

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 10, 2021
Rough Draft

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BREWER: Morning and welcome to Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer from Gordon. I represent the 43rd Legislative District, and I'm serving as the Chair of this committee. For the safety of our committee members, staff, pages, and the public, we will ask those attending our hearing abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter for the hearing, the hearing room for the bill that you are going to be presenting on. The bills will be taken up in the order that they are posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and move out and the pages to reset for the next bill. That shouldn't be a problem today. We request that everyone utilize the identified entrance and exit doors of the hearing room. Please note that the exit door is on my right. We request that you wear face coverings while in the hearing room. Testifiers may remove the face covering during testimony to assist committee members with trans-- assist in the transcribers, clear hearing and understanding testimony. Committee members, I will leave it up to your discretion on wearing of face coverings. We do have the dividers to protect those committee members. Public hearings for which attendance reaches seating capacity or near capacity, the entrance doors will be monitored by the Sergeant at Arms, who will allow only the people entering the room as those depart. The Legislature does not have available overflow hearing rooms due to the HVAC project. This will force us to have those waiting in the hallway. We ask that you please limit handouts or eliminate them. The committee will take up bills in the order that they are posted on the agenda. Our hearing today. Is your public part of this legislative process. This is your opportunity to express your opinion on the proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process. We have bills to introduce in other committees. Be aware that this is a committee that is fully digital. So there will be senators on their computers or cell phones either getting information or being notified if they have to speak or present. I ask that you abide by the following procedures. To better facilitate today's meetings, please silence or turn off your cell phones or other electronic devices. There will be no food or drink in the hearing room. Please move to the

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reserved chairs when you're ready to testify. These are the first two chairs on either side of the first row. Introducers will make the initial statement, followed by proponents, opponents, neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sheet that is on the table in the back of the room. Please fill out the green sheet, sign in, and be prepared to present that when you come forward to the committee clerk or page. Be sure to print clearly. Let's see. Letters for the record must be posted prior to 1200 hour Central Standard Time the day prior, and we'll read them at the end. If you have handouts, please make sure that you have 12 copies to give out to the pages when you come up to testify and they will take care of distributing them. Each letter must have the bill number, whether you're a proponent, opponent or in the neutral. Mass mailings are not going to be counted in those numbers. When you come up to testify, please speak clearly into the microphone and tell us your name. Then please spell your first and last name to ensure that we get an accurate record. We will be using the light system for all testifiers. You will have for this morning five minutes to make your initial remarks to the committee. When you see the yellow light, that will indicate that you have one minute remaining. A red light and an audible alarm should indicate that your time is complete. No displays of support or opposition to a bill, vocal or otherwise, will be allowed in public hearings. Committee members with us today will introduce themselves starting on my right.

BLOOD: Good morning. Senator Carol Blood representing District 3, which is western Bellevue and southeastern Papillion, Nebraska.

McCOLLISTER: John McCollister, District 20, central Omaha.

SANDERS: Good morning. Rita Sanders, District 45, the Bellevue/Offutt community.

LOWE: John Lowe, District 37.

HALLORAN: Good morning. Steve Halloran, District 33, which is Adams and parts of Hall County.

HUNT: I'm Megan Hunt and I represent District 8 in midtown Omaha.

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BREWER: To my right is Dick Clark, our legal counsel. To my left is the committee clerk, Julie Condon. Our pages today: John Laska; John, raise your hand there. John is a senior at UNL from Genoa, Nebraska. And up there he is, Ryan Koch. And Ryan is a senior from Hebron. With that said, we will welcome our first presenter, Senator Williams. Welcome to the Government Committee.

WILLIAMS: Good morning, Senator Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent Legislative District 36. I am here today to introduce LB65. I introduced LB65 at the request of the Nebraska Accountability and Disclosure Commission. The bill proposes to amend Section 49-14,103.01 of the Nebraska Political Accountability and Disclosure Act, which relates to local elected officials having an interest in a contract with their own governing body. The good news is that this bill this year is only technical in nature. As you may recall, those of you that served on this committee last year, I introduced legislation that was heard by this committee, which was ultimately passed by the Legislature, that amended Section 49-14,103.01 to allow the Central Nebraska Public Power and Irrigation District board members to participate in board discussions related to standard water lease and land lease agreements. During our discussion on the merits of that proposal, Frank Daley, the executive director of the Nebraska Accountability and Disclosure Commission, pointed out that the statute has some language that is awkward and that there is an inconsistency between two of the subsections. I agreed to introduce an amendment last year on the floor to fix the statute, but before we got to that point, the session was suspended due to the pandemic. When we reconvened in August of last year, I pulled the amendment so as not to muddy the water with the understanding that I would introduce this bill to fix this inconsistency this year. LB65 simply proposes to eliminate the awkward phrase "direct pecuniary fee or commission" found on page 3, line 4 of the bill and replace it with "payment, fee, or commission." In addition, the bill strikes subsection (6) of the statute, which is found-- also found on page 3, beginning at line 20 because it conflicts with subsection (4) also found on page 3, beginning at line 1. Subsection (4) generally prohibits elected officials, board members of political subdivisions from participating or voting on contracts in which they or certain family members have a personal interest. Subsection (6), however, implies the prohibition

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does not come into play if certain family members have a financial interest in the contract. Mr. Daley will follow me to specifically address that and his concern about why we need to pass this legislation. But I would encourage you to listen to Mr. Daley and advance this bill as warranted. Thank you, Mr. Chairman.

BREWER: Thank you, Senator Williams. Questions for Senator Williams on LB65. All right. Seeing none, you stick around for closer. Thank you. OK, first proponent for LB65. Good morning, Frank, welcome to the Government Committee.

FRANK DALEY: Good morning, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, F-r-a-n-k D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission. And I'm here today to express the commission's support for LB65. As Senator Williams says, it does one thing really, and that is it removes a conflicting paragraph within a specific provision, that is Section 49-14,103.01. The section at issue essentially provides that official-- elected officials in certain political subdivisions may not have an interest in a contract with their own political subdivision unless they jump through certain hoops and take certain steps. The steps are the contract has to be an agenda item. The interested official has to make a public disclosure of his or her interest in the contract and that, that interested official cannot vote to enter into the contract or make any payment under the contract. All of that stays the same. None of that changes under the bill. However, the section also describes what constitutes an interest in a contract with your own governing body. Under current law, in Section 4, paragraph (4), you have an interest in the contract if the elected officia--, if you, the elected official, have an interest in the contract or receive some sort of payment, your parents, spouse or child will receive some sort of payment. Also, if a business essentially owned by you, your parents, spouse or child will receive a payment, you're deemed to have an interest in the contract and you have to jump through all of those hoops in order to have a legal interest. However, two paragraphs later, it states that you only have an interest if you, the official, or your business will be paid. So in other words, it completely eliminates the parent, spouse, or child consideration. And there's just no way to reconcile these two paragraphs. So what this does, it creates a situation when a public official is coming to us for advice,

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we emphasize paragraph (4) with the parent, spouse, or child because that's the safe harbor. If they follow that provision, they are OK. However, when we have citizens coming to us that perhaps are complaining about how an interest is being handled or a public official having an interest in a contract, we have to point out the provision paragraph (6), which essentially says if it's the parent, spouse, or child, it may not be a violation. So at any rate, this just creates a situation that the only resolution is legislatively. And so I would ask your consideration of it. I would appreciate your moving the bill forward. I really do appreciate Senator Williams agreeing to introduce this bill. And thanks for the opportunity to testify today.

BREWER: Thank you, Mr. Daley . All right. Questions for Frank? All right, looks like you get off easy. Thank you.

FRANK DALEY: Thank you very much.

BREWER: All right, additional proponents for LB65. Are there any opponents to LB65? Anybody in the neutral? All right. That should then wrap up our as soon as-- oh, the waive helps.

WILLIAMS: Unless anybody has a question.

BREWER: I don't think so. I think we're good there. Let me read in. We do have one-- you know, I don't care how many do we-- back here. One proponent and that's the League of Nebraska Municipalities, no opponents and none in the neutral. So looks like a consent calendar item there. All right. Thank you. All right. We will switch out real quick and change up all of our numbers. And we've got Senator Cavanaugh ready to go.

J. CAVANAUGH: Ready for me?

BREWER: Senator Williams didn't sit down and contaminate the chair. So you're going to not have to wait on the--

J. CAVANAUGH: All right.

BREWER: --process there. Let me flip over, LB482. All right, we're all reset so. Senator Cavanaugh, welcome to the Government Committee.

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J. CAVANAUGH: Thank you. Good morning, Senator, Chairman Brewer and members of the Government Committee. My name is John Cavanaugh, spelled J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th District, Legislative District in midtown Omaha. I'm here today to introduce LB482, which closes a loophole in the current campaign finance law to prohibit public resources from being used as a contribution to a candidate or committee. LB482 clarifies that public resources may not be used for the purposes of contributing to a campaign committee, even if they first passed through a membership organization or cooperative. The principle is simple. Taxpayer or ratepayer dollars should not be used to advocate for or against a candidate for office. Nebraska has a proud tradition of public power, and the use of this money in public power districts to contribute to political campaigns is not only a betrayal of the tradition, it is a betrayal of the public trust. The reason for this bill is that, well, there's a number of reasons. But one example that brought this bill to my mind is in the 2020 election, there was an instance of an organization called the Nebraska Electric Generation and Transmission, which is an electric co-op funded by the rural public power districts. During the 2020 election, NG&T created a political action committee which then supported-- was used to support or oppose several candidates for the Nebraska Public Power District Board. To address-- the address of the committee and the address of the co-op are the same, and the general manager was listed as the assistant treasurer. But the reason for the controversy and the reason why I brought this bill is that the NG&T's funds, which is funded through public dollars, made a \$7,500 contribution to this committee. LB482 would-- would not apply to voluntary contributions from employees, their unions, and would not impair the ability of any private citizen to make contributions to any candidate or committee or even establish their own committee. It would-- also would not prevent political subdivisions from joining any membership, organization or cooperative. It would simply prevent public funds from being used in political campaigns. Essentially, what we're saying is we're not prohibiting public institutions from joining cooperatives or organizations. They just can't join cooperatives, organizations that engage in political conduct. And if they want to join an organization like that, then that organization can't engage in political conduct or vice versa, meaning that if an organization wants them as members, that organization can't choose to do that. It wouldn't prohibit organizations from engaging in political conduct. It just would not

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allow them to do so if they had public members. I've heard concerns from other organizations that the language in this bill may cover activity beyond the conduct it aims to prohibit, specifically that it may cover legitimate lobbying activity. And that's certainly not what we intend in this bill. I think the language in the bill is clear as it relates only to contributions to candidates or committees. But to the extent that changes are needed, I've been in contact with a number of associations of school board officials or other type of associations that come and testify regularly at the Legislature. And we are discussing changes that may potentially be needed-- needed to be made, if necessary, to make sure we clarify that it's not going to prevent educational activities of the Legislature. So certainly come back to the committee with any amendments as needed in the future. You'll hear from Mr. Daley here. He's going to come and oppose it. And he and I have spoken about this. And I would just tell you we, I guess, disagree about what is going on here. There, there's a loophole in the law. We're all-- we all agree public funds shouldn't be used for political ends. And there's a loophole in the law that allows someone or an organization to kind of create a strawman intermediary and attach to it some legitimate purpose, which Mr. Daley, I think, will probably speak to. What I'm-- what we're proposing here is that there is no legitimate purpose for which government funds can be used in an election, whether you-- you try and clean it through a third-party intermediary. So with that, I take any questions.

BREWER: Thank you. Let's go ahead and open for questions. I guess I got one for you and just so I'm tracking with you. So part of the idea is here and we'll just arbitrarily say a company, Public Power XXX, they can form this PAC, figure out a way to funnel money to fund this PAC, then they could pick folks who they would like to see on their, say, board of directors. And, and through that process, elect a-- I don't want to say a puppet board-- but a board who's going to be much more kinder to their particular desires. Is that kind of where we're looking here?

J. CAVANAUGH: More or less. There's an intermediary part there where so the elected board, and this example is a public power board, but it would not exclusively apply to that. But where a board, a public entity, then creates a co-op organization of those public entities. So there's countless of them that we see around here. And I don't want to name names because I don't want anybody to feel like they're going to

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be singled out, I guess. But Association of Associations type of thing. And that association is funded by dues being paid by public funds from, you know, say, public power in this instance that-- or fees being paid into that. And that association then being not the public entity itself, then creates a PAC. So there's a step in between--

BREWER: I see.

J. CAVANAUGH: --where they-- they're pushed, taking public funds, putting it to this use, and then that goes to that, that third political use. And that's the practice that I think is a loophole that we're trying to prevent, because I think everybody would agree NPPD directly cutting a check to candidates is, is against the law. What's the gray area here is whether NPPD can cut a check to third party, who then cuts a check to fourth party, who cuts a check to a candidate.

BREWER: Uh-huh, now I-- now I see your vision here. Thank you. All right. One more time, questions? You'll stick around for close?

J. CAVANAUGH: I will.

BREWER: All right. Thank you. All right. We will begin with those who are proponents to LB482. Proponents. He does a thorough job, Al. Senator Davis, welcome to the Government Committee.

AL DAVIS: Thank you, Senator Brewer. I think if I did have COVID this cleanliness would have gotten rid of it. [INAUDIBLE] Thank you. Senator Cavanaugh really answered a lot of the points that I wanted to make, but I will probably just read my letter anyway. So thank you, Senator Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Al Davis, A-k D-a-v-i-s. And I'm testifying here today as the registered lobbyist for the Nebraska Chapter of the Sierra Club in support of LB482, brought by Senator John Cavanaugh to address issues of campaign finance. The committee is fully aware of the incredible amount of money it takes to get elected to an office. And frankly, the system is so bloated with money that the need for cash is astounding to win an election, as you all know. But we need clear and hard rules about how the money is collected. In the private sector, employers and employees often work together to elect candidates who support their industry. This is acceptable and

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appropriate behavior because the process involves private dollars from the employer and private dollars from the employee. Customer dollars do not play a part here. However, it is unacceptable for a public utility to use ratepayer fees to steer an election to one candidate or another, and in this particular instance, ratepayers across Nebraska pay their utility bills to a local public utility, which provided some of those funds to another quasi-public entity made up of the dues-paying affiliated utilities. That entity, in turn, used those funds to try and influence the election of board members on another public board by making financial contributions to a specific candidate. If the ratepayers wanted to support a particular candidate, they can certainly write a check from their own account to that candidate. The dollars they pay to their local utility should be used to provide the service which the utility is licensed to perform, not to try and buy board seats on another public board and meddle in another entity's election. I'd like to see this bill move to the floor, and I thank you for your time.

BREWER: All right. Thank you for your testimony. Questions of Senator Davis? All right, again, thank you for coming.

AL DAVIS: Thank you.

BREWER: All right, so let's see any additional proponents? And we'll then go to opponents. We got one. Welcome back, Mr. Daley.

FRANK DALEY: Thank you, Mr. Chairman and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, F-r-a-n-k D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission. And I'm here in opposition to LB482. This is one of those strange legislative situations where we all agree on the goal. It's just how do we get there from here? Because LB482 really has a very, very laudatory purpose, and that is to ensure that public funds, government funds, do not make their way into the electoral process. The reason we're opposing LB482 is that we've sort of concluded that it doesn't really do anything that's not in law right now. Under current law, public officials and public employees are prohibited from transferring or using public funds or authorizing the use of public funds for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question. It doesn't

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matter whether those funds are moving directly to a candidate or ballot question committee or they're being funneled through a third party. It's the purpose which controls. And if the purpose is to put public funds into the electoral campaign finance system, it's currently prohibited by law. So this bill doesn't really change that. On the other hand, I think the language muddies the waters a little bit by raising the issue of paying dues to an organization or assessments to an organization, things of that nature. And I will tell you, I have this conversation with citizens on a fairly regular basis. My political subdivision, whether it's a school district, belongs to an organization and they've belonged for years. And then one year, the organization spent money to oppose a ballot question or support a ballot question. Ergo, my political subdivision violated the Accountability and Disclosure Act by putting money into the system. I think we always have to be aware of the fact that if public funds are paid out for a lawful purpose, they lose their identity as public funds. And so when we put this concept in of paying dues, I think what we do is we sort of throw out there the possibility that paying dues by itself could constitute a violation. So that's basically our reason for opposing this bill. Again, I'm not sure that it does all that much. It doesn't add anything to the law and maybe muddies the waters a little bit. I am happy, I will tell you, that Senator Cavanaugh appears to share my passion for keeping public funds out of the electoral system. And so I certainly see that there's a lot of basis for us to work together on future legislation. So I want to thank you all for the opportunity to testify today.

BREWER: All right. Well, thank you for your testimony. All right. We'll start with Senator Blood.

BLOOD: Thank you, Chairman Brewer. Thank you for your testimony. I have to say, before I ask your question, even when you're in opposition, you're just the nicest darn guy. I just really like working with you. I actually have two questions. Knowing that Senator Cavanaugh has this concern, is there anything that would prevent you from working with him on this to maybe find the middle ground if something could definitely be changed? Would you be willing to do that?

FRANK DALEY: Absolutely.

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BLOOD: Which I knew the answer to that anyway. I just want to get that on record. And then I don't know if you're able to answer this or not, so we all know what this is based on what happened with the public utilities. Has there been any action taken on that? Do we know? That you're allowed to speak about? Obviously I can tell by your face there might be an issue there. I mean, I think that's part of the problem is-- and we'll go back to my bill my freshman year, the bill based on the person who refused to pay their campaign penalty fees. I know sometimes legislation is generated because of people's misdeeds.

FRANK DALEY: Um-hum, um-hum.

BLOOD: So we never really know until sometimes things play out whether legislation is needed or not. And I guess based on that, saw that legislation is needed, but if action is being taken based on how the legislation is currently written, do you hear where I'm going with that?

FRANK DALEY: Yes, I do. Let me say generically, without reference to any specific matter--

BLOOD: OK.

FRANK DALEY: --that certain things under the Accountability and Disclosure Act are confidential by law,--

BLOOD: Um-hum.

FRANK DALEY: --and it's a misdemeanor for me to disclose them. So pardon me if I walk wide of some of your questions.

BLOOD: It's fine. And in some ways, you've kind of answered my question.

FRANK DALEY: Let me-- let me tell you what is in the public record. It involves the co-op that Senator Cavanaugh referred to, and it's a membership organization. Some of the members of the organization are public power districts and at least one, perhaps more, of the members of the organization are private entities. And the co-op is organized as a corporation and registered as a corporation under Nebraska law. So that's kind of the lay of the land. That's-- and I think-- and the corporate-- the corporation, the co-op, did make some campaign

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contributions or a single one. And I think there were some ratepayers that thought that their money was being used for campaign contributions. So that's the issue that's floating around out there.

BLOOD: Well, I'm glad you're dealing with that and not me. So I appreciate your honest answer. Thank you.

BREWER: All right. And Senator McCollister.

McCOLLISTER: Thank you, Mr. Chairman. Mr. Daley, thank you for your testimony. We talked before the committee met. How many years have you held your position? Thirty-four?

FRANK DALEY: I've been with the agency for 34 years. That's correct, sir.

McCOLLISTER: Thirty-four years of juggling those hot potatoes. And you've done it well.

FRANK DALEY: Thank you.

McCOLLISTER: Senator Blood asked my question, but I'll ask another. You talked about third-party folks that are active in political campaigns. Does Nebraska do a good job of identifying those donors to third party so-called dark money sources?

FRANK DALEY: Yes and no. And it depends upon the sources. There's a lot of money that comes into the campaign finance system, which is readily identifiable. However, certainly you know, money can go through Organization One, which then goes to Organization Number Two, which then goes to Organization Number Three, which ultimately makes a campaign contribution. Many of these entities are out of state. And so it can be awfully dif-- and all of them do not have filing requirements either, some on the state level, some on the federal level. And so there are certainly ways to funnel money into the campaign finance system without being able to track the original source.

McCOLLISTER: Could we write a law or a bill next year to identify those sources? Is that beyond our capability?

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FRANK DALEY: I believe it will take something in the nature of a national effort, to be honest, because certainly you can imagine the problems when the Accountability shows up at your office door in Falls Church, Virginia, banging on the door saying, we're the Nebraska Accountability Commission. We want to see your books. I mean, that's not likely to happen. So realistically, what we need is somewhat uniform reporting on both the national level and on the level of the states. And we also have to be mindful that when we're talking about campaign contributions, we're talking about First Amendment issues. So whenever we wander into the legal field to try and regulate the financing of political campaigns, we're always tangling ourselves with the First Amendment. And so we always have to be mindful of that as well. Some very, very pragmatic solutions probably would not pass constitutional muster.

McCOLLISTER: I'm disappointed in the answer, but I understand. Thank you.

BREWER: Additional questions? I guess I got one before I let you out. I can see where Senator Cavanaugh is coming from. And, and I think somewhere there, there is a fix or a tweak that we can do to maybe help the system be better, and I was excited that he was willing to figure out what that looks like. But, you know, if you-- if you look at and because that came up, we'll just say this XXX Public Power. This, this particular company is, is going to be able to figure out a channel to move money from what would be ratepayers, public, public funds, and channel that to where they could control or influence who is going to have the resources to run for a particular position. Where I would find that most disturbing is if they were doing that to actually help elect board members, because then as we've talked, that you could pretty much control what happens through that money source. And you wouldn't really have any fears of overwatch, because if that is your only watchdog is those board members, you can see how that could become fairly twisted. Is the system set up to where that would be pretty hard to ever have happen or?

FRANK DALEY: A few concepts might help. Number one, political subdivisions are only permitted to use public funds for lawful purposes. All right? And so the question is always what is the purpose of the expenditure and when do the public funds lose their identity as public funds? So let us say I'm the city. And the pipes burst in city

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hall and I call a plumber. The plumber fixes the pipes, bills us \$500. We pay him the \$500 and two days later he makes a \$500 political contribution. I mean, I think under those circumstances we'd all agree the city lawfully paid out funds to the plumber for goods or services. Once the plumber received the money, they lost their identity as public funds. And so, therefore, we shouldn't control what the plumber can do. Let's look at a separate example. There's a provision in Chapter 13 of the statutes that allows cities and villages to engage in publicity campaigns for their commercial areas. Now, a city or village may determine we don't have the internal expertise to run a publicity campaign, but the Chamber of Commerce does. And so they enter into a contract with the Chamber of Commerce to run the publicity campaign. The Chamber of Commerce does run that publicity campaign. And so the city lawfully paid out funds. It got what it bargained for in the payout of those funds. But the Chamber of Commerce is still a private entity and the Chamber of Commerce may have other sources of funding. And so if the Chamber of Commerce wanted to make a political contribution, it could do so. Let's take one more example just to round it out. Let us say that the city really opposed a ballot question and it really wanted to stop this thing in its tracks, but it knew it couldn't spend money to stop that ballot question. But it works out something with the Chamber of Commerce, the Chamber, we're going to give you money so that you can stop the ballot question. That money is paid out for unlawful purpose, for the purpose of opposing a ballot question. So there is a violation there so that-- that's already the law, I guess. So in most of these cases, it's a matter of determining whether the money has been lawfully paid out for a public purpose, or whether the money has been paid out for the purpose of supporting or opposing candidates or ballot questions. And very often those are circumstance-- determined by the circumstances surrounding the transaction.

BREWER: All right, excellent answer. Thank you. All right, one more time, any other questions? Sir, thank you for your testimony.

FRANK DALEY: Thank you, Senator.

BREWER: All right, we are on opponents.

DARIN BLOOMQUIST: Yes, sir.

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BREWER: All right, just double-checking.

DARIN BLOOMQUIST: 12.

BREWER: All I can tell you it's the times we're living in so

DARIN BLOOMQUIST: Strange indeed.

BREWER: Welcome to the Government Committee.

DARIN BLOOMQUIST: Thank you. Practiced for three minutes so I should be able to get this in five.

BREWER: All right.

DARIN BLOOMQUIST: Senator Brewer, Chairman Brewer, members of the committee, my name is Darin Bloomquist, Darin, D-a-r-i-n, Bloomquist, B-l-o-o-m-q-u-i-s-t. I'm the general manager of Nebraska Electric Generation and Transmission Cooperative, Inc.. NEG&T consists of 19 rural public power districts and one electric membership corporation and was incorporated in 1956 under state statutes and serves the needs of nearly 150,000 consumers in rural Nebraska. NEG&T administers an all requirements contract for wholesale power and delivery from Nebraska Public Power District exclusively that runs through 2035. This obligation results in approximately \$240 million of revenue annually for NPPD. In 2020, NEG&T sold nearly 4.5 billion kilowatt hours to its members at a 100 percent pass through rate that NEG&T is billed from NPPD, along with a small-- small membership assessment. I am testifying in opposition to LB482 as it is a bill that creates more questions than answers. I am concerned that it will interject more confusion than it does clarification into the electoral process concerning Nebraska political subdivisions. With great respect to Senator Hilgers' request that bill introduction debate be kept to a minimum, this is one bill that need not be advanced to the floor. LB482 appears to target-- be targeted at a perceived belief that public resources were made to a candidate or committee via a transfer made on behalf of a political subdivision because of membership in a membership corporation co-op, excuse me, membership cooperative, corporation, association, or other entity for use as a contribution to a candidate or committee. If this is a motivation behind LB482, it is off target. And I assure you, no such transfer was made on behalf of

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any political subdivision by NEG&T. However, let me be clear. I am a strong advocate that local elections, particularly those of public power district board of directors, should be funded by local contributions. The PAC Nebraskans for Reliable and Affordable Electricity was provided a single loan of \$7,500. This loan was not targeted at any specific agenda. This loan was not made on the behalf of the NEG&T's membership. Nebraskans for Reliable and Affordable Electricity receives the lion's share of its contributions from in-state entities and individually-- individuals. Contrarily, the PAC that contributed hundreds of thousands of dollars to numerous Nebraska campaigns, including that of several NPPD board of director races, was funded by Nebraskans for Common Ground. Further investigation reveals Nebraskans for Common Ground received more than \$575,000 from three donors, \$75,000 from two private citizens from Brooklyn, New York, and five hundred-- a half a million dollar contribution from League of Conservation Voters of Washington, D.C. Will LB482 stop outsiders from funding local Nebraska candidates? No. Will it stop the inflow of more than half a million dollars into our local election? No. But will it frustrate the efforts of Nebraskans to support local candidates? Maybe. Voices that best represent Nebraska are from Nebraskans and not voices from Washington, D.C., or Brooklyn, New York. If Senator Cavanaugh's objective is to preserve and protect the integrity of Nebraska elections, I look forward to working with him to craft, craft legislation that serves Nebraskans. But LB482 does not accomplish that task. For your convenience, I have attached filing reports from Nebraskans for Common Ground and Nebraskans Against Corruption to shed further light on the referenced contributions and a copy of an election report from Resistance Labs that documents how certain public power board members are under attack. Mr. Chairman and members of the committee, thank you for your time today. And I'd be happy to respond to any of your questions.

BREWER: All right. Thank you for your testimony. You put a lot of work into this. I was trying to read through it as quickly as I could here, but I mean, you-- you have taken a lot of information.

DARIN BLOOMQUIST: Well--

BREWER: It may take some digesting, but--

DARIN BLOOMQUIST: If I may, Senator--

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BREWER: Please.

DARIN BLOOMQUIST: --that, that booklet is from, again, a group called Resistive Labs. It's a national group. They have-- the highlighting in it is mine. It has specifically targeted my-- my membership. It goes director by director upon their perceived position of those directors, essentially relating to wind energy or clean energy, as they call it, and whether or not they should be replaced, campaigned against or otherwise disposed of. So that is exactly what we're dealing with.

BREWER: All right, let's go ahead and see if we have any questions for you. Senator Blood.

BLOOD: Thank you, Chairman Brewer. I'm sorry, I'm a little confused. Can you help me out here? So, so why do we have this [INAUDIBLE]?

DARIN BLOOMQUIST: Just, just to show you that there are indeed lots of outside influences on Nebraska public power district races and a large sum of money that is into play from outside sources, sources.

BLOOD: So your organization then would also be against the dark money that's used--

DARIN BLOOMQUIST: Absolutely.

BLOOD: --in campaigns. I'll be looking for that letter of support on my bill here in the future.

DARIN BLOOMQUIST: I'd love to visit with you about it.

BLOOD: So I-- I'm not sure of the benefit of, like, pointing fingers is to-- to your opposition, and I think that's maybe where I'm confused. Are you just trying to say that it's not us, it's other people or what are you trying to say?

DARIN BLOOMQUIST: I'm in the limited time we have, Senator Blood, all I'm trying to tell you--

BLOOD: We have plenty of time because we're asking questions so.

DARIN BLOOMQUIST: OK, all I'm trying to do is provide some background on what's going on in public power district races that I'm very much

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familiar with. And there are a lot of sources at work. It has changed dramatically over the last few years. And I think it's only going to get worse. And we-- it, it doesn't seem to represent the people, the views of the people that are--

BLOOD: Nebraskans.

DARIN BLOOMQUIST: --the ratepayers.

BLOOD: Yeah.

DARIN BLOOMQUIST: Yes, in my opinion.

BLOOD: There is a lot a, lot a, lot of outside money that sneaks into Nebraska during campaigns. I would agree with you. I'm not-- I'm-- but I have to say, I'm not sure. You did an excellent job in your testimony and you were very clear. I'm not sure pointing fingers doesn't muddy the waters some more.

DARIN BLOOMQUIST: I appreciate the feedback.

BLOOD: That's what I would say.

DARIN BLOOMQUIST: I appreciate that.

BLOOD: But I do appreciate because I was confused. I was trying to figure out why they were included in the packet and you've explained why. So thank you.

DARIN BLOOMQUIST: Thank you.

BREWER: I guess I got a quick question for you. The Southwest Power Pool, they encompass a number of states. We became a part of the Southwest Power Pool. It indirectly is going to control rates. Is that an accurate statement?

DARIN BLOOMQUIST: No. It's a marketplace, sir. It provides market prices and has dramatic effects on the rates in Nebraska,

BREWER: Fair enough.

DARIN BLOOMQUIST: But to control--

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BREWER: OK, fair enough.

DARIN BLOOMQUIST: --is not [INAUDIBLE]

BREWER: I think that's a good way to describe it. They encompass a lot of outside of Nebraska operations because of the multiple states and all that. But we are a part of this. And of course, some of the concerns is that we became a part of this 2011, something like that. It committed us to a course of action into the future that neither the Legislature voted on, the Governor signed or by any act of the Supreme Court. It was a decision by public power to become a part of this, even though it sets a course for the future that the state of Nebraska is going to be committed to. If they were influential in elections, I could see how that could become very challenging for any candidate who they opposed. And I guess, do you have knowledge or are you aware that they have any efforts to influence elections, whether it be Texas, Oklahoma, Nebraska, or anywhere else? I mean, Southwest Power Pool is very influential just because of the footprint they have.

DARIN BLOOMQUIST: Sir, the best I would answer that is they're, they're apathetic towards elections in every state because they are an entity. They are a market that provides a service. And I don't think that they would necessarily need dogs in certain states to help them because Nebraska is the only 100 percent public power state in Southwest Power Pool. So that's unique right there. So I, I-- my opinion is that that would be-- that's not because they provide a service that they're a market, no different than the commodity market.

BREWER: And I'm really glad to hear that. And that's the way it should be. You know, the concern is that Nebraska stays public power in a sense that we generate the power and then we distribute the power and that at the point that we lose our ability to be essentially self-contained, otherwise we bring in power from somewhere else and then we're at the mercy of their rates and their desires because we no longer generate our own. So if they're not an influence and you don't see them as one, then, then that's refreshing to hear that.

DARIN BLOOMQUIST: And I don't, and if I could be allowed a little latitude.

BREWER: Sure,

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DARIN BLOOMQUIST: I cut out my testimony because I thought I had three minutes. So my, my mistake. But so, again, as I'll reiterate, my membership is a 100 percent contractual customer of NPPD and completely happy with our arrangement for the time being with NPPD. NPPD has world-class resources: nuclear, coal, gas, hydro has some, some renewables. Yes. The problem-- the worry that we have is with the influx of renewables coming in in the Southwest Power Pool and in Nebraska, that that reduces the efficiency of these world-class generating facilities that Nebraskans own. There is close to a billion dollars of debt in these facilities. They're made cost inefficient, they're made efficient operational-wise and one day closer, closer to being closed because they can't compete in, in the regional market with this influx of renewables. We need reliable and affordable electricity. My organization was formed in 1956 because we had no electricity to power irrigation. My organization has 150 million horsepower of irrigation under its control. We fed a nation. We've put Nebraska in the number two row crop state, number two beef cattle state from an area that people called a couple hundred years ago, the Great Western Desert. So that's what reliable and affordable electricity does. And there are a lot of forces at work that are out there to destroy that. And my charge from my membership is to be an advocate for the wonderful and, and I'm not exaggerating when I say they're world class. They are world-class facilities that are hugely competitive. We want to ensure that they are not prematurely ended.

BREWER: All right, well, thank you for that and I think you got your other two minutes in there, so that's good. We got your whole five minutes. Yes, Senator Hunt.

HUNT: Thank you, Chairman Brewer. Thanks for being here today. In your testimony, you said that the PAC Nebraskans for Reliable and Affordable Energy was provided a single loan of \$7,500. Was that loan repaid?

DARIN BLOOMQUIST: It is my understanding that it has not been repaid. And if I may clarify one statement that was made, Nebraska Electric Generation Transmission had zero to do with the funding of that PAC. That PAC was funded by individuals, OK, so it did not have anything to do with the G&T. The G&T did make a comp-- a contribution in the year 2019, not in 2020. The \$7,500 loan was made in year 2019.

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HUNT: OK, and you have time to respond to the questions. You're not on like a time limit to respond.

DARIN BLOOMQUIST: I'm sorry.

HUNT: It's OK. Tell me more about the interest that NEGTEC has in killing renewables.

DARIN BLOOMQUIST: Not in favor of killing renewables, Senator Hunt. We are-- what we are in favor of is a responsible mix. We're not-- we're not involved in the turbine race, so to speak. No, I only know NPPD so that's what I'm talking about. Their resource mix is already close to 65 percent carbon free. Now, if carbon is the enemy, OK, that they're hugely positioned in a very enviable spot nationally already. There's no need to go on the bleeding edge and replace 24/7/365 sources of electricity we don't need. California is doing a case study on what happens when you prematurely close reliable and affordable electricity generating stations and replace them with an intermittent resource that cannot be there 100 percent of the time when it's needed or demand it. And that results in power going out and power being shut off, which happened several times in, in California. Now California, I imagine the power goes out, no big deal. You head down to the beach, hang out. It goes out tonight for a little old lady, she may freeze to death in Nebraska. So that's a-- that's a different story. And it has nothing to do with the physical transfer of electrons. It has to do with political pressure being applied to a entity whose sole charge is to provide affordable and reliable electricity, which NPPD has done a terrific job. They've been-- we've been-- we've been in existence longer than NPPD and they're our only contract. We're their only contract, excuse me. We only contract with them for 100 percent of our power needs. Very happy with that.

HUNT: But you have a billion dollars of debt in these nonrenewable energy power plants?

DARIN BLOOMQUIST: Don't quote me on it, but it's up to I think it's between \$750 million and a billion. So significant, yes, absolutely. And if those were to close prematurely, who pays that? That's a question we're dealing with. Somebody's got to pay those bonds.

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HUNT: So this would also speak to an interest in, in stopping investment in, in renewables.

DARIN BLOOMQUIST: My-- my-- how I would rephrase that is I'm not antirenewable, but it's got to be on a need basis. Renewable investment in Nebraska is not made by public corporations. They're made by private corporations only that return dividends to stockholders. And NPPD has six power purchase agreements with wind facilities. All six are out of state and return in investment to shareholders in other states, not Nebraskans.

HUNT: OK, is there a plan to get the \$7,500 loan repaid?

DARIN BLOOMQUIST: I would have to talk to my board about that. And yes, we actually are in discussions about that.

HUNT: OK, thank you.

BREWER: All right. Senator McCollister.

McCOLLISTER: Yeah, thank you for your testimony. Thank you, Mr. Chairman. Would you inform the committee when that, that loan is repaid?

DARIN BLOOMQUIST: Would I? Yes, sir. Absolutely.

McCOLLISTER: That would be great.

DARIN BLOOMQUIST: OK.

McCOLLISTER: Let's talk about electricity prices in Nebraska. How would you describe-- have we had many increases in electricity prices over the last decade?

DARIN BLOOMQUIST: Over the last decade? I'd have to go look at my records, but I have not had an increase from NPPD in the last six years. In the last three years, I've actually had a, a refund paid.

McCOLLISTER: Why do you suppose that's the case?

DARIN BLOOMQUIST: I like to think that's because they're efficient and they're becoming more efficient. And when we signed the new contract

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in 2016, we put parameters on what their costs can be. And if they're not competitive within that parameter ban. I can take my membership away from NPPD. And I would think that's a large driver of what makes them efficient, more efficient and have found ways to become more economical. Now natural gas prices, and joining the Southwest Power Pool had a big influence on that. NPPD traditionally does very well with their generation in the Southwest Power Pool.

McCOLLISTER: So the Southwest Power Pool has actually helped keep prices down.

DARIN BLOOMQUIST: I think-- I think one could probably come to that understanding, yeah.

McCOLLISTER: And the combination of our coal-fired plants and the renewable energy has had that effect, wouldn't you say?

DARIN BLOOMQUIST: I would say the largest effect on that, Senator, in the 14-state Southwest Power Pool is natural gas prices. They have with, with fracking have kept the price down. My understanding of my following when Southwest Power Pool is that natural gas prices set the market price. And I've seen data that, that reflects that correlation. So I would say that it's a combination. But the predominant prevailing, at least in the past, resource was, was natural gas that drove the prices.

McCOLLISTER: Natural gas at \$2.50 Mcf is, is cheaper than in previous years. But as a share of the energy generating mix, it's fairly small. I would say less than 5 percent. Isn't that true?

DARIN BLOOMQUIST: In Nebraska?

McCOLLISTER: Yes.

DARIN BLOOMQUIST: It's fairly small. I think it's a little more than five. But when you-- are you talking NPPD or all?

McCOLLISTER: The whole state.

DARIN BLOOMQUIST: I would say it's under 10 percent. Yeah, because gas isn't as prevalent here as it is in Oklahoma, Texas and Kansas.

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McCOLLISTER: And the renewable component is how large?

DARIN BLOOMQUIST: In Nebraska?

McCOLLISTER: Yeah.

DARIN BLOOMQUIST: NPPD claims that they get 10 percent of their energy from renewable resources.

McCOLLISTER: And OPPD?

DARIN BLOOMQUIST: Sir, I'm not familiar with what OPPD.

McCOLLISTER: OK.

DARIN BLOOMQUIST: I can give you a guess, but I really would hate--

BREWER: OK, let's, let's, let's shift out of the Natural Resources Committee--

McCOLLISTER: Yeah.

BREWER: --and get back to Government. Any additional questions specific to LB482? All right, seeing none, thank you for your testimony.

DARIN BLOOMQUIST: Thank you.

BREWER: Any other in opposition to LB482? Anyone in the neutral? All right, Senator Cavanaugh, welcome back. Sorry about that little detour there. All right, we're still very interested in your bill here.

J. CAVANAUGH: Most thorough deep cleaner here in the Capitol, I think.

BREWER: Yeah.

J. CAVANAUGH: Thank you, Government Committee, and I appreciate everyone's questions and I appreciate the testimony here today from the opposition. Mr. Daley and I did discuss this bill previously and we discussed his concerns and my position about it. I just from the testimony, I'd kind of like to point out a few things that we heard. One from Mr. Bloomquist is that they transferred the \$7,500. They haven't gotten it back. Well, first he didn't know and then they-- now

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he's going to look into it. My reading of the Lincoln Journal Star article is actually that Mr. Bloomquist is the treasurer or assistant treasurer of this committee, so hopefully he knows where the money is. But he also said that his charge is to advocate for his members, meaning those natural or the public power districts. And you heard his interpretation of what the advocacy means. And the point is, the reason government money shouldn't be used in political campaigns is because he and I could be ratepayers of the same institution. And we have a wildly different interpretation of what that means. He has his opinions, which he's entitled to as a private citizen. He's entitled to use private funds for. What we're trying to avoid here is where he's using my money to advocate for his objective, and that is the purpose of a ban on public money in, in political campaigns. As to what Mr. Daley said, th-- he set up a couple of examples of instances where government institutions pay money to private institutions that then go on to be used in political campaigns. I would just point out for you that every one of his examples would be described as a fee for service, and that is a clearly established use of a conversion of public funds to private use. What we're talking about here is membership dues to an organization. That's not a fee for service. What Mr. Daley's issue here is, is creating a essentially another category of illegitimate use of public funds. He's-- he, he has established and defined and we all agree that public fee money, I'm trying to look for his exact words here, but is converted to private when it's used for any legitimate use. And he's concerned about creating more instances where people can say these public funds were not actually converted into private use. And the thing is, I agree with him that this does do that. And that's the point, is that there is an exception in the law wherein someone can create a intermediate institution and purport that it is for a legitimate purpose. And what I'm saying is that association, what we're trying to establish here is being a member of an association is a legitimate purpose for legitimate reasons. However, public funds into an association cannot, should not be used for political purposes. You can join associations that do not engage in political activity. Associations can engage in political activity. They just cannot have public members. There is plenty of precedent in this for bifurcation of associations. I think unions do this quite well. So I think that the exemplar here is Mr. Bloomquist's organization-- and he did a great job of, I think, demonstrating the necessity for this bill. He came in and he told you exactly why they

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feel justified in doing what they did. And, you know, for his opinion and the objectives he's serving, he probably does feel justified. But he shouldn't be able to use our money for it, nor should anybody else. So if we don't adopt this legislation, we're going to find other organizations are going to say that worked for them, let's do it for us. We're going to find a onslaught of organizations-- well, I was thinking it's a loophole you can drive a truck through. And if we don't fix it, it's going to be a caravan. So any other questions?

BREWER: All right. Thank you. You kind of had the-- heard the back and forth with, with Mr. Daley, you know, that there probably is a sweet spot there where we've maybe figured out where there's a-- there's an issue. It's just how we shape it so that it is able to be addressed and be effective like we want it to be. I guess I'm just curious, after the discussions that we've had, is-- is there something that you've seen where it can be tweaked so that we still get done what you need done without, you know, I guess being directly in opposition to the way Mr. Daley addressed the issue?

J. CAVANAUGH: Well, I don't have the answer to you today I suppose, Chairman Brewer. And I do appreciate the question and the conversation. And I'm certainly willing to work with Mr. Daley about this going forward. And as I think I said earlier, there are a number of those associations who are certainly engaging in the conduct that we're not talking about here, that are concerned about this bill, and that I intend to meet with them going forward. And I've had discussions with them about how to address those concerns. And so, yes, there is probably some space to work on the bill to make it more narrowly tailored to address specific concerns. And I just don't have the answer for you yet, but we are going to continue to work on it.

BREWER: Thank you. I think you put a lot of thought into this and it's refreshing to see. OK. Other questions? Seeing none, we have some letters to read in. As far as written testimony, we have one opponent, that's Colby Coash, representing Nebraska Association of School Boards. And letters, we have four letters that are proponents, one in opposition, and two in the neutral capacity. With that said, we will close on LB482. And that is all the bills this morning, correct? All right. So we will be done. Be aware this afternoon--