

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

[LB881 LB914]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, January 28, 2016, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB881 and LB914. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Rick Kolowski; Brett Lindstrom; John McCollister; and David Schnoor. Senators absent: None.

SENATOR SCHILZ: Well, good afternoon, everyone, and welcome to the Natural Resources Committee. I'm Ken Schilz, represent District 47 from Ogallala. We have the rest of the committee here today with us. I think everybody is here. And we'd like to get you introduced to them, so we'll start over here to my far left.

SENATOR KOLOWSKI: Senator Rick Kolowski, District 31 in southwest Omaha. Thank you.

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

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

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

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

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

SENATOR HUGHES: Dan Hughes, District 44, in reverse order today: Red Willow, Perkins, Hitchcock, Hayes, Harlan, Gosper, Furnas, Frontier, Dundy, and Chase. (Laughter)

SENATOR SCHILZ: Thank you, Senator Hughes.

SENATOR HUGHES: My pleasure.

SENATOR SCHILZ: And also today we have Barb Koehlmoos who is the committee clerk and Laurie Lage who is the legal counsel for the committee. We also have a couple of pages today. Kellie Wasikowski is a sophomore at UNL. And Jake Kawamoto, I think, is a junior at UNL; and Jake is not here right now. But we enjoy having them here with us today. Today we have two

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

bills on the agenda--LB881 and LB914. And if you're planning on testifying, please pick up a green sheet that's on the table at either...stationed at the back of the room. And if you do not wish to testify, but would like your name entered into the official record as being present at the hearing, there's a form on the table that you can sign. And this will then become a part of the official record of the hearing. Please fill out the sign-in sheet before you testify. Print. And it's important to complete the form in its entirety. And when it's your turn to testify, please give the sign-in sheet to Barb, our committee clerk, and that will help us make a more accurate record. If you do not choose to testify, you can also submit comments in writing and have them read into the official record. And if you have handouts, please make sure you have at least 12 copies for the pages to hand out to the committee. If you don't have those, we'll try to work with you to get them. And when you come up to testify, please speak clearly into the microphone. Tell us your name and then spell both your first and last name. Please turn off your cell phones or anything else that would make any noise. And keep your conversations to a minimum; or if you need to, please take them to the hall. We don't allow any displays of support or opposition to a bill, vocal or otherwise. We do this so that the testifiers can get the respect that they deserve so that the committee can hear all their concerns. And we will go ahead and use the light system. I'm just kind of making it compulsory anymore and we'll go for five minutes. So there will be four minutes with the green light; one minute with the yellow light; and then when the red light comes on, we'd like you to sum things up and move on. So with that we will start up and I will turn the committee over to the Vice Chair, Senator Friesen.

SENATOR FRIESEN: Thank you, Chairman Schilz. [LB881]

SENATOR SCHILZ: Good afternoon, Senator Friesen and members of the Natural Resources Committee. My name is Ken Schilz, it's spelled K-e-n S-c-h-i-l-z, and I bring before you today LB881. LB881 would authorize performance contracting for energy-related projects for political subdivisions. Performance contracting provides cost recovery through utility and operation and maintenance savings. This is a contract that can provide for the analysis and design, acquisition, financing, installation, testing, operation, maintenance and repair of conservation measures. Performance contracting uses utility bill savings through energy and peak-demand reductions to pay for the improvements and provide long-term benefits. Often, payment is benchmarked and depends on how well the levels of performance are met over time based on measurement and verification. Government entities can use performance contracting to more accurately measure utility usage and implement self-funded programs that contractually guarantee results and allow the government entities to focus on their core operations instead of diverting funds to cover aging infrastructure. Following me will be representatives from different constituencies, as well as others that see the necessity of this...and utility of such contract and who can further expand on how performance contracts may help political subdivisions to accomplish their duties more effectively. Thank you. Is there any questions? [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR FRIESEN: Thank you, Senator Schilz. Are there any questions from the committee? Seeing none, are there any proponents who wish to testify? Welcome, Mr. Radcliffe. [LB881]

WALTER RADCLIFFE: Thank you, Senator Friesen, members of the Natural Resources Committee. My name is Walter Radcliffe, W-a-l-t-e-r R-a-d-c-l-i-f-f-e. I'm appearing before you today as a registered lobbyist on behalf of Siemens in support of LB881. Under existing Nebraska law, there is an allowance for and a provision for what's known as performance contracting, which Senator Schilz mentioned in his opening statement. Basically, what performance contracting is, is a contract and it's entered into between a private entity. Siemens is one who I happen to represent. Trane, there are a number of others that do the same type of thing. This bill is totally nonproprietary in nature. Johnson Controls is another. So a number of large companies out there that enter into these types of contracts. And what it basically is, is a contract in which an entity says to a political subdivision, look, if you do X...and this is usually in the area of water or HVAC, electricity, wastewater, those types of things...if you will do X, if you will pay us to do X, we will guarantee you a savings over what you are paying now. And in fact, we will pay that back to you. And that is a contractual relationship between the entity and the political subdivision. And what we have done in LB881 is...I hesitate to even use the word "expand." I think I would really say to state with some more specificity what exactly performance contracts can be about or what they can contain. The only expansion I would...I say would...perhaps be in the area of wastewater, which you can't do today. But nonetheless, it adds some specificity to the existing law. I think that it will definitely...and you'll hear later, will enhance the political subdivisions who today, let's be honest, are trying to do more with less. And this is the kind of tool that would, in fact, allow them to do more with less. But you'll hear from some representatives indicating that this is something they support. It is not obligatory in any, it's merely an option. Something that would be permissive. Existing law...there's one thing in existing law, and one of the witnesses is going to speak to this, and we considered it when we drafted LB881. It relates to an existing bond requirement that needs to be posted, not by the political subdivision, but by the contracting entity to ensure the performance of the contract. And quite honestly, the bonding requirement is an encumbrance to some contractual relationships, simply because, you know, the contract is a contract between the company and the political subdivision. Going out and getting a third-party guarantor many times is difficult. However, we talked about this...I say "we," my client and I, talked about this during the interim and during the drafting of this bill and my advise to them was--look, let's go in and get the language you need to perform the kind of contracts that you'd like to perform. Let's not go in and try to change existing laws that relates to bonding requirements. You get the authority, then go out and see how that expanded authority would impact your ability and how the bond would impact. And if it's negative, we can come back. So I know Mr. Schultze is going to talk to that. I agree with what he is saying. I just thought it might be a little too much to try in a short session with this particular subject. So with that, Senator, I'll be happy to attempt to answer any questions. [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR FRIESEN: Thank you, Mr. Radcliffe. Any questions from the committee? Senator McCollister. [LB881]

SENATOR McCOLLISTER: Thank you, Senator Friesen. Mr. Radcliffe, is this authority unique or is it a widespread practice throughout the country? [LB881]

WALTER RADCLIFFE: It's very widespread throughout the country. And as you know, in Nebraska, we're one of the two Dillon Rule states in which the Legislature has to expressly grant authority to a local political subdivision. And that's why we ask for this specificity. In other states, it's there unless it's retracted. [LB881]

SENATOR McCOLLISTER: And as you claim, the successful way to contract (inaudible). [LB881]

WALTER RADCLIFFE: It's been very successful, it's been...and there is some...there are examples of it today in Nebraska. And there are some...there's some now, there are some negotiations that are ongoing. It's really...there has been so much that's been done, Senator, if you think about it, in the last 20 or 30 years in energy. And you really have a lot of old and aging infrastructure out there. But the capital costs of replacing that to political subdivisions is very, very, very substantial. So this allows, for lack of a better word, a financing mechanism for that capital infusion and investment and guarantees a political subdivision lower costs going forward in operating that. [LB881]

SENATOR McCOLLISTER: So you're envisioning a lease purchase kind of thing? [LB881]

WALTER RADCLIFFE: Not...in the way you and I think of lease purchase, that would...I think that would be a good way to put it. But the reality of it is, no. I mean, the city would...depending on the contract, the political subdivision would own, or it could be a lease purchase, but does depend upon the nature of the contract. [LB881]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman. [LB881]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Johnson. [LB881]

SENATOR JOHNSON: Thank you, Senator Friesen. Thank you, Mr. Radcliffe. This contract then is between a manufacturer/supplier and the subdivision, the city... [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

WALTER RADCLIFFE: That's correct. And again, it probably could be a, you know, if you had more...it could be between joint entities if they wanted to, but, yes, that's the nature of the contract. [LB881]

SENATOR JOHNSON: So it would not involve a contract...I'll use Trane, you mentioned them, one of their appliances that guarantees that you'll have a 30 percent savings with their water heater to an individual, so this does not...this does not go down to that level. [LB881]

WALTER RADCLIFFE: No, that would not, no. [LB881]

SENATOR JOHNSON: Okay. Thank you. [LB881]

SENATOR FRIESEN: Thank you, Senator Johnson. Any other questions? I just have one, I guess, probably, and that's the type of contract, I mean, generally something like this if you were going to upgrade your HVAC system, it would be a contract dealing only probably immediately with that issue. It wouldn't be part of a large remodel project or would it be a stand alone type? [LB881]

WALTER RADCLIFFE: It would...you know, Senator, it would really depend. I mean, we're sitting in probably the biggest HVAC system that's going to be redone in the state of Nebraska, okay. Metro Community College has just embarked on a \$90 million construction project up there which would encompass many different forms of infrastructure; HVAC being only a part of it. So it really does depend upon the type of project. [LB881]

SENATOR FRIESEN: Okay. Seeing no more questions... [LB881]

WALTER RADCLIFFE: Thank you very much. [LB881]

SENATOR FRIESEN: Thank you, Mr. Radcliffe. Welcome. [LB881]

LYNN REX: Senator Friesen, thank you. Members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We appear today in strong support of this measure. It's a voluntary opportunity for municipalities to have another tool in the tool box, if you will, to try to figure out ways to be as cost effective as possible, whether it's wastewater, whether it's some other type of energy-related effort. And just to underscore what Mr. Radcliffe said, Nebraska is a Dillon's Rule state. The Nebraska Supreme Court, since our inception as a state, has ruled that municipalities in the state of Nebraska only have those powers which are expressly stated in state law, implied or necessary to effectuate corporate powers. As a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

consequence, this makes it very clear that municipalities have certain authorities. And in answer to, perhaps, some of the questions about how would those contracts be, that's going to be negotiated...would be negotiated on a local level. We already have authority to do certain types of these contracts already. We think this, again, is just an option to allow municipalities the opportunity to save as much money as possible and do everything as efficiently as possible. With that I'd be happy to respond to any questions that you might have. [LB881]

SENATOR FRIESEN: Thank you. Any questions from the committee? We have one here. Senator Johnson. [LB881]

SENATOR JOHNSON: Try not to stretch this out. You know I'm former mayor of Wahoo, and what we put on was monitors on all the air conditioner units in order to control peak loads. Not sure of the exact terminology, but it would monitor and it might hold your air conditioner off for 30 seconds longer, but you never would probably notice it. Is that a type of a thing that would be eligible for this? [LB881]

LYNN REX: Well, frankly, what we're looking at here are the types of things that municipalities...if you're talking about for the city's systems itself, yes. [LB881]

SENATOR JOHNSON: Right. [LB881]

LYNN REX: As Mr. Radcliffe said, in terms of individual homeowners, we don't see this as being all that helpful. You might be able to interpret it to allow for that. But predominantly what we're looking at is to be...for the big picture, some significant energy savings. When in fact, the municipality can do these types of contracts on the type of equipment that municipalities themselves use in terms of providing that kind of delivery to local citizens and ratepayers. [LB881]

SENATOR JOHNSON: Well, the monitors they put on at the end of a season, it would help... [LB881]

LYNN REX: Are they owned...I guess my question would be, are they owned by the city? If the answer is yes... [LB881]

SENATOR JOHNSON: They are owned by the city... [LB881]

LYNN REX: Yes. Then it would be...yes. [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR JOHNSON: ...because it helps the city stay out of the peak, which indirectly and directly eventually lowers rates for the consumer... [LB881]

LYNN REX: Yes. Yes. [LB881]

SENATOR JOHNSON: ...on a house-by-house basis. This could be part if it then maybe. Okay. [LB881]

LYNN REX: Yes. As opposed to what I thought you were asking which was I as an individual homeowner... [LB881]

SENATOR JOHNSON: No. No. [LB881]

LYNN REX: ...do it. And the answer would be no on that. But, yes, if the city is owning it. Yes. [LB881]

SENATOR JOHNSON: Okay. Thank you. [LB881]

LYNN REX: Thank you. [LB881]

SENATOR FRIESEN: Any other questions from the committee? Seeing none, thank you, Ms. Rex. [LB881]

LYNN REX: Thank you very much. [LB881]

SENATOR FRIESEN: Welcome. [LB881]

TYLER GLESNE: (Exhibit 1) Hello. My name is Tyler Glesne, T-y-l-e-r G-l-e-s-n-e. I'm a Nebraska engineer for Ameresco. I'm also the current chapter president of our local chapter of ASHRAE, the American Society for Heating, Refrigerating, and Air-conditioning Engineers. I should note, my statements, opinions, I didn't have time to flesh them through ASHRAE, so they'll just be my own for the purpose of this testimony. I have a handout there. I put it as support of this bill only because I believe it replaces LB117, which is hopefully dead and gone. That would have opened the floodgates to anyone to form this contract...or perform these services and probably would have been very detrimental. But we do have, and what I'm passing out in the handout is some...hopefully some clarifications and maybe some additions to this bill. I'll try to go through them quick. The first few I skipped; they're more about wording and clarification

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

than anything else. I'll skip down to page 3, lines 1 through 5...excuse me, page 2, lines 20 through 38. Just know that the way it's currently stated "for anything that enhances value." That could mean anything. The example I give is they purchase a riding lawn mower. That saves maintenance from the old push-behind mower they have. We have no issue with this, we just want to be clear that that's what it is currently stating. And if the intent is to only reduce energy or water consumption, we listed a couple of ways that could be directly stated. And I do need to correct Mr. Radcliffe. The agreement is not between the owner and the manufacturer. The agreement is between an owner and a performance contract provider. And that's a very important clarification to make because my last point on here, page 3, lines 8 through 9, it believe I...it currently states: Energy service company means a person or business experienced in the implementation and installation of energy conservation measures. That is very vague. Anyone can claim to be an energy service company. We propose that they actually go through an accreditation, one that's already existing, one that's been in existence for 32 years, NAESCO, the National Association of Energy Service Companies. That would not exclude anyone currently doing work including the one Mr. Radcliffe mentioned, Trane, Siemens, Johnson, they're all on the list. Everyone I know of that is practicing energy service contracting now is also on that list. That assures that the process stays morally ethical. To become accreditation, you have to have a certain amount of experience; you have to have a certain background. You have to have a whole list of assets I actually listed for you, I won't go through now. The reason that's important is that these are long-term contracts, 8, 15, 20 years. It's very easy for a company to come in, say they're an energy contractor, do the project, collect their money and then when they come for the guaranteed savings, because they did not correct, correctly, excuse me...they could be gone. They could declare bankruptcy; start a new company, and register all over again doing the same thing. It's a way to keep the less scrupulous contractors out of the business. And I don't believe it excludes anyone that currently does it, nor would it exclude anyone that wants to do it in the future. It's a simple accreditation program. If you have any questions on that, I can answer that. The only thing not on here, I also recommended to add is the engineer have certain certifications that qualify them as an energy service provider. I've been doing it most of my years. The two I recommended are CEM, Certified Energy Manager by AEE. That's been an accreditation since 1981. The DOE is using it. FEMP, Federal Energy Management Program requires that as well. Another newer one, BEAP by ASHRAE, the Building Energy Assessment Professional, that's pretty much qualifying someone to do audit and assessing energy use; also experience based. So we hope you'll add these recommendations as we outlined here to keep the process protected for the companies that choose to use them, because I've been to many of your counties and talked to you already. I'll accept any questions. [LB881]

SENATOR FRIESEN: Thank you, Mr. Glesne. Any questions from the committee? Senator McCollister. [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR McCOLLISTER: Thank you for your testimony. And thank you, Senator Friesen. Is this kind of arrangement, these kinds of contracts unique to your kind of business? Or is that something that could be extended to any other kind of contract a governmental subdivision would have with a contractor? What's the scope of this bill? [LB881]

TYLER GLESNE: Well, AMERESCO is not a manufacturer by any means. We specifically do performance contracting. We only have about 900 employees coast to coast. But we've done it in about every state. We do that and we do solar as a performance contractor. So it's all we do. As far as what the scope can be for the contract, it could be an addition to major remodels, but it's mostly for existing buildings. Does that answer your question? [LB881]

SENATOR McCOLLISTER: Yeah. This seems like a structure that could be utilized in other ways, not just for rehabs or for heating and air conditioning kinds of contracts, but I'm just trying to figure out the degree to which this kind of contracting could apply. [LB881]

TYLER GLESNE: Yeah, as it is stated now, you could open it up to anything that saves additional money either directly or indirectly through things like maintenance savings. It absolutely can. Actually, as the bill is stated now, it actually applies to new or existing buildings. Now how you guarantee savings on a new building is not defined. And I think that's dangerous as well. You're, essentially, comparing the new building to nothing. You could claim whatever you want. There are baselines that could be calculated for every type of typical building. ASHRAE has a whole guideline on the minimum qualifications for a building. You could use that; that would be setting the bar low, but that would be the best defined version of it. [LB881]

SENATOR McCOLLISTER: So are the elements defined inside of a performance contract? What things must occur and how people get paid. Is that...is that defined in any particular way? [LB881]

TYLER GLESNE: Not in any particular way we could define. It defines that the savings must be guaranteed which is very important, which means that they don't make the savings, the performance contracted company has to cut that entity a check. Which is, again, why the accreditation is important to make sure that company is stable enough to do it. There's also...oh, you'll have to forgive me...I'll skip that for now. I'm sorry, go ahead with the question you stated. [LB881]

SENATOR McCOLLISTER: I think we've gone far enough. Thank you for your answers. [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

TYLER GLESNE: Yes, sir. I'm an engineer, not a lobbyist. [LB881]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Seeing none, thank you, Mr. Glesne. [LB881]

TYLER GLESNE: Thank you. [LB881]

REX SCHULTZE: Good afternoon, Senators. My name is Rex Schultze, R-e-x S-c-h-u-l-t-z-e. I'm an attorney from Lincoln, Nebraska. I'm here, really, appearing on my own behalf, but also as legal counsel to many, many school districts across the state from South Sioux City to Scottsbluff; from schools that have a hundred students all the way up to 31,000 students, and have worked with energy financing contracts under the energy financing contract statute over the last 20 years in many different capacities for many different types of projects. As part of my practice, I'm called upon to assist school districts with legal issues and meeting statutory requirements including the requirements involved with the energy financing contracts. Energy financing contracts for school districts for the most part have limited themselves to HVAC systems, lighting systems, windows, those kinds of things that affect, really, the basic environment in which students and teachers are in every day, you know, heating, cooling, light, air, water. You just kind of think of it from that point of view. What is the environment they're in? We have high-quality public schools in the state. And these schools have facilities, and I think it was mentioned earlier, of varying ages and built in varying times. I was in a school district last week that's 95 years...school building that is 95 years old and it's still operational. And in fact, talked to the architect who works with that school district and they're just about to do a HVAC project in a 95-year-old building. I will assure you that the mechanical/electrical system in that building has probably been done three or four times since the advent of that building. The energy financing contract statutory scheme is one that has allowed school districts in some circumstances to make improvements to their heating, cooling, light, windows, systems. And it's been fairly effective in doing that. You have before you LB881 which would expand the energy financing concept in the statute to water usage and disposal. It will enable schools to update and improve water system infrastructure of their schools while achieving energy savings by including water conservation, through systems that reduce wastewater and energy utility cost, water consumption, and the intended cost savings. And importantly, it will reduce overall operating and capital costs related to water use of all kinds. The adding of the water system to the energy financing statute was, in my opinion, be particularly timely as we are seeing in the news the cost to a community and the citizens of that community for failing to maintain and improve such basic needs such as water lines and supply systems. It is important to note...and I think this goes to one of the questions that was asked earlier that for school districts, the statute dovetails with statutes to allow the school district to finance the purchase of the equipment, software, and systems required to achieve the energy efficiency and update building systems effective in the learning environment for our students in Section 79-10,105 which provides that a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

school may enter into a lease purchase agreement for such buildings and equipment as the board determines necessary and specifically allows such agreements entered into as part of the energy financing contract to extend for up to 30 years. This then allows the school district to amortize those costs and pay for those costs out of their general fund through that means. Now, LB881 is a good piece of legislation. There are some additional modifications, much like the gentleman who spoke previously, that we would like to see. We have found that the guaranteed energy savings have been difficult to quantify. And as such, procuring the required guarantee bond has been difficult to obtain due to the variable rates for the cost of energy; and now, possibly, water resources that can occur over the lifetime of the energy financing contract. Further, the statute does not specify whether the energy savings are to be calculated on a year-to-year basis or over the entire term of the financing contract. You can imagine if I have a 20-year contract trying to quantify what the costs of energy or what the cost of water are going to be over a 20-year period can be difficult. The result is that school districts have been unable to meet the statutory requirements to access this valuable opportunity to improve their buildings. We feel that we are...there are already sufficient protections in the statute to assure that energy savings will be achieved through the independent engineer review, an approval process prior to entering into the energy financing contract. As such, we would encourage the committee to consider an amendment to LB881 to eliminate the guarantee bond requirements, or at a minimum, to modify the guarantee bond provisions to make the statute more viable while assuring the energy cost savings component of the statute. One thing I would note is if you go in and look at the statute, there are certain requirements to get an energy financing contract done. One is that an RFP has to be put out and it has to be put out to at least three vendors. And most of the vendors, or at least all the vendors that I've worked with all meet the qualifications that the engineer who spoke previously would have. And so it's a pretty detailed process. And I can tell you that the RFPs that go out require very specific information to assure that the energy financing contract will provide the cost savings that Senator Johnson was talking about. Which, by the way, the things that you were talking about are some of the very things that these contract do which is you have software and controls, that's what you're really kind of buying along with the equipment to ensure that you have the cost savings and you're efficiently operating your building. [LB881]

SENATOR FRIESEN: Excuse me. Are we wrapping up? [LB881]

REX SCHULTZE: Yeah, I'm done. Sorry. I saw the red light, I just...I'm a lawyer, I just keep talking. (Laughter) [LB881]

SENATOR FRIESEN: Thank you, Mr. Schultze. [LB881]

REX SCHULTZE: Thank you. [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR FRIESEN: Senator Schnoor. Questions. Stay sitting please, we have some questions for you. [LB881]

REX SCHULTZE: Oh, sorry. [LB881]

SENATOR FRIESEN: Senator Schnoor. [LB881]

SENATOR SCHNOOR: You ol' buddy. [LB881]

REX SCHULTZE: Yeah. Hi, Senator Schnoor. How's it going? [LB881]

SENATOR SCHNOOR: Good. Rex, is performance-based contracting used much in the school systems? [LB881]

REX SCHULTZE: Yes. [LB881]

SENATOR FRIESEN: It is? Could you give us an example, please? [LB881]

REX SCHULTZE: Well, I could think of several districts: Grand Island Northwest, North Bend, Kearney Public Schools has done a lot of performance contracting. All of those are HVAC-kind of projects; lighting, windows. And they're projects that are done, first of all, they can either be paid for out of the general fund, if they do it under a lease purchase, or out of their building fund, which gives schools some flexibility for source of funding. But by and large, Senator, they are...the indoor air quality type of projects. Now sometimes they're financed through the qualified capital purpose fund which is a 5.2 cent levy that schools have available to them. But most of the energy financing contracts are done under the lease purchase process. And usually about a ten-year lease purchase to help pay for the equipment over that period of time. And it helps them quantify the energy savings, at least...as best as they can. But yeah, I would say that I probably worked on 50 projects over the last ten years where we did lease purchase. [LB881]

SENATOR SCHNOOR: Okay. All right, thank you. [LB881]

REX SCHULTZE: You're welcome. [LB881]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator Hughes. [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR HUGHES: Thank you, Vice Chairman Friesen. Thank you for coming in today, Mr. Schultze. Just a couple of questions about the financing, nuts and bolts of this. Who is actually carrying the paper on this? [LB881]

REX SCHULTZE: Usually the paper is going to get carried by a fiscal agent, sometimes Ameritas or D.A. Davidson will come in and do the financing and carry the paper... [LB881]

SENATOR HUGHES: Okay. [LB881]

REX SCHULTZE: ...for those projects. They'll work with the school district on the financing. Sometimes the paper is carried by the energy financing company itself like Trane or Siemens or Johnson Controls or Honeywell. [LB881]

SENATOR HUGHES: So it wouldn't necessarily have to be a large company that could come in and bid on a project. [LB881]

REX SCHULTZE: No, sir. [LB881]

SENATOR HUGHES: But the secondary (inaudible). [LB881]

REX SCHULTZE: No, sir. I haven't seen many electrical contractors or mechanical contractors come in on performance contracting RFPs just because it's, frankly, they have enough work going out and getting general contracts or being subs for major projects. [LB881]

SENATOR HUGHES: What are the normal interest rates on that? Are they fairly low or commercial rates? [LB881]

REX SCHULTZE: They're commercial rates. They're competitive rates. They go with...just like you would go out and borrow money in any other mechanism. Although, you know, you're doing it over a ten-year period or a five-year period. [LB881]

SENATOR HUGHES: Okay. Then my other question was on the bonding requirement. Would you expand on that a little bit of why we need to eliminate that. [LB881]

REX SCHULTZE: Well, here's the difficulty. Whenever we do these projects, school districts, in fact, any political subdivision is required to get a payment bond and a performance bond. And they talk in specificity about a performance bond. Obviously, a payment bond is to pay any subs

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

that don't get paid and a performance bond guarantees that the contractor will complete the work for the price which was contracted. The guarantee bond is different in that...and by the way, you buy those from a surety bond company like Universal Surety or Gene Lilly Surety Bonds that that's who I primarily work with. But those surety companies want to insure a sure thing, a fixed dollar amount. And the problem is, is the guaranteed bond or the guarantee bond under this statute is kind of a amorphous number, you never know exactly what it is. What am I guaranteeing? And we've had great difficulty and have had projects where we couldn't go forward with an energy financing contract but we simply couldn't get the bonding. We couldn't get...the company could not get the bonding to satisfy, frankly, me. [LB881]

SENATOR HUGHES: So we're talking specifically about a guarantee bond. [LB881]

REX SCHULTZE: A guarantee bond... [LB881]

SENATOR HUGHES: For payment or for... [LB881]

REX SCHULTZE: Correct. It's not a payment performance bond, it's a guarantee bond. You're guaranteeing the savings that will be achieved over a period of time. [LB881]

SENATOR HUGHES: So you as the attorney for the school...I mean... [LB881]

REX SCHULTZE: I require them to provide me the guarantee bond. And if they can't provide me a sufficient guarantee bond, we're not going to do the project. [LB881]

SENATOR HUGHES: So you are the final say on that? [LB881]

REX SCHULTZE: Well, I don't know. My clients don't always do what I tell them to do, but... (laughter). [LB881]

SENATOR HUGHES: Okay. Thank you for clearing that up. Thank you. [LB881]

SENATOR FRIESEN: Thank you, Senator Hughes. Senator Kolowski. [LB881]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Sir, thank you for your testimony today. Working with schools, many times the schools have some age on them. [LB881]

REX SCHULTZE: Yes, sir. [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR KOLOWSKI: When you're putting a new addition on; you're mixing a combination of units all over the building. I know with our own home, 30 years in that home and we're probably on our fourth wall panel. They get technologically better and do everything from start your coffee in the morning to start your car almost. It's just ridiculous how many things you can do with that. But what difficulties do you have going into a project like that and working on those kind of limitations sometimes? [LB881]

REX SCHULTZE: Well, first of all, I'm not an engineer. But there's one right over here. You have all kinds of difficulties and you have to decide--are we going to isolate one system...the older system and the older building or do we...in the newer part of the building, do I have an existing system that's okay and I don't need to replace the boiler or I need to replace the system in the older building. And sometimes you want to dovetail those. What happens a lot in energy financing contracts is they come in and maybe they aren't going to replace the boiler or they aren't going to replace the system, but they're going to come in with the software system that will allow those to operate more efficiently. Kind of like what Senator Johnson was talking about, that's really kind of a software component. So that can be part and parcel of your energy financing contracts. At least that's been my experience. Most of the time it's going to involve, in the HVAC area, it's going to involve the actual replacement of equipment and then trying to dovetail that equipment in. We do a lot of work in our schools with adding to existing buildings. So your example is one that we use frequently. And these companies are experts at this. Now you can go out and hire an architect and go out and do a design to build approach. Really what energy financing contracts are, they're more of a design build kind of construction delivery, if you want to use construction and delivery as the concept, and that you're hiring a firm to not only provide you the equipment, but to provide you the engineering, which I think this gentleman's firm does, do the engineering and provide the equipment or install the equipment, specify the equipment, service the equipment. Now one of the components of energy financing contracts sometimes involves a continuing contract to continue to service over the term of the contract and sometimes it doesn't. I generally try to work with school districts to have a defined contract which provides for the installation of the equipment and the operation of the equipment and then separate the service part of it just because I want to have the flexibility to hire anybody I want to. [LB881]

SENATOR KOLOWSKI: Thank you very much. [LB881]

REX SCHULTZE: You're welcome. [LB881]

SENATOR FRIESEN: Thank you, Senator Kolowski. Any other questions? I have just one. I guess...when they do bonds like this, do they fall underneath the lid when they pay them off or are they outside? [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

REX SCHULTZE: Yeah, they're under the lid. Well, first of all, these aren't bonds. Okay, let's not...we talked about payment bond and a performance bond. That's a...don't think school bond...financial bond, that's a...that's...the contractor has to provide that to us. It's their cost, although they build it into their contract. [LB881]

SENATOR FRIESEN: Gotcha. [LB881]

REX SCHULTZE: No, the answer to this is this is paid for under the lid, it would be under the \$1.05 lid. What I mentioned was is you can...because it's a lease purchase under Rule 2, under the Nebraska Department of Education, Rule 2, you may pay for a lease purchase out of your general fund and not out of your building fund. Or you can pay for it out of your building fund. It's a matter of source of funds, but all those funds are within your lid. [LB881]

SENATOR FRIESEN: Wherever you'd like to take it. [LB881]

REX SCHULTZE: Correct. [LB881]

SENATOR FRIESEN: Thank you, Mr. Schultze. [LB881]

REX SCHULTZE: Thank you. [LB881]

SENATOR FRIESEN: Any other proponents who wish to testify? Seeing none, are there any opponents who wish to testify? Are there any people who wish to testify in a neutral capacity? Senator Schilz, would you like to close? [LB881]

SENATOR SCHILZ: Thank you. Just real quick, I first of all, would like to thank everybody that came in today to testify; we always appreciate it. And I think if there's some of those changes that possibly need to be made, we'll be talking to everybody to see how that is and then bring it back to everyone. But I think that as you look at some of the issues that we're facing this year, I know I just had a meeting with Dr. Green from the university talking about the \$400 million worth of maintenance and deferred maintenance that has to be taken care of at the university. A tool like this could be very crucial in making that possible, because I know this body doesn't have \$400 million to go throw at that kind of stuff. So with that, we'll continue the conversation, keep it going, and report back when we think we're ready to go. [LB881]

SENATOR FRIESEN: Thank you, Senator Schilz. Senator Kolowski. [LB881]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR KOLOWSKI: Senator, thank you for bringing this. I think it's really important and it's a missing piece that we sometimes forget about, no doubt with our own homes or automobiles or anything else, the upkeep and the maintenance is extremely critical to get to where we want to be with the longevity of that particular issue, whatever it might be. These are not sexy issues, especially when you're dealing with the public. You can build a new high school for \$60 million, but then they forget all the maintenance and the upkeep and the continued things you have to do to that to keep it where it is or make it better as you put additions on. I already put three additions on a high school in my life. They are a lot of work, but they are really great when they're done. But then there's all the hidden things behind the scenes that you never think of. And I hope with the university's list that we have and other directions we might go, something like this bill would be greatly beneficial for everyone. Thank you. [LB881]

SENATOR SCHILZ: Thank you. And I think that's right. And I think also as you think about it, especially when you talk about maintenance and stuff like that, if you've got someone that is kind of...got something on the line, they're going to make sure to take care of that equipment, probably better than the folks that are putting it in place. So, I think you're exactly right. So thank you. [LB881]

SENATOR FRIESEN: Thank you, Senator Kolowski. Any other questions? Thank you, Senator Schilz. We'll close the hearing on LB881. And now we'll introduce LB914. [LB881]

SENATOR SCHILZ: Thank you, Senator Friesen, members of the Natural Resources Committee. Once again, my name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I introduce today LB914. LB914 seeks to establish compensation for the members of the Power Review Board chosen to represent Nebraska on the Southwest Power Pool Regional State Committee. This compensation will be set at \$250 per day engaged in the performance of their duties. The total amount compensated will be capped at \$20,000 per year. If the representative member is unable to continue the additional service, any of the additional compensation earned shall not be calculated against the statutory yearly compensation limit of \$6,000 for Power Review Board members. If another Power Review Board member serves as a proxy for the Southwest Power Pool representative, they shall receive the special compensation and not have it calculated against the yearly compensation limit. And the aggregate total of services shall not exceed \$25,000 in any one year. And I know Tim Texel is here. The Power Review Board did bring this bill to me to have introduced and he can explain the reasons. But I know that those folks that are representing Nebraska on that are doing much more work than the normal workload of the Power Review Board. And Mr. Texel can better tell you what that is and how that works. [LB914]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR FRIESEN: Thank you, Senator Schilz. Any questions from the committee? Senator Schnoor. [LB914]

SENATOR SCHNOOR: Are they...I'm reading here, Senator Schilz, they get currently \$60 a day? [LB914]

SENATOR SCHILZ: That's correct, yes. [LB914]

SENATOR SCHNOOR: Okay. That was the only question I have. Thank you. [LB914]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator McCollister. [LB914]

SENATOR MCCOLLISTER: Thank you, Senator Friesen. It's limited to one board member serving on the Power Review Board? [LB914]

SENATOR SCHILZ: The board member or their proxy, yes. [LB914]

SENATOR MCCOLLISTER: Okay, thank you. [LB914]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Seeing none, thank you, Senator Schilz. Any proponents who wish to testify? Welcome. [LB914]

STEVE LICHTER: Good afternoon, Senator Friesen. My name is Steve Lichter, S-t-e-v-e L-i-c-h-t-e-r, and I want to apologize, I'm also an engineer so you have to listen to two of us today. (Laughter) I'm currently the chairman of the Nebraska Power Review Board and for the past two years I've been the Southwest Power Pool Regional State Committee member for Nebraska. I stepped down from that role as of January 1 this year, partly to help with this legislation. I'd like to thank Senator Schilz for sponsoring this legislation. And I want to thank you for your time today. Over the past two years, I represented the state as the RSC member. Prior to that, Mike Siedschlag was the representative, dating back to 2009, when Nebraska's three largest utilities joined the SPP. During that time, the SPP has approved over \$8 billion worth of transmission. The cost of that transmission is shared by all the utilities in Nebraska, primarily by the three largest: NPPD, OPPD, and LES. So the work that we're doing at the Regional State Committee is extremely important. Last year I had the privilege of testifying in North Dakota about the challenges that they were facing joining SPP; how much time was going to be required from their board members; how much time was going to be required by their staff in order to manage the workload of billions and billions of dollars of transmission. As I was preparing that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

testimony, I started to understand how much time I was spending on the RSC. I spoke with Mike Siedschlag and he agreed with the estimates that I had put together. And it was at that point that I determined that I needed to find a solution to help this. The state has been fortunate that both Mike and I with our positions were able to put the time in to support the state of Nebraska in this. But it's not necessarily the way that we should be thinking about managing billions of dollars worth of transmission across the region with somebody that's getting compensated at \$60 a day per diem. It's my belief that this role is too important and the potential impact is too great. Speaking for myself, I did not join or volunteer to be on the PRB for compensation, as much as you didn't do this to be state senators for the compensation. But I also know that volunteerism isn't necessarily the right way to fill this critical role. So I would ask that you consider the supporting this bill, especially considering that we're not done building transmission. I know we had legislation here yesterday and a lot of testimony, there is still a lot of generation that has to be built. There's still a lot of transmission that has to be built to support that generation not only within the state of Nebraska, but within the footprint of SPP and across the U.S. I think we have an obligation to ensure that we're not creating a hardship for Nebraska ratepayers or for the RSC member that's supporting the state of Nebraska in the time that they're putting in. Speaking for myself, simply on the Power Review Board, we spend about one day per month, actually, in hearings. And we spend about another day preparing for that. My time on the RSC, I was spending on average five to six days a month, peaking out about 8 to 9 days per month. What we're asking for is that for that single individual that is representing the state on the RSC that the per diem would be increased and that the cap would be increased to allow us to give them some compensation for the time and energy that they're spending with that business. So with that I would ask that you support this legislation. And I'll answer any questions you might have. [LB914]

SENATOR FRIESEN: Thank you, Mr. Lichter. Questions from the committee? Senator McCollister. [LB914]

SENATOR MCCOLLISTER: Thank you, Senator Friesen. I certainly don't object to this bill. I'm just a little bit curious about the governance structure of the SPP. Can you just take a minute and describe how many members there are on that board and how you operate? [LB914]

STEVE LICHTER: Sure. The Southwest Power Pool is a member-driven organization. I don't know the exact number, but I believe there's between 80 and 90 members. Not all of them are transmission owners. Some of them are generation owners, some of them are third-party entities. But there's about 80 or 90 members on the members committee. The Regional State Committee is composed of Public Service Commission members or Power Review Board members from each of the states that have significant transmission within the Southwest Power Pool. Governing over all of that is a board of directors for Southwest Power Pool. Southwest Power Pool is a regional transmission organization. It's a tax-exempt organization. I believe they have eight to ten

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

board members. They make the final decisions as far as approval of the projects and the transmission that's being built. The regional state committee...and this was actually went up to FERC, the Regional State Committee actually provides oversight on how the cost allocation works throughout the entire Southwest Power Pool. So our role is kind of a check and a balance over what the board of directors is doing for the Southwest Power Pool. We have the ability to file our own filings at FERC. If we oppose transmission, if we oppose projects, if we oppose the way the cost allocation is actually being managed we can actually file opposition at FERC. Unfortunately, the people that pay that bill are the members of Southwest Power Pool. So it's not unlike the way the Power Review Board works, is it is essentially a cash-funded agency. Our utilities in Nebraska cash fund the Power Review Board. Similarly, at Southwest Power Pool, all the members cash fund the RSC. [LB914]

SENATOR McCOLLISTER: Fascinating. And thank you, Mr. Lichter. If there's an organizational chart that's available, I'd love to see it. [LB914]

STEVE LICHTER: I'll see what we can do. [LB914]

SENATOR McCOLLISTER: Thank you. [LB914]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Hughes. [LB914]

SENATOR HUGHES: Yeah, thank you for coming in today. Senator McCollister kind of asked my question, but the RSC is the Regional State Committee? [LB914]

STEVE LICHTER: Yes, sir. [LB914]

SENATOR HUGHES: And that's what you serve on. [LB914]

STEVE LICHTER: That's correct. [LB914]

SENATOR HUGHES: How many...what is the makeup of the state? I mean, is that just Nebraska...or Nebraska and Kansas....or... [LB914]

STEVE LICHTER: So the Southwest Power Pool just recently expanded. [LB914]

SENATOR HUGHES: Right. [LB914]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

STEVE LICHTER: So prior to that expansion, it was Nebraska, Kansas, Oklahoma, Texas, Arkansas, Missouri... [LB914]

SENATOR HUGHES: So all of the Southwest Power Pool is the region (inaudible). [LB914]

STEVE LICHTER: Yeah. Yeah. So the RSC was...I think there were seven members. Now we have South Dakota and North Dakota, Iowa. [LB914]

SENATOR HUGHES: So one per state? [LB914]

STEVE LICHTER: One per state, that's correct. [LB914]

SENATOR HUGHES: Okay. And then...but the Southwest Power Pool is made up of all the transmission generation parties that are within the region? [LB914]

STEVE LICHTER: That's correct. [LB914]

SENATOR HUGHES: But then the board of directors, how is that determined? [LB914]

STEVE LICHTER: So the board of directors currently is the CEO of SPP, the president of SPP and then independent board members that are elected. I don't know exactly what process they go through. I know they just... [LB914]

SENATOR HUGHES: But out of the 80 or 90 members? [LB914]

STEVE LICHTER: I believe the members vote. [LB914]

SENATOR HUGHES: Okay. Yeah, I would be interested in seeing the flow chart of that organization. [LB914]

STEVE LICHTER: Yes, sir. [LB914]

SENATOR HUGHES: Thank you. [LB914]

SENATOR FRIESEN: Thank you, Senator Hughes. Senator Kolowski. [LB914]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR KOLOWSKI: Thank you, Senator Friesen. Thank you for your testimony. Mike Siedschlag you mentioned you work with him. He's retiring now or about to retire? Is he still involved in this in the same way or not at this time? [LB914]

STEVE LICHTER: Mike has stayed involved kind of on a volunteer basis himself. I believe he was actually...had applied for board positions with SPP so...and I don't know what the status of that is, but he's trying to stay involved. [LB914]

SENATOR KOLOWSKI: Excellent. Thank you. [LB914]

STEVE LICHTER: You're welcome. [LB914]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator Schnoor. [LB914]

SENATOR SCHNOOR: What are the other levels of compensation for other members from other states? [LB914]

STEVE LICHTER: So, I don't know the exact dollar amounts, but the most of the other...this has been a challenge that we've struggled with in Nebraska, as most of the other state members are full-time positions. [LB914]

SENATOR SCHNOOR: Wow. [LB914]

STEVE LICHTER: They have staffs of anywhere between 5 and 10 or 15 people that are dedicated to electricity. The Power Review Board, we have Tim Texel is our general counsel and executive director. And we have a paralegal and an office manager. We supplement that with a third-party consultant that provides us technical support with some of the transmission issues that are out there. Normally when we attend meetings from Nebraska...or as Nebraska, we have one or two people attending those meetings. Some of the other states will have four or five people there just because they have that ability. We've actually done several things in the last couple of years to raise the bar for Nebraska. And Mike Siedschlag actually kind of set that. Mike was the...Mike was one of the only RSC votes that actually voted no for a package of projects. And when he did that, the SPP actually came to him and said--we want you now to chair that role. So what we've tried to do over the last several years, as you can imagine, these committees, the members of these committees, especially on the RSC, it's like a revolving door. So the more history, the more experience, the more continuity you have as an entity, the more you can push an agenda. So in the last three months, we've renewed our contract with our technical consultant. That gives us the ability for the next five years to maintain that consistency.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

He's actually become a very respected member of the cost allocation working group which supports the Regional State Committee. Part of the reason I stepped down as the RSC member was because I only have one more year left in my term on the Power Review Board. And I'm term limited. This gives me a year to overlap with the new RSC. I can still help with the transition, help bring that person up to speed faster so that we can maintain continuity. It allows us to put this person into a leadership role on the RSC which would then allow us to drive the agenda for the RSC. [LB914]

SENATOR SCHNOOR: Okay, thank you. [LB914]

STEVE LICHTER: You're welcome. [LB914]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator Johnson. [LB914]

SENATOR JOHNSON: Thank you. Are any of the other expenses of a board member covered-- mileage, and out-of-pocket expenses? Or do they take this out of the \$250? [LB914]

STEVE LICHTER: So the travel expenses are reimbursed, actually, by the SPP's RSC. [LB914]

SENATOR JOHNSON: Okay. So those are covered. [LB914]

STEVE LICHTER: Yes, sir. [LB914]

SENATOR JOHNSON: Thank you. [LB914]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator Kolowski. [LB914]

SENATOR KOLOWSKI: Thank you, sir. The way you described the number of people working in Nebraska, are we in a deficit then when you think of the demand for coordination and the cooperation and the breadth and depth of issues and it seems like we're less. [LB914]

STEVE LICHTER: My opinion? [LB914]

SENATOR KOLOWSKI: Yes, please. [LB914]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

STEVE LICHTER: That's part of the reason why I've tried to do what I've done in the last several months with renewing the contract with our consultant, with doing the transition. The advantage that I feel that we have...I'm an engineer, the gentleman that is replacing me, Dennis Grennan, is an engineer, has a history with the NPPD, brings a tremendous amount of background with transmission, generation, things like that. And our technical consultant has an extremely high level of knowledge. Even though there's only two of us, and no offense to the attorneys in the room, but when we're talking about transmission, we understand the technical side and we out-work the others. So I would say no, we do a very good job, sir. [LB914]

SENATOR KOLOWSKI: Sharks are hungry, be careful. (Laughter) [LB914]

STEVE LICHTER: Well, I... [LB914]

SENATOR KOLOWSKI: I wouldn't want you to be short and with the "inclusivity" and the "exclusivity" of all the things within power that we keep learning about...just from something yesterday with wind power again, the demands upon all the states and the sharing of information, the grids, and making things move and getting it done correctly is extremely important to us is huge. [LB914]

STEVE LICHTER: Um-hum. [LB914]

SENATOR JOHNSON: And I wouldn't want to see us behind the eightball on number of people and coordination of our office to get the things done that we need to get done when there's probably a ton of activity going on within the power pool itself on a daily basis. So I hope we're keeping up and that you'll be asking for whatever you need in the future. [LB914]

STEVE LICHTER: Yes, sir. This, I think, is a good first step. One of the challenges or one of the question that came up from industry as we approach them with this was--what happens if the...if we can't find someone on the Power Review Board that is able to commit the amount of time? That's a challenge that we haven't addressed yet. But that's one of the things that I hope to try and address in the next year. [LB914]

SENATOR KOLOWSKI: Thank you. [LB914]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator McCollister. [LB914]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

SENATOR McCOLLISTER: Mr. Lichter, thank you again. Would you say there's a direct relationship between the quality of representation we bring to the body and the kinds of resources that come back to Nebraska in transmission lines and that kind of thing? [LB914]

STEVE LICHTER: I would say that there's a direct correlation between...not necessarily what we bring back to Nebraska, but what's the right thing to do for the ratepayers in Nebraska. Because not everything comes back and has a direct impact on Nebraska. But understanding whether or not a transmission line should be built in northwest Texas, southeast New Mexico is a very critical part of what the resources from Nebraska have to understand. What we don't...one of the things that I feel that the RSC has to do and is tasked with is making sure that we're not over-building transmission. One of the challenges that we've got right now with the state of the oil industry is the transmission projects that have been planned for the expansion in the Bakkan and down in Texas, you know, is asking the questions about whether or not those projects should be put on hold or delayed or if the notice to construct should be held up a little bit until we understand what that market is going to do. So I think the resources that we have allow us to make better decisions. And, unfortunately, some of those decisions don't necessarily bring something back to Nebraska. [LB914]

SENATOR McCOLLISTER: Well, thank you for your service and thank you for bringing this bill. [LB914]

STEVE LICHTER: You're welcome. Thank you. [LB914]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? I just have one, I think. So when the Power Review Board when they're looking at allocating costs of a big power line, is that done kind of through an engineering study of who would benefit the most, who it helps the most, or what the purpose of the line is, because it is allocated across the SPP, but there's a process then if it helps the majority of just Nebraska we're expected to pay more of the cost I take it. [LB914]

STEVE LICHTER: So the way this works, just to clarify, the Power Review Board in Nebraska, we don't have any direct involvement. It's just the RSC representative. The way that the cost allocation has been established, and this has actually been...has grown from what was originally called a balanced portfolio where they tried to balance and make sure everybody was equal. That portfolio concept didn't work very well within Southwest Power Pool. What they went to when Mike Siedschlag was there was a transmission-based highway/byway system. So transmission lines that were 300 KV and above were cost shared across the platform based on 66 percent or two-thirds was cost allocated across the entire region; one-third to the local entity that the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

transmission was being built in. The byway system was between 100 KV and 300 KV--flip those numbers around. So one-third, two-thirds for cost allocation. [LB914]

SENATOR FRIESEN: Okay. [LB914]

STEVE LICHTER: Did I answer your question? [LB914]

SENATOR FRIESEN: I think you did. [LB914]

STEVE LICHTER: Thank you. [LB914]

SENATOR FRIESEN: Thank you, Mr. Lichter, I think...seeing no more questions, thank you for your testimony. [LB914]

STEVE LICHTER: Thank you for your time. [LB914]

SENATOR FRIESEN: Are there any other proponents who wish to testify? Welcome. [LB914]

TIM TEXEL: (Exhibits 1 and 2) Thank you, Senator Friesen. Members of the committee, my name is Tim Texel, T-i-m T-e-x-e-l and I'm the executive director and general counsel for the Nebraska Power Review Board. I will be very brief. And I, in fact, one thing I wanted to address is my staff actually was watching the testimony and has an organizational chart for the SPP for you. So I will ask the page. And I have a copy so I will thank my staff. My only credit was hiring them. (Laughter) But on that, I did want to mention one small point on the bill itself. There's a provision on page 3 and what will be Section 3 that's a minor cleanup. It has nothing to do with the SPP itself. I added that in because it talks that the board shall meet promptly after it's formed and choose a chair. We leave in the language that it will have a chair and vice chair, but that language was from 1963 when we were created. It seems that it's superfluous at this point so I'm just asking to take it out. It doesn't change anything. We're already formed; we already have a chair, so that's the only reason for that. I just wanted to point that out if there's any question about it. It's just a minor cleanup. It's not important to the pay or the SPP or anything like that. I did have one other handout that I wanted to give the board, mostly based on a question yesterday about what the board's role is, what our duties are, so I have a copy of our...about the board page from the Web site that just gives a five-paragraph overview for the public of what we do and our oversight responsibilities, so it's very short and I thought that might answer the question yesterday. It might be good for today to see what we do. The SPP functions that we're talking about today and the RSC are not in there. We don't talk about those. Those are difficult to talk about in a short paragraph. So, but certainly they're important, so I wanted to hand that out to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

you. Other than that, I wanted to make myself available for any questions. I think a couple of...one of the questions that was asked was if we're at a disadvantage? And I think originally the board had me try to do the responsibilities of operating as Nebraska's cost allocation working group. It's a subset advisory board to the RSC. And originally the board had me try to do it. It was fairly humbling because I was surrounded by a lot of engineers from the other states, and as an attorney we were not drafting by-laws or statutes; we were dealing with a lot of very technical transmission issues. And that's why the board and I asked to fund the transmission consultant that we have and has been very good for Nebraska, very good for the board. And I think the utilities could tell you it's been very good for them having that engineer that we hired come in as a consultant to be Nebraska's representative on the cost-allocation working group. Because the other members are all engineers or rate analysts, to my knowledge, so that expertise when those engineers or rate analysts are talking to each other is very helpful. And I think that's been borne out by how successful we've been and the committee chairmanships and the SPP requests for our consultant to even give updates to the SPP board of directors and they asked our consultant to do it at the SPP meeting. So I think that's a tribute to the work he's done and the respect he has at the SPP and the RSC. So with that, I guess one other thing I remember was asked was about the board of directors. They are independent and they're not from the membership itself. The membership elects them, but they're independent board members. They can't be from the transmission-owning members of the SPP. That would impact their impartiality. So these are neutral elected by the body, but it's to oversee the body and they have to be independent and unbiased. So with that, I think that addresses the questions I remember and the information I want to give out. And would be happy to try and answer any other questions or about the language that's in the bill. [LB914]

SENATOR FRIESEN: Thank you, Mr. Texel. Senator McCollister. [LB914]

SENATOR McCOLLISTER: But your members are appointed by the Governor, aren't they? [LB914]

TIM TEXEL: Yes. The Power Review Board members are appointed by the Governor, confirmed by the Legislature. [LB914]

SENATOR McCOLLISTER: Okay. Thank you. [LB914]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Seeing none, thank you for your testimony. [LB914]

TIM TEXEL: Thank you. [LB914]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

KEVIN WAILES: Good afternoon, Senator Friesen, members of the committee. I'm back. I'm Kevin Wailes, K-e-v-i-n W-a-i-l-e-s. I'm the administrator and CEO for the Lincoln Electric System and I'm testifying in support of LB914 on behalf of the Nebraska Power Association, which, as you all know, is the trade association for public power utilities in the state. By the way, I hope this isn't a third strike, I'm an engineer too. I get the easy job every time because this is a clean up and I think the questions you all asked, particularly of Steve, I think answered virtually most of the points I was going to hit. I think it's very important for us and we can't emphasise too much how important the PRB representation on the RSC is as it relates to protecting the ratepayers and customers in Nebraska. And they have a whole host of responsibilities that haven't even been touched on with respect to resource adequacy, what type of rates. And those allocations cannot be...you can't talk about how important that is on how those things are allocated. I won't go into all that, however, I think it is important that the utilities in the state are in strong support since we're paying for that cost because we believe it is extraordinarily important. I also thought it might be important, notwithstanding the strong things that are being done there, Nebraska utilities are extraordinarily engaged in SPP. I can't tell you how many hours LES spends. We've got...if you look at the committees on here, we have representation on the market and operation policy committee, corporate governance committee, and the finance committee, and I think two others. And I believe OPPD and NPPD are, basically, engaged as well. So we work very hard at making sure that Nebraska is strongly supported with respect to those issues. And we talk amongst ourselves a lot. In fact, in many cases our staff travel together to go to those meetings. And we also try to make sure we're coordinating with the RSC representation as well and provide any technical expertise we can there. With that, I won't take your time, but thank you and we appreciate your support. [LB914]

SENATOR FRIESEN: Thank you, Mr. Wailes. Any questions from the committee? Seeing none, thank you for your testimony. [LB914]

KEVIN WAILES: Thanks. [LB914]

SENATOR FRIESEN: Welcome. [LB914]

CHRIS DIBBERN: Good afternoon, Senator Friesen, and members of the committee. And thank you to Senator Schilz for introducing this bill. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n. I'm the general counsel to the Nebraska Municipal Power Pool and a registered lobbyist here in Nebraska. One of our members, MEAN, the Municipal Energy Agency of Nebraska, became a full member of the SPP in 2015, just last year. And we also joined MISO, the Midcontinent Independent System Operator, another RTO in Iowa. Our Nebraska utilities, transmission owners and generation owners on the eastern side of the grid, joined Southwest Power Pool in the recent past. Southwest Power Pool is what you've heard, a member-driven organization, all of those

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
January 28, 2016

committees, we found when we were a participant we could go monitor the committees, but we couldn't sit on the committees. So we decided to join SPP so that we could have a seat at the chair, so that we could be involved in those committees. And we have found that to be a much more advantageous position. The committee that the Power Review Board sits on, the RSC, is an important committee because it's those regulators from all of those states that give feedback to that independent board. And I'd like to thank the past board members who have just volunteered to do that and given up their time. We think LB914 is a reasonable, modest compensation to the one member of the Power Review Board that travels to the SPP. It is paid through...by ratepayers through the utilities, not out of the General Fund. And as Tim mentioned, the Southwest Power Pool, that independent board, this gives a lot of feedback to that board. Any questions? [LB914]

SENATOR FRIESEN: Thank you, Ms. Dibbern. Any questions from the committee? Seeing none, thank you for your testimony. Any other proponents? Seeing none, are there any opponents who wish to testify? Seeing none, are there any people who wish to testify in a neutral capacity? Seeing none, Senator Schilz, would you like to close? Senator Schilz waives closing. And we will close the hearing on LB914. [LB914]