

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee February 8, 2022
Rough Draft

WILLIAMS: All righty. Good, good afternoon, everyone, and welcome to the Banking, Commerce and Insurance Committee. My name is Matt Williams. I'm from Gothenburg and I represent Legislative District 36, and I am humbled to serve as Chair of this committee. The committee will take up the bills in the order of posted. Our hearing today is your part of the public process. This is your opportunity to express opinions on legislation before us today. The committee members may come and go during the testimony. We have to introduce bills in other committees and are sometimes called away. It's not an indication that we are not interested in the bills being heard in the committee, it's just part of the process. To better facilitate today's proceeding, I ask that you abide by the following procedures: please silence or turn off your cell phones; move to the front row when you are ready to testify. The order of testimony will be the introducer, followed by proponents, opponents, neutral, and closing. When you come up to testify, if you would hand in your pink sheets to the committee clerk. And when you begin your testimony, if you would please spell your first and last name for the record. And we request that you be concise, we do use a five-minute clock for testifiers. The light will be green during the first four minutes, it will turn yellow and at the end of five minutes, there will be a red light. At that time, we ask that you conclude your testimony. If you will not be testifying at the microphone but want to go on record as having a position on a bill today. There are white tablets at the entrances where you may leave your name and other pertinent information. The sign-in sheets will become part of the exhibits and the permanent record at the end of today's hearings. Written materials may be distributed to committee members while testimony is being given. Please hand them to the page for distribution and we will need ten copies. If you do not have ten copies, please raise your hand and the pages can make those for you. To my immediate right is committee counsel, Bill Marienau; to my left at the end of the table is committee clerk, Natalie Schunk. I will have the committee members introduce themselves starting with Senator Slama.

SLAMA: Thank you, Mr. Chairman. Good afternoon. Julie Slama, District 1.

LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

AGUILAR: Ray Aguilar, District 35, Grand Island.

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WILLIAMS: And the pages that are with us today are Malcolm and Logan. Thank you for being with us again today. And with that, we will invite Senator Hansen and we will open the public hearing on LB973 to redefine terms and change powers under the Nebraska Investment Finance Authority Act. Welcome, Senator Hansen.

M. HANSEN: Thank you, Chairman Williams and members of the committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here to introduce LB973. LB973 is a result of many conversations I've had with the Nebraska Investment Finance Authority, or NIFA, over the last year. Over the last two years, particularly through my work in the Urban Affairs Committee, I've worked on and prioritized issues relating to increasing access to affordable housing in Nebraska. NIFA works in a number of fields, including housing. It has been an important partner in this area, providing programs for first-time homeowners, homelessness prevention, and among others. I've worked with NIFA to craft legislation that would provide them with more flexibility to continue these efforts and expand programs to further support housing efforts in our state. Specifically, LB973 creates a new category of economic impact project to include opportunity zones, allows projects to be owned by a public agency as opposed to current law where it's for nonprofit entities only, includes nonprofit childcare facilities and certain projects, adds Broadband as a term included to low-income housing, includes commercial buildings and the definition of rental housing appurtenances, as long as it is not exceeding 20 percent of the total cost of the rental, and includes geothermal as a resident--residential energy conservation device. The goal of this legislation is to provide NIFA greater flexibility to revise the provisions of their act to address housing issues across the state. I believe there's someone here from NIFA who will testify behind me. And with that, I appreciate your attention to this matter and be happy to answer any questions.

WILLIAMS: Thank you, Senator Hansen. Are there any questions? Senator Pahls.

PAHLS: Thank you, Chair. As I read this, and this, this is an all-inclusive bill. You've taken on the state of Nebraska. Well, I was impressed with all the things you're trying to do.

M. HANSEN: Appreciate it.

PAHLS: I'm just harassing you a little bit.

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M. HANSEN: Thank you.

WILLIAMS: Any additional questions? Seeing none, thank you. And will you be staying to close?

M. HANSEN: I will.

WILLIAMS: Thank you. Invite the first proponent. Welcome and good afternoon.

SHANNON HARNER: Good afternoon. My name is Shannon Harner, S-h-a-n-n-o-n H-a-r-n-e-r. And I am here representing the Nebraska Investment Finance Authority as its executive director. I'm here today to speak in support of the LB973, which provides the revisions and updates to the statute that Senator Hansen earlier noted. Specifically, I would like to spend a little time telling you what the, the difference would be to NIFA if these changes are enacted. Initially, the economic impact projects right now only allow us to assist with new market tax credit projects, and the opportunity zone legislation came into being after the last time that the statute was updated. So this would simply harmonize what has happened in the federal realm and allow us to help with that in the state of Nebraska. We also understand how important childcare is for economic development, for growth in communities and to provide a reliable workforce in the state of Nebraska. And LB973 would add nonprofit childcare facilities located in all areas of the state as a type of project that can be financed pursuant to the NIFA Act. Additionally, in certain instances, we're able to provide financing for projects that are owned by nonprofit entities. But this bill would expand that ability with respect to entities qualifying as public agencies. And the reason that's important is because we work very closely and are looking at ways to do more public-private partnerships and when-- an example, if a city or county would desire to construct a childcare facility, which recently happened in Boone County, the Boone County Beginnings in Albion, NIFA might be able to assist in providing financing through the issuance of those revenue bonds, with those bonds being purchased by local banks and businesses to help support whatever those local projects might be. Additionally, the financing of affordable housing infrastructure is something that NIFA does, however, broadband is not a specifically listed item of infrastructure, and we know how important it is for our rural areas to be able to have broadband. And so this would just allow us a little more flexibility to be able to work with people in getting broadband infrastructure in for affordable housing. Because we know,

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specifically, as we've seen with COVID, the ability to have kids be able to work from, you know, attend schools from home, parents to be able to get online and do what they need to do, it's really just-- it's critical for our Nebraska citizens. In carrying out various housing programs at NIFA, we've also seen that-- I'm sorry. Right. People are really looking for community. And by asking to have an expansion that would allow us-- the current bill says that we can do something that's incidentally commercial in a project in looking at developments that are happening in places like Hastings or across the state where they're sort of live-work projects being created. Allowing us to have that up to 20 percent commercial would make it easier for a developer to not have to find two, maybe, entirely different sources of financing to put one project together, which is what they would have to do today. They could use us to finance the affordable housing piece, but not the commercial piece that was incidental within that affordable housing piece. Finally, we'd like to help-- we'd like just to note that since the inception of the low-income housing tax credit program, NIFA has helped to fund 19,629 rental units in the state of Nebraska, 18,053 of which were specifically available for people of low and moderate income. We know that that doesn't touch what the need currently in the state is, but we know it's an important tool for Nebraska to be able to have affordable housing. One of the things that we're seeing now is we're coming up on the 30 years, and so many of those first projects are starting to expire and they are not necessarily staying as affordable housing. So one of the clarifications here would really make it just very clear in the statute, although we think we probably already have this, this right, but just make it clear that we could purchase a property that is going off affordability so that we can maintain its affordability. Our goal would not be to continuously run those things, but would be to find a buyer who wants to, to bring it back into the tax credit program. So those are the, the main things behind the bill today, and I'd be happy to answer any, any questions.

WILLIAMS: Thank you, Ms. Harner. Are there questions? I have a question. Oh, go ahead, Senator Pahls.

PAHLS: No, no, no.

WILLIAMS: OK, I have a question on, on the last one you were talking about the affordable housing that are coming off.

SHANNON HARNER: Yeah.

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WILLIAMS: When you said they are not staying in affordable housing, can you, can you give me an example or talk me through that?

SHANNON HARNER: Sure, so something that is a-- what we call a LIHTC, low-income housing project, has a, a LURA, a land use restriction agreement, that, that is on it that requires for the period of the extended use, which is either 30 years or 45 years, that, that it would be rented to people of, you know, the specific income levels. Once that LURA expires because of the time period, those owners are free to do whatever they want with the property. And what we're seeing with several of them is that they are selling them and they're being redeveloped as market-rate properties.

WILLIAMS: OK. Gotcha. Any additional questions? Senator Pahls.

PAHLS: Yes, I'm looking at brochure--

SHANNON HARNER: Yes.

PAHLS: --and I heard you say Albion. What did you-- what's happen--

SHANNON HARNER: Boone Beginnings. Albion is doing-- and, and NIFA had nothing to do with it. I just think it's a cool idea and I'd love to help other communities do it. But they created a childcare facility in Boone County called Boone Beginnings.

PAHLS: OK. I think is that where Senator Briese is from?

SHANNON HARNER: I believe it is.

PAHLS: Because he's always talked about that. That's why I was trying to make that connection.

SHANNON HARNER: Yeah, we felt like we would be able to-- we would have been able to-- they went out and they did just private fundraising. We feel like with this change, we could have gone out and helped them market bonds, you know, for that project to their, their business community.

PAHLS: OK. Well, then I see on the-- what you checked off is accomplishments under the mortgage loans. You've done that in 72 of the 93 counties.

SHANNON HARNER: Yes, this last year.

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PAHLS: Is that-- yes-- is that mostly-- yeah, it says '21. I'm sorry. Is that mostly rural counties?

SHANNON HARNER: You know, it's a, it's a mix. We really span the entire state. We-- over the course of NIFA's history, we've done 2,000 loans within the city of Omaha, which given Omaha's population, is not a significant amount. But yes, most of them are probably the Lincoln and rural, although we do get a little bit into Omaha as well.

PAHLS: Then I look at the housing grants awarded; 88 of the 93 counties, that's even more so it's a broader--

SHANNON HARNER: Yes.

PAHLS: --touch. OK, thank you.

SHANNON HARNER: Absolutely.

WILLIAMS: Additional questions? Seeing none, thank you for your testimony.

SHANNON HARNER: Thank you, Senator.

WILLIAMS: Invite the next proponent. Anybody else to testify in support? Welcome, Ms. Gilbertson.

KORBY GILBERTSON: Good afternoon, Chairman Williams, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association and the HBAL/MOBA, which is Homebuilders of Lincoln and the Metro Omaha Builders Association in support of LB973. As most of you know, there's currently three agencies in the state or entities that deal with housing issues: DHHS, DED, and then NIFA. And we support any attempts or legislation that would allow NIFA to evolve with the ever-evolving needs of the affordable housing industry. So we support the bill and I'd be happy to answer any questions.

WILLIAMS: Any questions? Seeing none, thank you for your testimony.

KORBY GILBERTSON: Thank you.

WILLIAMS: Invite the next proponent. Seeing none, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify

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in a neutral capacity? Seeing none, we have no letters for the record. Senator Hansen, you're invited to close.

M. HANSEN: Thank you, Chairman Williams, members of the committee. I'll be brief. So the genesis behind this bill was kind of a question to NIFA, what do you need to support your efforts to build more housing in the state? They came up with a list and we kind of accepted all of them and chose to present it to the committee, to Senator Pahls's comment of it's a little bit of everything. It is, for the most part, technical updates, matching federal law, some new opportunities. I think it's a great opportunity to move housing forward in Nebraska.

WILLIAMS: Any final questions for Senator Hansen? Seeing none, thank you.

M. HANSEN: Thank you.

WILLIAMS: And that will close the public hearing on LB973. We will now open the public hearing on LB738, introduced by Senator Bostar to adopt the LIBOR Transition Act for contracts, securities, and instruments. Welcome, Senator Bostar.

BOSTAR: Settle in. Good afternoon, Chairman Williams and fellow members of the Banking, Commerce and Insurance Committee. I am Eliot Bostar, E-l-i-o-t B-o-s-t-a-r, representing Legislative District 29. I'm here today to present LB738, the LIBOR Transition Act. LIBOR, the London Interbank Offered Rate, is the reference rate utilized for \$200 trillion in financial instruments. The index or benchmark is determined by an administrator in London, the ICE Benchmark Authority, on the basis of rates submitted by a panel of banks. The rates are intended to reflect the interest rate in which each bank believes it could borrow on each day for a given maturity or tenor in a given currency. The market for unsecured interbank lending, such as LIBOR, dropped steadily after the 2008-2009 credit crisis and ensuing recession. Due to the declining volume of transactions and its lack of transparency, the long-term viability of LIBOR was brought into question. On March 5, 2021, regulators announced that LIBOR will, will cease to be provided and will no longer be representative immediately after December 31, 2021, for the one-week and two-month U.S. dollar settings and immediately after June 30, 2023, for the remaining U.S. dollar settings: overnight, one-month, three-month, six-month, and 12-month U.S. dollar LIBOR. The U.S. federal banking agencies issued supervisory guidance strongly encouraging banks to stop entering into

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new contracts that use LIBOR as a reference rate after December 31, 2021. Many contracts based on LIBOR, however, do not address the permanent end to LIBOR or the contracts contain ambiguous fallback language that could adversely impact hundreds of thousands of contracts. Some contracts, for example, rely on a poll or survey of large dealer banks to request their input on where they would set LIBOR. When LIBOR ceases to be produced, it is unlikely that these banks will respond to such polls. Other contracts default to the last published value of LIBOR, in effect, turning a floating rate instrument into a fixed rate instrument. For several years, U.S. financial institutions and regulators have been planning for a transition away from LIBOR. The Alternative Reference Rates Committee has recommended secured overnight financing rate SOFR as a replacement for U.S. dollar LIBOR. SOFR is a broad measure of overnight treasury financing transactions with about \$1 trillion in daily volume, and the rate is produced daily by the New York Fed. The Alternative Reference Rates Committee is a committee of private sector market participants supported by the Board of Governors of the Federal Reserve System for the purpose of facilitating a successful transition away from U.S. dollar LIBOR. It is certainly preferable for the parties to a transaction to agree on the replacement for LIBOR prior to its ending. In a majority of cases, the parties have agreed in advance on the specific replacement rate or fallback provision in which the replacement rate is determined according to an agreed method or by authorizing one of the parties to select the replacement for LIBOR. Given the large volume of legacy contracts, it is likely that a significant number of transactions will not be amended in time. In some cases, such as securities with multiple holders and unanimous consent clauses, it is impracticable or impossible to amend LIBOR provisions by agreement of the interested parties. For the majority of contracts, LIBOR should be able to be replaced. However, so-called tough legacy contracts, existing LIBOR contracts that have no or inadequate fallback language and no ability to be amended prior to LIBOR cessation are in need of a legislative solution. LB738 addresses transition issues for tough legacy contracts by ensuring that a recommended benchmark replacement based on SOFR becomes the benchmark replacement by operation of law. Contracts in which one party has the existing right to choose a replacement rate will not be affected by LB738. The party so authorized may, may exercise its discretion according to the provisions of the legacy contract. If SOFR falls within the scope of discretion permitted by the legacy contract, LB738 encourages, but does not require the selection of SOFR by providing a liability in litigation safe harbor. The terms of such an

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aforementioned contract would not be modified by the provisions of LB738. LB738 does not affect legacy contracts that contain provisions allowing for a non-LIBOR-based replacement rate for LIBOR, such as the prime rate or the effective federal funds rate. Contracts that are silent regarding how to address LIBOR cessation would typically be resolved utilizing common-law principles. LB738 essentially utilizes common-law principles, but by codifying the treatment of these contracts upon cessation of LIBOR, the legislation is able to provide consistent outcomes and a predictable interpretation without courts being burdened or individuals incurring significant legal expenses. The primary emphasis of LB738 is to address legacy contracts that result in a replacement rate based on LIBOR or that require a poll to determine LIBOR. When LIBOR is no longer published or no longer represents market conditions, contracts with these provisions will likely result in disputes, the need for litigation, and market disruption. LB738 addresses these concerns by replacing LIBOR with the recommended replacement rate SOFR, plus a spread adjustment, adjustment to account for the historical difference between LIBOR's unsecured rates and the collateralized rates underlying SOFR. LB738 offers a safe harbor that only applies in cases in which the recommended replacement rate SOFR, plus the applicable spread adjustment, has been integrated into the contract because the contract was silent, had a LIBOR based fallback provision, or were one of the-- where one of the parties has the contractual discretion to choose the replacement for LIBOR. The safe harbor does not extend to any other contract or party, and it operates to promote the use of a replacement benchmark that meets the policy goals. Absent a legislative solution, some floating rate instruments might be converted to fixed-rate instruments. The legal status and effect of various types of legacy contracts would be called into question, and litigation involving attempts to judicially enforce or reform such agreements would likely proliferate. Investors, consumers, and issuers of securities may face years of uncertainty, litigation, and change in value. This would create ambiguity in the marketplace and would lead to a reduction in liquidity and an increase in volatility. LB738 provides a solution for tough legacy contracts that lack sufficient fallback language and cannot otherwise be amended by the parties. The bill is narrowly drafted to allow parties to, to contract that contain effective fallback provisions to opt out of legislation and to only apply to tough legacy contracts so that new or future business will not be effective. The legislation offers uniform, equitable treatment for all contracts that fall under LB738. It creates a safe harbor from litigation for parties that are covered by the legislation and

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prevents otherwise inevitable litigation costs and gridlock. The states of New York and Alabama have adopted virtually identical arc-proposed legislation, which establishes that SOFR is a commercially reasonable substitute for and commercially, commercially substantial equivalent to LIBOR. The legislation adopted in these states establish a safe harbor from litigation for use of SOFR. LB738 is patterned after the New York and Alabama laws, and similar legislation has been introduced in a number of other states in 2022. H.R. 4616, the adjustable interest rate LIBOR Act of 2021 passed the U.S. House of Representatives with broad bipartisan support on December 8, 2021, and has gone to the Senate for consideration. While passage of federal law providing uniform treatment of all U.S. contracts would be preferred, there is no certainty that Congress will take final action on the legislation in a timely manner. I encourage the committee to advance this critical and timely legislation. I'm happy to answer any questions you might have, and I know that there are individuals who will testify behind me that are excited to talk to you about this bill. Thank you.

WILLIAMS: Thank you, Senator Bostar. Senator Pahls.

PAHLS: Thank you, Chair. As I read this, apparently the London Interbank Offered Rate, they were capable of-- well, it says here lying. That's why the problem was?

BOSTAR: The LIBOR is fundamentally based in a poll of banks, so a series of banks being asked what rate they would set for a hypothetical interbank transaction and they could provide any number they wanted. It didn't have to actually match, for example, a real transaction. So yes.

PAHLS: And so-- and you're, you're telling me this-- instead of the acronym, the Secured Overnight Financing Rate will do away with that, that makes it so lying or whatever is impossible?

BOSTAR: Absolutely. It's, it's certainly not based on a poll. And it's-- I mean, SOFR is a rate that exists out there right now. And another benefit to it that isn't just that it, it can't be corruptly manipulated is that it's also based on-- it's looking at better information. So it's based in transactions that are collateralized with T-bills. So it's, it's a far more understandable rate when you're looking at how many basis points are-- is being produced by the rate.

PAHLS: OK. Thank you. Appreciate that.

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WILLIAMS: Additional questions? Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman Williams. Just so I understand, Senator Bostar, this is a floating rate that adjusts as time goes on, as interest rates change. Would that be a safe way to--

BOSTAR: Yes, this is-- absolutely, this is a floating rate. And that's one of the reasons why this is important because without a legislative fix, LIBOR could become a static rate, which is known as frozen LIBOR, which would then take instruments and contracts that rely on a floating rate to match market conditions and fix it in place, which could be extremely detrimental to one party or the other, depending on if it got stuck very high, very low, somewhere else. Either way, these contracts are not designed to point to a fixed rate.

McCOLLISTER: Thank you very much.

WILLIAMS: Additional questions? Seeing none, thank you.

BOSTAR: Thank you.

WILLIAMS: We would invite the first proponent. Welcome, Mr. Hallstrom.

ROBERT J. HALLSTROM: Chairman Williams, members of the Banking, Commerce and Insurance Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB738. Senator Bostar has done a more than adequate job of giving you all the ins and outs and nuances of the LIBOR transition, so I'll attempt to address some other matters of significance addressed by the legislation and try to minimize repetition. Senator Bostar has indicated that the landscape of what's happening in other states and at the federal level, we have seen a number of states introduce legislation in 2022, in addition to the states of Alabama and New York who passed legislation in 2021. And I would note that that legislation was prepared by the Alternative Reference Rates Committee, which was in essence created by the Federal Reserve to assist in this undertaking in transitioning from LIBOR. As Senator Bostar noted, it would be preferable to have federal legislation in this area for uniformity. But we just don't trust that we're going to have anything passed any time soon at the federal level. When we look at these tough legacy contracts that Senator Bostar referenced, the issue is many of those contracts do have workable fallback language. And for those, this legislation does not impact. Many business loans will be

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satisfactorily addressed by having fallback language that provides for an alternative floating rate, such as the prime rate. Derivatives are governed by a master agreement that's governed by a protocol published by the International Swaps and Derivatives Association that allows the derivative counterparties to amend their master agreements on a multilateral basis to provide for a floating SOFR-based rate for counterparties adhering to the protocol. However, Senator Bostar noted there are many other contracts that have problematic fallback language, they would convert to a fixed-rate instrument as of the last published rate of LIBOR. And there's also rate terms in floating rate notes and securitizations that typically can be changed only with unanimous consent of all note holders, which would be typically and logistically difficult to secure. In the absence of legislation to address these issues, I think the major issue here is that significantly litigation would be likely to result. When Senator Bostar referred to the conversion to a fixed-rate contract, that clearly is something that may disadvantage one party or the other. It won't always be the lender, it certainly could be the borrower. And if that's the case, then court intervention would be required to come in and determine exactly how that floating rate should be established and what would apply. We've also talked to some of the individuals, the, the experts, legal counsel, and economist with the Alternative Reference Rates Committee, and they had indicated the situation in bonds and securitizations where a third-party trustee might be looked to, to make decisions regarding the replacement rate and they indicated what would most likely happen in a situation like that. It's, it's not the bank, it's not the borrower. It's an independent third party who decides that they're not willing to take action for fear of being embroiled in litigation. So by taking no action, you end up converting to a fixed-rate note and, therefore, you start the circle of potential litigation once again under those circumstances. The federal regulators, banks have indicated their support for federal legislation or some type of legislative fix relating to these tough legacy contracts. But once again, given the uncertainty of the passage of federal legislation, individual states need to respond. In closing, I'd just note that LB738 will establish a clear and uniform framework for replacing LIBOR in legacy contracts that do not provide for an appropriate fallback rate. The legislation is targeted narrowly to address legacy contracts that do not have that fallback language and does not affect any other contracts that are sufficient with regard to their fallback language and conversion to another floating rate. The safe harbor provision contained within LB738 for participants selecting the SOFR benchmark replacement are narrowly crafted and will

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assist in avoiding much of the litigation that would otherwise occur. For those reasons, we would encourage the committee to advance LB738. Be happy to address any questions of the committee.

WILLIAMS: Questions from the committee? I have a couple. The SOFR rate has been around for a period of time, and the analysis with the rate committee evidently is that it is comparable to what LIBOR was when LIBOR was working correctly. Would that be--

ROBERT J. HALLSTROM: Yes, and there, there will be spread adjustments. But those spread adjustments are also provided for within the legislation to avoid any type of issues or problems that might, might result from one party having the ability to make those decisions. So I think both the benchmark replacement rate, which has been recommended by, by the Alternative Reference Rates Committee and the spread adjustments that are required to adjust SOFR replacement to LIBOR are pretty much set in, in stone.

WILLIAMS: The federal legislation that has been introduced and, and passed in the House, how closely does it mirror LB738?

ROBERT J. HALLSTROM: My understanding is that-- and in our phone conversation yesterday with the individuals from the Alternative Reference Rates Committee that it's very, very closely patterned. I don't know which came first, the Alternative Reference Rates Committee recommended state legislation or what's on the federal level. But my understanding and from reviewing them, they both have virtually identical definitions and there are significant definitions in, in the bill that, that make it, make it work in structure.

WILLIAMS: If, if we were to pass this and then eventually there is a federal legislation passed on it, what would happen?

ROBERT J. HALLSTROM: It will probably, it will probably be determined on whether or not it is replacing any, any alternative or conflicting state legislation. If it covers the field in terms of the way that it's drafted, then the federal legislation would control. But I'm not sure. I think the, the federal regulators have recommended that it do so for purposes of nationwide uniformity. But I don't know that it's in that position right now in terms of, of covering the field and, and replacing any state legislation.

WILLIAMS: And so that the, the committee understands this, there are a substantial amount of current contracts out there between borrowers

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and lenders that use LIBOR as a key to determining that rate. Is that--

ROBERT J. HALLSTROM: Yes, and some, some of them have the appropriate language. But--

WILLIAMS: Yeah.

ROBERT J. HALLSTROM: --and, and I would say a good number have the appropriate language. But when you're looking at \$2 trillion worth of LIBOR-based contracts, there are still a significant number in dollar volume that need this type of legislation to provide those protections.

WILLIAMS: Any additional questions? Seeing none, thank you--

ROBERT J. HALLSTROM: Thank you.

WILLIAMS: --for your testimony. Invite the next proponent. Welcome, Mr. Luetkenhaus.

BRANDON LUETKENHAUS: Thank you. Thank you, Chairman Williams, members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus. It's spelled B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s. I am here on behalf of the Nebraska Credit Union League. Our trade association represents Nebraska's 58 credit unions that are not-for-profit, member-owned, cooperative financial institutions. We are here in support of LB783 [SIC--LB738]. I want to thank Senator Bostar for introducing this bill. Over the last year, our federal regulator, the National Credit Union Administration, has been advising credit unions across the country, including here in Nebraska, to begin the transition from LIBOR to another benchmark [INAUDIBLE]. And so many of our credit unions are doing that, and I've had conversations with our credit unions and most of them are not using LIBOR, obviously, anymore because it ended at the end of the year. But even then, many credit unions weren't, weren't using it. But there are credit unions that have used LIBOR, so this is an important bill for credit unions in Nebraska, and we certainly support it. If you have any questions, I'd be happy to answer any.

WILLIAMS: Questions for Mr. Luetkenhaus? Seeing none, thank you for your testimony. Invite the next proponent. Seeing no one jumping up, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Senator Bostar. We have no letters for the record.

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BOSTAR: Thank you, Chairman Williams, members of the committee, and Nebraska Bankers Association, Credit Union League for participating in this project. It's, it's been a lot to unravel all of the elements that go into something like this, but it's been a, a fascinating journey, and I really can't overstate how important it is that we get this bill accomplished. I was told a couple of months ago that the-- that LIBOR is integrated into one-third of the financial transactions and activity in our national economy. Someone else who was in the room said that it was probably significantly more than that. So what we're talking about is something that has wide-reaching impacts and like has been mentioned, ideally, this will be handled at the federal level. And from conversations that I've had with people who are involved in that effort, it's, it's kind of a coin toss on whether or not that's going to get accomplished. So this really is being left to the states to solve. And so with that, I'd be happy to answer any other questions anyone has.

WILLIAMS: Any questions for Senator Bostar? Seeing none, thank you.

BOSTAR: Thank you.

WILLIAMS: And that will end the public hearing on LB738. We'll move on to opening the public hearing on LB993, again by Senator Bostar to provide for a limitation on the digital asset and cryptocurrency custody services. Welcome again, Senator Bostar.

BOSTAR: Good afternoon again, Chairman Williams and fellow members of the Banking, Commerce and Insurance Committee. I'm Eliot Bostar, E-l-i-o-t B-o-s-t-a-r, representing Legislative District 29. I'm here today to present LB993. Cryptocurrency's total market capitalization rose from \$767 billion to approximately \$2.4 trillion in 2021 alone. Last year was also a record-breaking year for cryptocurrency-related theft and fraud. Cybercriminals netted an estimated \$14 billion in stolen assets. Fraudulent schemes involving digital assets continue to evolve and mature requiring creative solutions to protect the public and our financial institutions. While fraud and theft involving digital assets can often seem similar to non-digital crime, for example, the stealing of cryptocurrency from a wallet owned by another, sometimes the digital asset itself is fraudulent. One example from October 2021 is scammers created a crypto token that exponentially rose in value within its first two weeks on the market, ultimately peaking at approximately \$2,862 per unit. After promoting the token's profitability on social media to speculative investors, the developers of the token utilized a backdoor in the code to drain

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the funds from the assets' liquidity pool. The token crashed, rendering it basically worthless, while the creators of the token disappeared with \$3.4 million of invested funds. LB993 is straightforward legislation designed to protect consumers and the reputation of Nebraska financial institutions from scams like the example I just gave. LB993 amends the Nebraska Financial Innovation Act passed last year by prohibiting the custody of digital assets unless such assets were initially offered for public trade more than six months prior or were-- or was created by a bank chartered in Nebraska or chartered by the United States. Unfortunately, the crypto industry currently provides ample opportunity for scams like these. The combination of highly publicized sky-high returns and a relatively new and unregulated product are a potent mix for bad actors looking to take advantage of an unregulated system. LB993 gives time for new cryptocurrencies or digital assets to mature and build market trust before they enter the custody of a Nebraska financial institution. Thank you for your time. I will say-- and if this could be passed out, I have a proposed amendment that is the culmination of work from the Nebraska Bankers Association as well as some of the industry folks on the crypto side who worked on the Financial Innovation Act. And essentially what it's doing is it's just trying to align the language of this bill with, with language that more similarly is represented within the act currently. And with that, I thank you all for your time and I'd be happy to answer any questions.

WILLIAMS: Questions for Senator Bostar? Seeing none, thank you. We would invite the first proponent. Welcome back, Mr. Hallstrom.

ROBERT J. HALLSTROM: Chairman Williams, members of the committee. My name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, appear before you today on behalf of the Nebraska Bankers Association to testify in support of LB993. We have worked with Senator Bostar with regard to the proposed amendment. I'd, I'd suggest that it's relatively technical in nature, just hoping to more closely align itself with the definition of bank and other financial institutions. The amendment would provide for banks, banks, savings banks, savings loan associations, building and loan associations. All of those entities that were authorized under LB649 last session to both custody digital assets and to issue digital assets, as well as part of their authorization. I think that the underlying provision of the bill that says if there is the potential for fraud out there in situations not involving traditional financial institutions issuing digital assets, that there should be some sort of cooling-off period to allow the digital assets to prove their merit in the marketplace, as opposed to

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having individual consumers caught up in some type of fraudulent activity. And with that, I'd be happy to address any questions.

WILLIAMS: Questions? Senator Flood.

FLOOD: Mr. Hallstrom, I'm trying to understand the amendment identified as proposed amendment to LB993. Let's just start off by saying, does this have anything to do with the issuance of a stablecoin?

ROBERT J. HALLSTROM: It, it could, Senator. I don't know that I'd be the one that would determine that. I think under LB649, there is the issuance of stablecoin as one of the authorities for digital asset depositories. But the amendment wasn't drafted in terms of looking specifically at stablecoin. I think the lead-in talks about digital assets in cryptocurrency as being--

FLOOD: Just more broad.

ROBERT J. HALLSTROM: --[INAUDIBLE]. Yes.

FLOOD: So I don't know that I want the Department of Banking to-- if under our stablecoin provisions in LB649 from last year, those stablecoins have to be matched with a dollar-to-dollar, one-to-one ratio, as I recall.

ROBERT J. HALLSTROM: Yes.

FLOOD: So there wouldn't be any, any potential fraud perpetuated upon a consumer if every, if every stablecoin equaled \$1, we wouldn't need to have this provision, would we?

ROBERT J. HALLSTROM: Theoretically, I, I would agree with that. I, I know there's been some issues-- just tangentially, there's been some issues and questions as to whether or not those that have issued the stablecoin are holding the, the required one-to-one. But that's probably a different, a different issue.

FLOOD: And that would probably be regulated by the Department of Banking on another level. I would think that goes to the core of the issuance of a stablecoin.

ROBERT J. HALLSTROM: Yeah, I, I would hope that in their regulations that, that-- and on the federal level, too, that's one issue that I think needs to be, be looked at and whether or not you carve out

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stablecoins because of those protections. I, I think there still is, and this for another, another day and another bill, perhaps, I think there's still some cleanup to do on the custody requirements and the reserve requirements for stablecoin under LB649 last session, but maybe we'll have an opportunity to, to clean that up.

FLOOD: So as simply and as succinctly as you can, can you describe what the, what the main purpose for this clarifying amendment is?

ROBERT J. HALLSTROM: It-- it's simply to conform the language more closely to how banks and financial institutions are defined in other provisions of the statute.

FLOOD: Does this expand from the green copy the authority or breadth with which the department can regulate in any way, on any level, for any reason?

ROBERT J. HALLSTROM: Not, not in my opinion, Senator. I think the only issue-- you've raised the issue as to whether or not the breadth of digital assets in cryptocurrency perhaps would lead to some need to carve out stablecoins if, in fact, the, the rationale is they're backed by a dollar-to-dollar reserve and, therefore, maybe there's no need for a cooling-off period with regard to that.

WILLIAMS: And I think when you talk about a cooling-off period, you're talking about-- and I think the introducer's intent was to target competitors of a, a Bitcoin, for example, that had less market presence in history so that consumers aren't bitten by a new cryptocurrency fad, not necessarily stablecoin. That's--

ROBERT J. HALLSTROM: I, I, I would tend to agree with that, but I'd, I'd be speculating as to Senator Bostar's intent.

FLOOD: Thank you.

WILLIAMS: Additional questions? Senator McCollister.

McCOLLISTER: Mr. Hallstrom. Thank you, Mr. Chairman. Is this based on model legislation from other states or from the federal government?

ROBERT J. HALLSTROM: Not that I'm aware of. Senator Bostar may have some, some other information on that. I'm not aware of, of this. I didn't research as to whether or not other states have done that, but I think the, the underlying premise of if there is the potential for

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consumers to be taken advantage of that there, there are good, good elements of this bill to, to address that.

McCOLLISTER: So do you know the source of the legislation?

ROBERT J. HALLSTROM: I do not.

McCOLLISTER: Thank you.

WILLIAMS: Any additional questions? Seeing none, thank you--

ROBERT J. HALLSTROM: Thank you.

WILLIAMS: --for your testimony. Invite the next proponent. Welcome, Mr. Kohout.

JOE KOHOUT: Chairman Williams, members of the Banking, Commerce and Insurance Committee, my name is Joe Kohout, K-o-h-o-u-t, and I appear before you today on behalf of our client Exodus Movement, Incorporated in support of LB993. First, let me tell you a little bit about Exodus Movement. Exodus is a company founded in 2015 by Nebraskans JP Richardson and Daniel Castagnoli. Exodus is a multi-asset software wallet that keeps design for a priority to make cryptocurrency and digital assets easy for everyone. Exodus allows users to secure, manage, and, and exchange cryptocurrencies like Bitcoin, Ethereum, and more. The noncustodial function ability is encrypted locally on users' own devices, ensuring privacy, security, and complete control. As to LB993, the issue presented is what new crypto assets in Nebraska banks should be allowed to custody to protect both the banks and the consumers from potential bad actors. In the fast-moving world of cryptocurrency, new coins can be created and go viral very, very quickly and easily. This can lead to a rug-pull situation where creators abscond with the funds received from early investors. If a Nebraska crypto-- Nebraska crypto bank were to hold these coins, it could be seen as lending credibility to a scam asset. However, most new coins are not scams and are created to serve a purpose or solve a unique problem. The market also has a history of weeding out scams. Note that even in traditional markets, there's a history of scam assets being under custody of financial institutions, Enron, a prime example. LB993 presents a-- represents a commonsense approach by placing a reasonable time limit of six months on new coins that were not created by existing government or regulated financial institutions. An example to illustrate this point: should a coin such as JP Morgan's coin, JPM coin, find a commercial use in its first six

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months of life, there would be no reason to enter a Nebraska bank's ability to custody it. However, if the coin is not developed by a governmental or regulated financial institution, six months gives the crypto market ample time to evaluate the merits of the new crypto project and its associated coins. Exodus appreciates the conversation that we have engaged in with Senator Bostar on this issue, and I am happy to try to answer any questions that you might have. And let me just say, I, I did not see the amendment ahead of time. My client has not had the chance to review it, so I'm not in a position to comment on the amendment.

WILLIAMS: Any questions for Mr. Kohout? Seeing none, thank you--

JOE KOHOUT: Thank you.

WILLIAMS: --for your testimony. Invite the next proponent. Seeing none, is there anyone here to testify in opposition? Seeing none, is there anyone to testify in a neutral capacity? Welcome, Director Lammers.

KELLY LAMMERS: Chairman Williams, members of Banking, Commerce and Insurance Committee, my name is Kelly Lammers, K-e-l-l-y L-a-m-m-e-r-s. I am director of the Nebraska Department of Banking and Finance. I am appearing today in neutral capacity with respect to LB993. The Nebraska Department Banking and Finance is a regulatory agency established by Nebraska law. The department is required to enforce the Nebraska Financial Innovation Act, which includes regulations concerning the, the custody of digital assets. LB993 proposes to amend the Nebraska Financial Innovation Act to limit custody services for a digital asset unless the digital asset has been offered for public trade for more than six months prior to any date of custody service or created by a national or Nebraska state-chartered bank. Consumer protection is an important consideration of any complex statutory financial framework and especially important in the digital asset custody area. To address this concern, the act, when passed, addressed the volatility considerations inherent in digital asset custody services and mandated certain disclosures be given by Nebraska-chartered digital asset depositories when interacting with customers. Mandating a six-month custody service ban for almost all digital assets could put Nebraska-chartered institutions at a disadvantage to their national bank counterparts, as national banks and other custody service providers will not have to engage in a six-month custody service period delay and will be able to meet customer needs upon demand. LB993 appears to be focused on preventing

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harm to unsophisticated individual consumers. Individual consumers will not be the only purchasers of digital assets from Nebraska digital asset depositories. Institutional investors, which do not need the same consumer protection considerations, would also not be able to utilize Nebraska-chartered digital asset depositories for their digital asset custody business and strategies. Again, this will put Nebraska-chartered departments at a distinct disadvantage in the marketplace. Nebraska-chartered digital asset depositories will have an important role in educating consumers and guarding against rug pulls and other digital asset scams, which can be achieved under existing law without mandates that might place Nebraska-chartered institutions at a competitive disadvantage. I'd be happy to answer any questions. Thank you.

WILLIAMS: Questions for Director Lammers? I have a question. In, in previous testimony, someone talked about the fact that the credibility given to crypto if it's through a Nebraska bank and wanting to catch scams, do you think that credibility is important in this discussion or not?

KELLY LAMMERS: Credibility of the banking as a regulated financial service industry is critical in this discussion. This has to do with financial awareness, understanding the transaction in place. The legislation before you is, is, is public policy relative to how a consumer will look at the, at the event, as well as how sophisticated investors or those that are wishing to do other types of higher-risk enterprises may engage in a depository. So I believe that a, a, a regulated financial entity may offer a number of different services to the people as they are considering the risks. And I'm simply bringing this to the committee's attention that this is a risk-limitation issue testifying neutral.

WILLIAMS: Yeah. Thank you. Additional questions? Seeing none, thank you, Director Lammers. Anyone else wishing to testify in a neutral capacity? Seeing none, we have no letters for the record, so we'll invite Senator Bostar to come up and close.

BOSTAR: Thank you, Chairman Williams, members of the committee. Trying to remember what everyone's questions were. To my knowledge, this isn't model legislation. This legislation is the product of seeing a problem in the market and then working with crypto businesses in the state, speaking with them about it. Speaking with the Bankers Association about it and even speaking to the Department of Banking and those conversations and back and forth is what led to the language

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in the bill. Senator Flood, the amendment doesn't create any additional restrictions or limitations that aren't found in the green copy. Fundamentally, the six-month waiting period is, is the same. And if anything, the amendment ensures that through clarification that all of the appropriate entities are exempt from that six-month waiting period. So if, if there was an impact to how restrictive the bill is based on the amendment, I would say that the-- if, if it could move at all, the amendment makes it less restrictive. And with that, I'd be happy to answer any other questions that anyone has.

WILLIAMS: Senator Pahls.

PAHLS: Thank you, Chair. The two bills that you brought forward today, actually to me are protection bills. Protect those of us who are the consumer.

BOSTAR: That's correct.

PAHLS: Because LIBOR, apparently some shady deals were going on and the potential for this shady deal. So that's, that's a positive thing, I see. And as I listen to all the testimony, sometimes you get lost in the if and or but for type talk. I will say if you use some suggestions from the Exodus discussion because it showed some real-life examples if this gets the floor. Those things, I think, make it really clear. I'm just, just being honest with you, but I appreciate you trying to help out the consumer.

BOSTAR: Yeah, well, thank you. Yes, it's designed to offer some level of consumer protection. I want to make clear that the bill doesn't actually prevent anyone from purchasing any given digital asset of cryptocurrency that they want to. It prevents the custody of that asset in a financial institution adequately chartered in the state. And so not only is it consumer protection, it really is-- also, this came up in, in-- during the testimony from the, the director, it also really is about protecting the mitigating reputational risk to our financial industry. Because if a-- if an investor purchases a digital asset of cryptocurrency that ultimately proved to be fraudulent, and in that process, they have entered into a custody arrangement with a, let's say, a bank in Nebraska, a lot of folks, I believe, would imagine that their digital asset is deposited in the bank and then once that asset becomes valueless, potentially maybe they invested a ton of money in this, and it becomes worthless while they felt that it was under the protection of our financial institutions, people could imagine that the bank shares in that responsibility. And of course,

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that isn't the case. But the way the members of this committee think about banking, banking policy, how this system works is very different than how the average Nebraskan imagines it and how the average Nebraskan interfaces with it. And so it's imperative that we don't, we don't expose the institutions and the system that we've all worked very hard to create a robust and protective environment for, we don't expose that to unnecessary risk haphazardly. And this bill is designed to mitigate at least some of that risk.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman Williams. Senator Bostar, can you document financial losses that customers or consumers have, have incurred that gave rise to this legislation?

BOSTAR: Absolutely. I, I gave one example in my opening. But there are countless examples, and I'd be happy to furnish you with as many as you would care to read.

McCOLLISTER: Works for me. Thank you.

WILLIAMS: Any additional questions? Senator Flood.

FLOOD: Senator Bostar, would you be open to clarifying in an amendment, if this committee adopted it, that this doesn't apply to stablecoin that is issued by a Nebraska digital asset depository or a digital asset bank if it were regulated by the state of Nebraska?

BOSTAR: So a, a stablecoin that was issued by a regulated entity.

FLOOD: Right.

BOSTAR: I would certainly be open to, to having that conversation, and I also want to take the opportunity to thank you for being a cosponsor of legislation.

FLOOD: Oh, I appreciate that. I'm just trying to understand these amendments that you're bringing.

BOSTAR: Understandable. And, and honestly, this was a-- this amendment was finalized--

FLOOD: Moments ago.

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BOSTAR: --maybe a half an hour before we started. It's been a process going through it. I see this amendment truly as just clarifying language to have the bill represent the language that already exists in the act. But we can, obviously, have further conversations as a committee and I'd be happy to talk through any other proposed amendments that anyone from the committee might have.

FLOOD: Thank you.

WILLIAMS: Any final questions? Seeing none, thank you. And that will close the public hearing on LB993. I'm going to turn it over to Senator Lindstrom. I've got the next bill up in Appropriations, can-- if, if people can stay around, even though I know Senator Slama's got to go, but if you could stay around, I'd still like to have a Exec Session when I get back.

LINDSTROM: OK, sounds good. We'll now open the hearing on LB1017 introduced by Senator Slama.

SLAMA: Thank you, Mr. Vice Chairman, fellow members of the committee. My name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent Legislative District 1. I offer for your consideration today LB1017. The bill was prepared by members of the Nebraska State Bar Association's real estate, probate, and trust section. And I've introduced it on behalf of the attorneys who practice in this area. LB1017 aims to incorporate a tax reimbursement power into the Nebraska Uniform Trust Code. Such a power provides the grantor of an irrevocable trust the flexibility to prevent a cash squeeze on which the grantor for payment of income tax is triggered at the trust level, which ultimately would have been paid by the grantor. In short, a tax reimbursement power merely allows a trustee to control who pays income tax triggered at the trust level, the grantor or the trustee of the trust. I think it's important to be clear about this point. A reimbursement power does not reduce, defer, or in any way avoid the payment of any amount owed in income taxes. Instead, the tax reimbursement power simply provides needed flexibility for payment of those taxes to help prevent potential liquidation of assets. Under current Nebraska law, the granting of the tax reimbursement power would likely cause all of the assets of an irrevocable trust to be included in the grantor's gross estate. Assets included in the gross estate beyond certain lifetime exemptions are subject to a 40 percent federal estate tax. LB1017 aims to change Nebraska law in such a manner so that the grant of the tax reimbursement power alone will not cause gross estate inclusion. The statutory language used in LB1017 is

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drafted in compliance with an IRS guidance. At least 26 states have adopted similar tax reimbursement power legislation in response to this particular IRS guidance providing the statutory clarity needed to comply with it. By advancing LB1017, Nebraska will take one more step in modernizing its trust laws allowing Nebraska trustees, including banks and trust companies, to more aptly compete with their counterparts operating in neighboring states. Without this change, trustees have a strong incentive to move trusts and the underlying trust of states-- trust assets, sorry, to other jurisdictions, such as South Dakota, placing Nebraska businesses at a competitive disadvantage. In turn, less assets are managed by Nebraska financial institutions and less Nebraska income is generated resulting in lower tax receipts for the state. It is for these reasons that I ask the committee to advance LB1017 to General File. There is an attorney here to testify following me, who will be able to answer any technical questions you may have. Thank you for your time and I'm happy to answer any questions you might have of me, but I'm praying you don't. Thank you.

LINDSTROM: Thank you, Senator. Any questions from the committee? Seeing none, thank you. First proponent.

CRAIG BENSON: Good afternoon. Thank you all for having me here today. My name is Craig Benson, that's C-r-a-i-g B-e-n-s-o-n. I'm an attorney at Koley Jessen in Omaha, Nebraska. I practice in the area of tax and estate planning. Senator Slama, thank you so much for introducing the bill, and I'm here to kind of explain a little bit in detail what that was all about. So I'm going to start off with some background information and then we'll get into the meat of what a tax reimbursement power really is. What we're really talking about here is a commonwealth transfer planning strategy that involves gifting and selling assets to an irrevocable trust. You, you transfer these assets to remove the, the value from the grantor's gross estate, in which case they would otherwise be subject to federal estate tax, which is 40 percent. There is a currently a \$12.06 million exemption for each spouse. Combined, that equals \$24.12 million. But that's said to be cut in half in 2026 on the federal level. How these actually work is these trusts are what's called a grantor toward trust and what a grantor trust means is that the, the grantor or the creator of the trust is treated as the owner of the trust assets for income tax purposes. That's for income tax purposes. And, and what that means is that all income taxes arising from the trust's assets are reported on the grantor, so the creator's personal income tax return, even though in transferring those assets to an irrevocable trust, that grantor no

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longer actually owns those assets. At the same time, the trust has its own, as I said, taxpayer identification number, so for estate tax purposes, we remove those assets from the trust. The reason why a lot of times we, we structure these in such a manner as a grantor trust is we actually want the high-net worth individual to, to pay the taxes because it's a tax-free gift, in essence, that will ultimately lower the estate tax bill on the federal level later on. So the problem with structuring these right now is you give away too many assets or you have a sale event where your maybe your company is sold at-- sold at multiples of your earnings. And all of a sudden you get this huge tax bill. But at the same time, you don't have, you're not actually receiving the income from that. The trust is, and you're not entitled to receive any of those trust assets. Otherwise, it would be includable in your estate. So what we're really talking about here in the tax reimbursement power is how to offer flexibility for allowing the, the grantor or the creator of the trust to pay those taxes and then for the trustee of the trust to reimburse the grantor for payment of those taxes. It's coming out of-- taxes are being paid. It just depends on who's going to be paying it. Is it going to be the grantor or the trust? And really, what it comes down to in a really significant situation where there's not enough assets so then a liquidity event has to occur, which could harm Nebraska businesses. So the solution here adopted by 26, over 26 states here in our country, is what's called a discretionary tax reimbursement power. And now what that means is exactly what I just said just a moment ago. It gives the trustee the option to reimburse the trust, the, the grantor for paying the-- for paying the taxes. The most important here, though, is it does not reduce or defer income taxes, but rather shifts the, shifts the party who's going to pay it. One thing that's important to note with this is there's a revenue ruling out there from the IRS that provides as long a state law, as long as the state law that allows for the tax reimbursement power provides that such a power does not subject the trust assets to the claims of the grantor's creditors and cost the grantor to be considered a beneficiary of the trust, then it will not cause gross estate inclusion, which again will potentially be subject to a 40 percent estate tax. That's what the aim of this legislation does, and it's mimicked off of South Dakota law and a lot of other states that have similar legislation. Couple clarifying points before I run out of time. There's a lot, a lot of trust out there already have this power. The question is, is whether the IRS is going to come back in there and say that it's going to cause gross estate inclusion. We're just looking for clarifying language in the Nebraska Uniform Trust Code that clearly indicates that this power is

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allowed without crossing gross estate inclusion. One common item that many have asked is, well, is this sheltering assets from creditors? This type of trust in general has a feature where it passes from one generation, is held in lifetime trust, and then ultimately continues automatically to pass to the next generation. That feature in and of itself has some creditor protections, but this reimburse-- tax reimbursement power does not in and of itself hold any other creditor protections in it.

LINDSTROM: Did you have any-- one, one other issue you needed to clarify?

CRAIG BENSON: Yeah. Yeah.

LINDSTROM: Senator Williams is introducing another bill so we do have some time.

CRAIG BENSON: Sure, sure. The last one is-- well, I think I covered it earlier, so I think I'm good.

LINDSTROM: You got it? OK.

CRAIG BENSON: Yeah, yeah.

LINDSTROM: Sounds good.

CRAIG BENSON: Yeah.

LINDSTROM: Any questions? Senator McCollister.

McCOLLISTER: Yeah, thank you, Vice Chair. This discussion dealt-- deals primarily with federal taxes or you're also including state taxes?

CRAIG BENSON: This is just federal taxes, that's the main thrust of it. You could reimburse, this would also extend where if there was taxes due for state level where the grantor could be reimbursed for state taxes paid. But at the end of the day, the state taxes will be paid one way or the other from the grantor or the trustee.

McCOLLISTER: How about the county inheritance tax, how's that fit in?

CRAIG BENSON: Does not have an adverse effect on the county inheritance tax. It's still in full force. This is more talk-- how that-- the inheritance tax comes into play is a function of the

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federal gross estate. It, it doesn't affect that tax. Rather, except to say that the, the trust can pay on behalf-- the grantor is more likely dead at that time, so the grantor wouldn't actually be paying that tax, it would just be left to the trust. So it wouldn't really come into play in actually exercising this power in that situation.

McCOLLISTER: How many states have adopted similar clarifying language?

CRAIG BENSON: There's over 26, and there's several other that's in, in the process.

McCOLLISTER: Thank you very much.

CRAIG BENSON: Yeah. Thank you.

LINDSTROM: Thank you. Senator Flood.

CRAIG BENSON: Senator Flood.

FLOOD: Quick question. Where are you from originally?

CRAIG BENSON: I'm from Norfolk.

FLOOD: That's what I thought.

CRAIG BENSON: Yeah. Yeah.

FLOOD: Is your dad, Bill Benson?

CRAIG BENSON: He is. Yep.

FLOOD: I see the similarity.

CRAIG BENSON: Yeah, we, we look almost identical.

FLOOD: I was going to say. Hey, question on the-- so if you're a grantor and you put your-- put these assets in irrevocable trust, you stated that the grantor still has the obligation to pay the tax even though they've put this into something they don't own.

CRAIG BENSON: Correct.

FLOOD: What's the public policy reason for that?

CRAIG BENSON: Well, the public policy reason for allowing that?

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FLOOD: Yeah.

CRAIG BENSON: You know,--

FLOOD: It seems [INAUDIBLE].

CRAIG BENSON: --it is, it is, it is a bit contradictory. I agree. And some people would call it a loophole per se. It was something here in the Build Back Better Act that I think everybody's probably familiar with this last year that they were trying to change the law so this would be possible in which also would affect some of these tax reimbursement provisions. As many of you know, that Build Back Better Act is dead on arrival from what I understand right now. So to answer your question, the policy point, I guess one, one policy point that you could have is let's not force any liquidation event of a successful business because ultimately that's going to hurt the economy.

FLOOD: OK. And the trustee doesn't have the obligation. It's on the grantor so they can put their assets in this irrevocable trust. But that's the one nonirrevocable, that's the revocable part of the--

CRAIG BENSON: Right.

FLOOD: --they still have the obligation to pay the tax.

CRAIG BENSON: Right.

FLOOD: So this would harmonize that and, and allow the grantor to have the ability to get paid back by the trust.

CRAIG BENSON: Yeah. And one thing I would say is actually exercising this power is going to be a pretty in-depth conversation between the client and the accountant and the attorney on whether you should actually exercise it. This is not something that someone will want to exercise every year, you know, that, that has some risk of IRS challenge. This is kind of a worst case scenario. And there's a lot of planning on the front end that you don't transfer too many assets to the irrevocable trust for this exact reason. This is just, I would say, adding one tool in the tool belt.

FLOOD: What if the trustee says I don't want to reimburse the grantor?

CRAIG BENSON: That's the trustee's power.

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FLOOD: Right.

CRAIG BENSON: Right. The grantor cannot have any influence, otherwise they would have some--

FLOOD: Right.

CRAIG BENSON: --gross estate inclusion issues.

FLOOD: Thank you.

CRAIG BENSON: Yeah.

LINDSTROM: Thank you. Any other questions? Seeing none, thank you.

CRAIG BENSON: All right. Thank you.

LINDSTROM: Any other proponents? Any opponents? Any neutral testifiers? Senator Slama waives closing. And that'll end the hearing on LB1017. And that will--