts of situations, but you can still be friendly with people. But that's not what these people have said. They said how easy it is to work with and how, how--

KELLY: One minute.

J. CAVANAUGH: --thank you, Mr. President-- quickly you can resolve these things. But in a regulated industry, there needs to be the Department of Environment and Energy and Mr. Macy needs to be the person standing up and defending the state of Nebraska, in some, in some instances, needs to make enemies in the regulated industry. Should not be too close to regulated industry because what happens is you're less likely to be mean to your friends and sometimes you have to be mean to polluters on behalf of the state of Nebraska. And that is fundamentally the concern in the way that the department is operated and what happened here in Mead. They were being too nice. They were giving too many opportunities to remediate. They were too cozy with the industry. And so that is what this example shows. It--

all the things Senator Blood is saying, those are the result of lack of oversight and coziness with the regulated industry. And so we need to be certain about that. And I think I'm going to run out of time--

KELLY: That's your time, Senator.

J. CAVANAUGH: Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. I'd yield my time to Senator Blood.

KELLY: Senator Blood, 4:54.

BLOOD: Thank you, Senator Conrad. I'd like to keep going from where I left off. So I want to keep addressing the things that were said on the floor. Senator Bostelman is right that we, we did indeed pass a bill in reference to the treated seeds. But what we really did when we passed that bill was codify it because it's already illegal at the federal level so it really didn't do anything except show that we were paying attention maybe. Senator McDonnell talk about how we can't expect perfection and that this is a lesson that, that he can learn from-- Mr. Macy can learn from to improve his performance. Well, so where along those 12, 13 times that he was cited did he not have an opportunity to learn from his mistakes? Now, we talked today on the mike, too, about the meetings that were had. But what wasn't talked about were the closed-door meetings that went on for a very long time where the people of Mead weren't allowed to participate. It was a very small group. And when questioned about it, because I had a bill to have an oversight committee, it was thought that if we brought in too many people, it would be chaos, which is kind of ridiculous. Instead, what it did is I feel personally-- and it's my personal opinion-- that it slowed the process down because we did not create a sense of urgency. So now they say, well, here's the result. The result is that the companies did pay for the cleanup and that things got better. Well, I don't know if you know what the cleanup was. It does say this in one of the articles. And by the way, I have the timeline coming. Please don't vote until you read that timeline. So hopefully we'll be talking for a while this morning. They apparently can only use one copier regardless of the magnitude of copies you have to make, which I guess we can talk about another day. So they did a type of Poly Shield. There's still nothing underneath that contaminated waste pile, nothing in that-- under that contaminated waste pile. Just sitting

there on the dirt and they put a Poly Shield, which is kind of like a fiber and plastic type of thing, and put it on top of the pile. So if you talk to the scientists, to the people who actually know the science of chemicals-- Dr. Schalles from the Creighton University is one that comes to mind immediately. They'll tell you that it can create a type of witch's brew, that we don't even know what's going on under that shield because we've changed the environment around those chemicals. Now, I'm hoping to get some emailed out today, but I have some new aerial shots. That Poly Shield, which was the end-all solution to protecting the environment and those around it, is cracking and leaking. It is not doing its job. It did create a temporary window of time where the smell got much better. And you heard Senator Cavanaugh talk about the smell. The smell was like a cross between a rotting corpse and a raw-- and a hard boiled egg, a rotten egg. So imagine living by that. For those of you that support veterans, did you know that there was a veteran who bought his dream home close to the AltEn plant to raise his family? And because of the science that he was reading from our specialists at the university and Creighton and others involved, he decided to sell his house, his dream house, and then when he went to sell it with full disclosure-- the people buying it understood the circumstances-- do you know what happened? The bank refused to give them a loan, even though he was trying to sell it with full disclosure. So now not only did he lose his dream home, this veteran, but now he has two mortgages to pay. How fair is that?

KELLY: One minute.

BLOOD: The collateral damage is long. We're going to talk about it as long as we can stay on the mike this morning. And for those of you that are willing to vote for this and say that this is OK, then you have a very low bar when it comes to staff because this person had an opportunity to learn from his mistakes. How many times is someone allowed to cite an organization before they pull the trigger. And to utilize the fact that we are in litigation is bull. Not the whole word I want to use, but I'm going to say bull today. Don't fall for that because we rushed to the courts when it came to the mask mandates. We rushed to the courts when we didn't like what the federal government was doing. But hey, we can sit on this for a couple of years. And by the way, look that up and look at all the movement that's been made on that litigation, Senator Moser, wherever you are.

KELLY: That's your time. Senator. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. So I'm trying to remember where I left off in my last comments, I guess about the coziness of regulation and regulators and regulated industries. And it does bear repeating that that is an important distinction. When you're the person in charge of overseeing and investigating and holding people accountable, you do have to have a bit of distance. And so when we did get those letters of support, again, I think a lot of people look at those and see those are good things. And I saw those as a red flag. And so I guess I just wanted to make sure that everybody understood why that was, that I don't necessarily see the regulate-- the industry you regulate coming and supporting your appointment for regulating them as a good thing. But I did-- so I printed out this article. I don't think Senator Blood has circulated this one yet, but it's about, "Contamination from AltEn plant found in more homes, streams and soil." It's from the Nebraska Examiner on January 30, 2023, so just about a week or so ago. I can get copies made and circulated for folks. But I, I-- actually, I agree with the-- I am-- sorry I didn't hear Senator McDonnell's floor remarks, but I heard Senator Blood's recap of them that you can learn from mistakes and you can move forward and make progress. And I think it is important to take that perspective from when we, when we have a bad situation like this. Obviously, we're-- we have the remediation phase ongoing and we're still trying to find out exactly how bad this is. We have, again, UNMC out there testing soil and individuals, human samples, and trying to get the scope of how bad this is. So that's one thing we still need to learn, but we can also learn how to prevent this from happening again. And that's the important part, I think. It is we need to be conscious going forward that we're not just sitting here pressing, you know, our green button for everybody-- for every appointment and letting everybody, once they're appointed, be on autopilot and not holding them accountable, and especially when somebody comes in and says that we don't need to engage in oversight of them. We have some departments that-- I think everybody here, if you've been here long enough, has had that frustration with some departments, not just NDEE, but HHS, Department of Corrections, the court systems. Everybody here has had some encounter with some department, what they felt was not meeting their obligation to report to us and explain to us their conduct or how they were undertaking maybe the implementation of one of our bills. And so we have a broader responsibility to engage in oversight of these other departments and obviously, we have a budgetary responsibility to give them money. And we have an obligation to make sure that the bills that we pass are being implemented in a timely fashion, but also in the way we intended. And then obviously, if we

have a disagreement about either of those things, to take up those issues and hold them accountable, either through passing further legislation or discussing their budget with them, right. That's our power of the purse string. And so I think it is really important as we go forward to make sure that we are serious about our responsibility to engage in oversight of these departments. And I guess to circle back to my original comments, I've talked with, with Mr. Macy, Director Macy about my issues with him previously.

KELLY: One minute.

J. CAVANAUGH: Thank you, Mr. President. I've had-- talked with him about what my expectations are going forward and I'm hopeful that if we do confirm Mr. Macy, which I have every expectation that we will do, that he is as serious about this more aggressive oversight and reciprocal oversight from the Legislature that we talked about, engaging in that conversation and dialogue about what we're supposed to be doing. So I don't know if I-- there's a lot of people in the queue so I don't know if I'll speak again, but at the moment, I will be at present, not voting on Mr. Macy, but I have hopes about the future going-- as the management of the agency after learning from these previous mistakes. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator Bostelman, you're recognized to speak.

BOSTELMAN: Thank you, Mr. President. Once again, I want to speak to factual information on this. Director Macy did come before the committee and did have a hearing. Questions were asked of him, in specific some Senator Cavanaugh-- John Cavanaugh speaks to those, that they had those discussions. He was part of that hearing that we had. It-- remind you it did come out 7 yes and one nonvoting. So there was-- there is support from the committee for this confirmation. I'll speak a couple of things. There's never-- I don't know of any private, closed-door meetings. There's been meetings as happened with the community leaders. The community leaders invite people to-- those who wanted to come, to come. Early on in this process, I will say I did have a meeting with the community leaders and then those people who met with me were then chastised for meeting with me. So that-- it's been kind of a, a mixed bag as far as how meetings are handled, who comes and who doesn't, involvement with that. The people of Mead, the leadership of Mead, are 100 percent behind Director Macy and the-- and AFRC getting the site cleaned up. That's where they're at. That's what they want. That's a process we're going through right now. And as

Senator Cavanaugh, John Cavanaugh mentioned before, LB1102 in '22 was a bill we passed that now gives the DEE the authority or the ability now to step into a site if they need to. They didn't have that authority before. It was all voluntary compliance before. So what does a voluntary cleanup program look like? The voluntary cleanup program utilizes a streamlined, results-based approach to environmental cleanup while maintaining strict compliance with all applicable state and federal environmental regulations. I have spoken with the EPA. They have been to me-- they've been to me numerous times. They've done air sampling. They've done other things there. They are involved on the-- on this as well as far as oversight on this, So to say that no one cares, to say that no one's paying attention, to say that there's nothing being done is false. It's-- they have been, they are, and they continue will be on the federal level, on the state level. Voluntary cleanup program: applicant submits a draft, work plans, reports and other information to NDEE for review and comment to ensure that the remedial actions are protective but may combine investigation and remediation activities. The voluntary cleanup plan applicant pays for all oversight and cleanup costs. There is no state cost share. In accordance with state statute, cleanup must start within six months of approval of a remedial action plan and must be completed within two years. That's very important; two years to clean this up. And if you think, well, that's way too long, if you look just south of Mead on the university's property is the Superfund site. That Superfund site has been there for-- on the Ordnance plant for a long time and it's more than ten years, I believe. It's been there a long time. Currently the community is involved in talking with and being a part of the cleanup. That's important to understand. The community is involved and a part of and understands what processes we're going through, what processes are doing on the cleanup. They are involved and they are working with that. In accordance with state statute, cleanup must start within six months of approval of a remedial action plan and must be completed two years. This means that in some cases, the voluntary cleanup sites can complete the cleanup in as little

KELLY: One minute.

BOSTELMAN: --as two to three years from the date the application enrolled in the program. Work is being done. Work has been done. If you want to know, I do have information later. I'll tell you what AltEn has been doing. I'll tell you what the-- I'll tell you what cleanup has been happening out there. It's not being ignored. It's not, it's not being cast aside. It's being taken extremely serious. And to clean up the matters that are there, it takes time. I just want

people to understand that this is not something that's been cast aside, it seems like what's being purported. It's not. All the, all the information is taken very seriously. All the information is being worked on. Collaboration at the local, state and federal level is happening. The site is being cleaned up and it will get cleaned up.

KELLY: That's your time, Senator. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Colleagues, I rise today just to highlight and echo some of the concerns that have been brought up by our other folks here in the body. I think one of the most important things that we can talk about and things that we can do as members of the Legislature is be good stewards of our land. When I was out knocking doors in the campaign, one of the things that I heard from folks across the entire political spectrum was that what they care the most about oftentimes are things like having clean air and clean water. I think that one of the most vital responsibilities we have is to do everything we can to make sure that entities are held accountable when they make mistakes that harm all of us. And there's really not any greater harm to our environment than what we're talking about here with AltEn and, and the issues that have been highlighted in great detail. So I share these concerns. One thing I will note, obviously, is that I wasn't in the Natural Resources Committee. I didn't hear the committee hearing and so I'm going to be yielding my time here to my rowmate, Senator John Cavanaugh, just to have him maybe explain a little bit more about what that hearing looked like and if he could, maybe tell us a little bit about the questions that were asked and some of the answers that were given because I think that would illuminate things for all of us. So, Mr. President, I'd yield the remainder of my time to Senator John Cavanaugh.

KELLY: Thank you, Senator Dungan. Senator Cavanaugh, 3:40.

J. CAVANAUGH: Thank you, Mr. President. Thank you, Senator Dungan. Well, so in terms of the hearing, again, I appreciate-- if you all recall, Senator-- Chairman Bostelman said that in these hearings he asked everybody to come in person, which to any committee chairs, I would recommend is a great practice because it was so much easier to engage with, with these individuals when they were there in person. And some folks do come from great distances, particularly folks on the oil and gas board, which is based out of Sidney, Nebraska. And so people make the great-- the trek to be there, but it is a lot easier to have that dialogue and conversation when these appointments are in

person as opposed to on the phone. So again, I appreciate Senator Bostelman's dedication to that. In the hearing and in my conversations with Mr. Macy beforehand, we talked about-- specifically, I wanted to talk about our role in holding him accountable and his department accountable. And my specific questions were about whether or not he would continue to come to the committee and subject himself to hard, uncomfortable questions. And I asked him that because really the first encounter I had with him was a hearing about Mead that was a special hearing that this-- that the Natural Resources Committee had in the spring of 2021 where he and I had a bit of a heated exchange and our relationship continued heated from that point forward. And so I asked him that to make sure that he would continue to come to the hearings, he would come and subject himself to those heated exchanges about subjects that we disagree. Because obviously, where have-- we have some disagreement about what is the right approach, how aggressive NDEE should pursue its oversight authority and should go in and make sure that they do everything they can. He and I also disagree about what I would call being caught doing something. And so Senator Bostelman talked about-- actually I think it was a pretty good point-- where he met with some people and got some pushback for even having the meeting. And Senator Bostelman, Chairman Bostelman, I would actually say that, that's a good thing. I think getting in trouble for doing the right thing is a good thing. Whether-- whoever you upset by that, I think that that's-- that was the right thing to do to go meet with those folks and make sure that they were being heard, the, the folks in the town there, having their opportunity to be heard and that. So those were kind of the questions I asked of Mr. Macy. I--

KELLY: One minute.

J. CAVANAUGH: Thank you, Mr. President. I didn't ask him questions specifically about Mead. I didn't ask him questions specifically about what the processes they're undertaking at this point in time. And I didn't do that partly because it's a subject matter that I've revisited with him and other folks at the department many, many times and so I didn't get into that specifically. And as I said, I think that this is an example. It's a case study as to how we want to approach things like this. And it's not necessarily the crux of whether we should make this decision on whether he should be reappointed or not based off of exactly what happened to me. But we should look at it for-- as an instructive as to what we want our agencies, how we want our agencies to behave and how we want them to come and interact with us. And so my questions were specifically about

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

his interaction with us. And he and I, I think, have at least a semi understanding of how we're going to approach each other going forward.

KELLY: That's your time, Senator.

J. CAVANAUGH: Thank you, Mr. President.

KELLY: Thank you, Senator. Senator Brandt, you're recognized to speak.

BRANDT: Thank you, Mr. President, and good morning, Nebraska. I support the nomination of Jim Macy for Director of NDEE. This came through the committee that I serve on, the Natural Resources Committee, 7-0. Could the AltEn response have been better? Absolutely and this was discussed at length in committee by very vigorous questioning of the people on the committee. I agree with Senator Moser. We have a director that operated within the constraints of state law to the best of his department's ability. Now, NDEE does more than just AltEn. In rural Nebraska, they are responsible-- actually all of Nebraska-- for permits. And in my case as a livestock producer, they do a lot with livestock permitting. And I want to compliment that department. This is the most responsive we have ever seen it. And I'm not speaking just for myself. I was at a Livestock Feeders Association banquet this weekend and a lot of people in this industry will tell you that NDEE has become very responsive not only to livestock producers but also to the complaints from the public. So I want to compliment them on their quick responses. On a personal level, I have found Director Macy to be open and responsive to any questions. I have, have and will support his nomination. I would like to yield the rest of my time to Senator Jacobson.

KELLY: Senator Jacobson, 3:15.

JACOBSON: Thank you, Mr. President, and thank you, Senator Brandt, for yielding the time. I too sit-- do also sit on the Natural Resources Committee, did hear the testimony, did vote in favor of Jim Macy. I would agree that the AltEn situation was a real problem. Nobody denies that. This was a horrible situation, but it really didn't stem from the initial approval. It really stems from the fact that they went way beyond what their approvals were. And from everything I've been able to see and study on this, Jim Macy took the steps that were within his purview to be able to remedy it. We need to keep in mind-- I can tell you that I'm not an attorney, but I am a banker and I can tell you that it's a little easier said than done when someone fails to comply with the contract and then you try to go out and sell assets and

recover assets. That's a whole different can of worms. And so we're looking at people now, other seed companies, suing AltEn for having sold the assets. There's a limit on what the director can do. I think as Senator Bostelman accurately pointed out, EPA's been involved. There been another-- other agencies involved. I think Jim Macy took the steps that he needed to take. I think he regrets maybe not getting more aggressive on this issue, but he also has tried to work with several people throughout the state and companies to do the right thing to protect the environment and at the same time, work with business. And I appreciate that. As a business owner, I see that that's an important aspect to have. I admire him for that. He's not a pushover. I think anybody who has worked with him would tell you that that's not the case. He's somebody that's reasonable, will do the right thing. We can point to one mistake or one problem and blame it all on him, but I can tell you that all of the great things he's done along the way should not be forgotten either. So I will be voting for his, his appointment-- reappointment. I think he's the right guy to lead the agency and I think we need to let him continue and I'll yield the rest of my time.

KELLY: Thank you, Senator. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President, colleagues. I'm just-- last session, there were sometimes some bills that I opposed and some members of the body would talk about how the introducer was a nice guy or gal. And while I wouldn't have disagreed with that statement, that didn't mean that I supported their bills. What I'm hearing in support of this nomination is that people think that Mr. Macy is a nice guy. But nice people aren't necessarily qualified to lead. And I'm not hearing anything about Mr. Macy's leadership that would compel me to think that he is well suited to continue in this role, seeing as there is a pretty much very well-documented, complete and utter failure when it comes to the handling of AltEn and the community of Mead, Nebraska. I'm reading over resolutions. Senator Blood put in LB-- or LR159 in 2021 that we did not move forward. I think that, yes, Mr. Macy probably isn't the only one responsible. I think we as a body are also responsible. I think that we have turned a blind eye to ensuring that there's the right tools available and that there is the correct amount of oversight in this situation. And looking over the historical news articles and resolutions and floor debate, there's a pattern here where we are turning a blind eye. And I think that's extremely unfortunate for a lot of reasons, but most significantly, for the people of Mead, Nebraska. I think they deserve better. I think they

deserve to have a leader in this state that is going to stand up when it's hard and I have not seen that in the work of Mr. Macy. I would like to remain-- yield the remainder of my time to Senator Carol Blood.

KELLY: Senator Blood, 2:40.

BLOOD: Thank you, Senator Cavanaugh. I'm going to quickly address some of the things that have been said on the mike and then I will start talking about the timeline that each of you has now received, starting with the year two -- 2014. We're not talking about one mistake, one problem, as Senator Jacobson just said. We're talking about a historic, documented issue that could have been addressed very, very early on before this crisis became bad. And I'm sorry, Senator Bostelman, that someone was chastised for being in a closed-door meeting, but that's because they were having meetings with you and, and Mr. Macy and two or three other people, is my understanding. And nothing was being shared with the community at that time. So I'm not surprised that-- and I know who you were talking about was, was chastised, but people are scared and people were concerned. And I've never said that nothing was being done. Not once have I said that. I said it was done ineffectively. It was not done in a timely manner. And yeah, we have invited people from the federal level to Nebraska to periodically do some testing, but again, we sat on that too long as well. If you look at the front page of your timeline, for those of you that didn't throw in the recycling already, you'll notice that we start from the very beginning. And it was shortly after bankruptcy was filed and they reorganized that the neighbors started to see problems. Complaints about odor, respiratory and other health issues began almost immediately and a--

KELLY: One minute.

BLOOD: --NDEE document, dated 4-13-2018, dismissed those complaints as being invalid. Well, there's your first opportunity to do better. Now, as we read through all these pages this morning, let's look at all these other opportunities we had to do better. So by its own admission, NDEE discovered in 2015 that AltEn was using discarded seed corn that had been treated with pesticides as its feedstock rather than normal field corn. You can look at page 12 of the court filing by NDEE. According to court documents, NDEE discovered in 2019 that AltEn's byproduct had elevated concentrations of pesticides. Document from Scott Tingelhoff-- you know, AltEn's general manager that I-- was making money for a long time even after they closed-- on 7-13-2018,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

stated the wet cake we have is treated seed corn. February 10, 2017, NDEE approves--

KELLY: That's your time, Senator.

BLOOD: --expansion--

KELLY: Senator Hunt, you're recognized to speak.

HUNT: Thank you, Mr. President. I am, I am following this timeline. And when all of these things were going down with AltEn, I was not as engaged as I wanted to be. And part of the reason for that is that I knew people like Senator Blood were totally on top of it. They were following the money. They were following the sequence of events that happened. They were working to get accountability for the people responsible. I would like to have seen more input from the University of Nebraska and the experts there who have been researching the water and soil quality and also making recommendations about how to fix the mess. I would have liked to see more recommendations from them and more involvement from them in this natural resources board that we're talking about since this is really the most pressing issue that I see affecting the board at this time. But I am following along with this timeline and listening and I'd like to yield the remainder of my time to Senator Blood. Thank you.

KELLY: Senator Blood, that's 3:50.

BLOOD: Thank you, Mr. President, and thank you, Senator Hunt. Moving forward on the timeline, February 10, 2017: NDEE approves expansion of AltEn's compost operation. By 11-15-2017, AltEn was in violation for unauthorized compost. February 18, 2017-- here is opportunity number two to learn a lesson-- AltEn noncompliance warning from NDEE. Disposal of solid waste after October 1, 1993, at location other than solid waste management facility holding permit from NDEQ. You remember NDEQ? When we were trying to, like, save money in Nebraska, we merged two departments together, you know, because one department can do the job of two? Twenty-six thousand sixty-two cubic yards of compost stored in area not permitted. The December 18, 2017, noncompliance letter followed a site visit on November 14, 2017, and apparently they had to do it again in January 2017 when the noncompliance issues were observed. On January 26, 2017-- third opportunity-- NDEQ letter stated all compost should be land applied within 60 days. On June 8, 2017, AltEn letter response indicated none had been land applied. Potential penalties mentioned, mentioned by NDEE: failure to address the matter

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

would result in referral to legal section-- it should be action-- action for possible enforcement. Hmm. OK so that was 2017 and when did we take legal action? Two and a half years ago in March? But, you know, we're in litigation. We can't do anything. July 23, 2018, AltEn notice of violation from NDEE. You guys can read, right? Are you going through this? I don't see anybody picking this up and reading it. Friends, over and over and over again, we had opportunities to do better. To talk about this like it was one problem, one issue is incorrect. It was multiple problems, multiple issues. And wait until it is your district and you, you're going to get answers like I did on some things. It's like, well, it's happened in other states. I'm not talking about this particular issue, but that tends to be sometimes what department heads say. If it's happened elsewhere, it's OK that it happens in Nebraska. I'm not OK with this and the fact that you guys are-- yes, everybody makes mistakes, but when you make mistakes over and over and over again, which the timeline--

KELLY: One minute.

BLOOD: --is clear. Did you say-- I'm sorry, what did you say, Mr. President?

KELLY: One minute.

BLOOD: Thank you, Mr. President. When you make mistakes over and over again, you are not learning your lessons. You are not learning how to be better at your job. To say that your hands were tied because of litigation or the federal government or whatever, good grief. These are people's lives at stake. And by the way, you know that it was already a federal site when it came to, to toxic chemicals, right? So this is a double whammy for Saunders County in case you weren't aware of that either. So what I want to know is what are you guys going to do in the future? Because there's going to be a future Legislature that's going to have to deal with some of these issues. What are we going to get out of litigation? We're not going to get anything. They've got no money left. They're not going to be able to pay back the seed companies. We let that ball drop. We filed litigation so we were complicit.

KELLY: That's your time, Senator, and now you're recognized to speak for your last time on this matter.

BLOOD: Thank you, Mr. President. Friends, we filed litigation because we are complicit. And to think otherwise means that you haven't read

through anything. We have a video that we are happy to share with you that have all the results from the university and Creighton University that worked together and did the testing. There are some brilliant minds at the university. Minds that, by the way we help invest in with our budget who are telling us that these people's homes have levels of poison that are to be concerned about. We know when this first started because almost all of us got phone calls or emails and a lot of people ignored it. People were getting sores in their mouths, they were having respiratory issues. A dog ate the wet cake and became deathly ill and almost died. Dr. Judy Wu-Smart: look that up. That was the canaries in the coal mine. Her bees were dying and they couldn't figure out why. And it wasn't the national bee thing that's going on. We know that bees are dying now from different chemicals and there's a big issue when it comes to our bees. Her bees were dying. If you look at the videos of these bees, I have a very vivid memory of one bee, like, literally laying on its side and kind of, like, pushing itself in circles. And it was so damaged chemically that it couldn't get up, it couldn't fly, it couldn't do anything but lay there and move around and die. And yeah, I know it's just a bee, but it's not just bees that have been poisoned. It's people. It's embryos. It's their bodies that are going to have issues in the future. And we asked for \$10 million in research. We asked this body for \$10 million and thank goodness that Senator Bostelman came on board. We were able to get \$1 million after I begged and pleaded and begged and pleaded and begged and pleaded. And \$1 million covers a year of research, friends, so what are we doing after that? I feel, based on the responses that I'm hearing on the mike today, based on what I've gotten in my response letters, based on how the media is starting to lose attention, that we're just kind of waiting for this to go away. And we did get national media attention on this. It was, it was printed in The Guardian. People could not believe the length of time that we allowed this to go on. In Nebraska. We are honest, hardworking people here in Nebraska. Why would we let something that we know is going to hurt people go on for such a long time? We can do better than that. And now it's the nitrate issue. And by the way, my freshman year, I asked for an interim study, a public hearing on the nitrates. I wanted to bring indigenous plants to Nebraska and filter out those nitrates and protect our children from childhood cancer and they refused to give me a hearing, promising I would get it in the second part of the biennium. And you know what happened? They had their staff put together some brouhaha about all these agencies are working together and rah-rah and never once addressed the issue at hand. And now what's in the media? Oh, we have this nitrate issue and childhood cancer is

really high and we need to do something about it and what's the state going to do? And you know why they wouldn't do that? Because they thought I was going after the, the chicken plants. What I was going after was saving our children. So don't, don't tell me that this guy is a good guy. Don't tell me that this is one issue, one problem. This is an issue that festered for years. And yeah, we've done something about it, but we've done a lot of wrong things about it--

KELLY: One minute.

BLOOD: --ot a lot of right things about it. And if you really, really look at this timeline, like, you really read it, which I'm not seeing anybody doing, how can you vote green? How can you tell me that, hey, he learns from his mistakes and he can do better. How many mistakes do you get to make before you learn your lesson? How many drunk driving tickets do you get? How many times do you get busted for child abuse? Hey, you know, they only beat him a couple times; let's give him a couple more times. Maybe they'll kill the kid next time. That's how serious this is. And to see people say things otherwise, to see people not give a damn and put things in recycling, shame on you. This is about Nebraskans. This is about their families, their babies, their livestock, their pets, the air that we breathe. We talk about property rights every day. Property rights is about-- more about--

KELLY: That's your time, Senator. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. I yield my time to Senator Blood, if she so desires.

KELLY: Senator Blood, you have 4:54.

BLOOD: Thank you, Mr. President, and thank you, Senator Conrad. Let's talk about property rights. We talk about property rights when you don't want a wind turbine in the house next to yours. We talk about property rights when someone maybe puts their fence one inch over the property line into your yard. We talk about property rights all the time in this body. Of course, we like eminent domain when we can get a lake, but any other time, eminent domain is bad. If you look up the definition of property rights, it's about enjoying-- having the right to enjoy your property. You have the right to breathe clean air that doesn't have toxins in it. You have the right to drink clean water. Right? To be able to shower and not be concerned about what's coming down on to your body or into your mouth or your eyes. You have the

right to plant in your garden and eat those vegetables from that garden, knowing that what you put into that soil is something that you would want to put into your mouth. That's property rights. We violated their property rights. AltEn violated their property rights. We're complicit because we allowed them to do it. Yes, we're not the ones that poisoned the folks in Saunders County, but we're the ones that allowed it to happen over and over and over again. You can say, well, the county gave special permits. Well, sure, that's their job, but we oversee a lot of what happened. And again, look at the timeline. Look at the responses from NDEE. Are you happy with those responses? I want you to tell me how many times we let department heads make major mistakes that hurt Nebraskans when that's OK. I just-- I want you to come up and tell me the number. What's the numbers? Is it one, two, three, ten, 12 or 13? How many times is it OK to hurt a Nebraskan knowingly and do nothing about it? As you heard from Senator Machaela Cavanaugh, we had an opportunity to create an oversight committee. We wouldn't be standing here having this conversation today had there been an oversight committee. But we had a small handful of people come in and say, oh, yeah, we're already having these closed-door meetings and then we share what we say with the community so everything's OK. And if we bring other people in and we make it public, it's going to slow the process down. So you had a small group of people deciding what was best for the whole community. And now there have been community meetings, as you heard Senator Bostelman say, and thank goodness for the, the, the Med Center and for, for Creighton because we have brilliant minds that put together a really great presentation. And again, I have the video, if you want to watch it, that talks about the process that went on and the science. And the science is clear that there is contamination. And we can talk about the site cleanup, but that doesn't matter anymore because the contamination has happened. And what are we doing about that as a state and how could that-- hmm, how could that have been avoided? Gee, I don't know. Maybe respond correctly on the first time we had an issue with this company. And what was really interesting is that the attorney for AltEn has been at many of these announcements for some of the candidates that ran for office in the last election cycle. Probably just a coincidence, but there's things that I note like that. I think that's probably not good business. If I had an organization that I was in litigation with, I'd be concerned if the attorney--

KELLY: One minute.

BLOOD: --for that organization started showing up at political things that were invite only, by the way. So, you know, friends, it comes

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

down to what are we willing to put up with? These appointments are important. This isn't one issue. It's many issues with one company. And I don't like that I have to stand on the mike today in opposition to my friend, Senator Bostelman. I like him personally, but it has nothing to do with him. It has to do with the appointment. And hey, Senator Riepe, you know I can see from here. You know, when you guys, like, make little messages and thumbs up and stuff about how you're going to vote, you know I can see from here. This is a really good vantage point. I want you guys to take this seriously. I don't have hope that any of you really will.

KELLY: That's your time, Senator. Senator Wayne, you're recognized to speak.

WAYNE: Thank you, Mr. President. I'll yield my time to Senator Blood.

KELLY: Senator Blood, 4:50.

BLOOD: Thank you, Mr. President, and thank you, Senator Wayne. You heard me say I don't have any hope that you're going to do the right thing today and that's based on what I've already seen this session. I don't understand, as a freshman senator especially, how you feel it's important-- and I heard it when freshman senators say this in a public forum-- that you depend on the senior-- the more senior senators to tell you kind of what's going on. You guys can all read. Read that timeline. Read those news stories if you haven't already. When this is all said and done and we vote, I want to show you those maps of this alleged cleanup. I want to show you the ridiculous way they tried to protect the community from the wet cake. I want you to see the family whose lake was polluted as a result to our inaction. How much is too much? That's what we're here to talk about today. I'm sure Mr. Macy is a very nice man and he's got really adorable bow ties. I'll add that in too. But that doesn't make him good at his job. You know, our state has a lot of issues right now. DHHS has major issues. Thanks to people like Senator Cavanaugh who continues to bring them forward, from the Saint Francis fiasco to the lack of services available because they just don't have the staff. We can go by department by department by department and we keep voting in people that we don't really research. Are we doing our jobs when we do that? I don't think so. And you may think, well, Senator Blood is going to try and take as much time as she possibly can because she's really against this. It's like, yeah, that's exactly what's going to happen. Anybody wants to yield me time, I'm going to keep talking. Let's talk about October 18, 2019, in response to the issues related to inspection of the facility on July

2019. September 23, 2019, which required AltEn to stop land application of lagoon wastewater due to pesticides. AltEn answered some of the issues associated with the industrial stormwater permit, but fails to respond to NDEQ's determination that the pesticides in the wet cake are not addressed in AltEn's pollution control plan. All right. No response. October 25, 2019, AltEn further responds to violations NDEQ determined from the July 31 site visit. NDEQ had ordered AltEn to comply with solid waste regulations for proper landfill disposal of old wet cake, new wet cake, starch, and biochar and land application of compost with these materials was prohibited due to contamination with pesticides. AltEn disagreed with these NDEQ findings, stated plans to continue to process these products, not waste per se, for safe agronomic land applications with or without composting, considering the EPA pesticide limits for seed corn should not apply. So back and forth and back and forth, right? Go back to the drunk driving. AltEn does not plan to comply with certain of the violations of solid waste regulations cited in NDEQ's September 23, 2019 report. This specifically includes violations for containment of stormwater runoff and discharge of wastewater and solids containing pesticides into the environment. Right? Not just wet cake, wastewater. And by the way, do you know before they shut down, they wouldn't even allow staff to drink out of the water in the, in the factory because they knew that that was contaminated? They had them drinking bottled water.

KELLY: One minute.

BLOOD: Did you know that? But, you know, Mr. Macy is allowed to make one mistake. May 2021, AltEn submits Nutrient Advisors certified land application report for lagoon wastewater for 2020. This document-- this, this report documents disposal of 42,000-- oh, excuse me, 42,138,545 gallons of pesticide-laden wastewater on cropland-- hey, farmers-- solely on agronomic chemical level basis. No pesticide analysis was apparently done as required in the original report from NDEE. All right, how many places are we going to apply this? How much are we going to put toward the water? How much are we going to store illegally? But it's just one mistake, friends. Just one mistake. You know, if you haven't had a chance-- and most of you aren't even bothering to look.

KELLY: That's your time, Senator. Thank you, Senator Blood. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. This is, I don't know, an interesting conversation. It makes me think about the environmental issues that occur in north Omaha around the power plant and the safety and the ramifications and effects of having a power plant so close to communities and the effects on growth and development of kids and families in those areas and it has me thinking. And it's a-- I do believe it's an important issue that we should definitely be paying attention to and try to figure out what happened, what's going on, and how can we ensure that it doesn't happen in the future. And with that, I'll yield the rest of my time with Senator Blood. Thank you.

KELLY: Senator Blood, 4:00.

BLOOD: Thank you, Mr. President, and thank you, Senator McKinney. You know, friends, I'm not going to read all day long the timeline. I really thought-- and you know, this is something that I'm always going to admit. When I first became senator, I was a Pollyanna. Like, I really believed that everybody read their own research and made their own decisions until, like, the first time I had a bill on the floor. And I went up to a senator and was, like, hey, my bill is next on the agenda and I really need your vote. And the senator said, I don't know. I haven't talked to my staff about it yet. And of course, my first question was, well, who's the senator? You know, we have a big paying job, this \$12,000-a-year job. And the expectation, the expectation is that we do our own research, that we vote for what is in the best interest of Nebraskans. Not for special interests, not for big business, not for the Governor, not for a party, but for the best interests of Nebraskans. And I say that because there are many times that I vote against things that I'm pretty well sure that my party doesn't agree with. And I don't really care because I'm not a party. I'm a person. We have people that stand on these mikes and say I'm a proud Republican woman or I'm a proud this or whatever. In here, it's a nonpartisan body. We have one job. That job is do the best we can possibly do with the knowledge that we have when we make decisions, be it about the budget, be it about taxes or be it about the well-being of all Nebraskans. I never thought I would stand up and talk for any length of time on an appointment in my entire career. This is how strongly I feel about this. I'm not doing this to get back at somebody because my bills haven't come up in hearings, which they haven't, by the way. But if you look at our agenda, you'll see who's have. I'm not here trying to prove that I can filibuster because I proved that my freshman year with the AltEn-- with the at-rest bill that pertained to craft brewing, where the other senator just basically took his ball and went home because we heard his feelings. I'm here because this is

important, This isn't about somebody digging in their heels and getting their way. This is about protecting Nebraskans. And we're not talking about one mistake. If we were talking about one mistake, I would not be standing at this mike. I would not have killed a gazillion trees making all these copies because I'm not a big fan of paper. I'm standing here because this is in the best interest for the safety and protection of Nebraskans, not just now, but in the future, and their babies and their children, their loved ones, their pets, their livestock.

KELLY: One minute.

BLOOD: This is a property rights issue. And you can say, well, we can't do anything about this issue now. Well, yeah, actually, we still can. We could have done that if we had pulled the trigger on our litigation. But we didn't pull the trigger on the litigation because, again, we're complicit. Why would we do that? But maybe if we wait around long enough, enough, everybody will forget it. And then when your insurance goes up because all these people have cancer or brain tumors, miscarriages, infertility, there's not going to anything you can do about that. These are things we could have prevented by getting in front of it. When you don't fund further research, these people get sick, these people die. These people get sick. They have lifelong maladies. We have an opportunity to do one thing and that is not to appoint Mr. Macy. The world will not end if this appointment does not go through.

KELLY: That's your time, Senator. Mr. Clerk for a motion.

CLERK: Mr. President, a priority motion. Senator Blood would move to recommit the nomination to the Natural Resources Committee.

KELLY: Senator Blood, you are recognized to open.

BLOOD: Thank you, Mr. President. I bring forward this recommit to committee because I know there's other things you'd like to get done and I'd like to get things done as well. We can move this back to committee. They can discuss it some more, answer the hard questions, maybe bring those answers back to the body as to why this is only one mistake and not 13 mistakes, as to why we didn't do better and what was supposedly tying the hands of Mr. Macy because I'm not hearing that. All I'm hearing is he's a nice guy. He's a nice guy, has an awesome bow tie. But I'm not hearing any answers that say how he really protected the citizens of Saunders County. And yeah, there are

people that think cleanup may be going just fine, but I've talked to a lot more people that are worried and concerned and want to know what we're going to do when they get sick. And I'm guessing nothing, by the way. And I'm sorry, Saunders County, I'm just being honest with you. We have so many opportunities to get in front of things, from our schools, again to Health and Human Services, our children, childcare, our worker shortage. Good grief. If you watched the news 20 years ago, you read a newspaper-- remember newspapers, friends. You guys aren't reading those enough-- listened to the radio, we knew 20 years ago we were going to have a workforce shortage because the baby boomers were aging out. How did Nebraska prepare for that? We didn't. But now we're sure putting tens of millions of dollars into it because it's a big problem now. Saint Francis, we took that contract to save money, which ended up costing us more money and having the most vulnerable fall through the cracks. But, hey, you know, we canceled that contract. Do you want me to keep talking about things like prison overcrowding? When I worked for the prison system in the late '80s and early '90s, there was overcrowding then and, and they built Tecumseh State Prison in Tecumseh. And then they were like, hey, we don't have enough people in this community to provide workers for the prison. We're going to have to start shipping them in. Way to plan, Nebraska. Over and over and over again. We could talk all afternoon. I brought-- I bet if I brought up Senator Hunt, Senator Cavanaugh and a whole bunch of other senators that are very in tune with what's been going on in state government, they're going to tell you the long list of issues we have had here in the state that we ignored and then we rush and throw money into it. Let's do this right. You don't have to vote no against his appointment. You can vote yes to recommit it to committee and we can move on and address this another day. I have a heart. Tomorrow is Valentine's Day. This is my gift to you. Let's recommit it to committee. Then you don't have to decide if it's a yes or a no. Because I know at least one or two of you might have a little guilt if you vote yes, even though you're going to do it anyway. And let's really have the right conversation about Mr. Macy. It isn't that he's a nice guy. It isn't that he's not allowed a mistake. He made a long list of mistakes. Take your timelines back to your office and if you aren't willing to read them, have your staff read them and interpret them for you. Have them give you a synopsis. Ask me for the videos because we have aerial videos of the AltEn plant for the last two to four years, depending on what we were looking at. We'll show you where the wastewater went. We'll show you how the Poly Shield isn't working. I have more articles I can share with you. Why don't you go to Mead, Nebraska, and knock on a door and talk to some folks? Because I can

tell you, we invited a lot of senators to that town hall and only a handful actually came. And until you're in that, that town, the smell-- like, the smell is one you will never forget. You don't need to see anything when you can smell it. Imagine living next to that. It's not like living next to a stockyard where there's good days and bad days. It stunk all the time. And imagine not knowing what really was going on for a very long time and then calling the Legislature, sending emails and most of the senators that weren't in your district, they did ignore those emails or their staff did because it wasn't in their district. I don't know about some of those senators, but I represent all Nebraskans. I'm elected by a district, but I represent all of Nebraska. I'm giving you an out today. We can recommit it to committee. You can have the opportunity to vote yes to recommit. You don't have to keep running up to the Speaker to ask him how you should vote. You can make that decision on your own as a freshman senator. Give us time to really review this and decide if this is our best of our-- to our best interest. And by the way, when you bring it back, which I'm sure it will come back, tell me something compelling because I have not heard anything compelling that tells me this isn't going to happen again. Tell me something compelling that says this is not going to happen again and this is why. Not hey, he's a nice guy and he made one mistake because clearly, if you can read, he made more than one mistake. And you can't say it was his staff because tell me where the buck stops. And by the way, where does the buck stop? At the executive branch. And who's the executive branch? Our Governor. What's our Governor going to do about this appointment, knowing what we've said on the mike today? I'd be curious because I know our last Governor didn't do squat except rush to do litigation so we wouldn't have to talk about it since we're complicit. And I'm not a lawyer so I don't talk about that too much because I'm not even going to pretend I know it-- anything about the law except for what I've learned in this body. Not enough that I would be comfortable talking on it. But I do know when somebody is trying to pull a fast one. I'm really good at that. That's from working in the prison. And so, friends, those are-- that are still in here, which most aren't-- if you're in your office, have your staff give you a synopsis of what I just said, which is you can vote green to recommit it to committee. Then you don't have to vote yes or no today. We have the potential then to have the committee have the hard discussion about whether they want to move Mr. Macy forward and then potentially maybe bring me something compelling to the floor. This is why we're supposed to excuse all of these issues that are documented. And by the way, many of this is on their portal. We didn't make these timelines up. We got most of this from their portal so it's

public information. Do the right thing today. I'm not standing here to kill time for any reason, except for the fact that I am strongly against Mr. Macy being reappointed. I can tell you that towards the end of our relationship when it came to Mead, that he was not very cordial, that he refused to answer things towards the end. And clearly someone gave him permission to do that. Well, she's got way too many questions. She's asking for written responses. She's putting her letters in writing. When does it end? Well, it's never going to end. It's never going to end, guys. It's not my district and I don't care because the Nebraskans that live in this district came to me. I have plenty to do in my own district. I have plenty to do in my personal life, but I chose to fight for those who have heard-- who were not being heard and I was being told were voiceless. I was told that they weren't being heard. I was told that not enough was being done and I was told that calls weren't returned and I was told that they were scared. And if you know anything about me--

KELLY: One minute.

BLOOD: --you know when someone calls me and says I'm scared and I need help, that that becomes my priority. Because at the very least, I'm going to make a difference in that one person's life to the best of my ability. But we're not talking about one person. We're talking about hundreds of people. And friends, I know that you are more than a green or red vote. I know that you have a heart and that you have a conscience. And if you really listened today, there is no way you would vote to move Mr. Macy forward. At the very least, you will vote to recommit to committee. And then if you decide to vote green after it comes back from committee and we hear compelling evidence as to why we need to ignore what happened with Mead, maybe I'll vote green along with you. But right now, I'm asking you to recommit to committee. Thank you, Mr. President.

KELLY: Thank you. There's been a, been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 19 ayes, 8 nays to place the house under call.

KELLY: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senators Riepe, Murman,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

Linehan, the house is under call. All unexcused senators are now present. Senator Dungan, you are recognized. I raise the call.

DUNGAN: Thank you, Mr. President. I would yield my time to Senator Blood.

KELLY: Senator Blood, you have 4:50.

BLOOD: Oh, OK. Sorry about that, Mr. President. I got excited. Friends, we are all called here to make a vote to recommit to committee. You have the opportunity. It's still call of the house, though, isn't it? Has it been raised? Everybody is walking around again. OK. They need to strategize over here anyway. So we know that if we recommit this to committee that you have the opportunity to vote green today to allow this to go back to committee. We can end this discussion and not drag this out and let them come back with something compelling that tells us why Mr. Macy should be given another chance. Because if you took notes today during today's discussion, they said he's a nice guy. He made a mistake. He learned from his mistake. I'm here to tell you he made multiple mistakes. Look at your timeline that's on your desk, for those of you that didn't throw it into recycling. And by the way, those who are senior senators, and shame on you. And make a decision based on what was said at the mike today. And what was said at the mike today is that he made multiple mistakes and had opportunities to learn from these multiple mistakes to do better. Show Nebraskans that you care about their health and well-being enough to send it back to committee to get more information. Then you don't have to vote yes or no on his appointment. You only vote for more information. That's our jobs. That's the job of a committee chair. There's no reason Senator Bostelman can't take it back to committee. Bring forward more things that compel us to want to vote yes. Not just vote yes because people are in your ear right now telling you you need to vote yes. Have some guts. Stand up for what's right. Because if you just blindly vote green, you haven't heard anything that's been said on the mike today, you haven't read anything that's been put in front of you. And if that is the case, shame on you. You need to stand up, be brave, vote green to recommit to committee, give Senator Bostelman the opportunity to come back to us and show us why it's so important that we appoint Mr. Macy. Because nothing in his introduction told me anything. It was just the usual fluff. When Senator Jacobson said people are allowed to make a mistake, one mistake, this was not one mistake. This was 12, 13 or more mistakes. When Senator McDonnell talked about him being a nice guy, I don't doubt that he's a nice guy. I don't doubt that he has cute bow ties. What I doubt is that he did

his job well. There are a lot of people that I don't like how they do their jobs that I like as people. This is not a personality contest, it isn't a beauty pageant. This is the business of the state, the business of the people. At the very least, we owe them an opportunity to hear things about Mr. Macy that are good about why we should go ahead and appoint him instead of the fluff that we were told. Recommit it to committee, let him bring it back. You can end all of this hubbub, which I'm sure the Speaker would love, or we can just keep at it in other ways.

KELLY: One minute.

BLOOD: I'm asking you today to vote to recommit to committee, give the committee chair an opportunity to bring back something that compels us to really want to support Mr. Macy besides the fact that he's a nice guy and show me that Mr. Macy learned from his mistake-- mistakes. Because what I see when I look at the timeline that I provided everybody was he had many opportunities over the last three, four years to fix his mistakes and never did. And even though you're on the committee and you voted it out, Senator Brandt-- I saw you peek over your shoulder-- I want you to know that it's OK to recommit it to committee. Give us the opportunity to learn more about this person you think is fantastic and needs to move forward. I'm begging you, friends. Recommit it to committee. And I'm going to say--

KELLY: That's your time, Senator. Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Mr. President. Colleagues and people at home, I want to explain. So I just did a call of the house and it was successful so thank you for that. I learned from Senator Wayne a couple of years ago that you can do a call of the house at any time in debate. And a call of the house is, is saying, colleagues, we'd like you to return to the floor for whatever's happening on the floor. I did it after Senator Blood's opening on her motion to recommit because she had made a comment that she felt like the body wasn't present. And so I thought, OK, well, then let's get the body present. The last time I did a call of the house, it failed, which is wildly inappropriate. And this time, it passed and we had our call of the house. I did notice that there were still some red lights. And so I'm not going to do this today, but moving forward, the call of the house is a simple majority. If five people vote and five people vote red or five people vote green it's however-- the majority of five, three or more. It's a simple majority. You do not have to vote one way or the other for a

call of the house. You can just let other people vote. But when you vote red, you're being disrespectful to the people of Nebraska and you're being disrespectful to this body. So from now on, when anybody does a call of the house and there are red votes, I will immediately do another call of the house, even if the call of the house is successful. I will continue to do calls of the house until there are no longer red votes. I have sat here for four years and watched people vote red on a call of the house and it's always been a handful of people. And I thought, well, OK, whatever. I don't know why. I don't know why I was, like, well, OK, whatever. Why am I OK with people being rude to the people of Nebraska and saying, no, we don't think that we should be in our seats doing our job when our colleagues ask us to. So people of Nebraska, my commitment to you over the next four years is to do calls of the house until there are no one in objection to a call of the house. Hopefully I won't have to do that. Hopefully from this moment forward, every call of the house only has green votes and those that don't agree with the call of the house, just don't vote. Just don't vote. But if you vote red, you know and everyone else in this room knows that Senator Machaela Cavanaugh is going to call for another call of the house as soon as the call is raised. The moment the call is raised, I will be calling for another call of the house until there are no red votes on calls of the house. It is inappropriate. It is disrespectful to your colleague who has asked for the call, whoever that is, and it is disrespectful to the people of Nebraska. You are saying I don't believe we should be doing our jobs right now. With that, I will yield the remainder of my time to Senator Blood if she would like it.

KELLY: Senator Blood, you have 2:00.

BLOOD: Thank you, Senator Cavanaugh and thank you for that lesson for the freshman senator. I always think it's nice when we can share knowledge. Hopefully people were listening. Again, friends, the AltEn disaster is our Flint, Michigan. To be told otherwise is an outright lie. We have minimized it in some of the language that's been used on this floor today. But the bottom line is there are people that are scared and some of them, I'm told-- by the way, some of the people who are doing some of the research have been told not to share information because it scares the residents of Mead. Well, I don't know about you, but I'd rather be scared than uninformed. We've got to do better. We can't do better if we're doing carte blanche when it comes to these appointments. We have an opportunity to recommit it to committee and then let the committee and, and the Chair do their jobs better and bring it back to us with something compelling or we can allow--

KELLY: One minute.

BLOOD: --them to dig in their heels and say, vote green, it's fine, move on. You can do that, but I'm going to take note of that and I'm going to make sure the people of Mead take note of that and the people of Saunders County take note of that and our scientists and our environmentalists and everybody that's concerned about this environmental crisis know who was not willing to at least send it back to committee. Now, I'm not standing here threatening you because we've seen that happen many times on this mike. You don't vote this through or you didn't vote this through, I'm going to make your lives miserable. We heard that said on the mike just last year. That's not what I'm saying. What I'm saying is that I'm going to be open and transparent about everything that happens with Mead so people know who supports them, who doesn't, who's not willing to do something as simple as recommit to the committee and, and who is. They need to know who has their backs and who doesn't. And you may not care about it because it's not your district and that's OK.

KELLY: That's your time, Senator. Senator Hunt, you're recognized to speak.

HUNT: Thank you, Mr. President. I'll yield my time to Senator Blood if she'd like it.

KELLY: Senator Blood, 4:52.

BLOOD: Thank you, Mr. President, and thank you, Senator Hunt. Friends, I don't know about you, but I like to be on the right side of history. Like, in 20 years, 30 years when they talk about this Mead disaster, when people start having miscarriages and brain tumors and cancers, when they start talking about this and they research what happened, I want to be on the right side of history. And right now, our opportunity to be on the right side of history is to recommit this to committee. Let's make sure that whoever we appoint is the right person, that we are doing something that is just and right. Because the people in Mead, Nebraska, never got that opportunity to say-- they never got the opportunity to say no; no, we don't want this to happen to us. Yes, we want this to stop. They got ignored for a very long time until it got out of hand. There were employees that were exposed to chemicals who didn't have correct protective gear. What do you think is going to happen to them? Don't forget the story of the veteran. That's in one of your handouts, by the way. He's paying two mortgages now because he can't sell that house because a bank won't

give him the-- they won't give him the loan even though he had full disclosure and he had someone to buy the house, his dream house. And by the way, I made sure he had the name of a lot of good attorneys that might be able to help him because I don't see anybody else reaching out to help that veteran. Have a conscience. Have a heart. You can vote for one person who made a lot of mistakes, who might be a nice guy or you can vote on behalf of the people of Mead who need you to show them that we can do better. And we do better by recommitting this to committee. We allow the head of that committee to come back with something that tells us that it's, it's compelling and that you have to approve this appointment for the Governor because, again, all we heard today was fluff. All we heard today is he's a nice guy. He made one mistake. Yeah, I voted it out because I like the guy. He's done good on other things. Well, he may have done good on other things, but he did really, really, really bad on this. I just don't understand why you can't feel it in your bellies like I do, guys. Like, I never wanted to get involved with Mead. It's been a huge undertaking. Huge. But when I got that fire in my belly, it never went away because until we've done everything we possibly can do to help these people, I can't walk away. And if you feel otherwise, you're not reading what's been put in front of you. You haven't been watching the media. You haven't looked at the videos online. Go to their Facebook page, What About Mead? Feel it in your belly, guys. These are people. Real people. Disappointment matters. What's going to be the excuse when this happens again? Because something like this is going to happen again. Well, he learned his lesson from Mead. Yeah, he learned it really well, but, you know, let's give him another chance to do the exact same thing. You learn your lesson the first or second, maybe even the third time, not the 12th or 13th time. Look at that timeline. Look at our responses. Look at our lack of response. This has nothing to do with his hands being tied by the federal government. This has to do with his lack of response. Be brave. Be bold. Have some guts.

KELLY: One minute.

BLOOD: Recommit this to committee. Thank you, Mr. President.

KELLY: Thank you, Senator Blood. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. I'd yield my time to Senator Blood, if she so desires.

KELLY: Senator Blood, you have 4:51.

BLOOD: Thank you, Senator Conrad. I've probably talked enough for the whole year already. So I'd be curious how many people actually looked at their documents on their desk. I know the ones that put them in recycling. That's why I start-- sat back here this year. You guys know I never leave my chair. I always observe everybody. I listen to debate. I don't go back to my office and watch it on TV. I don't go out in the Rotunda-- maybe 2 percent of the time, if it's an emergency-- to talk to lobbyists. I don't even go out to their breakfasts or the lunches, with very few exceptions. Not because I don't think they're not nice guys and gals and however they identify, it's because that's not why I became a senator. I became a senator because I believe that we have an opportunity to make effective change, to do things that are good for the citizens of Nebraska. I didn't just come because of property taxes, which is all we ever seem to talk about in this body. We gotta lower property taxes. Young kids are leaving because the property taxes are too high. Heck, they can't even afford to buy a house. Come on. I came here to make a difference. I came here to make a difference. I came here with my Pollyanna attitude, truly believing that the vast majority of people that get elected want to make Nebraska a better place to live and raise our families. And that means sometimes we have to get into the ugly stuff: the ugly stuff like big businesses poisoning our children, our families, our animals, our pets, our livestock; big businesses that infringe on our property rights, our right to clean air or fresh water, to be able to eat the plants that we put in our garden. You know, I always think it's interesting-- and we've talked about this already. We talk about eminent domain all the time. Eminent domain is bad. They don't have the right to put up that wind turbine. They don't have the right to put up those solar panels. That infringes on my right to enjoy my property. But when it comes to poisons, when it comes to toxins, it's like, well, you know, we live in an ag state so it is what it is. We're not talking about the farmers here. We're talking about a ne'er-do-well who purposely poisoned the citizens of Mead. They purposely did it. And you say, well, they're the ones that are complicit, not Macy. Macy is complicit in the fact that they never pulled the trigger. How many times do you get to hurt Nebraskans? When-- tell me the line. I'm waiting to hear that. I haven't had anybody tell me that. How many times do you get it? When is it OK? Saint Francis had time after time after time. That was OK, I guess. Oh, but we canceled that contract. We talked about that already. Prison overcrowding, oh, yeah, we'll just build some more prisons that we can't, man, that we can't staff. But we don't need to do anything to slow down the pipeline to the prison system. And, you know, after

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

all, it's not really our problem because most of the people that are incarcerated aren't the color that we are so we can look the other way. Mostly people from the brown and black community and, you know, they probably deserve to be in there is what some of you think because I've heard you say those words in a more polite way. We have opportunities, friends, to do better and we never really do better. We wait for it to fester, we wait for it to become a problem and then we throw tens of millions of dollars--

KELLY: One minute.

BLOOD: --at that problem. Our prisons, our children, our schools. Sometimes when I look at what's going on with the legislation for schools, I think you want our schools to fail. So you can say, see, they're horrible, and do whatever the heck you want with the money that's supposed to go to schools. But maybe that's just my observation. I just cannot believe that there are people that are unwilling to recommend this to committee. I can't believe that you haven't taken the opportunity to read what's been put in front of you, that your decision is already made. And remember, I can see all of you from this vantage point. I know if you read those documents. I know if you've paid attention to debate. I know if you've been otherwise preoccupied. I know if you've been on the floor. I'm kind of like Santa Claus, right? I see you when you're sleeping.

KELLY: That's your time, Senator. Senator McDonnell, you're recognized.

McDONNELL: Question.

KELLY: I'll rule that out of order at this time, Senator McDonnell. Senator Bostelman, you're recognized to speak. Senator McDonnell [SIC] has ruled to challenge the Chair. The motion before you is to overrule the Chair. All members may speak once. You may not yield time. Senator Bostelman, you're in the queue.

BOSTELMAN: Thank you. Colleagues, I would ask that you overrule the Chair, vote to overrule the Chair. We've had the same people in the queue speaking on the same things. Remind you that the vote came out of committee 7-0. There was no opponents that come to testify at the bill. We're not talking about recommit. Those who are talking now, it's the same people and it only talks of the merits of the bill and not a reason to recommit. Again, same people are speaking in the queue, 7-0 vote, committee is not going to change. No one came in and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

testified in opposition to the bill. We're only talking about the merits and not the reason to recommit. I urge you to vote to overrule the Chair.

KELLY: Thank you, Senator Bostelman. Senator Erdman, you're recognized to speak.

ERDMAN: Thank you, Mr. President. Good morning or afternoon, I should say. I agree with what Senator Bostelman had to say. The vote is going to be for approval. So what we've done, we've wasted an hour and 45 minutes and I guess that's, that's fine. At least we're not passing something that affects other people's lives. But I'm going to vote for Director Macy and I ask you to do the same. I just want to give a little bit of information to Senator Cavanaugh-- Machaela. I'm going to vote red whenever I feel like voting red. And whatever you have to do, you do. And you've seen that I voted red almost every time on call of the house. They give us an option. They say vote aye-- yea or nay and I will vote nay any time I want to vote nay. And nobody on this floor is going to tell me how to vote. So when I get my red light on, you can do another call in the house if you would like. Thank you.

KELLY: Thank you, Senator Erdman. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Senator Erdman, I appreciate your willingness to stand by what you want to do. You should. And I will do what I want to do. I am going to-- well, I was in the queue to speak, but I am going to vote against overruling the Chair because there were people in the queue. And just because you've tired of debate doesn't mean that debate should cease. There-- this is an important thing that we are talking about and just because the same people are talking, maybe more people should be engaged in the conversation than having the same people talking. But there is a lot to talk about when it comes to AltEn and Mead, Nebraska. And so I appreciate that we are honoring that when there are people in the queue, we let them speak instead of calling the question. Thank you.

KELLY: Thank you, Senator. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Well, I guess I rise in opposition to the motion to overrule the Chair. I was in the queue. I had not yet spoken on the motion to recommit. I had spoken my piece originally. I think I spoke about four times on the issues I'd had

with Mr. Macy and my conversations with him and issues surrounding AltEn and had not yet spoken on the motion to recommit. I did just push my light not that long ago to get in because I've been listening to the debate and thought maybe I did have something to contribute to the motion to recommit. So I guess in the most technical sense of the word, the issue was still being debated and there was somebody in the queue that still had something to contribute, I guess, on the subject of recommit, that person being me. So I rise in opposition to the motion to overrule the Chair. I appreciate the Chair's willingness to make an unpopular decision of not finding that debate had been full and fair debate at that point at 12:14 when everybody wants to leave and go to lunch. But I-- and I, I can clarify-- I don't know if I'm gonna get a chance to talk again-- but there was a talk about that the bill-- the nomination came out 7-0. The Natural Resources Committee has eight members. I voted present, not voting and there's been a lot of conversation about what present, not voting means. And I was-- mentioned to Senator Brandt that I've had constituents already emailing me upset that I-- they thought I voted for Mr. Macy, which is not true, and I don't intend to vote for him today either. But I was intending to vote present, not voting again. And the reason for that, that I both voted present, not voting in the committee and intend to vote present, not voting on the floor is because I do have problems with the way that he has run the department and the, the issues that have been articulated today. And so I'm expressing my displeasure with that past performance. But I'm not voting no because of the conversations I've had with him. I'm hopeful for learning from these mistakes, however many there are. We can, we can count them all, I suppose, but we can all agree that there have been mistakes made. I think it would be untrue to say that there were no mistakes made. But I'm hopeful that he and the department and all of us can learn from those mistakes, take this opportunity and make some sort of progress going forward. And so my expression of, I guess, voting in-- not voting in the affirmative to demonstrate my opposition to how things have been run, but my not quite voting no is a demonstration of my desire to hopefully work positively, move forward, make progress on this. So I'd-- as to the recommit things I was going to say, one, I think there are people who have heard things today that didn't come out in the committee and, and perhaps we should do a better job of asking questions in committee about these hard issues and these criticisms. I've done some in the past of that kind of critic-- critical conversations in committee, but a lot of these committee votes come out really fast. They come out with very little conversation, little criticism. And some of that is because we want--

you know, people are very nice. Some-- we all want to be nice to people. We don't want to be-- discourage people from putting in for these positions because they are-- a lot of the boards and committees are, are unpaid and thankless jobs. But I think it is important to have that critical eye and even if you end up voting for somebody, to ask them some tough questions. And so if we were to recommit this to committee, I certainly would be interested in asking some more questions to flesh out a lot of the topics that were raised here today. I think that is a valid consideration. I'm not saying it would change how I end up voting, that I might still be a present, not voting, but that is--

KELLY: One minute.

J. CAVANAUGH: Thank you, Mr. President. I do think it is a valid recommit motion. I do think there is still conversation to be had about why the committee should hear this information again. And I think that maybe there are those who would change their vote and it might not come out 7-0-1 again. So I rise in opposition to the motion to overrule the Chair and I rise in support of the motion to recommit. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad-- or Senator Cavanaugh. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good morning, colleagues. I rise in opposition to the motion to overrule the Chair and appreciate that the Chair made the right call originally to allow for a deliberative process to continue. We have been back on the floor now again in substantive debate for the first time in weeks. We haven't had an opportunity to connect with each other in the same kind of meaningful and organic way that we typically do in a traditionally structured legislative environment where we can talk through some of these issues, we can see if there's consensus, we can learn more about what's happening in the jurisdictional committees before everything hits the floor. We've all been working really, really hard every free minute in this fast-tracked, double all-day hearings kind of schedule that's been set forward that inhibits that kind of meaningful opportunity to talk about the issues before they hit the floor and are presented to us. So this is really our first chance to hear about what was happening in the committee of jurisdiction and to hear from senators that were concerned about this nomination. And let's be clear, colleagues, we are just a few hours into debate. We started at 10:00 today and we are just about two hours into debate on a major

position of leadership for our state that has jurisdiction and oversight over one of the most critical environmental justice issues that our state has faced. And this is the first opportunity that this body has had to talk about those critical issues. It is disingenuous, inaccurate to say, well, only a few people were talking. That's not true. There were a host of different senators that had hit their lights. And keep in mind, Senator Erdman and others, when I hit my light, it's up to me to decide how I want to devote that time. I made a decision that I wanted to delegate my time to Senator Blood because she has demonstrated so much leadership on this issue and digging in. I wanted to hear what she had to say. That's what I thought was a meaningful use of my time when I pushed, pushed my button. There were a variety of other senators who were utilizing a similar strategy. The debate was not dilatory. The debate was substantive. The debate was about leadership and it was about issues. I think in addition to what we're looking at in the very, very near, near-term in regards to this motion and this vote is going to be a harbinger for what's yet to come. We're going to need to get comfortable with debate. We're going to need to allow time for deliberation. We're going to need to allow time for important issues to be raised. We are the only deliberative body in the state of Nebraska that has these critical, important obligations regarding oversight on these critical appointments. It is imperative that we take our time, that we give voice to different points of view, that we give voice to critical issues that are part and parcel with these key appointments. And if we set a poor precedent today, our first day back on the floor, a mere two hours into debate that some senators find inconvenient, what does that mean for the substantive bills to come before us? We have big issues to take up this year together, colleagues--

KELLY: One minute.

CONRAD: --tax reform-- thank you, Mr. President-- educational policy, criminal justice policy, civil rights, voting rights, the budget, a host of key issues. We need to get comfortable with having debate so that we can find compromise and consensus. We shouldn't rush to stifle debate because we're inconvenienced or disengaged. We should respect the process and we should honor the ruling of the Chair, which was correct in this regard, that we had just started down the path of substantive debate. And it's an inappropriate time at this juncture to call the question. Thank you, Mr. President.

KELLY: Thank you, Senator. Senator Bostelman, you're recognized to close on the motion to overrule the Chair.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

BOSTELMAN: Thank you, Mr. President. Colleagues, as I had said before, there has been the same people that have punched into the queue before on the recommit that have been there before and yielded time to Senator Blood or spoke on other issues. I do believe that we have-- the committee had a 7-0 vote again. Most of those committee members have spoken on the floor already to the support of the, of the gubernatorial confirmation of Senator Macy [SIC]. There were no opponents. Again, no opponents that come before the committee. None. There were four proponents that came before the committee and testified, some testifying for multiple entities. We're not talking about the recommit. We have not been; only the merits of the bill. And with that, I would urge you to vote to overrule the Chair so we may move on with this. Thank you, Mr. President.

KELLY: Thank you, Senator Bostelman. The issue before the body is whether or not to overrule the Chair. All those in favor say aye. Machine vote. Those in favor vote aye; all those opposed vote nay. The request is to place the house under call. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 22 ayes, 14 nays to place the house under call.

KELLY: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Machaela Cavanaugh, Senator Wishart, Senator Clements, please check in. The house is under call. Senator Hunt, Senator McKinney, please check in. The house is under call. Senators McKinney and Hunt, please check in. The house is under call. Senators McKinney and Hunt, please check in. The house is under call. All members are present. The question is, shall the Chair be overruled? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 32 ayes, 12 nays to overrule the Chair.

KELLY: The Chair has been overruled. Members, the question before the body is to cease debate. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 31 ayes, 10 nays to cease debate.

KELLY: Debate does cease. Senator Machaela Cavanaugh, you're recognized to close on your motion to recommit. It's Senator--

M. CAVANAUGH: It's not my motion. It's Senator Blood's.

KELLY: Senator Blood, you're recognized to close on your motion to recommit.

BLOOD: Thank you, Mr. President. You just heard that allegedly, we didn't discuss the recommit to committee, which is untrue because we talked about the importance of why we need to recommit this to committee, which is it gives this committee an opportunity to bring something forward that is compelling, that tells us why we should vote for this person, not that you should just vote for this person because he's a nice guy, nice guy and it's one more chance. Have some guts. You don't have to decide yes or no whether you want to appoint this person. You can allow it to go to committee and let him bring it back to us. No harm, no foul. Or you can go ahead and vote the way someone told you to vote in your ear and move on and live with the consequences. I personally am unwilling to live with those consequences. This hasn't been fun. Fun debate is when we talk about a bill and how to make it better, why we need to kill a bill so it doesn't hurt anybody. This is a debate in reference to an appointment for somebody's job, but I thought it was serious enough to take up time on it. And I agree with Senator Conrad. Good Lord. What's happened to debate in this body? People come in and know how they're voting. Why do we bother? If you're just going to vote yes or no based on what you're told, why are you here? Debate is one of the most awesome things about our jobs. And I know that public speaking is the number-one fear next to spiders. I'm not scared of spiders either. But this is your opportunity to show your constituents that you are informed and you are here for the greater good of all. Not special interest, not big money, not a Republican Governor that helps you pay your way into office, that you are here for the right reasons. This is an opportunity to send it back to committee to get something compelling to share with us so we know we're making the right decision. And you can vote any way you want or you can not vote. That's OK too. You know, Senator Blood, I'm still not really sure. I'm a new senator. I don't know what I want to do. Then don't vote; present, not voting. And you can tell your constituents that say, why were you present, not voting? I paid you to go in there and do work. You're like, I'm doing my work. I'm waiting to get more information. I didn't hear that today in debate because maybe I wasn't on the floor or maybe I was working on something else for this afternoon because we have hearings this afternoon. That's OK. But please take this seriously. This has to do with the air that we breathe, the water that we drink, the nitrates that we are now finding in our soils that are

giving children childhood cancer. Yeah, it's a great place to raise and live your families unless you're a kid. There are a lot of important issues that are coming forward that are going to be decided by NDEE. And if even one person falls through the crack, it's going to be our fault because we're the ones that appointed that person. And yes, that person is not the whole department, but the people that we appoint to be in charge of those departments are ultimately where the buck stops. And lately, we haven't been very good at that.

KELLY: One minute.

BLOOD: Have some guts today. Vote to recommit it to committee. We can put this to rest for a while and get on to the other appointments, which I'm sure our Speaker would be very happy that we would do. But mostly vote for what's right, not what you've been told is right, and show that you have some guts. Thank you, Mr. President.

KELLY: Thank you, Senator Blood. The motion is to-- or the, the motion-- the vote is on the motion to recommit to committee. Senators, all those in favor vote aye; all those opposed vote nay. Roll call vote, reverse order, Mr. Clerk.

CLERK: Senator Wishart voting no. Senator Wayne voting yes. Senator Walz not voting. Senator von Gillern voting no. Senator Vargas voting yes. Senator Slama voting no. Senator Sanders voting no. Senator Riepe voting no. Senator Raybould voting yes. Senator Murman voting no. Senator Moser voting no. Senator McKinney voting yes. Senator McDonnell voting no. Senator Lowe voting no. Senator Lippincott voting no. Senator Linehan voting no. Senator Kauth voting no. Senator Jacobson voting no. Senator Ibach voting no. Senator Hunt voting yes. Senator Hughes voting no. Senator Holdcroft voting no. Senator Hardin voting no. Senator Hansen voting no. Senator Halloran voting no. Senator Geist voting no. Senator Fredrickson voting yes. Senator Erdman voting no. Senator Dungan voting yes. Senator Dover voting no. Senator Dorn voting no. Senator DeKay voting no. Senator DeBoer not voting. Senator Day. Senator Conrad voting yes. Senator Clements voting no. Senator Machaela Cavanaugh not voting. Senator John Cavanaugh voting yes. Senator Briese. Senator Brewer voting no. Senator Brandt voting no. Senator Bostelman voting no. Senator Bostar. Senator Blood voting yes. Senator Ballard voting no. Senator Armendariz voting no. Senator Arch voting no. Senator Albrecht voting no. Senator Aguilar voting no. Vote is 10 ayes, 33 nays to recommit, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 13, 2023

KELLY: The motion to recommit fails. Mr. Clerk.

CLERK: Mr. President, items. Your Committee on Judiciary, Chaired by Senator Wayne reports LB77 to General-- LB77, LB81, LB83, LB183 to General File. Additionally, your Committee on Revenue, Chaired by Senator Linehan reports LB300, and LB384 to General File. Amendments to be printed: Senator Erdman to LB79; Senator Machaela Cavanaugh to LB77; and Senator Fredrickson to LB626; and Senator Hunt to LB485. A motion from Senator Hardin to withdraw LB594. Amendments to be printed to LB278 from Senator Walz. A motion from Senator Wayne to withdraw LB476. Amendment-- excuse me, a motion. Senator Machaela Cavanaugh to reconsider the vote taken on the recommit. Notice of committee hearings from the Education Committee, the Banking and Commerce Committee. New resolution: LR39 from Senator Briese. That will be laid over. Name adds: Senator DeBoer to LB11; Senator Aguilar to LB254; Senator Linehan and Senator Dorn to LB274; Senator Halloran to LB397; Senator Brewer to LB735; and Senator Lippincott to LR23CA. Notice: the Business and Labor Committee will have an Exec Session after their hearing today in Room 1524. Business and Labor, Exec Session, 1524 after the hearing. Finally, Mr. President, Speaker Arch would move to adjourn the body until Tuesday, February 14, 2023, at 9 a.m.

KELLY: The question is shall the Legislature adjourn for the day? All those in favor say aye. Those opposed. Legislature is adjourned. There's a request for a record vote. All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk.

CLERK: 30 ayes, 13 nays to adjourn.

KELLY: Thank you, Mr. Clerk. The Legislature is adjourned for the day.