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Government, Military and Veterans Affairs Committee  
February 07, 2014

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[LB817 LB845 LB919]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, February 7, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB919, LB845, and LB817. Senators present: Bill Avery, Chairperson; John Murante, Vice Chairperson; Dave Bloomfield; Tommy Garrett; Russ Karpisek; Scott Lautenbaugh; Jim Scheer; and Norm Wallman. Senators absent: None.

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. We have three bills today to take up and we will take them up in the order they are presented on the agenda posted outside the room. But for those of you who didn't look at that, I will tell you what the order is: LB919, Senator Mello's bill; LB845, Senator Schilz's bill will follow; and then the last bill will be LB817, Ken Haar's bill. Before we start, I want to introduce members of the committee, at least those who are present, starting with Senator Dave Bloomfield from Hoskins, followed by Senator John Murante, the Vice Chair of the committee, he is from Gretna. To my immediate right is Christy Abraham, the legal counsel for the committee. I am Bill Avery and I represent District 28 here in Lincoln and I chair the committee. Senator Karpisek will be here in a few minutes, he is from Wilber. Next to him is Norm Wallman who is from Cortland and Jim Scheer from Norfolk. Sherry Shaffer is the committee clerk. She occupies the last seat down on the end there and she basically runs the committee because she makes sure we get everything done right. Part of what we do is we record these sessions; a written record is kept. So we need, if you want to testify for or against any of these bills, you will need to fill out this green sheet of paper and provide the information requested. And print so that it is clear who you are. And give this to the clerk when you arrive at the table to speak. The bills that you have an opinion on, do not wish to testify but would like for us to know what you think, you can record your opposition or support on this sheet of paper here. And this is available at each entrance to the room and we will make that a part of the record as well. If you are curious, we do have an order that we follow. And that is, the introducer gets to go first. The introducer has initial comments and statements describing the bill, followed by the proponents of the bill. And then that's followed by opponents and neutral testimony. Closing remarks are reserved for the introducer only. We ask that you pay attention to the testimony that precedes you so that you will not be repetitive when you get to the table yourself. We will be using the light system. It is a five-minute light system. The green light indicates you have four minutes. After the green light goes off and the amber light comes on, you have one more minute. And when the amber light is replaced by the red light, you should be finished. Please turn off your cell phones, any electronic devices that you have that make noise. And if you have any prepared material you'd like for us to view, you need 12 copies. If you do not have 12 copies, give the original to Sherry, the clerk, and she will have the page get copies for us. And the page is Colton Wolinski from Lincoln, he will be here with us today to help out. If you have a written copy of your testimony,

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obviously, we'd like to see that as well. But supporting documentation is accepted as well. With that, I would...I will start our proceedings today with the first bill up, LB919. Senator Mello, welcome to the committee. [LB919]

SENATOR MELLO: (Exhibits 1, 2) Good afternoon, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. Both at the state and federal level, open records statutes look at public information in a reactive manner. Information is made available only after someone asks for it. In contrast, the concept of open data provides that public information is proactively made available on-line and in open formats. The idea of moving our state in the direction of open data was the subject of the LR223 interim study heard before this committee this previous fall. While much of the work currently being done on open data is at the local level, several states have recently adopted new open data policies or amended existing data policies to make public data more accessible. For example, the state of New Hampshire now mandates that state agencies use open source software in most cases, while the state of Hawaii launched an open data site, [data.hawaii.gov](http://data.hawaii.gov) where state agencies and departments make data sets available for public consumption. The [nebraska.gov](http://nebraska.gov) Web site contains a similar clearinghouse of sorts. But the number of data sets on our site pales in comparison to that of Hawaii's and similar local efforts around the country. LB919 is modeled after legislation that passed in the state of Utah last year and would create a nine-member Open Data Advisory Board that would be housed in the office of the Chief Information Officer. Under the bill, the board would be tasked with studying the establishment of a state open data Web site and developing recommendations about how to make public data sets and information more readily available to the public. LB919 directs the board to use the provisions of Nebraska's open records statutes as a starting point and lays out a series of principles to guide their recommendations. The committee should have received a copy of the Sunlight Foundation's guidelines for open data policies. The open data principles in Section 4 of the bill draws heavily from these policies. And from among the key guidelines are: setting the default position to open, building on existing public accountability and access policies, appropriately safeguarding sensitive or confidential information, removing unnecessary restrictions and barriers to public information, and encouraging the use of electronic filing systems in the collection of data. Last year I assisted with Hack Omaha, a one-day programming competition that looked at the use of government data. As part of the competition, teams of designers, Web developers, and software engineers were given existing city, county, and state data sets and challenged to create a program or an application that would be useful to businesses, entrepreneurs, or the general public. While the competition led to some truly innovative ideas for utilizing public data, it was clear to me that Nebraska's state and local governments still have a lot of operations that are far from being open. One of the primary goals of Hack Omaha and other open data initiatives is not transparency for simply the sake of transparency, however...but for also economic development. Making government data available on open formats can

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encourage entrepreneurs and new businesses, help create new products and services, and even supplement existing products. For example, open data from the U.S. National Weather Service currently supports a weather industry estimated to be worth \$1.5 billion. And academic research on open data in Europe found that the direct impact of open data was more than \$32 billion Euros in 2010. Open data initiatives can also help save valuable taxpayer dollars by exposing duplicate and redundant expenditures, improving service efficiency, and reducing transactional to state and local governments. During the interim study this fall, the Legislative Research Office contacted a handful of state agencies to determine whether any had implemented open data policies on their own. Despite the fact that many state agencies have thorough and detailed data policies, most agencies tend to rely on the basic policies and procedures adopted by the office of the Chief Information Officer and the Records Management Division in the Nebraska Secretary of State's Office. While I find it unfortunate that a few agencies are currently exploring...are exploring open data policies on their own, I believe that the relatively centralized nature of our current data policies creates an environment that would make implementing open data policies at the state level relatively easy. The committee should have just received a copy of AM1869. It's a white copy amendment that would address two issues that came to light after the bill was introduced. First, the amendment changes the members of the Legislature to ex officio, nonvoting members. This change addresses a potential separation of powers issue that was brought to my attention by Speaker Adams. Second, the amendment is designed to address the fiscal note that you see in front of you, which my office received yesterday. The basic goal of the bill as introduced was to have an Open Data Advisory Board develop recommendations over the next six months and then review those recommendations on an annual basis to account for the inevitable changes to technology. While I concur that the board will likely require some administrative support that cannot be provided utilizing existing staff in the Office of the CIO, I believe that the \$100,000 in staffing and travel is excessive. So under the amendment, the CIO would be authorized to contract for the board's administrative support in an amount not to exceed \$25,000. And members of the board would not be eligible for reimbursement of expenses. In addition, the amendment would terminate the board on December 31 and provide that the CIO would annually review the recommendations instead of the board. Earlier this morning, my office received a copy of a letter from the Chief Information Officer regarding LB919, which recommended to the committee that the duties of the Open Data Advisory Board instead be given to the Nebraska Information Technology Commission. While my office considered utilizing the Nebraska Information Technology Commission in lieu of creating a new board, the membership of the Nebraska Information Technology Commission is generally incompatible with the goals of LB919. And it lacks the experience and knowledge of open data issues that the proposed Open Data Advisory Board would contain. Ultimately, when we talk about government data, it's important to remember that it doesn't belong to any one agency or any one branch of government. Government data is the people's data. As Nebraskans demand more on-line services from their state and local governments, we should keep in mind, oftentimes, unless

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government data is made readily available, members of the public may be unaware of its existence or its potentially beneficial uses. Simply put, it's the public's data. And the public may just know how to use it better than their own government. Thank you for your time. And I'd be happy to answer any questions you may have. [LB919]

SENATOR AVERY: Thank you, Senator Mello. Questions from the committee? Senator Bloomfield. [LB919]

SENATOR BLOOMFIELD: Thank you. Senator Mello, I like the idea of having a little sunshine in some of these dark places. You reduced that fiscal note by 75 percent. Did you get a little carried away there? [LB919]

SENATOR MELLO: I think in review... [LB919]

SENATOR BLOOMFIELD: You didn't look for that question from me, did you? [LB919]

SENATOR MELLO: No. Senator Bloomfield, I appreciate it. Looking and evaluating the fiscal note, I think the Chief Information Officer's analysis was that they thought it was going to be an ongoing board. After...by reading their reading of the green copy would require a full-time staff person to do this ongoing. Our interpretation of the green copy was this was a board that was going to meet for six months, develop recommendations to the Legislature, and then, ultimately, would meet maybe once a year, at max, to go over the changes, if any, in regards to technology changes that would necessitate that. So we tried to address that in the white copy amendment where...and I acknowledge, there will be some administrative support needed to do an advisory board like this. Even if it's taking minutes, setting agendas, contacting members, and arranging the meetings, let alone...those are the more basic administrative functions of any commission or board. Instead of hiring a full-time person for six months, I felt it was better just to spell out in the bill that we would appropriate \$25,000 that they could contract out for, for that administrative support. So I would just...I'm willing to make the argument to this committee and to the floor that I don't think it's necessary for a six-month commission to hire a full-time staff member to staff a part-time commission that will only meet seven times, but... [LB919]

SENATOR BLOOMFIELD: Okay. Thank you. [LB919]

SENATOR AVERY: Senator Scheer. [LB919]

SENATOR SCHEER: Thank you, Senator Avery. Senator Mello, can you go into a little more depth in relationship to not wanting to use the Information Commission versus developing your own, because it would seem the people that you're suggesting certainly are knowledgeable in data information. But if they're having...if it is a commission trying to get information, it would seem that those people could just as easily testify in front of

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somebody providing that information rather than developing a brand new layer of bureaucracy. So is there something specific that you're trying to do there? [LB919]

SENATOR MELLO: Senator Scheer, that's a great question. And we looked at...and we initially looked at the Nebraska Information Technology Commission. That was our first foray knowing that that is a created authority, by statute, that looks at IT-related issues, Enterprise Projects across the state as it involves information technology, software, and hardware. And I'm going to read you real quick under the statute who consists of that board and the reason really why we chose not to utilize them was, the statute reads: The commission shall consist of one member representing elementary and secondary education, one member representing postsecondary education, the Governor or his or her designee, one member representing communities, and five members representing the general public who have experience in developing strategic plans and making high-level business decisions. Understanding who makes up the commission and that's their background, is considerably different than what you see in LB919. In part, because we're looking at more public records. The focus on LB919 is less on, I would say arguably, certain kinds of software/hardware. And it's more on how do you make the existing public records more, I would say, user friendly to the general public in regards to both the process as an agency and as a state, but also I would say, somewhat the format of the data that we currently all have within different state agencies. And looking at the way the commission is currently created with that membership, we felt that it just didn't reach the specific areas that we really thought needed to be at the table in regards to an Open Data Policy Advisory Board. We also looked at the State Records Board because we thought that...and when we looked at...after looking at the NITC and realizing that their makeup was more skewed, it felt like, to...it was more skewed to Enterprise Projects and education more than it was data or open public records. We then looked at the State Records Board, which their membership is made up of the Secretary of State, the Governor, the Attorney General, the Auditor, the State Treasurer, the Director of Administrative Services, three representatives appointed by the Governor to represent banking, insurance, and law groups, and three representatives appointed by the Governor to represent libraries, the general public, and professional members of the news media. So I would say, both kind of commissions and boards as we looked at, had a little bit of what we were looking for. But they really just...they really didn't have, I guess, the focus of what we were hoping for under LB919. And I'll be honest with you, I'm open minded. By all means, if there is conversations that the committee wants to have after today's hearing of looking to see if there's a way to make this work under one of the two commissions. But our initial analysis just felt that it'll get lost in either one of those boards or commissions because it's only a six-month focus. [LB919]

SENATOR SCHEER: Well, I guess that's part of the reason I was asking. And I have not. So if you have, that's great. My question would be, did you look at the members--not the membership makeup--but the members of that commission to see if

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their expertise would fall within this area? I mean, because you've got five members of the public, that doesn't mean that they're people that have no experience. So regardless of why they were appointed, if those people had the knowledge and the expertise to do that... [LB919]

SENATOR MELLO: Uh-huh. [LB919]

SENATOR SCHEER: ...would it make not sense, because it is such a short period of time? [LB919]

SENATOR MELLO: You know, we didn't look specifically into, I would say, dossiers or extensive research on each individual member on the NITC. I think we looked more statutorily of what their authority is, what their representation is, and knowing they have a specific slot similar to the State Records Board and what you see in front of you in LB919. Once again, if it's something that you or the committee, in general, wants to look at more of trying to make this part of the NITC, I'd consider it. But I think there is a unique focus, though, in regards to what LB919 is looking to accomplish in comparison to what the NITC does. I mean, their focus, I think more than anything else, is really geared towards the information technology infrastructure, arguably, of the state and primarily looking at those, I would say, more infrastructure hardware components, less on the public policy changes that may or may not be made in regards to open records laws or access to public records. So I think part of it is not simply the membership. But I would make the argument that their general focus of the commission is not geared towards evaluating open records policy as much as it's looking at hardware and infrastructure. But... [LB919]

SENATOR SCHEER: Okay. Thank you, Senator. Thank you, Senator Avery. [LB919]

SENATOR AVERY: Any other questions? Oh, I thought you were pointing. I'm sorry. Senator Murante. [LB919]

SENATOR MURANTE: I'm wondering if you could let me know what you were thinking when you developed the commission to have three members of the Legislature on this advisory board and to have those members be nonvoting, ex officio members. [LB919]

SENATOR MELLO: Our original...in part, because the Advisory Board's focus is to create public policy recommendations to the Legislature, I felt it was probably a wise decision for us to have people from the Legislature who may have to implement or consider implementing these recommendations that would more than likely, I'd say, come to this committee if there were recommendations if LB919 passed. So that's something that we...that I firmly just believe that when you have a policy recommendation advisory board or commission that gets created, having someone from the Legislature who will have to implement those policies or consider them, having them

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be part of the process just to have, I think is, more of a general understanding and knowledge of what may or may not occur, I think is, generally, good public policy. We originally had them voting members. And Speaker Adams approached me--and this is an issue for some of the older members who served under Speaker Flood--Speaker Flood had always continuously raised issues on commissions, advisory boards, that had voting members of the Legislature with members of the executive branch or judicial branch on them. He felt it was a separation of powers issue. And I think Speaker Adams is continuing that general mind-set. So he approached me and said, if you're going to have an advisory board or a commission of any shape, form, or structure that has members of the Legislature on it, they need to be ex officio in nature. They can't be, in theory, contributing, voting members of the policy recommendations that would come from this advisory board or commission. So it's a request that we simply made and changed at the request of the Speaker. But I think having members of the Legislature...and I would argue, at least having one--if not more--members of this committee who would be interested in open data being part of that would serve, I think, a great function for the Legislature as a whole in understanding changes in our potential open records law to meet open data policies moving forward. [LB919]

SENATOR MURANTE: Thank you. [LB919]

SENATOR AVERY: I would point out that the legal counsel for this committee also noticed that separation of powers issue and recommended that we might want to consider ex officio status for legislative members. [LB919]

SENATOR MELLO: I think your legal counsel is obviously wise beyond her years. And I would not be surprised if she didn't find that as well. [LB919]

SENATOR AVERY: I want to ask you about this Sunlight Foundation report here. This is...it looks to me as if you followed this pretty carefully... [LB919]

SENATOR MELLO: Uh-huh. [LB919]

SENATOR AVERY: ...in the preparation of your bill. Can you tell us a little bit about the Sunlight Foundation? [LB919]

SENATOR MELLO: I will do my best. In general, the Sunlight Foundation is a government-transparency think tank located in Washington, D.C. They focus on a variety of different transparency and government...open government-related issues, not just at the federal level but, obviously, the state and local level. And open data has been a policy area that they have ventured into more over the last few years. They have been able to compile--as you can see with that general report--they've been able to compile what other states have done and kind of look at best practices of what state governments and local governments are doing right now on open data policies. In part,

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because it's a new policy area outside of your simple open records requests that any one of us in this room could issue to a state or local government entity. This really is taking a completely different look at your access to government data. And they're a nonpartisan think tank so there's not a liberal, conservative, or moderate-centrist view. It's more simply trying to make government data more easily accessible to the public and its main focus is making that available electronically in various formats. [LB919]

SENATOR AVERY: I see references in here to a number of states and cities. Do you have any idea how many cities and states have actually adopted this kind of legislation? [LB919]

SENATOR MELLO: I know there's been more than a dozen states and cities. And really the focus, if you read through that entire report we gave, the real focus has been at the municipal local level. It's a little easier to have...to make those changes on a quicker level, I'd say, by just simply passing city ordinances to change the way your data is made available to the public. We structured LB919 after the state of Utah, though. They approached this of creating first an advisory board that would make recommendations for the entire state and then go in and try to make policy changes after those recommendations. After the interim study hearing we had this fall on this issue, I felt it was a better approach to take instead of just bringing you a bill, making a wholesale list of changes to open records laws, access to different government documents. I felt it would be better to have, I think, a more thorough process just because it's a new policy area. I mean, it's something that we haven't really had a significant discussion outside of this committee's interim study this past fall on it. So I felt it was a more prudent approach for us to travel down of looking to create the advisory board model instead of doing what other states and cities have done, which is just create city ordinances and/or state laws changing formats and access. [LB919]

SENATOR AVERY: Well, this would be an improvement on our current open records law. [LB919]

SENATOR MELLO: I would make the argument, if the Legislature...come next year, if LB919 passes this year and the advisory board develops recommendations for the Legislature to consider moving forward, I would assume that there would be positive recommendations that would help make our existing open records law, I would say, more enhanced. It would be more, I think, technologically friendly moving forward. And I think, really, that is the real focus here is, how do you make government data that may come in a Word document or a PDF or some other format more user friendly to people who may want to use that data in a different format or may want to...as I mentioned, a lot of businesses, entrepreneurs are looking at open data as a way to create new industries. The gaming industry--I mentioned the weather service bureau--the gaming industry is utilizing government data at a whole other level in regards to federal government data. One example is, there was a video game that was created utilizing

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weather bureau data and mapping data for them to be able to create exact replicas of mountains in the Himalayas where they really used for a skiing video game based on that data that was available from the federal government. So there's a variety of different business and venture and economic development opportunities with data, open data formats and sorts. But it's just...it's a policy here that right now state and local governments are just a little bit further behind than where the federal government is. And I think LB919 helps puts us in a pathway that starts to address the issue. [LB919]

SENATOR AVERY: Thank you. Questions? Senator Bloomfield. [LB919]

SENATOR BLOOMFIELD: If this comes out of committee, are you going to attempt to prioritize it or ask for a Speaker priority or something along those lines? [LB919]

SENATOR MELLO: I would consider prioritizing this and I would consider asking a Speaker priority. And depending upon...as this committee knows, since this is an act relating to state government, most bills that come out of this committee sometimes you can run as an amendment to another bill since it's a similar act relating to state government. And this is a new statute we're creating, which gives us the ability, I think, as myself or the committee to run this as an amendment to another bill related to state government. So if it came out of committee, it would simply...there's three different pathways, I think, that we could consider to get it passed this year so we could get recommendations for 2015. [LB919]

SENATOR BLOOMFIELD: Okay. Thank you. [LB919]

SENATOR AVERY: Any more? Thank you, Senator. [LB919]

SENATOR MELLO: Thank you, Senator Avery. [LB919]

SENATOR AVERY: Are you going to stay to close? [LB919]

SENATOR MELLO: I will. [LB919]

SENATOR AVERY: Okay. Proponent testimony? We're on LB919. Welcome. [LB919]

RENEE FRY: (Exhibit 3) Thank you. Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Renee Fry, R-e-n-e-e F-r-y, and I'm the executive director of OpenSky Policy Institute. We are a data driven, statewide, nonpartisan Nebraska organization focused on budget and tax policy. I'm here in support of LB919. There is a shortage of accessible data on Nebraska's local governments such as cities and counties. The State Auditor's Office provides a very helpful Web site that allows electronic download of certain local budget data, but many important pieces of information are not included. This makes it difficult to

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have an informed policy debate on issues like county inheritance taxes and cities' use of occupation taxes. For example, inheritance tax data can only be found by combing through paper copies and PDFs of 93 county budgets for each year of data needed. And even someone with the time and means to do that can only get totals for each county, not the amount collected under each of the three separate inheritance tax tiers and rates. This makes it impossible to estimate how an adjustment to those rates, such as proposed in LB960 this year, would affect different Nebraskans and the services provided by the counties that rely on that revenue. As another example, there is essentially no data currently available on the use of occupation taxes by Nebraska's municipalities. Use of these taxes appears to be on the rise and is a topic that has been directly relevant to policy debates in recent years, but there is currently no way for citizens or policymakers to inform themselves about the magnitude of the increase or the effects of possible policy changes related to occupation taxes. And a shortage of data on Nebraska's local governments extends far beyond inheritance and occupation taxes. In the data that are available through the Auditor's Web site, more than half--54 percent--of municipal revenues are combined into a single category called "Local Receipts: Other" with no further details available. It is our hope that the Open Data Advisory Board created by LB919 might help address some of these issues. For example, one reason for the shortage of local data is that no electronic system exists for submission of the data to the Auditor's Office, so it is a labor-intensive process for the office to gather the information and put it on its Web site. Section 4 of LB919 specifies that the guiding principles of the board will include encouraging the use of electronic filing systems for public data collection and establishment of standardized formats to make the information more easily accessible. Similarly, the Department of Revenue, the Property Assessment Division, the Legislative Fiscal Office, the Department of Administrative Services, and other state agencies all collect and produce excellent data and reports, much of which is publicly available. But the information can be difficult to track down for those who do not know exactly where to look for it or who to ask. Only in a few cases are the data available for bulk download. And much of the information is available only by request, which the agencies are not always able to provide in a timely manner due to more pressing priorities for their limited staff and resources. LB919's requirement that the Open Data Advisory Board study the establishment of a central state open data Web site may lead to improving the accessibility of these data sets as well. Thank you for your time, and I'd be happy to answer any questions. [LB919]

SENATOR AVERY: Thank you. Questions for Ms. Fry? Senator Scheer. [LB919]

SENATOR SCHEER: Thank you, Senator Avery. Welcome back. You missed a couple this week because of weather, I know. [LB919]

RENEE FRY: Yes. Yeah. [LB919]

SENATOR SCHEER: Are you familiar with how many are in any other states that are

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utilizing this? [LB919]

RENEE FRY: You know, we haven't looked into that issue. We'd be happy to do so, but we haven't spent... [LB919]

SENATOR SCHEER: Okay. Fair enough. [LB919]

RENEE FRY: Yeah. Sorry. [LB919]

SENATOR SCHEER: Okay, thank you. [LB919]

SENATOR AVERY: Any other questions? Don't see any. Thank you, Ms. Fry. [LB919]

RENEE FRY: Thank you very much. [LB919]

SENATOR AVERY: Additional proponent testimony? Good afternoon. Welcome. [LB919]

MIKE BATTERSHELL: Good afternoon. Thank you for having me. My name is Mike Battershell, M-i-k-e B-a-t-t-e-r-s-h-e-l-l, I'm the chairman of the United Neighborhood Alliances of Omaha as well as a cofounder of Open Nebraska out of Omaha. Thank you for your time today and allowing us to come down and continue the conversation we started under LR223 this summer. As a reminder, I always like to start the conversation by saying that PDFs are not good data. The government is really good at creating PDFs but it's not helpful to citizens who are trying to engage in their community. As part of Open Nebraska, we spend a lot of time looking at ways that we can access the information as well as provide that information out to citizens in better ways. Volunteer organization, no formal status, no objective other than to take things we're interested in and make them better. It started, for me, about six years ago as a neighborhood leader with city council agendas in Omaha. They're put out as a static PDF on a Web site every Friday before the Tuesday meeting. But they're not searchable. There's no way for me to know what's going on, specifically, in my neighborhood. There's no way for me to search it or access it. So that's how the conversation started. And so we started an event called Hack Omaha, which is a national event that we just modeled and brought to Omaha, which allows us to take these and ask government for nothing other than what they have. And then take people with skill sets and try to work with that data to create something better. The first year, we got a lot of games and we got a lot of things. So the second year when we invited Senator Mello to come be a judge, we took that and homed in a little bit. And we took my particular problem on city council agendas and we said, what can we do with this? And they spent 72 hours really beating up that information--for lack of a better way--taking a static PDF, converting it back to raw information which it would have started in, and then turning it into something. And that project is actually currently live and functioning on [dataomaha.com](http://dataomaha.com). So we've...so the

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goal of Open Nebraska is to take this information that would be made available through this commission and sort of work with it using the skill sets of software engineers, Web developers, and other people to just present it differently so that we're not asking for any more resources to be given by government to do it other than to put that raw information out there so that information graphics can be created so apps can be created. To Senator Mello's point earlier, I met recently with a large Nebraska-based construction company who was going out to California to do a Hack event with the state of California where they were taking their roads information--they're doing big infrastructure improvement projects in California--and the construction company has real-time GPS information available on their construction trucks. The public works, because they're doing just-in-time inventory of steel and just-in-time inventory of concrete for big infrastructure build projects, they were partnering with the department of roads out of California to share that information so that they could provide real-time improved reports for how the roads were running so they could identify slowdowns, so they could identify potholes. And so there would be some opportunities, I think, to partner with private industry in the state of Nebraska if that raw data were available for volunteers and people to pull together and develop things to do that. Similarly, the city of Omaha--in our work in neighborhoods--has identified that Metro Bus--which is our local transportation provider--and City of Omaha Public Works have the ability to talk to each other about road conditions instantly. So every Metro bus is loaded with the GPS system. That GPS system could, conceivably, report every time it hits a pothole--it has a motion sensor--and then could report where that pothole is. It could also report instantaneous road conditions. However, the two software systems and the way that data is currently reported are incompatible. And they're not built on an open platform to where those two systems could talk to each other. So we could create some great efficiencies if we just start to have the conversation about what would be considered good open data. How are we going to create that good open data, and move forward from there? So those are just a couple of things to continue the conversation from ours this summer. And I'd be open to any questions about what we're doing with Open Nebraska or in neighborhoods. [LB919]

SENATOR AVERY: Thank you. Questions from the committee? I think you got too technical for us. [LB919]

MIKE BATTERSHELL: I know. I know it's hard, sorry. [LB919]

SENATOR AVERY: Thank you. [LB919]

MIKE BATTERSHELL: Thanks. [LB919]

SENATOR AVERY: Next testifier? Welcome. [LB919]

KORBY GILBERTON: Good afternoon, Chairman Avery, members of the committee.

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For the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as registered lobbyist on behalf of Media of Nebraska, Inc. and I guarantee you I will not get too technical for you. Media of Nebraska, as you know, is made up of...is a group of both print and broadcast media from across the state of Nebraska. And their only focus for this association is concentrating on the First Amendment open records or public records and open meetings laws. And when we reviewed this legislation, we think it is a great idea to have something new because if there would be any way to, say, if Senator Avery and all of those people, all of you, and everyone else who gets involved in the constant fight over access to public records, we think it would be a great thing. And that this may be a very good step in helping the custodians of public records get some efficiencies. So with that, I'd be happy to try to answer any questions. [LB919]

SENATOR AVERY: Good point. Thank you. Questions from the committee? That last point was a good one. I've got to remember that one. Thank you. More proponent testimony, LB919? Welcome, sir. Good afternoon. [LB919]

RYAN WADE: Good afternoon, Chairman Avery and committee members. My name is Ryan Wade, R-y-a-n W-a-d-e. And I'm representing a company called Aviture. We're a software development company located out of Omaha. We have about 50 software engineers; 35 of those are here in Nebraska. And I can say that those individuals are in high, high demand across the country right now because of their skill sets and their need in business. And that's why I'm here to talk to you today, because I'm the vice president of business development and I love opportunity. And I see opportunity here. And I'm excited to be a part of the first step towards an open data policy because part of what I do--because I'm not technical in nature--is look for those type of opportunities. One of the things we look for is, are there industries out there that are using PDFs? Are there industries out there that are stuck in spreadsheets? Because if they are, we have a chance to go in there and unlock data and the opportunity within that for economic development purposes. Entrepreneurs see this. You know, today there's examples of companies out there--right here in Nebraska--that are looking for opportunities like that. And an example is a company called MindMixer that now has grown in the last three years from two founders to 40 employees. Most of those, again, very high-paying jobs because what they do is they look for an opportunity to take information from the government sector--mostly those in roundtable discussions--and they put that into virtual format. They work with 400 different communities across the country right now. And over 800,000 participants are on this system. What's unfortunate about that is, most of the cities and state governments that they work with are not here in Nebraska because the policies that we have in place preclude them from gathering the information they need to be effective. So we see opportunities from the entrepreneurial sector to, you know, if we get our hands on this, we really think that we can do amazing things in terms of attracting and retaining businesses here that are highly needed to get to the next generation of where we're headed in our economy. And from a talent perspective. Aviture was a sponsor of the Hack Omaha event. And I can say the excitement in the

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room of those software engineers when they were faced with these problems, that they could use their skill sets to do good back to the community was amazing. I can say that, you know, some of the disappointment in terms of what information they could actually get their hands on, even though it was public data, was a little discouraging. So, you know, I wanted to bring up a couple of those points. One is, as a business development person, I see huge opportunity here for different types of start-up companies to go out and create jobs here in the state of Nebraska to attract and retain talent. But I also caution the committee that if we don't do something to take that first step, there's also risks that we are going to lose businesses and lose talent. I think all of you may be aware that there is a recent study out there that showed there is brain drain occurring again here in the state. You know, these types of policies are an opportunity to send a message out to the business community, to the young professional community, that we understand what you're looking for in terms of creating businesses and jobs here in the state. If I sound a little disjointed in my notes, it's because--it was kind of funny--when I heard, you know, we need to turn off our cell phones, I actually had all my notes on my cell phone. Pretty telling of the difference in terms of the way that different generations gather, consume, and use data. And down here, you know, I rode with Mr. Battershell. And we were talking about a 15-year-old kid who now has a million followers on Instagram. And he's creating just enormous followings across the country. And media companies are actually flying him to different cities just because he posts different videos out there on different social media sites. And we were just baffled on how this could even occur. And it's just an example of where we're headed. I mean, we don't know how this data is going to be used. But we have to provide the opportunities that, you know, some really talented individuals can, you know, position that data and use it for value moving forward. So, thank you. [LB919]

SENATOR AVERY: Thank you. And just so you know, you could have kept your phone on. You just couldn't have the ringer on. [LB919]

RYAN WADE: Well, I appreciate that. I saw the airplane mode on there, I didn't see the committee mode, but, so... [LB919]

SENATOR AVERY: Committee mode is under "meeting." [LB919]

RYAN WADE: I appreciate that. Thank you for your time. [LB919]

SENATOR AVERY: Hold on, we might have questions. [LB919]

RYAN WADE: Okay. [LB919]

SENATOR AVERY: Yes. Senator Lautenbaugh. [LB919]

SENATOR LAUTENBAUGH: I just think it's great that on our chairman's very birthday,

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you're reminding him he needs to be more youthful in his technology. [LB919]

SENATOR AVERY: So far, it's been a stealth birthday. [LB919]

SENATOR LAUTENBAUGH: Always here for you, though. [LB919]

SENATOR AVERY: Yeah. Uh-huh. Thank you, Mr. Wade. [LB919]

RYAN WADE: Thank you so much. [LB919]

SENATOR AVERY: Any other proponent testimony? Welcome back, Mr. Geis. [LB919]

GAVIN GEIS: Yes. Chairman Avery, members of the committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s. And I'm the executive director of Common Cause Nebraska. A lot of what I was going to talk about has already been touched on today so I won't reiterate a lot of that. But I will let you know a few things, the states that have already implemented this. New Hampshire was mentioned as well as Utah. New York, Hawaii, Washington, and Colorado is kind of going back and forth in terms of fully implementing the system. One thing that needs to be noted in that, though, is that the federal government considers about 40 states to have open data policies but nothing unified. It's piecemeal. It's by department. And I think that LB919 does a nice job of making sure that we don't implement a piecemeal system, that we don't have some agencies that are taking it seriously and others that it's a tertiary consideration. And those states are only since about 2008, so it is a very new issue. But it's something that states are taking very seriously. We're not getting less involved with data. People aren't stepping away from their computers in any way. We're moving forward in that. And in our opinion, this is not a question of if, but when. And, as a state, do we want to put it off and put it off until it comes to the point where we're not addressing it and everybody else at the table has? This is a great way to do it. It's responsible, it's structured, and has a lot of the great principles that have been set out by the Sunshine Foundation, which is considered the leader in the industry. So in most every respect, we support LB919 and we think it's a great policy for our state. [LB919]

SENATOR AVERY: Thank you. Any questions? I don't see any. Thank you much for your testimony. [LB919]

SENATOR SCHEER: Have a good (inaudible). [LB919]

SENATOR AVERY: Any additional proponent testimony on LB919? Okay. Any opponent testimony? [LB919]

COLLEEN BYELICK: Let's not all rush up here. Chairperson Avery and members of the committee, my name is Colleen Byelick, C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the general

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counsel for the Secretary of State's Office. And as you all know, the Secretary of State is the State Records Administrator. It's also the chairperson of the Nebraska State Records Board and has been slated as a member of this proposed Open Data Advisory Board. The Secretary is concerned that the creation of this board is duplicative of other state government functions and possibly in conflict with the purposes and functions of the Nebraska State Records Board. For those of you that aren't familiar exactly with the Nebraska State Records Board, basically the board hires and manages the portal contract for the state of Nebraska. As these functions have been assigned to the board, the state has used a self-funding model to operate and manage the portal. So, in essence, users pay fees to access electronic government information and services and, in some cases, batch agency data. The self-funded model allows those that wish to transact business electronically with the government or wish to purchase records electronically, the ability to do so for a fee. And the fees collected are used to fund the operations of the portal, the State Records Board, agency services, and to provide technology grants to state and local agencies. There have been over \$2.5 million in grants awarded since 2000 by the State Records Board. Although right now we're creating a board, it seems like the intent is to create a Web portal that provides public data for free. And if this is the intent, then that appears to be in direct conflict with the self-funded model utilized by the State Records Board to fund the operations and functions of the portal. Further, it appears that instead of asking users of the portal to fund its operation, we're asking for general taxpayer dollars to support the providing of free data for commercial purposes. We would just urge the committee to further study this matter in consultation with the Secretary of State and the State Records Board. And I can answer any questions you may have. [LB919]

SENATOR AVERY: You can answer any questions? [LB919]

COLLEEN BYELICK: Well, I will try. How about that? [LB919]

SENATOR AVERY: Okay. Just checking for clarification. I don't see any questions. [LB919]

COLLEEN BYELICK: Okay. [LB919]

SENATOR AVERY: So you must have been crystal-clear all along. [LB919]

COLLEEN BYELICK: That's what I aim for. [LB919]

SENATOR AVERY: (Exhibit 4) Any other opponent testimony? Any neutral testimony? We have a letter that is taking a neutral position on this from the Office of the Chief Information Officer, Brenda Decker. Seeing no other people interested in testifying, Senator Mello, you're recognized to close. [LB919]

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SENATOR MELLO: Thank you, Chairman Avery and members of the committee. I'll be brief. As every bill I think I've ever brought to the Government Committee, I always will defer to further conversations with members in regards to changes, compromises, amendments that may need to be made to the original legislation. I'm a bit disappointed that I was, for one reason or the other, the Secretary of State's Office wasn't able to communicate with my office prior to today's hearing over this bill because I can assure you, it's not to replace [nebraska.gov](http://nebraska.gov) or the portal that they utilize. As we looked at the Records Board as a potential, as Senator Scheer asked about the NITC, we looked at the Records Board as a potential advisory component under LB919. But it just didn't seem to fit because their focus, more than anything else, is on records management, where this is looking at all government data right now and looking at the format that it's in and how it's available to the public at large. So I would see that it's not a conflict at all in regards to what the Records Management Board does. I think it only will further complement what they do in regards to providing on-line services through [nebraska.gov](http://nebraska.gov) and a variety of other state agencies. And in some respects, it is...government data is free in most cases, with the exception of sometimes having to purchase specific things from certain agencies. That is a policy, no doubt, that would probably be considered and reviewed and researched in LB919. But, once again, this is simply creating, I think, the next step of looking at an advisory board to be able to evaluate and determine whether or not policy changes need to be made to create, I would say, a new format for our data through a more open data structure. [LB919]

SENATOR AVERY: But you're not unwilling to consult with the Secretary of State's Office? [LB919]

SENATOR MELLO: Oh, I'm...I probably will go up and grab the Secretary of State later this afternoon and actually try to talk about this, so. [LB919]

SENATOR AVERY: I thought you might. A question from Senator Scheer. [LB919]

SENATOR SCHEER: I apologize, I probably should have asked it earlier. But the time frame seems awfully aggressive for the magnitude of what you're going to be discussing. Are you a little concerned that you may have underestimated, perhaps, the time requirement? I mean, because everybody that's on...even if we utilize... [LB919]

SENATOR MELLO: Uh-huh. [LB919]

SENATOR SCHEER: ...the people that you would like to utilize, they all have a day job. And so in order to get all this facilitated by December 1 seems awfully aggressive. [LB919]

SENATOR MELLO: I think part of it, we had conversations after introducing the bill whether or not if the bill was to come out of committee to put an E clause on it to try to

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move it, to speed it up, so it wouldn't be a July 1 through December 1 or June 1 to September 1 or December 1. So depending on the action of this committee and the action of the Legislature, there's a chance to add, I think, some more time. But I think the...we have existing data policies more than anything else in regards to records management and open records laws now. And I think the bigger issue is just evaluating those existing laws in the construct of, I would just say, more advanced technology and different formats and sources of that data. So I think getting this done within a six- to eight-month period is doable. Its recommendations is what they're supposed to provide the Legislature and the Governor when they're complete. As I mentioned, I could have brought, simply, a bill and changed all this simply from, I thought, a very productive interim study hearing that this committee had this fall. But knowing that that is an awful lot of change that would have been made, I just felt it would be better to take an initial six to eight months to have both the, I would say, the community or at-large and the executive branch evaluate the policies before the Legislature moves on them. But I feel comfortable with that six- to eight-month time frame because I don't think, once again, this is not, I would say, the most difficult of decisions. In part, because I think we have a fairly good open records law now. This is simply building on it, I would say, in a more digital age. [LB919]

SENATOR SCHEER: Okay. Thank you. [LB919]

SENATOR AVERY: Any more questions? Thank you. [LB919]

SENATOR MELLO: Thank you, Senator Avery. [LB919]

SENATOR AVERY: That is the...that will end the hearing on LB919. Thank you all for participating. We'll now move to LB845 and welcome Senator Schilz to the Government Committee. Good afternoon, sir. [LB919]

SENATOR SCHILZ: (Exhibit 1) Well, good afternoon, Chairman Avery and members of the committee. My name is Ken Schilz, spelled S-c-h-i-l-z, and I...I had to think for a second. Well, it's on my page so I just started reading. And I do represent the 47th Legislative District. I'm before you today to introduce LB845 on behalf of the Nebraska Aviation Trades Association. In its original form, LB845 defines a meteorological evaluation tower, also known as MET towers, and requires such towers to be marked as specifically provided in the bill. It also provides deadlines for owners of MET towers to comply with the marking and registration requirements for towers that are already erected and towers that are yet to be erected. The association, the department, and the wind folks have been having conversations and I hope they are close to reaching a compromise. I have an amendment that I feel is close, which is AM1846, that I have provided to you. The amendment will require that only the top half of a MET tower to be painted rather than the whole tower. This is similar to the Kansas law and will save on the expense of having to paint the whole tower. It includes more language regarding the

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markings, registration, and deadline to comply with these provisions. AM1846 also includes strict liability. I believe this language is an attempt to provide a stronger penalty for those who fail to comply. I ask for your support of LB845 with AM1846. And there are others behind me that I'm sure will want to testify. And they also may be able to answer questions that you have. But I'd be happy to try to entertain and answer any questions that you may have. Thank you. [LB845]

SENATOR AVERY: Thank you, Senator Schilz. We have a question. Senator Scheer. [LB845]

SENATOR SCHILZ: Yes. [LB845]

SENATOR SCHEER: Not so much a question but just for record purposes. And we had talked a little bit in the hallway and you had mentioned you had worked with different groups and entities and there seems to be agreement upon what you've brought forward as far as people involved... [LB845]

SENATOR SCHILZ: We had worked on some language. We thought we had it all put together. We will find out today whether that's the case. I have a feeling we have a little more work to do but I think we're close. [LB845]

SENATOR SCHEER: Okay. Okay, thanks, Senator. [LB845]

SENATOR SCHILZ: Uh-huh. [LB845]

SENATOR AVERY: Have you now become the number one senator in the Legislature for aviation-type legislation? Because this is... [LB845]

SENATOR SCHILZ: No. I don't believe so. [LB845]

SENATOR AVERY: Is this the second bill that you've had? [LB845]

SENATOR SCHILZ: That's a good question. I don't know. I can't remember if I had another one. But I do know a little bit about the wind energy stuff and what's going on there. And that applies to this as well, so. [LB845]

SENATOR AVERY: So it's really just a marking issue, right? Painting of the tower? [LB845]

SENATOR SCHILZ: As far as I know, yes. And I can tell you that having worked with the Natural Resources Committee on the wind export... [LB845]

SENATOR AVERY: Uh-huh. [LB845]

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SENATOR SCHILZ: ...bill and things like that, we did have some language in there on MET towers. This will go to strengthen that. And probably, from what I understood from everybody--and not to speak for them--but in my opinion, this will help to clarify that a little more as well. [LB845]

SENATOR AVERY: We had a bill before this committee that defined a lot of the...how the towers could be and all that. We worked on it for two years. [LB845]

SENATOR SCHILZ: Yeah. [LB845]

SENATOR AVERY: Hope this one won't take that long. [LB845]

SENATOR SCHILZ: Well, I hope that's the case too. [LB845]

SENATOR AVERY: Any more questions? I don't see any. Are you going to stay for closing? [LB845]

SENATOR SCHILZ: I'll stick around, yeah. [LB845]

SENATOR AVERY: Okay. [LB845]

SENATOR SCHILZ: Thank you. [LB845]

SENATOR AVERY: Proponent testimony for LB845? Welcome, sir. [LB845]

TOM MAY: (Exhibit 2) Good afternoon, Senator Avery, members of the Government, Military and Veterans Affairs Committee. My name is Tom May, T-o-m M-a-y, I am the president elect of the Nebraska Aviation Trades Association which is the aerial applicator association in the state of Nebraska. I'm representing the Nebraska Aviation Trades Association and appear before you today in full support of LB845. We greatly appreciate its introduction by Senator Schilz in cosponsorship by Senators Krist and Watermeier. We also want to thank the Department of Aeronautics and the wind energy industry with their cooperation on this...of this issue. LB845 requires identification marking and registration of meteorological evaluation towers, commonly known as MET towers. A MET tower is a single, tapering column of galvanized metal with guy wires in four directions that can be easily erected within six hours. These towers contain weather instruments to collect wind velocity, direction, and duration to evaluate a given location for a possible wind turbine farm. They are commonly built at a height of 195 to 199 feet, just short of the U.S. Federal Aviation Administration requirements mandating evaluation for safety enhancements such as lighting and marking. Unmarked MET towers are a great concern to low-level aviation because the gray pipe towers and guy wires blend into the background and they cannot be seen easily. In some gray sky

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conditions, MET towers are nearly invisible until too late to avoid. Even though an agricultural pilot may know his territory, because MET towers are constructed within a period of hours, a pilot can be completely caught off guard when a tower is constructed earlier in the same day. MET towers are not placed on sectional maps that pilots use for navigation because they are less than 200 feet in height. For one and a half years, our association and the Nebraska Department of Aeronautics have contacted the FAA multiple times about our concerns with unmarked MET towers. The FAA finally recognized the aviation risks that unmarked MET towers provide. And on June 24, 2011, issued a national guidance for their marking. The national guidance recommends that towers have stripes of aviation orange and white paint from top to bottom, marker balls on the guy wires, and high visibility sleeves on the guy wires' ground anchor points. Unfortunately, this is the only guidance and is not regulation or statute. And also, with the amendment that has been proposed with the top half being painted, we are not in agreement upon that due to the visibility and it's more of a safety issue, not a marking issue. LB845 fully incorporates the FAA guidance and requirement for the marking of MET towers in Nebraska, plus registration of such towers with the Nebraska Department of Aeronautics. The National Agricultural Aviation Association's Web site states the number of meteorological towers erected to support the rapid growth of the wind industry turbines will markedly increase as well, contributing greater risk to low-level aviation operations, particularly if these towers are unmarked. In 2011, there were 69 known MET towers in Nebraska. Today the number of MET towers continues to increase and there are nearly 100 of them now. Unmarked MET towers have caused deaths to pilots in California, Oklahoma, Oregon, and Texas. I speak to you today as a pilot that has had a close encounter with a MET tower and recognize the need to require markings. There are several national demands that have occurred for calling for requirement to mark MET towers. I bring your attention to five of the following points: Our parent organization, the National Agricultural Aviation Association, the most dangerous and common towers are MET towers which are typically less than 200 feet in height. The NAAA has asked the FAA to mark MET towers saying towers erected with guy wires, including meteorological testing towers, should be marked with aviation orange and white stripes, strobe lighting, and four high-visibility cables on outer guy wires. I see that I'm kind of running short on time here. I don't know that I can get through the rest of this. I guess what we're asking for in our testimony is full compliance with the FAA's guidance that they have put out for marking of these towers. Again, it's not a marking issue to us that are out there working with these towers, in and around these towers during our spray season, during our busy times. And myself having had encounters with these towers, the ones that are marked within FAA guidance are highly visible due to the ones that are not. And at this time, if you have any questions I'd be glad to answer them. [LB845]

SENATOR AVERY: Thank you. Is it very likely that striking one of these towers would bring down a crop duster, for example? [LB845]

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TOM MAY: Striking one of these towers inevitably will probably 100 percent--I shouldn't say 100 percent--but 98 percent of the time will bring down an aircraft and will probably result in a fatality to the pilot flying the aircraft. [LB845]

SENATOR AVERY: What about lighting? I noticed in the amendment here, there is mention of lighted towers. Are they required currently? [LB845]

TOM MAY: No, they're not currently required lighting. Any tower under 200 feet is not required lighting. It has been discussed about adding lighting. Some states I think, I believe, are even asking for lighting in their legislation. But the FAA did not put that out in their guidance so we are not asking for that. However, lighting would be...we would feel it would be beneficial due to night operations. Our state isn't one of them that has a lot of high nighttime aerial application operations as other states do. But we're also looking at, you know, for life flight and for law enforcement and other avenues of aviation that are out there operating around these towers also. And those would be ones that are operating at night where lighting would be beneficial. [LB845]

SENATOR AVERY: How tall are these towers again? [LB845]

TOM MAY: Generally, between 190 to 199 feet, right below the 200-foot marking requirement. [LB845]

SENATOR AVERY: So it affects mostly crop dusters, life flight... [LB845]

TOM MAY: Uh-huh. Life flight, yes. [LB845]

SENATOR AVERY: ...and law enforcement because they fly low from time to time? [LB845]

TOM MAY: Correct. Correct. [LB845]

SENATOR AVERY: That's...looking at these pictures is very helpful because it's quite clear that you could easily hit one before you'd even see it... [LB845]

TOM MAY: Right. [LB845]

SENATOR AVERY: ...if they're not marked. Senator Scheer. [LB845]

SENATOR SCHEER: Thank you, Senator Avery. Are you...do you have any knowledge on what it costs to stripe existing towers because if you don't, then I'm not going to bother you with the questions? But... [LB845]

TOM MAY: In my handouts there, there should be a sheet that lists what...we have had

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a study with the University of Nebraska of the states, what the cost to mark one of these towers is. I can just run through it quick here. Paint was approximately \$150; the marker balls were approximately \$1,000; the sleeves were \$128; and miscellaneous supplies, \$32. The total cost for supplies registers at \$1,310 according to our study. The university when they did this, they had four people. It took them eight hours. They figured their cost time for four people at \$25 an hour, so \$800 you figure in labor at \$25 an hour. Total cost with labor, right around \$2,110 to take the tower down, mark it, and reerect the tower. [LB845]

SENATOR SCHEER: Okay. So \$2,000 on existing ones, I mean, to add the differentiation in the color on new ones, really would be sort of insignificant other than maybe the balls and so forth that would go on. But, I mean, anything new, it'd be somewhat insignificant as far as cost factor. Would that be a fair assessment? [LB845]

TOM MAY: I would say, you know, other than their...the cost for the paint and the extra time to paint the tower while it's down, I mean, is probably going to add a little bit of cost to the initial cost of the tower. But, again, we don't feel that the cost of this is the issue if you want to put a value on a pilot's life. [LB845]

SENATOR SCHEER: I understand it's a safety issue. [LB845]

TOM MAY: Sure. [LB845]

SENATOR SCHEER: I'm just looking at the straight cost of it as well. Thank you. Thank you, Senator. [LB845]

TOM MAY: You bet. [LB845]

SENATOR AVERY: Thank you, Senator. Senator Garrett. [LB845]

SENATOR GARRETT: Thank you, Senator Avery. Are you aware, does the military still have low-level flying routes, especially out in western Nebraska? [LB845]

TOM MAY: That's something I'm not aware of if they still do those or not. Personally, I haven't seen...we had some in my area several years ago but I haven't seen them run those routes in probably 15 years. But that's something we can sure check into and get back to you on. But they still... [LB845]

SENATOR GARRETT: I'm a little alarmed with something you said about how quickly they're erecting these meteorological towers. Are they required to put out notams when they erect a vertical obstruction? [LB845]

TOM MAY: No. They are required to file for a permit with the Nebraska Department of

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Aeronautics to erect the towers and, in turn, the Department of Aeronautics will place those towers on a, you know, on their Web site, so. [LB845]

SENATOR GARRETT: Okay. But that's not part of like a notam for every post? [LB845]

TOM MAY: No. It doesn't go out as a notam through the FAA or anything like that that these towers are being erected. [LB845]

SENATOR GARRETT: Okay. [LB845]

TOM MAY: Not to my knowledge, anyway. [LB845]

SENATOR GARRETT: Okay. Thank you. [LB845]

SENATOR AVERY: Thank you. Senator Bloomfield. [LB845]

SENATOR BLOOMFIELD: Thank you, Senator Avery. And this is something I should have asked Senator Schilz. And if you don't know, I'll catch him on his close. With a fiscal note of \$3,800 they say is because the Department of Labor has indicated they'd require the Performance Committee to meet face to face rather than via telephone conference. Do you know why that is? [LB845]

TOM MAY: That's something I couldn't answer for you, I'm sorry. [LB845]

SENATOR BLOOMFIELD: Okay, I thought probably. I'll try to get Senator Schilz to respond to that. Thank you. [LB845]

SENATOR AVERY: Any other questions? I don't see any. Are you a crop duster? [LB845]

TOM MAY: Yes, I am, sir. [LB845]

SENATOR AVERY: And you're still here. Good for you. [LB845]

TOM MAY: I'm still here and hope to be around for a long time yet, so. [LB845]

SENATOR AVERY: Thank you for your testimony. [LB845]

TOM MAY: You bet. Thank you for your time. [LB845]

SENATOR AVERY: Additional proponent testimony? Welcome, sir. [LB845]

DAVID LEVY: (Exhibit 3) Thank you. Good afternoon, Chairman Avery and members of

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the committee. David Levy, D-a-v-i-d L-e-v-y, Baird Holm law firm. We represent most of the wind energy developers active in the state and probably represent, oh, I don't know, 75 or so--at least, over 50--MET towers that are erected around the state as well. I feel like I should have them here with me or something. But it's a significant number of MET towers that we're talking about here. Our clients, though, even though it would add additional expense and burden on them, do support LB845 as amended by AM1846, which Senator Schilz passed out, with one exception. And I've passed around AM1849 which would change or replace the strict liability provision in AM1846 with the provision that instead says that the owner of a MET tower that is up and is not marked, is not only violating state law but if somebody crashes into that, that failure to comply with state law is admissible as evidence of negligence should there be a lawsuit--a civil lawsuit. We felt that the strict liability provision in AM1846 really sort of short-circuited the mainstream legal process. We have no problem with somebody with an unmarked tower being subject to clear possibility for a liability. But it should fit within the mainstream legal process of negligence and all of the tort principles. We have worked, I think, diligently and cooperatively with the proponents of this bill and with Senator Schilz's office and I want to thank Senator Schilz and his office and also the proponents of the bill for doing that. As was alluded to, we are very close to agreement. AM1846 would require painting the top half of the tower. Our original proposal was the top third of the tower because we felt that that was the part that was most important to mark. It made sense from a cost standpoint. It's very consistent with our surrounding states. These MET towers actually move around from state to state from time to time so it's important to be consistent. But we are willing to go to the top half of the tower and that's what's in AM1846 that you have before you. There was a question about lighting. The lighting...the word "lighting" that you see in AM1846 refers to existing law. If a tower is lighted under existing law, it is considered compliant. And I want to make that point or emphasize that point. Since 2010 there has been on our state statutes a requirement that owners of MET towers mark them. And they were all required to come into compliance by January of 2013. So that statute gave them about two and a half years to come into compliance. As far as I know, all of our clients' MET towers are marked. We always, of course, advise them to do that, advise them that they need to comply with that statute, that they need to register them with the Department of Aeronautics. And, in fact, we send out a regular kind of alert on various legal matters to our clients in different industries. And we just did one of these alerts to our wind energy clients on, make sure that you've got your MET towers marked and registered with the Department of Aeronautics probably about in November or December. So this is something that's very important to our clients. Safety is very important to them. They are willing, even though there is a fairly recent statute that requires marking to comply with this higher level of marking that's in this bill and in AM1846. We support those but also ask that you support AM1849 which would replace that liability language for folks with unmarked towers. [LB845]

SENATOR AVERY: Let me ask you to clarify who is your client now in this? [LB845]

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DAVID LEVY: Sure. We represent a long list of wind developers. But the primary clients that I've been working with on this bill are Blue Stem which has wind projects in Cherry County, Keya Paha County, and Greeley County, currently; Sand Hills Wind Energy which is primarily working in Cherry County; and Geronimo Energy which has a large project happening right now in Holt County; and also other projects under development and other MET towers erected in other parts of the state. [LB845]

SENATOR AVERY: Do the wind...does the wind industry actually own some of these MET towers, so? [LB845]

DAVID LEVY: Typically, the clients will lease the MET towers. [LB845]

SENATOR AVERY: Uh-huh. [LB845]

DAVID LEVY: And they'll contract with an entity to put those up, to maintain them. They take them down for maintenance every 12 to 24 months. And so one of the things that's in AM1846 that's very important is, it gives them up to two years to comply but also says, hey, if you take it down for maintenance in the meantime, bring it into compliance with the new requirements. And, you know, that's one of those things that it makes a lot of sense. You're not adding a lot of additional costs by making them take it down just to remark it when it's already marked. But when it's down and when it makes sense, go ahead and do that. And we appreciate that part of that amendment. [LB845]

SENATOR AVERY: Yeah. And you're testifying in support? [LB845]

DAVID LEVY: In support of the bill as amended by AM1846, as amended by AM1849. I look at the clerk when I say that to make sure I'm not... [LB845]

SENATOR AVERY: Senator Lautenbaugh. [LB845]

SENATOR LAUTENBAUGH: Thank you, Chairman Avery. And thank you, sir. Actually you anticipated an amendment that I anticipated. I was...a strict liability struck me as kind of overreach here. [LB845]

DAVID LEVY: Yeah. [LB845]

SENATOR LAUTENBAUGH: I mean, if it's not painted, it seems to me you could prove it's noncompliant. Strict liability seems it would be unnecessary. I mean, it's easy to demonstrate they're not in compliance and that would be proof of negligence so why would that be necessary to have strict liability imposed? [LB845]

DAVID LEVY: Exactly right. And on the off chance, for example, that it was something

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with the plane or with the pilot or, you know, they weren't competent at that moment or something like that, strict liability would totally ignore that and put that liability, nonetheless, on the owner of the tower, so. And I believe that the association from which you heard testimony is...AM1849 is acceptable to them. But I can't speak for them. [LB845]

SENATOR AVERY: Senator Bloomfield. [LB845]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Just to satisfy my own curiosity because you've already agreed to it, the 200 foot tower, the difference between the top third and the top half is about 30 feet. What's it cost to do that with your quality of paint? [LB845]

DAVID LEVY: I can tell you this. The difference between painting the top half and the whole tower is about \$1,000. So if the paint part of it is all proportionate, when you're talking a sixth it's, you know, \$300 or something between the top third and the top half. That money, you know, is not the issue. The issue is, you go to Kansas and you get a tower there which, by their law, is required to be painted at the top third. You can't just bring it to Nebraska and put it up, you've got to paint some more of it. Again, you know, it's a little bit of a hassle but it's important, as you heard. And we're glad for that. [LB845]

SENATOR BLOOMFIELD: Thank you. [LB845]

SENATOR MURANTE: Senator Scheer. [LB845]

SENATOR SCHEER: I guess one clarification because you brought it into the record that you mentioned that they had two years to bring their...according to what I'm looking, it says one year after effective date, so. [LB845]

DAVID LEVY: AM1846, I believe... [LB845]

SENATOR SCHEER: Changes it to two years? Okay. [LB845]

DAVID LEVY: ...changes it to two years or, if sooner than that you take it down for maintenance, you do it then. [LB845]

SENATOR SCHEER: Okay. All right. Thank you. [LB845]

DAVID LEVY: Sure. [LB845]

SENATOR MURANTE: Any additional questions? Seeing none, thank you for your testimony. [LB845]

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DAVID LEVY: Thank you, Senators. [LB845]

SENATOR MURANTE: Are there additional proponents wishing to speak on LB845? Welcome. [LB845]

ROD STORM: Chairman, committee members, my name is Rod Storm, R-o-d S-t-o-r-m. I'm the city administrator for the city of Blair, Blair Airport Authority airport manager, here today to testify in support of LB845 on behalf of the...not only the Blair Airport Authority but the Nebraska Association of Airport Officials. I'm going to keep this real brief because I think most of it's been covered relative to what the bill is. We view it strictly as a bill for aviation safety. Clearly, the markings, the importance of it, is what we see as very positive. The bill removes what was subjective standards that exist today and replace those with some specific standards. So we are in full support of it. I can tell you, as airports across the state, we get a lot of complaints from pilots relative to when did that tower go up and who let it go up. It's been testified previously that those towers are at about 190 to 195 feet so that they stay just below any FAA requirements. And so we've had a number of pilots across the state, not only in the spraying industry but also some of our farmers and ranchers that have left home and come back two or three days later only to find out that the tower in the middle of where they normally would use for approach to their grass landing out in their fields and ranches. So with that, I would be happy to try to answer any quick questions that you might have. But we are in full support of the bill. [LB845]

SENATOR MURANTE: Thank you very much. Are there any questions? Senator Lautenbaugh. [LB845]

SENATOR LAUTENBAUGH: Just...thank you for coming today, sir. And it's a shame Senator Avery left because he was just bemoaning that interminable airport tower bill we had and I was going to say, that's the guy right here. [LB845]

ROD STORM: Hey, sometimes it takes a while. I mean, you know, when it goes from Senator...former Senator Mines to Senator Lautenbaugh and Senator Krist. But eventually, we got the job done, so. [LB845]

SENATOR LAUTENBAUGH: Oh, I know. I mean, we had to make my district smaller just so you guys would give me some peace in my waning years down here. It's good to see you, sir. Thank you for coming. [LB845]

ROD STORM: Thank you. [LB845]

SENATOR MURANTE: Any additional questions? Thank you for your testimony. Additional proponents wishing to speak? Welcome. [LB845]

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RICHARD LOMBARDI: (Exhibit 4) Good afternoon. My name is Richard Lombardi, R-i-c-h-a-r-d L-o-m-b-a-r-d-i. I'm representing The Wind Coalition, which is a regional organization of wind component manufacturers, developers, engineering firms serving the states within the Southwest Power Pool which is Texas, Oklahoma, Kansas, Nebraska, and Missouri. And I have just circulated to you a look at a very successful story where the Legislature has led the development of wind energy in Nebraska. And I thought that many of you on this committee have been instrumental in watching us grow this industry with a series of pieces of legislation. And it's that type of cooperation that has now moved this to a multibillion-dollar industry in the state and I wanted to share that information with you. And it's because of, I think, the types of collaboration that happens in Nebraska, as evidenced on this bill, with trying to work out the details of this bill that I think has been one of the great success stories in economic development that we've had in the last couple of years. Really appreciate the aviation industry, Senator Schilz and his staff of working with the various parties on this. And I would just be somewhat redundant to not only thank but to say that we support the amendment as offered. And thank you for your time. [LB845]

SENATOR MURANTE: Thank you, Rich. Senator Bloomfield. [LB845]

SENATOR BLOOMFIELD: Just a couple of quick questions on the status of a couple of these projects, Rattlesnake and Prairie Wind, to be specific. Where do we stand? [LB845]

RICHARD LOMBARDI: The Prairie Wind project is in the process... [LB845]

DAVID LEVY: This year. [LB845]

RICHARD LOMBARDI: ...yeah...this year and they...there was an agreement with the Omaha Public Power District for a power purchase agreement. They are in the early stages of construction. I think they have met their threshold so they qualify for the production tax credit. And I think they're within...it's probably a two- to three-year timetable that they're operating on. The Rattlesnake project was...is an export project that has been delayed because of some other...well, there's been a number of different causes, but the primary cause has been...has to do with some transmission costs in the southern part of the Southwest Power Pool with another entity to be able to move energy from here to a market in southeast United States. There were some changes that have caused a slowing down of that. There's considerable money invested in that and I know that the owners are looking for...continue to look for customers and to enter into a power purchase agreement. [LB845]

SENATOR BLOOMFIELD: Okay, thank you. [LB845]

RICHARD LOMBARDI: Okay. Thank you very much. [LB845]

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SENATOR AVERY: Any more questions for Mr. Lombardi? Thank you for your testimony. [LB845]

RICHARD LOMBARDI: Happy birthday. [LB845]

SENATOR AVERY: Okay. Any more proponent testimony? Okay, we'll go to opponent testimony. Pretty good. Any neutral testimony? Senator. [LB845]

SENATOR SCHILZ: I was going to waive but I think there might be a question for me, so. Thank you very much, folks. Appreciate it. I know it's Friday afternoon and I don't want to take up a lot of your time. Obviously, this bill is about safety. And being a person that farms for a living and has used aerial applicators before, I understand the risks that they go through and the hazards of their job. And making these towers safe so that they can see them is very important. We also want to work with all the parties to make sure that it doesn't become onerous as we move forward. And it's my hope that we can all come together and make this work--as it looks like we are--and maybe we'll be able to get this thing through this year and not have to wait a couple of years. Shoot, who know? It might even be a consent calendar bill. Wouldn't that be crazy? [LB845]

SENATOR AVERY: Let me ask you, are you okay with Mr. Levy's amendment? [LB845]

SENATOR SCHILZ: I believe so, yes. [LB845]

SENATOR AVERY: Okay. Senator Bloomfield. [LB845]

SENATOR BLOOMFIELD: Thank you. Yes, Senator Schilz, I did have a question on the fiscal note... [LB845]

SENATOR SCHILZ: Uh-huh. [LB845]

SENATOR BLOOMFIELD: ...realizing that it isn't much of a fiscal note. Why do they have to meet face to face instead of by teleconference? [LB845]

SENATOR SCHILZ: Senator Bloomfield, if I knew the ways of the Fiscal Office and why they do certain things, I could probably be a rich man. I don't know. I can't tell you that. If you would like me to, I can try to find out. [LB845]

SENATOR BLOOMFIELD: Let's chase it down, we'll see where it goes. [LB845]

SENATOR SCHILZ: Okay. I will see what I can do to find out. I have no idea. [LB845]

SENATOR BLOOMFIELD: Okay. Thank you. [LB845]

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SENATOR SCHILZ: And I was only happy that it came back zero, so. [LB845]

SENATOR AVERY: Are you going to ask for an increase? [LB845]

SENATOR SCHILZ: No. Okay. [LB845]

SENATOR BLOOMFIELD: Where did you find zero? [LB845]

SENATOR SCHILZ: Well, there's no fiscal note. [LB845]

SENATOR BLOOMFIELD: You've got \$3,808. If I look in... [LB845]

SENATOR SCHILZ: Not to the state. [LB845]

SENATOR AVERY: What bill you looking at, Dave? [LB845]

SENATOR BLOOMFIELD: Okay. I'm looking at the wrong bill. That would explain it.  
[LB845]

SENATOR SCHILZ: So you don't want me to check into it now. I'll just leave that alone.  
[LB845]

SENATOR BLOOMFIELD: If it's zero, just leave it lay there. [LB845]

SENATOR SCHILZ: Well, thank you, Senator Bloomfield. [LB845]

SENATOR AVERY: I don't know anybody else who's ever gotten on the wrong bill.  
[LB845]

SENATOR SCHEER: Go ahead and take the weekend off. [LB845]

SENATOR SCHILZ: There you go. You too. [LB845]

SENATOR AVERY: Thank you very much for your testimony. [LB845]

SENATOR SCHILZ: Thank you very much. [LB845]

SENATOR AVERY: That ends the hearing on LB845. (See also Exhibit 5) We will now  
go to LB817. Senator Ken Haar, welcome. [LB845]

SENATOR HAAR: The \$3,800 bill is...that's on my bill. [LB817]

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SENATOR BLOOMFIELD: I would be surprised to see one of your bills with that low a number. [LB817]

SENATOR HAAR: And I opened myself up to that, so. [LB817]

SENATOR LAUTENBAUGH: That's just a handout cost of one of your bills. [LB817]

SENATOR HAAR: God, I hope it's Friday. [LB817]

SENATOR AVERY: We get a little bit crazy in here around Friday. All right. Welcome, Senator Haar. [LB817]

SENATOR HAAR: I know you're all eating cookies (inaudible). Okay. Mr. Chairman and members of this friendly committee, I...my name is Ken Haar, K-e-n H-a-a-r; I'm that Haar. I bring today LB817, which I believe addresses an oversight in the current statute regarding employees of a public power district serving on a public power district board. Current law prohibits any employee from serving on the board of a district that employs them unless the employee resigns or takes an unpaid leave of absence. LB817 changes the law to apply to any public power board, not just the board employing the member. This originally came to me...to my attention two years ago when the executive director of Norris Public Power ran for the Nebraska Public Power District board of directors while he was executive director of Norris Public Power. I see a direct conflict of interest for the employee of a public power board to serve on a board of directors of another public power board, especially when the one district buys their power from another district. And just to go a little further then--and I'm sure this will be covered in the testimony--but if you look at the definition--and I'm not a lawyer but this is from the dictionary that lawyers use all the time--they define a conflict of interest as a real or a seeming incompatibility between one's private interests and one's public or fiduciary duties. So the private interest would be, for example, being employed by a public power district. And then you have the fiduciary duty if you're, for example on the NPPD board, to the whole state. And then going to [Wikipedia](#), which is where they talk plain English, it says a conflict of interest is often defined as a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest will be unduly influenced by a secondary interest. So let's say, in the case of...that happened two years ago...and I don't know if that's going to happen again because we haven't reached the deadline for signing up for running for office. But if you had, let's say, a director of LES and he wanted to run for the...for NPPD board, it'd be hard certainly, at times, in his professional judgment to make a decision between LES that he works for and the interests of LES and, let's say, the NPPD board if he got on that, and then looking at the whole NPPD which is responsible for the whole state. And, in fact, NPPD and LES own common facilities and those kinds of things. So I can't imagine that there wouldn't be conflict of interest in that kind of situation. So what we're doing with this bill would be to say, hey, if you're employed by a public power district, you can't run for any

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other public power district board. You can always resign and then run for that board but conflict of interest is just too obvious an issue there, so. With that, I'd be happy to answer any questions. Yes. [LB817]

SENATOR AVERY: Senator Bloomfield. I'm running the committee, Senator. [LB817]

SENATOR BLOOMFIELD: You said we couldn't run. Could he not run and then resign if elected? [LB817]

SENATOR HAAR: I believe the current law...that's a question I can't answer. I mean, yeah. [LB817]

SENATOR BLOOMFIELD: I wish we'd look into that. I don't think it's fair to keep him from running just because he has that position. I do agree, probably he should resign if elected. [LB817]

SENATOR HAAR: Yeah. And going back to my notes here, current law prohibits an employee from serving on the board of a district that employs them unless the employee resigns or takes an unpaid leave of absence. [LB817]

SENATOR BLOOMFIELD: So you can't serve. [LB817]

SENATOR HAAR: You can't serve. You can't serve. Yeah. That's my understanding. [LB817]

SENATOR BLOOMFIELD: Okay. I'd want to make sure that was clear in the bill. [LB817]

SENATOR AVERY: But this would prevent them from running, your bill? [LB817]

SENATOR HAAR: No, I don't believe so. And I'll clear that up at the end if that's the case. But I believe it's...to make this consistent to fill that loophole, it's the idea of serving on the board. [LB817]

SENATOR AVERY: Any other questions from the committee? [LB817]

SENATOR HAAR: Good question. Thank you. [LB817]

SENATOR AVERY: I don't see any. Are you going to stay to close? [LB817]

SENATOR HAAR: Oh, yes. Yeah. [LB817]

SENATOR AVERY: Okay. All right, the committee will accept proponent testimony.

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Welcome. [LB817]

SHERRY MILLER: (Exhibit 1) Hi. I jumped the gun. I've still got kids waiting at Lincoln High; every time I'm here. [LB817]

SENATOR AVERY: It's about time to pick them up. [LB817]

SHERRY MILLER: Well, good afternoon, ladies and gentlemen of the committee. I wish...well, first of all, I'm Sherry Miller, S-h-e-r-r-y M-i-l-l-e-r. And I am here today as president of the League of Women Voters of Nebraska but I am representing Linda Duckworth who is the energy director of the League of Women Voters of Nebraska and immediate past president of the League and is very, very sick and so she couldn't come. Linda is also the League's member-volunteer observer at the Nebraska Public Power District. And this is her testimony in favor of LB817. The League's position on representative government states, "Promote an open governmental system that is representative, accountable, and responsive." Founded by the activists who secured voting rights for women, the League has always worked to promote the values and processes of representative government. Protecting and enhancing voting rights for all Americans, assuring opportunities for citizen participation, working for open, accountable, representative, and responsive government at every--and that's my emphasis--at every level, all reflect deeply held convictions of the League of Women Voters. The Nebraska Public Power District is one of those entities that is not on the average citizen's radar. In fact, that is generally true of all of our public power districts in Nebraska. They go about their business of procuring energy for customers with the least amount of fanfare possible, rarely scoring big headlines in the news. Citizens tend to forget that these utilities have governing boards which are elected by the voters and that citizen attention and input are vital links in creating good policy for customers and all Nebraskans. Even though little citizen attention is given to public power district proceedings, it is still surprising that an employee of a power district would choose to run as a board member for that power district or any other power district. There is a direct conflict of interest which must not be allowed. LB817 corrects this egregious practice and the League of Women Voters fully supports this proposed legislation based on the position I stated at the beginning of this testimony. When an employee of a power district sits on the board of directors of that power district or another power district, he or she has private information, giving that person and that person's company special advantages. LB817 needs to be quickly enacted. It is simple, eminently sensible, and it will put an end to a practice that is not in the best interest of our state. Thank you. [LB817]

SENATOR AVERY: Thank you. Do you know if this is a widespread problem now? [LB817]

SHERRY MILLER: I think it's a good idea to put in some preventive measures so it

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won't be a widespread...in Nebraska, I say, no. But who...you know, elsewhere, I have no idea. [LB817]

SENATOR AVERY: There may be someone else who can answer that. [LB817]

SHERRY MILLER: Uh-huh. [LB817]

SENATOR AVERY: Senator Wallman. [LB817]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, and welcome. [LB817]

SHERRY MILLER: Uh-huh. [LB817]

SENATOR WALLMAN: Do you know if there are very many women on power boards? [LB817]

SHERRY MILLER: No, there...I don't know for sure. I get the impression there is not. [LB817]

SENATOR WALLMAN: Okay. [LB817]

SHERRY MILLER: How many power boards? I know we have lots and lots of little, local power boards across this state. [LB817]

SENATOR WALLMAN: Uh-huh. [LB817]

SHERRY MILLER: I used to work for an electrical manufacturer rep. And I was always surprised at the long list of these little, small, across the state public power districts. But as far as women representing, I could ask Linda to try to find that out and let you know. [LB817]

SENATOR WALLMAN: That's what I...just curious. [LB817]

SHERRY MILLER: Uh-huh. [LB817]

SENATOR WALLMAN: Thank you. [LB817]

SHERRY MILLER: Sure. You're welcome. [LB817]

SENATOR AVERY: Any other questions? Thank you. [LB817]

SHERRY MILLER: Okay. Thank you. [LB817]

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SENATOR AVERY: Additional proponent testimony? Welcome, sir. [LB817]

GARY THOMPSON: (Exhibit 2) Thank you very much. Senator...Mr. Chairman and members of the committee, good afternoon. My name is Gary Thompson, G-a-r-y T-h-o-m-p-s-o-n, and I wish to support LB817. I am a member of the Nebraska Public Power District board of directors. I represent subdivision 8 which covers a large portion of southeast Nebraska. I wish to make it very clear that I am testifying as an individual and I do not represent NPPD here. I offer only my perspective because it is personal to me. Three years ago, I ran for reelection to the NPPD board, as Senator Haar mentioned. My opponent was the general manager of Norris Public Power District. If elected, he made it very clear that he would remain employed by Norris as its chief executive while also representing the voters of subdivision 8 on the NPPD board. Norris is a total requirements wholesale customer of NPPD and with our other wholesale customers, has a long-term contract with the district, regulating the purchase of electricity and other relationships and obligations between the two. Norris is obligated to purchase all its power from NPPD. And it is, in return, entitled to certain support and services as provided for in the long-term contract. My opponent, had he been elected, he would have found himself in the position of trying to represent contractual obligations of both sides at the same time. At that time, we knew we were soon going to be entering into negotiations for a new long-term contract with our wholesale customers, including Norris. And we are now engaged in those negotiations. Mr. Pollard would have found himself trying to strategize NPPD's negotiating position while, at the same time, trying to fulfill his obligations as manager of Norris to oppose those positions which might not be in the best interests of Norris. He could not have done both. Had he recused himself from the board deliberations at NPPD, the voters who elected him would have been without representation. On the other hand, had he tried to represent the interests of NPPD, the ratepayers of Norris would have had no voice in such negotiations. While we like to think that our public power districts have common interests--and we do--it is true that there are many diverse and contrasting interests represented by the various utility districts within the NPPD family. And it is difficult enough to try to resolve disputes which invariably arise. It becomes almost impossible to do so when one has a vested interest in one position or the other, which each employee has from his obligations of his particular utility. Case law of Nebraska is replete with cases involving disputes between public power districts. It presents a very difficult situation to have an employee of one district serving on the board of another district, which might be sued by that same publicly owned utility. LB817 is reasonable and makes certain that these potential conflicts do not occur in the future. And I would ask that you support LB817. Thank you. [LB817]

SENATOR AVERY: Thank you, Mr. Thompson. Questions from the committee? Don't see any. Thank you for your testimony. [LB817]

GARY THOMPSON: Thank you very much. [LB817]

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SENATOR AVERY: We are still on proponents to LB817. Good afternoon, sir. [LB817]

VERN JANTZEN: Good afternoon. Chairman Avery, members of the committee, my name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I'm a farmer from Plymouth, Nebraska, south of Lincoln here. And I am a customer of Norris Public Power. And so the situation that Senator Haar spoke about and which Mr. Thompson outlined in more detail is exactly the reason why I was very upset when I heard the general manager of Norris was going to run for the NPPD board because I thought, how is this going to work? I want him to represent my interest as a Norris customer. He is hired to do that by the Norris Public Power Board. And I thought, this is going into places where people usually don't wander. And the thing that was even more disturbing was, when this was pointed out to him, he made it very clear that he was going to serve both Norris and NPPD. And the proposal here from Senator Haar, LB817, has a couple ways that this...that a person could do this if he would resign from his current position or take a leave of absence. And Mr. Pollard made it clear that that was not going to happen. And so I, for the reasons that Mr. Thompson spoke about earlier in terms of the scope that Norris Public Power District has and then you compare that to the size and generation responsibilities that NPPD has, I knew this was not going to work very good. And so I wrote some letters to different newspapers, to the editors, and expressed my concern. And the election was held and I think the right outcome happened. But it seems like it would be a good idea for this committee to consider this proposal from Senator Haar and have the Legislature discuss it and pass it. And then we won't have to find ourselves in a position of wondering if this...why people would do this. We'll just take it completely off the table. So I speak in support of LB817 and urge your passage of it. [LB817]

SENATOR AVERY: Thank you, Mr. Jantzen. Questions from the committee? I don't see any. Thank you very much. [LB817]

VERN JANTZEN: Thank you. [LB817]

SENATOR AVERY: More proponent testimony? Good afternoon, sir. [LB817]

JOHN HANSEN: Good afternoon, Mr. Chair and members of the committee. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of the Nebraska Farmers Union and also their lobbyist. This issue came to our attention because of phone calls from our members, including Vern Jantzen, and lots of others who looked at this situation and said, how can this possibly be? One of the callers said, how can you possibly--at the same time--represent both sides of the buy and sell equation when you have competing interests? And I said, well, it certainly doesn't look right, doesn't feel right. And the more we dug into it, the more it became clear that this was a new issue. It has not, in our organizational memory, happened before. But it is an issue that is appropriately back in the purview of the Nebraska Legislature. You are the

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folks who have created the public power system and the guidelines and the governance for it. And I knew that this issue needed, really, to be dealt with by this body and that the rules of the road need to be clarified when we heard a very similar bill in the Natural Resources Committee. And when the opponents came forward and testified against Senator Haar's bill in Natural Resources, it was very clear that they were not only...they were certainly not in the least bit repentant. And, in their view, they thought that there was a need to just get rid of all of the elected public officials that sit on the board of directors of public power, NPPD, and that, by golly, it should just be made up of the general managers of the REAs. Well. That told me that there was really a need for this bill because that is not the system, as it should exist. That is not the system that should be in place. And those folks only represent a third of NPPD's business. So what about all of the other entities then? All of the other munis? What about the single-source contract folks? You can see, that if you go down that road following that logic, it is just trouble and more trouble. The system we have right now works. It works well. And so should this bill be passed, what will that mean? That means that the world as we all understood it up to two years ago, continues forward in a very good fashion as it has served us well in the past. You've got to keep the lines of decision making clear and straightforward. I, frankly, have a hard time understanding why we're here. But the fact that that viewpoint is out there and has not gone away, and as we interact with our friends in public power, it's very clear that the folks in charge--which should be you--do need to step up and you need to set the rules of the road so that we don't have these situations that needlessly divide us and cause hard feelings and conflict. As my granddaughter, Stella, is often to say as she quickly senses tension and needless tension in the room, "awkward" is her favorite expression. And this situation was extremely awkward for all of us who care about the public power system. It was certainly awkward for Mr. Thompson who did, in our view, a very appropriate and professional way of trying to deal with that issue. But to avoid that in the future, I would strongly urge you, in the interest of good public policy, to support LB817. And with that, I would close and be glad to answer any questions if I might. [LB817]

SENATOR AVERY: Thank you. Questions? Any questions? I don't see any. Thank you. [LB817]

JOHN HANSEN: Thank you, Mr. Chairman. [LB817]

SENATOR AVERY: We will hear additional proponent testimony. Okay, seeing none, we will now hear opponent testimony. Good afternoon. [LB817]

KRISTEN GOTTSCHALK: (Exhibit 3) Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and the registered lobbyist for the Nebraska Rural Electric Association. The Rural Electric Association comprises of 34 rural electric members. I might point out that 22 of NREA's

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34-member systems do receive 100 percent of their electricity at wholesale from NPPD. In these systems, the electric wholesale rate accounts for approximately 50 percent to 70 percent of the cost to provide electricity to consumers. So it is clear that the rural PPDs and their consumers do have a direct stake in the actions taken by the NPPD board. LB817, as introduced by Senator Haar because he did feel it was inappropriate for the general manager of the...the former general manager, I say, of Norris Public Power District to run for the NPPD board in the 2010 election. The former manager's motivation in running for the NPPD board was not to try to gain any special advantage for his power district. His sole motivation, in his own words, were to provide a voice for electric consumers who had seen a 44 percent increase in their wholesale electric rates in the years preceding that election. I do want to emphasize, NREA, its membership, did not support or advocate for his role. It's against our policy. We don't support or advocate for any member running for a PPD board. LB817 unfairly singles out the employees of PPDs, making them ineligible to serve on the board of another PPD without resigning or taking an unpaid leave of absence. Remember that PPDs are customers. However, it does not apply to the employees of other large customers of NPPD, including private companies like Nucor Steel in Norfolk or Tyson Foods in Dakota City. It also does not apply to employees of electric cooperatives or city utilities that may, in fact, be larger customers of NPPD than some of the rural public power districts. NPPD serves 52 communities at wholesale and about 80 at retail. These include South Sioux City, Norfolk, York, Kearney, North Platte, Chadron, and Scottsbluff, to name just a few. There's really no rational basis for applying different rules to these employees than are applied to a public power district. In 2009, the Unicameral passed LB53, which was supported by both NPPD and NREA. LB53 provided equity and fairness for the customers of NPPD by ensuring that individuals elected to the board are, in fact, retail or wholesale customers. And this was done because they felt that the board members needed to have a financial stake, needed to have a vested interest in the actions of the board rather than those people who had no vested interest. LB817 runs counter to this intent by excluding qualified PPDs' employees from serving on the board of directors of any PPD unless they resign from their position or take an unpaid leave of absence. To be clear, LB817 does not simply restrict membership on NPPD's board of directors. Any employee of one PPD who lives in the service territory of another would be prevented from serving on the board of directors in his own home district. That means, if you lived in Cuming County and you worked for Stanton County's Public Power District Board, even though there's no direct relationship between those boards, you would be ineligible to serve on that board. And what LB817 also does, is it presumes that an employee is only going to run to represent their employer which, quite frankly more often than not, would not be the case. Now I'm polling my NREA membership and others in the industry. No one can remember any other time other than 2010, when an employee of a PPD tried to run for the board of directors of another PPD. In 2010, the voters made the decision to reject that PPD employee's candidacy. And we do believe that the voters can be trusted to make the right decision on who's the best candidate for their PPD board. An outright ban is not needed and, in fact, it would serve to disenfranchise

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qualified, knowledgeable individuals from running for elected office. We do urge you to indefinitely postpone LB817. I do want to thank you for considering our views on this bill. And I would be happy to answer any questions you may have. [LB817]

SENATOR AVERY: Thank you. Would you oppose a drafting of this bill that would prevent them from serving in those two positions at the same time? They can still run. I think Senator Bloomfield raised that earlier. [LB817]

KRISTEN GOTTSCHALK: I guess...you're talking if you served on the Norris board and wanted to serve on the NPPD board? Is that the question you're asking me? That type of... [LB817]

SENATOR AVERY: No. If you were employed by the Norris board. Would you accept a revision of this bill that would prevent you from serving on another PPD board? [LB817]

KRISTEN GOTTSCHALK: No. [LB817]

SENATOR AVERY: You wouldn't... [LB817]

KRISTEN GOTTSCHALK: That's the whole premise of the bill, I guess, as it stands now. So I'm not sure that that amendment... [LB817]

SENATOR AVERY: So you really...you don't see a conflict of interest? [LB817]

KRISTEN GOTTSCHALK: No. Actually, I see...you know, if anybody who serves on a public power district board is a consumer within that district. So on any board, and regardless of which board I'm talking about, if you served, you're a customer. So your decisions do impact you and the rate that you would receive. What we're looking at in this situation is...and in...and I hate to use the Norris situation because that's not the only situation. But in that Norris district situation, Norris, if he was advocating on behalf of Norris and the consumers at Norris, he was doing the same thing that any other director at any other PPD would do or any other existing director on NPPD's board does right now. They advocate on behalf of the consumers either in their wholesale territory or their retail territory. That's the role of the director. [LB817]

SENATOR AVERY: Anybody have any questions? No? Okay. [LB817]

KRISTEN GOTTSCHALK: No questions? [LB817]

SENATOR AVERY: Thank you. [LB817]

KRISTEN GOTTSCHALK: Thank you. [LB817]

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SENATOR AVERY: Any other opponent testimony? We're on LB817. Any neutral testimony? Good afternoon, neighbor. [LB817]

MARY HARDING: How are you, sir? Good afternoon, Senator Avery and members of the committee. I have not got prepared notes but I was listening. And so my name is Mary Harding, it's M-a-r-y H-a-r-d-i-n-g. I'm an elected member of the NPPD board serving subdistrict 2 which is Senator Bloomfield's district. I was elected out of Senator Avery's district but then we've had a census in between and redistricting, so. But I am also here as an individual, strictly. And there were a couple of things in the previous testimony that I felt you needed to have in mind as you consider what this bill means. You know, we're uniquely a 100 percent public power state. And you know what that's like. Things are different because you're uniquely the Unicameral. So things are different here from other states. One of the things that is different is that there is not a public utilities commission that oversees our rate-making authority. That power is strictly vested in the elected boards of the utilities. And so it's our responsibility to be sure that all rates are set in a fair and nondiscriminatory manner. And there's no oversight board to double-check that. There is, you know, lawsuits. There's...a court of law would be the recourse if a customer class were not satisfied with its treatment in the rate-making process of the board. And you've heard a lot about negotiating contracts and some of the issues that might come to bear there in terms of creating a conflict of interest. But I wanted to be sure you also understood that rate-making is strictly a responsibility of the board and the need to protect the integrity of that process is very important. If it is true that this bill does not pertain to municipalities and co-ops, I would see that as an oversight that should be corrected. Different classes of customers have different interests in the rate-making process. It's not a strictly numerical process, although we go to great lengths to be sure that it is as numerical as possible. And, for example, at NPPD, the board will be presented with data showing this rate change will impact this many customers in this way and this many customers in that way. Staff doesn't tell us which customers because we don't want to unduly give favor to one class of customer over another. And if we don't know which customers, that helps us make a more objective decision. But if I were actually employed by one of the customers...one of the utility customers, I'm pretty sure I would know. And it might...well, that's up to you to decide. I also want to just clarify that large commercial customers such as Nucor, do not participate in contract negotiations. There again, they're a retail customer and it's a different situation than our utility customers where we do negotiate through contracts the transmission of electricity. And those are my thoughts. I hope it's useful in your deliberation. [LB817]

SENATOR AVERY: Thank you. Question from Senator Scheer. [LB817]

SENATOR SCHEER: Can you be more specific how it is different in negotiating, for example, with Nucor than it would be with one of your other rural electric customers? [LB817]

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MARY HARDING: We don't negotiate rates or delivery terms, necessarily, with Nucor. They're a retail customer and so they purchase power like any other retail customer in the state. [LB817]

SENATOR SCHEER: Well, they certainly don't buy it at the same price as everybody. [LB817]

MARY HARDING: They don't. But that was a rate-making case and it was actually decided in court on the merits due to factors like what does it cost to serve a large customer like that. [LB817]

SENATOR SCHEER: Okay, so...okay. You don't need to go into a lot of detail. [LB817]

MARY HARDING: Okay. [LB817]

SENATOR SCHEER: My question then would be, is their rate, then, based on a percentage of whatever the local retail or your local wholesale? So, I mean, you're not negotiating that on a periodic basis if it's just always some type of percentage or a factor of something else? [LB817]

MARY HARDING: Yes. And I've been on the board 12 years now. And what I understand about rate-making...I've been to several classes to try to understand it. But it's really complex. And so management comes to us and has run through the formulas and the models of what it costs to deliver electricity to Nucor. And they recommend a large industrial rate--Nucor is the only customer in that class--to the board and the board either votes it up or down. And then Nucor either accepts it or sues us for being unfair and discriminatory in our rate-making process. [LB817]

SENATOR SCHEER: Okay. But then how would that be any different than a person that was the manager of an NRD or a rural electric co-op? I mean if, indeed, I'm Dirk Petersen and I'm sitting on the board of NPPD and I'm the only one that is in that class that you've developed the rate for, now don't I have a conflict because it's not like I'm not knowing who that rate's going to be. I'm the only one person... [LB817]

MARY HARDING: That's right. There's one person in that class. But it's not a negotiated...I think for me, the key is it's not a negotiated figure. It is something produced by staff through formulas that have been adopted by the board. [LB817]

SENATOR SCHEER: Are your prices different relationship to the different rural districts? [LB817]

MARY HARDING: We have one contract with 22 wholesale utilities that are members of

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the NREA, as Kristen said. And that is the same rate across. What would possibly be different is, we also have municipal customers that are wholesale, contract customers. It's the same situation. We have a contract to serve. We provide all their electricity. They get certain services in return for that. [LB817]

SENATOR SCHEER: Okay. But going back, then, to the conflict. If that rate is the same for all 22 other districts, there is not a unique and measurable way that a person that is with Elkhorn Rural Public Power or somebody else can deviate that price. Would that be correct? [LB817]

MARY HARDING: You are correct. [LB817]

SENATOR SCHEER: Okay. [LB817]

MARY HARDING: However, they're not the only class of customer we have. Municipals, as Ms. Gottschalk pointed out, are another class of wholesale contract customer. And their load profiles are different. The demand, when they need energy and how much, in a municipal, that will be a very different profile from... [LB817]

SENATOR SCHEER: But you're missing my point. My point would be that if my rate is the same as the rest of the 9 districts around me or the other 22, for that matter, as a manager for just one of that 22, if the price is always developed for all 22, how can the one individual...that one individual, necessarily, dictate a rate that would be different than the other 21 other districts? I'm just trying...I'm wanting to explain the difference here. [LB817]

MARY HARDING: Senator Scheer, I want to be responsive. [LB817]

SENATOR SCHEER: And I appreciate that. [LB817]

MARY HARDING: I don't think the difference would come to bear in the other 21 districts. The potential for conflict that I see in rate-making is that rates could be structured to favor rural districts that have a different load profile than municipal districts or other classes. [LB817]

SENATOR SCHEER: Okay. So...all right. So what you're saying is, the protectiveness would be that the 22 rural electric may not be paying the appropriate share as the single class, as Nucor or the municipalities or other individual ratebands that you work with. Is that, simplistically, what we're talking about? [LB817]

MARY HARDING: Pretty much. Tossing Nucor in here for me muddies the waters because they're just different. Rural districts and municipalities, to me, are kind of in the same wholesale category. They're contract customers. So they are a better

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apples-to-apples comparison. [LB817]

SENATOR SCHEER: I understand apples-to-apples. But I'm...if I'm going to look at it at all, I'm looking at it in its entirety. And not saying that there is anything inappropriate because right now that isn't the case. There is no one that is involved in Nucor that is in relationship to NPPD. So it doesn't exist there but on a hypothetical basis, that certainly could be true. And what you're telling me that their rate is exclusive. It may be developed by you and I can take it or leave it. I get that. But when you bring it to the board saying, here's the rate that we want to charge this band of customers, which by the way is only one customer, it could create a conflict, I think. [LB817]

MARY HARDING: You might have a point there. I really haven't thought about large commercial customers needing to be excluded from service on the board. [LB817]

SENATOR SCHEER: And I don't know that we legally could. [LB817]

MARY HARDING: Yeah. [LB817]

SENATOR SCHEER: But I'm just...it does make you pause. [LB817]

MARY HARDING: Mostly, I'm thinking about elected officials. [LB817]

SENATOR SCHEER: Uh-huh. [LB817]

MARY HARDING: You know, subdivision-to-subdivision relationships because we are all created under the authority of the Legislature in Chapter 70. The municipal districts, the load-serving rural districts, the generators and transmission utilities, you know, we all report to you. And to me, I've been thinking about this in terms of relationships of one subdivision to another. [LB817]

SENATOR SCHEER: I can appreciate that. Just different thought pattern. [LB817]

MARY HARDING: And how... [LB817]

SENATOR SCHEER: And I don't want to burn any more time. Thank you. [LB817]

SENATOR AVERY: Okay. Any more questions from the committee? Thank you, Ms. Harding. [LB817]

MARY HARDING: You're welcome. Good luck with this. [LB817]

SENATOR AVERY: Appreciate your appearing. Any more other neutral testimony on LB817? I don't see any. Senator Haar. [LB817]

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SENATOR HAAR: I want to go back to this concept of conflict because on a personal level we often face that. For example, last Sunday. Do you watch the Super Bowl or do you go to your granddaughter's concert where she's going to play with the Lincoln Symphony Orchestra? That's a conflict. And in that situation, you have to decide what's a higher value. [LB817]

SENATOR LAUTENBAUGH: Not knowing what I know now. [LB817]

SENATOR HAAR: I went to the concert. [LB817]

SENATOR LAUTENBAUGH: Okay. Good for you, in retrospect. [LB817]

SENATOR HAAR: So my son could watch the Super Bowl. But in a situation, if I work for any public power district and then I serve on that board, they're going to come up times when I have to decide which comes first. Where is my primary responsibility? This could come in the area of lawsuits, it could come in the area of contracts, it could come in the area of hiring. And so then you're caught in this biblical situation of you can't serve two masters. So you have to decide who's your master. So let's say that it's my...I'm hired by a public power district buying from NPPD. And in the...in figuring out a situation for my district--that's where I'm being hired--so then that's my master. Okay? And then the NPPD becomes the secondary. But let's say, then, that there is some kind of lawsuit in which it's not my public power district so now the master is NPPD and that other one may be secondary. I mean, the case of conflict here is just...and luckily, the voters figured it out in the case of Norris Public Power. But I don't think the situation should be there in the first place. And, again, just going back to testimony from two years ago, someone from...one...a CEO of Southern Public Power District testified, "We think there are a lot of reasons why we ought to have some sort of say in how they operate their business." So in this situation, he's saying, as CEO, we...and NPPD is they, okay? So in this situation, in this conflict of interest, the primary...that he saw as primary responsibility as to the "we," the smaller public powers, and the "they," the secondary was NPPD. But yet if he were elected by the people to serve on the board of NPPD, don't they have a right to that...to that saying his first responsibility is representing the people who elected him, not the people that hired him? So, you know, maybe somebody else can figure this all out in a nice way so that conflict of interest could not enter into this. But, again, I think it rounds out LB817. It fills a loophole. It makes a lot of sense. Let's just not have that conflict of interest. Answer any questions? [LB817]

SENATOR AVERY: Is this, essentially, the same bill that was before Natural Resources last year? Was it? [LB817]

SENATOR HAAR: Essentially, yeah. [LB817]

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SENATOR AVERY: Okay. [LB817]

SENATOR HAAR: And by the way, we looked at the bill again. And it's the idea of serving. Yeah. You could be a director or an employee of a public power district running for an NPPD board, for example. But this bill would say, if you're elected to the NPPD board, then you'd either have to take a leave of absence or resign your position. [LB817]

SENATOR AVERY: Okay. Questions? Any more? Senator Bloomfield. [LB817]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Are you in favor of including the cities and municipalities in this, as was mentioned? [LB817]

SENATOR HAAR: You know, I hadn't thought of that. The big difference is that, for example, the LES board is not elected, it is appointed. It's appointed. So, you know, I'm trying to think of where the difference is. Maybe at some point, this needs to be expanded to that conflict of interest. But right now, we're addressing, you work for somebody and you get elected to something else. Yeah. [LB817]

SENATOR AVERY: But you could still have a conflict of interest even though you're appointed. [LB817]

SENATOR HAAR: You could. You could, yeah. [LB817]

SENATOR BLOOMFIELD: My question would be if we went that route, would the guy running the street sweeper be allowed to serve on the utility board? [LB817]

SENATOR HAAR: The guy operating a street sweeper? [LB817]

SENATOR BLOOMFIELD: A street sweeper that would have had nothing to do with the electric part. [LB817]

SENATOR HAAR: Well, yeah. I mean, if he's employed... [LB817]

SENATOR BLOOMFIELD: That's a tangled web we can get into at some other point. [LB817]

SENATOR HAAR: And really, this conflict of interest is really a tangled web when you try and figure it out in your mind. So let's just put it and say you can't do it. You can't do it. [LB817]

SENATOR AVERY: Thank you. Appreciate you appearing today. [LB817]

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SENATOR HAAR: And I was debating whether to bring this out or not. But it's a little bit, like many of us when we were young men, had two girlfriends at the same time. [LB817]

SENATOR AVERY: You never had two girl...you're bragging. You never had two girlfriends. [LB817]

SENATOR HAAR: Well, I thought I did. [LB817]

SENATOR SCHEER: How are we going to do any fact checking on that? [LB817]

SENATOR HAAR: I'm not giving names. Truly, conflict of interest is a very interesting... [LB817]

SENATOR AVERY: As is having two girlfriends...I hear. [LB817]

SENATOR HAAR: Thank you very much. [LB817]

SENATOR AVERY: Thank you. That ends the hearing on LB817 and the hearings for today. Thank you very much for attending. [LB817]