

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resource Committee January 28, 2022

BOSTELMAN: OK. Good afternoon, everyone. Welcome to the Natural Resource Committee. I am Senator Bruce Bostelman. I am from Brainard and I represent the 23rd Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Introducers will make initial statements, followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for 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 it-- fill out the green sheet before you testify and please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to a page or the committee clerk. This will help us to make a more accurate public record. If you do not wish to testify today but would like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign for that purpose. This will be a part of the official record of the hearing. When you come up to testify, please speak clearly into the microphone, tell us your name, and please spell your first and last name to ensure we get an accurate record. We will be using the light system for all testifiers. You will have three minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining, and the red light indicates that your time has expired. Questions from the committee may follow. There is no display of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves starting on my left.

GRAGERT: Good afternoon. Tim Gragert, District 40, northeast Nebraska.

HUGHES: Dan Hughes, District 44, eight counties in southwest Nebraska.

BOSTELMAN: And on my right?

J. CAVANAUGH: John Cavanaugh, District 9, midtown Omaha.

MOSER: Mike Moser, Platte County and parts of Stanton County.

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BOSTELMAN: And to my left is committee legal counsel Cindy Lamm. And to my far right is committee clerk Katie Bohlmeyer, who will be celebrating her birthday tomorrow. Happy birthday, Katie. Our pages for the committee are Malcolm and Kate, and thank you both for being here today. With that, I will turn the hearing over to Vice Chair Moser as I have the first bill up.

MOSER: Senator Bostelman, welcome to your committee.

BOSTELMAN: Ready to open on LB806?

MOSER: All righty. Kick it off.

BOSTELMAN: All right. Good afternoon, Vice Chairman Moser and members of the Natural Resource Committee. My name is Bruce Bostelman. I spell that B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. I'm here today to introduce LB806, which would prohibit the drainage of water off of land through the use of trial da-- of trial-- tile drain systems if the increased flow causes damage to another person's property. I am bringing this bill because we currently have an ongoing issue across the state where water is being drained from fields through drain tiles into an underground sump-- sump pump system. The-- the sump then pumps the water to the surface, and in some cases continuously, causing flooding on our neighbor's fields. More specifically, the water being drained was then flowing onto the neighbor field, damaging crops and making the ground unfarmable. The water then continued to flow across other fields and ditches, causing flooding to another landow-- to additional landowners. LB806 will prohibit the draining of fields through the use of a tile drain system if the increase in water flow damages another's property, I have handed out pictures for you to look at. You can see in the cover it's just one of the fields. The next couple pages, you can actually see the system itself as it comes into, I call it, a large cistern, if you will. The water gets drained into there from the tile system and then that's the sump pump that comes out and pumps it out onto the surface. So I'd ask for the committee to move the bill to General File, and I will take any questions that you may have.

MOSER: Questions from members? Senator Hughes.

HUGHES: Yeah, so it-- it appears that this-- they're pumping into a natural waterway. Is this-- I mean, is the waterway being backed up or overtaxed or why?

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BOSTELMAN: You'll-- there's individuals behind me that can answer that question for you.

HUGHES: OK. Very good. Thank you.

MOSER: So this only pertains to tiling? It doesn't pertain to dirt work that a neighbor might do to increase the flow of water that winds up running onto the neighbor's field and flooding the neighbor?

BOSTELMAN: Correct. The intent of this would be very narrow in scope. And Mr. Blankenau will be behind me to address your questions as well. But the intent is this is a specific system that's being put in where there's tile that is-- that is being drained into the-- I'll call it, you know, a large culvert cistern or whatever. There's a sump pump in the bottom of it. And then what happens, as that fills up, the sump pump kicks on, it kicks water out, and that water then is, if you will, is crossing into the neighbor's property and flooding out the neighbors. And some of those individuals are here with me today as well. So, again, it's not a normal drain tile that's a gravity-fed that you normally see. This is specific-- or to any other work. This is specific to this type of system.

MOSER: That's your intent, but the wording of it makes it that way?

BOSTELMAN: I believe it does. And we'll have-- Mr. Blankenau can address that. I would ask you to ask him that.

MOSER: Who's the person you're referring to?

BOSTELMAN: Don Blankenau, he'll be one of the testifiers coming behind me.

MOSER: He's--

BOSTELMAN: He's an attorney.

MOSER: --one of the guys that's being harmed by the neighbor who's pumping wa--

BOSTELMAN: No, no.

MOSER: No?

BOSTELMAN: He can explain his situation, I would ask.

MOSER: All right. OK. Well, we'll--

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BOSTELMAN: He's an attorney.

MOSER: Oh, OK. Well, we'll consider his testimony when it happens.

BOSTELMAN: He-- he works-- he works in this area, and so this is a concern of his, that he's seen this happen across the state. And again, since he deals in this-- with these cases, I, I would defer to him to explain that role to you.

MOSER: OK, thank you.

BOSTELMAN: Sure.

MOSER: Other questions? Seeing none, thank you.

BOSTELMAN: Thank you.

MOSER: Are there proponents for this bill?

DON BLANKENAU: Good afternoon, Mr. Vice Chair, members of the committee. My name is Don Blankenau, D-o-n B-l-a-n-k-e-n-a-u. I'm a lawyer in private practice here in Lincoln, and I've been involved in water issues for over 30 years, including many cases dealing with this very issue. I'm not representing any party today. I'm here on my own behalf, just as a concerned citizen, because I have seen so many of these disputes over the course of my career. And I'll thank Senator Bostelman for introducing this legislation. It amends a statute that is 111 years old. I think it's in need of some refreshment at this point. And the problem with the statute is that it lacks a predictability of outcome. That is, it's very simple, it allows landowners today to drain their land through virtually any means and put it into a natural drainage way, which can go into a draw or, or depression. And where it usually comes into conflict is when it washes out crops. Any sort of depression, it goes right through a cultivated field, oftentimes with pretty significant, disastrous results. But the way the court has interpreted the existing statute is that you can damage the land of your neighbors so long as that damage is not unreasonable, whatever that means, and that interpretation that the Supreme Court has given it has resulted in over 90 cases going to the Supreme Court over the course of the existence of this statute. Now, if you are an astute student of these cases and you place the fact scenarios together to try to determine what the likely outcome would be, I would defy anyone to find that there is any logical conclusion. That is, you just simply can't determine how these cases are going to turn out because the same fact pattern will result in a different conclusion, depending on the judge, sometimes depending on the same

judge at a different time. It's just very complicated, and I, I really applaud Senator Bostelman for this amendment, which I think adds greater predictability of outcome. Now, I will note that the Nebraska Association of Resources Districts came out in a neutral capacity on this bill, and I don't represent them, but we did get a call this morning from one of their NRDs, Lower Platte South NRD. They had a few concerns with it and I've agreed to work with them to see if we can't find some, some language that will be suitable to them and address their concerns. We'll provide that language to Senator Bostelman in the next few days. So with that, I thank you for hearing me out.

MOSER: Thank you. Questions? Senator Hughes.

HUGHES: Yes, thank you, Mr. Vice Chairman. Mr. Blankenau, thanks for coming in today. So if-- if we were to pass LB806, does changing the law simply treat-- if this change would simply treat drainage like any other kind of harm that one person would do to another?

DON BLANKENAU: Yeah, it puts it on a par with other sort of tort claims. For instance, if I were to collect my cattle waste and drove it to my property line and dumped it over onto my neighbor, the way the law is presently interpreted, that kind of thing, by analogy, would be acceptable unless it harmed the neighbor unreasonably. What this does is kind of invokes the golden rule and simply says, you can do this, you can drain your land, so long as you don't harm your neighbor. And I think what that does is it facilitates cooperative agreements between landowners, encourages them to work in advance before the damage is done, and I think in that way avoids a lot of the litigation that we've seen over the years.

HUGHES: So do you think this should be applied retroactively?

DON BLANKENAU: I do not, no. I-- and I think there's good reason in case law why it would not be, so if the situation presently exists and had been litigated, then it's forever concluded.

HUGHES: So you think if we make this change, it would actually reduce litigation?

DON BLANKENAU: I think so. People always say-- as a lawyer, they say, really, Don, you're gonna reduce your workload? But I-- as I've found over the years, I've tried to encourage clients in ways to avoid litigation. I find I increase my workload when they ignore it. I do think that the very fact that this will result in more predictable outcomes and generally discourage drainage unless you work with your

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neighbor, that that will eliminate future litigation-- or not necessarily totally eliminate it, certainly, but reduce the number of those cases.

HUGHES: And this-- this is just strictly limited to tile and sump pump issues?

DON BLANKENAU: It-- it-- it's broader than that though. It's tile, sump pump, and then if you dug a ditch, for instance--

HUGHES: OK.

DON BLANKENAU: --that accessed that water. Any sort of drainage off your land is still permitted again so long as you don't harm someone.

HUGHES: Yeah. OK, very good. Thank you.

DON BLANKENAU: Yeah. And I should mention very briefly that this puts-- this would put Nebraska in line with the majority of states and how they deal with drainage disputes.

HUGHES: OK.

MOSER: Senator Gragert.

GRAGERT: Thank you, Vice Chair Moser. Thank you for your testimony. You know, I've worked a little bit in this area and probably just enough to be dangerous. But up in northeast Nebraska, I've never seen this. I've never seen the tile system going into a sump pump and pumping it up. What-- what topography are we on here? Is this flat ground? Because usually when people tile coming off of a-- you know, any kind of grade with, with gravity, they were allowed to tile that as long as they didn't add water to that drainage. Are we adding any water to this drainage at all by this sump pump action? Again, I've never seen this.

DON BLANKENAU: Senator Bostelman's example is one that I hadn't seen before. He showed me those same photos. I'm not familiar with the topography on that one. But I did contact a number of other natural resource districts, and this sump pump approach apparently is kind of the in thing now, I guess. I've talked to-- can't remember which NRD now, but I know that a number of NRDs are seeing these sump pumps go in. Sometimes the volume of water that comes out of it is pretty significant to the point where it causes erosion. I saw one where the erosion was probably five feet deep on the neighbor's ground and ten

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feet across. That was over a period of several years, of course, but it was a significant impact, damage to that neighbor's land.

GRAGERT: Well, with the, with the tile systems that we did, as long as that producer outletted the water on, on his land and then it went onto the neighbor, that was, that was allowed. And, and would this LB806 change the gravity-fed type? Because what they're, they're intercepting, you know wat-- the surface water, but they're not pumping up groundwater, if that's what's happening right here.

DON BLANKENAU: I don't think that one does. I think that does collect just runoff, but it does it in such a volume, it allows it then to-- to put it out in such big pulses that it really creates those issues.

GRAGERT: Well, tiling will tend to do that. It'll drain the--

DON BLANKENAU: Yeah.

GRAGERT: It'll drain the-- the watershed a lot faster than the-- but the amount of water coming down through that watershed is the same amount of water. It's just coming at a faster pace with the tiling, and I can understand that. You can't outlet it on your neighbor and cause erosion problems, but I would be concerned right now with this type of system, and we're going to pass LB806, and it's going to affect all the gravity systems that--

DON BLANKENAU: It, it could affect gravity systems and it-- but again, only to the point where they would cause damage to their neighbor. Now, again, if they dump it into a natural drainage way that's a typical creek or whatever, that-- that's not going to be an issue.

GRAGERT: OK.

DON BLANKENAU: If-- if it dumps it on their cropland, though, and causes that erosion, then that could be enjoined.

GRAGERT: OK, then one last question then. The-- just to sum up, from what I think you said and I heard, it's only-- this will only be-- come into effect if he's actually causing an erosion problem on the, on the neighbor. Otherwise, if that water comes down through here with no, no erosion problem effect on-- on his neighbor, he's good to go?

DON BLANKENAU: Yep, that-- that's right. And in fact, even if you caused erosion, if you worked with this neighbor and got an easement, again, no problem.

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GRAGERT: Yeah, exactly. Thank you.

DON BLANKENAU: Yeah.

GRAGERT: Thank you.

DON BLANKENAU: Thank you.

MOSER: I have a couple of questions about-- Senator Bostelman said that he kind of intended this to apply to sump pumps and-- only and-- because I-- you know, in the-- like in the Platte River Valley and some of the lower areas, they tile those fields because they're too wet to farm sometimes. So you can-- where we used to chase the cows down to the pasture, I could walk along, and there was water in the ditch most all the time, and you could look at the tiles coming out of the field and they'd be, I don't know how big a pipe, maybe six-inch pipe. They'd be, some of them, half full and, and there's no pump, but it just flows out of there. And in fact, one hayfield we went in, a lot of times, we'd get bogged down in the middle of it somewhere. There were springs. So it's not-- it's not unusual; up in the hills, maybe not so much, but-- so-- but that wouldn't be affected by this bill?

DON BLANKENAU: No, it-- it's written broad enough to cover both situations, whether it's a sump pump or--

MOSER: So that could be also a covered situation.

DON BLANKENAU: --or gravity, yeah.

MOSER: And, OK, then here's another experience I'll ask you a question about. So the neighbor does a bunch of leveling so that his sprinklers and things don't have to go over such rough land and stuff, and he straightened out a creek a little bit, too, which I'm sure is illegal, but anyhow, it was done.

DON BLANKENAU: I'll give you one of my cards.

MOSER: Yeah. [LAUGHTER] There-- what's the statute of limitations? So then when it rains, the runoff is much higher and faster than before, and it runs across a fence and floods a field. And we were told by the county supervisor that you can't drain water on your neighbor artificially. And even though that's kind of what he did, there was no, no penalty. But would this also cover that?

DON BLANKENAU: It should, yeah. It-- again, it tries to place drainage--

MOSER: This is looking up.

DON BLANKENAU: [LAUGH] It tries to place drainage on a par with all other sorts of tort claims, which simply says you-- you're free to do what you want on your land, you know, subject to permitting, so long as you don't harm your neighbor, which I think makes kind of perfect common sense, right?

MOSER: Well, in this case, if it rains a lot, it'll run at such a speed that it'll climb the road and get on the other side and then run in the field, and it can flood six acres.

DON BLANKENAU: Yeah. And what, what I've seen sometimes is one neighbor will tile, create a problem for his neighbor, then that neighbor will decide, well, I'm going to do the same thing, and create an even worse problem for the next person and so on downstream.

MOSER: Well, maybe, maybe we could put in a tile system and pump it back in the ditch and try to make it go downhill to the next guy.

DON BLANKENAU: Well, you know, and, and part of the problem is people look to the state. You know, the state agency has jurisdiction over these sorts of situations. Then they look to the NRD and the NRD said it's not really groundwater yet because it hasn't gotten to the-- to the-- any underlying aquifer. So they don't have jurisdiction, and then they go to the lawyers and, and they fight it out. And they typically are pretty pricey cases. They take a long time. And at the end of the day, you don't-- you can't predict how it'll turn out

MOSER: Well, and some of the other neighbors kind of tried to help work it out. One guy had a dam and they changed-- they raised the road and dug the ditch out, so some more of that water would run down into the neighbor's dam, and so, you know, some people were trying to do the right thing.

DON BLANKENAU: Yeah, and I-- and I think if you place kind of that standard tort liability out there, it forces then that person to think about how they're going to drain before they create an issue for their neighbor.

MOSER: Other questions for the testifier? Certainly an interesting case, and thank you for coming to testify.

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DON BLANKENAU: Yeah. Thank you. And thanks again to Senator Bostelman.

MOSER: Thank you. Other proponents? OK, please give us your name and spell it, first and last, please.

LUMIR JEDLICKA: My name is Lumir Jedlicka, L-u-m-i-r J-e-d-l-i-c-k-a. I'm also from your area a little bit.

MOSER: You're--

LUMIR JEDLICKA: I'm a little bit more to the east and we're on-- both in the Platte Valley and we can talk about that type of low running--

MOSER: You're-- you're my neighbors.

LUMIR JEDLICKA: Yeah, downhill neighbor.

MOSER: OK.

LUMIR JEDLICKA: My background is true Nebraska: school and rural schools, then to the University of Nebraska, then time in the Navy. Back in 1971, farm-- started a farm with my father and got involved with the community. Served 12 years on the Lower Platte North NRD and in that time served on the Governor's Water Task Force, with Don, being one of our good lawyer leaders, guiding us. I have been in most all areas of Nebraska's water problems. This change to Section 31-201 is overdue to be corrected. The Rawhide drainage area that I live in and farm has very little slope, and I think Moser kind of related to that type of walking in the water in pasture. I'm sure all of our farm ground was pasture at one point, years back. The slope that I'm talking about is 0.02 percent an inch to one foot. That's one hundred one-hundredths of an inch to one foot. I-- most of my land is with that slope and it, and it was delevelled and it was leveled for gravity irrigation so that I could farm it. My father and uncles and the whole neighborhood was doing that under the instruction of the Farm Service Agency at the time. 50 to 60 years back. I will talk about that drainage again, 1 inch to 50 feet. The tile system has developed since then; irrigation has changed a lot. The-- you know, the, the pumping from tiles in my area doesn't work unless it's pumped. So that's why the tiling now is coming out of Minnesota. These developers are developing the pumped tile system, and the grain prices are really good. This dewatering of low fields is pushing water into drainage ditches that used to be farmed through, thus making downstream farms saturated and harder to farm. Timely makes a big difference. They get to farm way ahead of us now that they tiled it. What I would like for this-- one more word to put into this, line 4 of this bill, that is

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dewatering of head of tile drain, because that is what tile drainage does, dewater. It would be very clear, very clear. That's what tiling is: dewatering. I want to point out that mechanical pumping of groundwater is a well in Nebraska law. Also, many well-- any well pumping more than 50 gallons per minute needs to be registered. Chapter--

MOSER: Sir, the red light's on. Why don't we move on to some questions and maybe you can--

LUMIR JEDLICKA: OK.

MOSER: --we can ask you questions about some of your other points, just to be fair to everybody.

LUMIR JEDLICKA: Right.

MOSER: Questions? Yes--

GRAGERT: Thank you.

MOSER: --Senator Gragert.

GRAGERT: Thank you, Chair. Now you've been-- you mentioned you, you gravity irrigate?

LUMIR JEDLICKA: Yes.

GRAGERT: Did you continue to gravity irrigate?

LUMIR JEDLICKA: I have mostly pivots now on that gravity-irrigated ground.

GRAGERT: Oh, so you're, you're not gate irrigating; you're-- you've got pivots on it now.

LUMIR JEDLICKA: I have a lot of gate irrigation yet too.

GRAGERT: Oh, you still-- OK. So, you know, to-- on level ground and you get water across to the other end of that, that's a lot of water goes through there. A lot of, a lot of water seeps down before it even gets to the end, correct?

LUMIR JEDLICKA: And that's what happens with these tile systems too. A lot of water seeps down into other fields before it gets to the other end of the river, to the--

GRAGERT: Yeah. So would it be possible that with this type of system, and I'm asking, I guess-- yeah, I'm asking more than I-- than I really understand this. But would it be possible to be able to run the sump pumps after harvest to take the-- to take the field-- or the water capacity or field-- yeah, your waters-to-field capacity, bring it down for the next-- for the next season instead of keeping this ground evidently saturated?

LUMIR JEDLICKA: I-- it's-- what it's doing then, my answer to that is it's saturating the ground below. It's a mile away, farther away. That's at these slopes, same type of slopes I'm talking about. I guess my, my thoughts through all this is that dewatering of one piece of ground causes another piece of ground to get wetter. Unless you're by a river or a good creek, the Rawhide Creek, which I'm living by and is the main problem, is a very, very flat area. And part of this situation that I'm in, my father put some dams on that hillside right up from Shell Creek, and that's right below-- right below this farm is that-- where they're tiling it now because there's a saturation of water from my dams. So cause and effect has created a lot of cause and effects. So what I'm saying is, these pumping tiles are coming into our area and my son says, well, maybe we shouldn't complain because we may have to do the same thing.

GRAGERT: I-- I'm kind of getting mixed, mixed messages. Are you in-- are you a proponent of this or an opponent of this?

LUMIR JEDLICKA: Proponent, proponent. I'm-- but I am-- I am also calling it a well. And in my-- rest of my testimony, I point out some points that, that anything that's a case-- casing in the ground that you pump mechanically is a well. So it's not an artesian well, like a natural drainage tile would be, but it is what we in Nebraska that want to preserve our water-- I am a proponent of preserving our water for the next generation.

GRAGERT: Right.

LUMIR JEDLICKA: And if you're pumping out all these gallons to the rivers, to New Orleans, we're not saving it for Nebraska generations.

GRAGERT: Right. But with gravity irrigation, I guess I'm going to ask you then, your pivot irrigation is a lot less--

LUMIR JEDLICKA: You-- you bet.

GRAGERT: --or is a lot more efficient than gravity irrigation, right?

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LUMIR JEDLICKA: There's two efficiencies. There's a labor efficiency and then there's a water efficiency. You can put it on when you need it. More accurately, I'd have to say that some of my gravity-irrigated fields out-yield my other fields, but-- so it comes down to benefits, monetary benefits.

GRAGERT: OK, thank you.

MOSER: So what road do you live on in Schuyler?

LUMIR JEDLICKA: I live on Road 14; my son's on 15. And--

MOSER: So you're east of Schuyler?

LUMIR JEDLICKA: Yes.

MOSER: OK. Well, you're seven or eight miles from us, so you're safe.

LUMIR JEDLICKA: No. [LAUGH] Well, I-- we're getting water from the Columbus area through Lost Creek.

MOSER: Now you'd probably have more experience than I do, but I would think if you quit running these during the harvest sea-- or during the growing season, that that water would come right back. I mean, it's, it's all these drain tiles can do to keep that water so that you can drive across the field in some cases.

LUMIR JEDLICKA: I am-- I'm hopeful of that. I'm hopeful of that. When I was on the Water Task Force, I got to see out-- firsthand out west of situations that reversed. And I was under the assumption when I came off of that task force that we'd never have that problem in eastern Nebraska, never. But I'm monitoring this well that I have above this tiled farm and the, and the NRD does not monitor the level of my well there, but it does it for--

MOSER: They monitor some wells, just not yours.

LUMIR JEDLICKA: But not for depth-- not in my well, right. Now this, this dewatering would also affect my other wells downstream from these fields in the future years because my wells are only 40 foot deep in that other area around the Rawhide.

MOSER: Your irrigation wells are only 40 feet deep?

LUMIR JEDLICKA: Forty feet deep. I'm pumping out of the alluvial waters, alluvial--

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MOSER: You can pump enough water to irrigate with a 40-foot well?

LUMIR JEDLICKA: That's where pivots come in. Pivots make it much more efficient. I will--

MOSER: How-- how high-- are you quite a bit closer to the highway then?

LUMIR JEDLICKA: I am north of the highway and then two miles from the highway is the Rawhide, and that's-- Shell Creek overflow goes into the Rawhide and it runs across this flat ground, which I call the delta of Nebraska. It's no different than what's from the--

MOSER: OK.

LUMIR JEDLICKA: Yeah?

MOSER: Well, we can reminisce another time. We don't want to--

LUMIR JEDLICKA: Yep, yep.

MOSER: --spend all this time, but other--

LUMIR JEDLICKA: I [INAUDIBLE]

MOSER: Yes, Senator Hughes.

HUGHES: Thank you, Vice Chairman. Thank you for coming in today. So I guess that was kind of my question. What, what's the level of the water table in your area?

LUMIR JEDLICKA: My water table is around eight foot, six foot some years. And, yes, basements in my area get water in them in the wet years.

HUGHES: So I'm assuming you have some uphill neighbors that are-- have installed this tile and dewatering?

LUMIR JEDLICKA: This is the, this is the first-- three years ago maybe is the first tiling that appeared with these pumps and--

HUGHES: So how deep is the tile generally?

LUMIR JEDLICKA: I think the tiles are 18 inches and then these sumps at the end of the field might be four foot, and then it runs into that eight, eight-foot casing that the pump is in.

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HUGHES: So they're not typically in the, the groundwater.

LUMIR JEDLICKA: Well, in, in Nebraska law, it says anything under the ground is groundwater.

HUGHES: But they're not tapped into the aquifer.

LUMIR JEDLICKA: What is the aquifer? I was told in the task force that all the water is connected.

HUGHES: OK. So are-- is this-- are these pictures of your farm that we, we were handed out today?

LUMIR JEDLICKA: I don't think so.

HUGHES: Oh, OK, nevermind, but there's another gentleman. OK, thank you for coming in today.

LUMIR JEDLICKA: Thank you much.

MOSER: Other questions? Thank you for coming to testify with us today. Other proponents of this bill? OK. Could you please say and spell your name for us?

JOE HEAVICAN: My name is Joe Heavican, J-o-e- H-e-a-v-i-c-a-n. Some of those photographs are my farm. I have lived and farmed in Rogers, Nebraska, which is, you know, just east of Schuyler--

MOSER: Just down the road. Yeah, I know right where that's at too.

JOE HEAVICAN: --my entire life, for 59 years. In the year of 2020, I noticed how wet our land near Rawhide Creek was getting, to the point of drowning my wheat crop with very little rainfall. At the time, we were over ten inches under normal rainfall, my wheat crop suffering. I followed the creek upstream, only to find two lift stations pumping water nonstop. They can run from 300 to 500 gallons a minute, running 24/7, discharging water into a ditch, which eventually runs into Rawhide Creek, which goes down the road 4 miles to my property. And the creek can't handle this much excess water, so it's backing out and seeping into mine and some of my neighbors' properties, causing harm to our crops. There doesn't seem to be any regulation or common sense used as to the amount of water these lift stations are pumping, in my opinion, so I support the law changing to-- I support changing the law to read as proposed, to make it illegal to increase the water flow if it is causing damage to others. I have met with the NRD, the NRCS-- excuse me, the NRCS, county attorney, zoning administrator, and county

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commissioners on this matter, and although most of them seem to agree with what's going on isn't right or fair, they don't have the authority to do anything about it. So we need to change the law, as this problem is only going to get worse. It's not right to be able to drain your water, your problem, on someone else. I thank Senator Bruce Bostelman and this committee for considering my matt-- considering this matter.

MOSER: Thank you. I see you're on the list. You must have submitted a written testimony also.

JOE HEAVICAN: I did, Senator--

MOSER: OK.

JOE HEAVICAN: --because I was-- I wasn't sure I could make it today, but I made it.

MOSER: Yeah. Well, I'm glad that you made it through your flooded field to get here. [LAUGH] We have a couple of other proponents, beside Mr. Heavican. Questions for Mr. Heavican? Senator Hughes.

HUGHES: Thank you, Mr. Vice Chairman. Thank you, Mr. Heavican, for coming in.

JOE HEAVICAN: Sure.

HUGHES: I'm a farmer, too, so I'm sympathetic. But when, when there's a big land-- when there's a big rain, does this area generally flood--

JOE HEAVICAN: No,

HUGHES: --because of big rain? It drain-- it's well-drained?

JOE HEAVICAN: Not that-- not that field. It'll be saturated in the spring. I'm not going to-- not pulling the wool over anybody's eyes. It's a low-- it's downstream from Lumir, so it's lower yet, so it, it is wet soil. But when you're ten inches under normal rainfall and it's backing into your wheat crop and damaging it to the point of, on the high end of the field, 60 bushel to 10? And 10 inches below normal rainfall, I was getting stuck with my combine. And when I went to do the wheat, I'm getting stuck with the round baler. There's something wrong here.

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HUGHES: I guess if you're, if you're ten inches below normal rainfall, I wouldn't think there would be that much being pumped-- being drained from the tile fields above you.

JOE HEAVICAN: Wrong. Wrong. I can bring any amount of witnesses you want that they never shut off. And when I say there's no common sense being used in the NRD, Mr. Bruckner could come down and verify, that man's center pivot was running at the same time the lift station is in the same field.

HUGHES: So it-- these drain tiles are on irrigated ground. It's not on--

JOE HEAVICAN: Yes.

HUGHES: --nonirrigated ground.

JOE HEAVICAN: It's irrigated ground.

HUGHES: OK, that's a piece I didn't have.

JOE HEAVICAN: He's running his pivot at the same time his pump is running. Now where, where's any common sense in that?

HUGHES: I-- that just kind of blows my mind. OK, but--

JOE HEAVICAN: So that's why we need some legislation that says [INAUDIBLE] drain-- and I have no problem with natural drainage. It's these lift stations. And you guys calling them sump pumps is not a-- even a justification. The tile going into the ground, it's catching this water. There's tiles running into a pit. It's bigger than the diameter of this table, and there's a six- or eight-inch discharge coming out of this thing, running 300 to 500 gallons a minute. And it ran all winter, all spring, all summer, all fall. It's on a variable speed pump, so it slows down a little if, if the tiles aren't full of water. But it's--

HUGHES: OK.

JOE HEAVICAN: --it's crazy if you figure-- if you stop and figure out the amount of gallons, and this water's gotta go somewhere.

HUGHES: Thank you for coming in today.

MOSER: Senator Gragert.

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GRAGERT: Thank you, Vice Chair. I want to-- I'd like to ask you, is-- are there-- on this-- is this your place or is this a place above you or--

JOE HEAVICAN: That's-- that's where the lift station is.

GRAGERT: That's yours?

JOE HEAVICAN: No.

GRAGERT: OK.

JOE HEAVICAN: That's the lift station causing the problem.

GRAGERT: OK. Is-- are there any dams downstream of this, on, on this, on this stream?

JOE HEAVICAN: Maybe a few beaver dams.

GRAGERT: Well, then, whether they're-- you know, anything that would restrict water flowing in that ditch? There, there are? Yeah, that might be one thing that wants to be cleaned up. But I, I totally agree with you. If-,if water's coming out of this field and a guy's over-irrigating, that's not very good irrigation water management.

JOE HEAVICAN: It's not very good management at all.

GRAGERT: Excuse me?

JOE HEAVICAN: It's not good management, period.

GRAGERT: OK.

JOE HEAVICAN: And like Lumir pointed out, you know, you're wasting water. Once it goes from Rawhide Creek into the Elkhorn River and so on and so forth into the ocean, it's, it's never coming back.

GRAGERT: Thank you.

JOE HEAVICAN: Thank you.

MOSER: Thank you. You have a question? Is that what you said? It's hard to imagine that water bubbles out of the ground when you live out where you get six inches of rain or whatever, ten inches. But anyway, I'm not testifying. Any other proponents? So you go out and waddle around in it, then you'll figure it out, but OK. Are there any opponents to this bill? Anyone here to testify in the neutral

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capacity? Senator Bostelman waives closing. Thank you. We'll move on to the next bill.

BOSTELMAN: All right, we're ready to-- Senator Brewer to open on LB924, please.

BREWER: Thank you, Chairman Bostelman, and good afternoon, fellow senators, members of the Natural Resource Committee. I'm Senator Tom Brewer; for the record, that is T-o-m B-r-e-w-e-r, and I'm representing the 11 counties of the 43rd Legislative District of western Nebraska. I'm here to introduce LB924. This bill was brought to me by the mayor of Chadron, Mark Werner, who is here with us today, with the idea to allow cities of the first class to apply for the Waste Reduction and Recycling Incentive Fund for the deconstruction of abandoned buildings. Currently, only cities of the second class, villages, and counties with a population over 5,000 or less, are eligible now for this grant. The Waste Reduction and Recycling Incentive Fund was established in 1990 and has, and has many eligible uses related to recycling and refuge [SIC] materials. The funds for the program are comprised of \$25 business fees and \$1.25-per-ton landfill fees. And it's also part of the new \$1 tire free recycling. It's called the Scrap Tire Management Fund. I've worked with the Nebraska League of Municipalities on the legislation, and they are in full support of this bill. Following me, there'll be someone from the league to talk on this, and the mayor is here also. So hopefully, if you have any real specific questions, they can help you.

BOSTELMAN: OK, thank you, Senator Brewer. Are there questions from the committee? Seeing none, you stay for closing?

BREWER: I will.

BOSTELMAN: Thank you very much. With that, for-- anyone to testify as a proponent for LB924? Afternoon.

LASH CHAFFIN: Good afternoon. Thank you, Senator Bostelman, members of the committee.. And a particular thank you to Senator Brewer for, for taking this bill. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a staff member at the League of Nebraska Municipalities. And the, the origin of this bill is the city of Chadron came to the League and, and said, how do we get this particular law changed for a project that we're looking at? And we said we have a series of legislative committees that-- we have a one with cities under 5,000 and one for 5,000 and over. And they, they talk all summer about legislative concepts and they get together and sort of see if there's any

consensus on issues. And there was general consensus that, that this particular fund fairly could be enlarged to include cities between, between 5,000 and up to Lincoln's size, and the, the small cities agreed with that. This fund, this particular use of the fund that Chadron wants to access is, about a decade ago, the Department of Environmental Quality at the time came to the League because the cities and villages are the primary-- they're not the only recipients of this particular fund. It's-- the fund goes back to '89, '90 when, when they-- when actually the state started to regulate solid waste for the first time. And, and other, other entities get money, but cities and-- to be honest, cities and villages are typically the ones who are involved and go get-- go ask for the money. And they didn't want to dilute the fund, so they said, we've been looking at old buildings and old buildings often have interesting architectural features that just get knocked-- they just get dumped in the landfill when the building's knocked over. And they, they wanted to create a fund to find a way to finance some of these, what they call-- the term they used was "deconstruction," when a building is being demolished, that some of this stuff could be utilized and pulled out and if it didn't pay for itself to do that, that this fund be-- access this. It hasn't been heavily used, but it is, it is a neat fund. There was a big project in Oshkosh. There was a two-story building right off the highway that, that they used this, this fund for and pulled a lot of cool things out of it, and they've subsequently re-- reused those, those particular products in other places around Oshkosh. So, so it's a good fund and we would-- the League would encourage you to support, support enlarging this fund. Mayor Werner-- sorry, Senator Brewer. I guess I didn't tell you Mayor Werner couldn't be here today. But, but he handed out a letter from the city of Chadron, as well, so, I can certainly answer any questions.

BOSTELMAN: Thank you, Mr. Chaffin, for your testimony. Are there questions from committee members? Senator Hughes.

HUGHES: Thank you, Mr. Chairman. Thanks for coming in, Mr. Chaffin. So where is this fund-- where'd the money come from that's in this fund?

LASH CHAFFIN: OK. OK, going back to '89, '90, in '89 and '90, there was a-- there were-- there was-- there's multiple funds dealing with recycling, as, as you know from your prior, Chairman. This, this is the fund that was funded by the \$1.25-per-ton trash fee. The, the, the, the business fee, what is that, \$25, the business fee everybody pays, and then at the time, it was also funded by the dollar tire fee. Now the dollar tire fee, somewhere along the line in the mid-'90s, got isolated to tire uses, and the overages in that fund, which I'm not

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sure if-- you have to ask DEQ if-- or D-- DEE if there's ever been an overage. The overages in theory could go to this fund, but then the dollar tire fee was pulled out of this fund. So basically, it's the \$1.25 that every trash hauler pays when they dump--

MOSER: A ton.

LASH CHAFFIN: --per ton, correct, and the, the, the business fee that businesses pay annually to the Department of Environmental-- DEE, that, that's very awkward to say. I know I seem to struggle with it too.

HUGHES: I see that there's no fiscal note to this, so.

LASH CHAFFIN: Well, I, I don't think it would have a fiscal note because it doesn't change the funding. It just changes the available uses.

HUGHES: So how much-- how many dollars are in the fund today?

LASH CHAFFIN: I'm not sure we'd have to ask D-- DEE-- well, how many are the-- it's--

HUGHES: So by including cities of the first class, is it going to put a strain on that fund so it-- I mean, is it going to be drawn down to nothing, so nobody gets anything out of it or--

LASH CHAFFIN: My theory is no. I think this is a, this is a hard use to qualify for. You know, most of this fund goes to chippers, the recycling take-back days, you know, or the hazardous waste takeback. It goes to a lot of those things. This is a fairly rarely used portion of that law. I don't think it will.

HUGHES: So is it a, just a straight grant or do they have to pay, pay back the loan?

LASH CHAFFIN: I think they have the authority to do it both ways. They-- I think, I think the department has the authority to, to do-- to structure it however they want.

HUGHES: Is that how they judge the, the request and see whether it can--

LASH CHAFFIN: Right.

HUGHES: --can be a loan or a grant?

LASH CHAFFIN: Right.

HUGHES: And that's--

LASH CHAFFIN: And I think most of them are grants, but--

HUGHES: And that's the Department of Energy and Environment?

LASH CHAFFIN: Yes.

HUGHES: OK, thank you for coming today.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman. I'm going to probably expand a couple questions on what Senator Hughes was asking. But the amount of money currently in the fund, is it used up right now?

LASH CHAFFIN: I believe it is. I believe this fund gets used, used-- gets spent down every year, yes.

GRAGERT: And how is that distributed?

LASH CHAFFIN: They have a priority system, and cities, counties, NRDs, anybody eligible, if they have an eligible use, they've got a 38-page complicated document on how you define your eligible use, then they have a priority rating system. And, and then, then sometimes they go back and will encourage entities to work together if they see two similar projects or they, they sort of work it that way. But there's a-- there's a priority-- there's a rating system.

GRAGERT: My concern with going from 5,000 up to 100,000 is in my, in my district, anyway, we-- you know, all small towns and--

LASH CHAFFIN: Sure.

GRAGERT: --sometimes we don't have the money to hire a grant writer. It's usually a city administrator that tries to fill in or, or--

LASH CHAFFIN: Sure.

GRAGERT: --maybe the mayor himself to compete, you know, and nothing's fair in life, but to compete, a 5,000, you know, town competing against 100,000, who's going to get the money when you've got a creative grant writer versus somebody that's just trying to get some grant money?

LASH CHAFFIN: Oh, that's a-- that's a fair-- that's an extremely fair question, Senator, and I think-- and a lot of programs, particularly when you get into the Department of Transportation programs, they're very complicated and this program is not that complicated. You know, I know over the years Creighton-- Creighton's gotten grants. I'm pretty sure Randolph got a grant a few years ago. There-- the-- this has been a heavily-utilized program for cities and villages of all sizes. It's been-- and it's-- the staff is always, is always enthusiastic about it. They-- you know, because it-- it's something that's always-- it's something fun and interesting that, that comes out of this fund and, you know, and the-- I think the deconstruction phase, if you happened to grow up in a small town, you know, they-- you see those old abandoned buildings, you're like, there's cool features to that building. You know, you all-- we've all driven by those buildings, you know, a million times and wondered-- and, and to be honest, this has not been a heavily-utilized portion of that. I hope it picks up. It's, it's, it's fascinating.

BOSTELMAN: Senator--

GRAGERT: [INAUDIBLE] oh, sorry.

BOSTELMAN: Senator Gragert, do you have another question?

GRAGERT: No[e, that's it. Thank you.

BOSTELMAN: Senator Hughes.

HUGHES: So we're increasing the amount of entities that can access this fund. Are we adding any funds to it?

LASH CHAFFIN: We are not. I think--

HUGHES: And what you're saying, it's being drawn down every year by those that are--

LASH CHAFFIN: It is.

HUGHES: --currently eligible.

LASH CHAFFIN: I, I think it would still go into the priority system, and, and if a, if a chipper or a recycling day or a take-back day or something like that happens to be a higher priority, no one will get funded. It just-- it'll just fall into the priority, priority system. And I think every year there are projects that don't get funded on, on this, and they're, they're still [INAUDIBLE]

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HUGHES: Well, sounds like we're just adding a lot more hands to get into the same small pot.

LASH CHAFFIN: We're adding a few more hands, yeah.

HUGHES: Well, cities of the first class, there's quite a few of them.

LASH CHAFFIN: There are, yeah, about 20-- 29, I think.

HUGHES: Yeah, and they'll have big asks.

LASH CHAFFIN: Yeah. Well, a lot of those cities of the first class aren't involved in solid waste projects, so you-- billions that-- you know, it'd be the Grand Islands, the Fremonts, and the Ogallalas.

HUGHES: Thank you, Mr.--

BOSTELMAN: Senator Moser.

MOSER: So currently this fund is buying cardboard mailers and recycling trailers--

LASH CHAFFIN: Yes.

MOSER: --and that sort of thing because I know at the city of Columbus, we got a lot of grants from this fund. But I could imagine, you know, as long as part of the building is recycled-- it doesn't say all the building, and so you could take this steel out of it or, you know, some parts of it, and then you just generate a bunch, generate a bunch of trash and you get paid to knock down some old buildings.

LASH CHAFFIN: The, the guidelines aren't written quite that way. Really, it's-- the only difference is what you would get reimbursed for is just the additional costs that you would have. If you're making money off of it, if you're pulling a bunch of steel, then that would clearly be eligible-- in-- ineligible under this program. I, I think it would just be for pulling-- the additional cost for when it would take you-- you don't get paid for the demolition. What you get paid for is the additional cost to do the demolition in a different way to pull some of this stuff out.

MOSER: So you're keeping some stuff out of the compactor?

LASH CHAFFIN: Correct.

MOSER: So that's a green cause?

LASH CHAFFIN: Yes. Yeah.

MOSER: But you don't think that-- I mean, all cities can apply for grants now, not just the ones-- not just first-class cities, right?

LASH CHAFFIN: Correct. However, this particular use--

MOSER: --is only allowed in first class.

LASH CHAFFIN: --is only allowed-- and, and I think at the time when the deputy director of the department came to the League, because they were concerned it might swallow the fund as well, that they didn't know how many-- how many entities would apply. And there haven't been a lot in the-- since it's been an eligible use.

MOSER: This program is already in use?

LASH CHAFFIN: It has, yes, for those-- Oshkosh did a big project a couple years ago.

MOSER: This is a reauthorization of the same?

LASH CHAFFIN: No, this is just expanding one of the uses, but the use has been around for, I don't know, ten years or so.

MOSER: All right. Thank you.

BOSTELMAN: Other questions from the committee? Do you know-- have you talked to DEE on the fund-- on the fund manager, the person it is, what their thoughts are? I don't know there's [INAUDIBLE]

LASH CHAFFIN: We have-- we have not talked to--

BOSTELMAN: I don't think there's a person here, so.

LASH CHAFFIN: We haven't talked to DEE. I was a little surprised they weren't here, but--

BOSTELMAN: OK, thank you. Thank you for your testimony. That's all we have. Other proponents on LB924? Any proponents for-- other proponents for LB924? Seeing none, anyone like to testify in opposition? Seeing none, anybody like to testify in neutral capacity? Seeing none, Senator Brewer, you're welcome to close.

MOSER: Do we have letters of support for this?

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BREWER: All right. Good questions on the impact on the account. Actually, I'm blessed to have an AA who actually called and checked and they said, yeah, sure, there'd be an impact, but they didn't see it being a negative impact. It would just be a management thing if they were to have to also deal with the additional applications. So, fair question, but that's what they said is that they, they looked at it. It would be an impact if it-- what they do when they manage it.

BOSTELMAN: OK.

BREWER: Other than that, I got nothing.

BOSTELMAN: OK, any questions from committee mem-- other, other questions from committee members? Seeing none, that'll close our hearing on LB924. So next we'll open a hearing, LB1058, and Senator Brewer, when you're ready, you're more than welcome to open.

BREWER: All right. Thank you, Chairman Bostelman, and good afternoon, fellow senators of the Natural Resources Committee. I am Senator Tom Brewer. That's, for the record, T-o-m B-r-e-w-e-r, and I represent the 11 counties of the new 43rd Legislative District to western Nebraska. I'm here to introduce LB1058. Now to kind of give you some background, we've been obviously, those that have been tracking things that happen in Natural Resource Committee, in somewhat of a-- oh, I want to say-- challenging back and forth, understanding public power, and how public power works and how it's managed, what it affects and how it affects it. And it was through a number of conversations from folks in different capacities, not just those that are impacted by some of the things that public power does, both good and bad, but also from the closing of the Fort Calhoun Power Plant and, of course, more recently with our, our study that we did this past fall. It was a combination of those that generated this bill. So as I read through the formal part of this, that helps you to understand why there's a concern and why they wanted to have some, I guess some guarantee that with the-- what was, I think it's kind of become normalized a little bit now, but almost a runaway passion to have renewables, and renewables were the only way forward. Now, because of the events of the last year, we've had the reins pulled back, and folks have stopped and said, hey, we may have to add a common sense factor to this. We may have to look at what's best for the safety of, of the residents of Nebraska and not what feels good as far as this emotion to want to have more stuff that's considered green. So with that said, I'm introducing this bill on behalf of my constituents who are concerned about protecting public power. This bill is also about protecting the thousands of employees who work for public power in Nebraska. It's also about protecting the

rural communities that depend upon union jobs and local power plants. The bottom line for this bill is about protecting the reliability of electricity generation in Nebraska. The nuts and bolts on the two pages of this bill provide financial incentives for public power utilities to keep our base load generation in Nebraska up and running. Should the decision to prematurely close a base load plant be made, a number of very serious consequences will follow. North Platte and Alliance and many other communities would face very uncertain futures if the coal trains ever stopped rolling. The Nebraskans employed at these facilities would also face uncertainty, starting with the real possibility of becoming unemployed. The economics of local communities depending on our power plants and the local business and subcontractors providing, providing resources to these plants, we force-- they're forced to close. Now examples of this-- say if we were to close the OPPD Nebraska city station, more than 100 employees that could lose their jobs, hurting scores of families and the community. Again, we can look to Fort Calhoun as an example of where this was handled poorly. I would encourage any research you do on Fort Calhoun. The decision was made very quickly, and many of those employees were not given options. And even the security of that plant after it was closed ended up going to an out of Nebraska company. So we have to have some ability to have peace of mind for those that work in these facilities because there is this running emotion. Although I think it is, it is becoming less aggressive with renewables. But, you know, charting this course that we set here or what is ongoing has kind of a grim scenario if we don't look at options. We simply must address the serious consequences of a premature retiring baseload generation in Nebraska. The problem has emerged as a result of various plans for our public electric utilities to have decarbonization. This electrical generation in Nebraska's decarbonization has consequences, and that's what we need to address. I believe it is noble and a noble goal, but I also realize-- I think it's unrealistic in the foreseeable future to do some of the decarbonization that seems to be the, the running emotion now. If there is a clear way to reduce pollution and do the things that we have to do to provide energy for modern society, I'm all for it. That said, I believe that it is unwise to steer our public utilities on a course that depends on electric generation that only works a few days a week and cannot be made reliable in a cost efficient way. If federal subsidies for these various renewable wind energy, wind or other energy generation is ended, it will leave a void in our generation portfolio and we will need baseload generation to fill that. Recycling carbon dioxide emissions can never be something that is more important than delivering reliable, affordable electricity to Nebraskans. I will close with a quote from the chief

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operating officer of the Southwest Power Pool, Lanny Nickell. Last October, he testified in front of this committee during the LR136 hearing, and this is what he said. One of the recommendations that has, this task force that, that this task force has been asked to figure out is should SPP, in addition to doing the things that are in this new study to determine the minimum reliable attributes that we have to have to be present and generate, in the generation mix, should we also provide ways or incentives? So, for example, should we-- as wind energy continues to grow and as solar energy starts to grow, we don't have a whole way forward, but it is in the queue and coming. As that continues to grow, how do we maintain a reliable system that-- with that portfolio? Can we afford to let these units retire? Can we afford to let it go away? Do we need a minimum to maintain that? It, it-- is it through an incentive, a financial incentive? Or is it through a requirement where SPP says, I'm sorry, you can't retire this unit, we need it for reliable reasons? Mr. Nickell's testimony before this committee was one reason that I introduced the bill. I have a number of concerns, and today we'll probably have a chance to hear from those on the other side. But I think that, if you look through the bill and the way it's structured with the financial incentives, it is the best way to protect the employees and to keep our, our energy affordable in Nebraska. Thank you, Mr. Chairman.

BOSTELMAN: Thank you, Senator Brewer, for your opening. Do we have questions of the committee? Senator Moser.

MOSER: From reading the bill and from what I've been able to kind of understand, it sounds a little bit like not only are you protecting the employees, but you're also giving kind of a poison pill to the utilities to deter them from decommissioning plants?

BREWER: Well, you're using a harsh term with poison pill, but there might be some truth to that [LAUGHTER].

MOSER: That's what I like, an honest testifier.

BREWER: Yeah.

MOSER: Thank you.

BREWER: You bet.

BOSTELMAN: Senator Hughes.

HUGHES: Yes. Thank you, Senator Brewer, for coming in today. I guess I like this bill. Having sat through the testimony yesterday-- and I

don't recall what the bill number was about the reliability factor. I think it was on the bill of the Governor appointing board members to public power districts. The comment was made that SPP should be looking at some sort of a reliability cost when they determine what power is added to or is allowed to serve the footprint of SPP. Also, during that discussion, there was the comment made that there was a big emphasis of building additional wind generation with gas backup, but also the question of what-- questionability of reliability of the gas supply came into play as well. That, coupled with the out-of-Nebraska money that is being poured into the director's races for OPPD and NPPD, I think sets up a very clear scenario that this bill needs to be in place. There's a definite effort to undermine the production facilities in Nebraska from outside the state, and the reliability factor, which I think most Nebraskans-- I think all Nebraskans probably want to come first. But I was curious if, if I missed the mark at all in, in that statement, in your opinion.

BREWER: No, I, I think you're, you're definitely working around the edges. For those that haven't been here-- and you've been around a lot. So no, I mean that in a good way, 'cause if we go back to 2016, it was LB824, that changed how we do business in Nebraska when it comes to renewables and the Power Review Board. Now, I think commonsense people would say the Power Review Board probably should have oversight in things that have to do with power, but that's just me. And that was disconnected. They were really allowed to run rampant wherever they can go and find county commissioners and say: Yeah, build them, build them till you're blue in the face; it's up to you. Find the landowner, don't worry about the neighbor; just get them done. And they went hard and fast, and they built a lot of wind towers in Nebraska; and there's a lot of hard feelings over that. Well, some of that's coming back to roost now. And so, as they tried to build in places like-- well, Gage County was a, is a close example-- that didn't go well. So now the shift is to go to solar because solar isn't as hated. Now solar has its issues, too, because if you look at the footprint of how much ground a wind tower, the roads go in and everything takes up, that's pretty ugly. The decommissioning of them and where are you going to put the parts of that wind tower, another ugly thing. And you know, there'll be-- there were people that actually testified that they thought that was a good thing, that we take those giant wind towers and bury them here in good old Nebraska. Now, we'll, we'll not, we'll not go any farther on that. But there's some common sense that needs to be weighed into this, because those solar panels are going to need to be taken care of, too. They've got to go somewhere. Now, solar panels don't last as long as wind towers,

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and they're made in China by slave labor. But we're not going to talk about that because we're talking green now and if it's green, it's got to be good; doesn't matter who dies getting it done. So back to your point here is that, yes, there's a lot of, a lot of issues that need to address with public power, because we get on this bandwagon where we want to go and build everything green and, and they say, well, this, this thing that happened last year was once in 100 years. Well, I got news for you. You've been here long enough to see two hundred-year floods. So I'm sorry. I, I understand that it may be that supposedly once in a millennium, but we were within a whisker's edge of losing power and losing it in a big way. And, and commend NPPD, OPD, LES because I think they managed it as best they could. I mean, they, they were given a pretty ugly situation to try and manage. And we, we should probably count our blessings we didn't lose power for more than what we did. But still, we're woven into this network that's outside of Nebraska, and it appears as though we're woven in a way we can't get out of. Now, that wasn't a decision, decision by the Governor, that wasn't a decision by this Legislature. It was a decision by the leadership of these organizations. And they're hired for that, and so be it. But what we got to do is make sure that we do as much as we can to make sure that, if this situation arrives again, that we've got ways of protecting those who are relying on public power in Nebraska. We have a very unique situation here because nobody else has what we have. Let's not screw it up. And part of this is to ensure that we protect not only the communities, but also the ones that actually work for public power. Now I'm sure there'll be, you know, a conga line that comes up and say, listen, you know, our purpose in life is to take care of folks, and, and you've got nothing to worry about. But again, we, we need to use some common sense and say, hey, this puts them in a position that they have to set up and pay attention. And that's why the bill was written.

HUGHES: Very good. Thank you, Senator Brewer.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman. Thank you, Senator Brewer. My question is, do you see this-- and not so much as a poison pill-- but more of a, a way of keeping this, this will be a tool and a way of keeping a good mix in coal, nuclear, wind, and solar?

BREWER: Yes. And that was kind of behind. I mean, Senator Murman-- Senator Murman, Senator Moser, I get you guys mixed up all the time-- that was a term he used. I wouldn't have. It, its intent is to have a balance. But, you know, in a perfect world, you know, nuclear would be

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a part of that. But unfortunately, what we learned from the study is we're still some years away from being able to have the nuclear piece of this. But the, the negative emotion about nuclear is fading away as people get smarter about the small units and the capabilities and how, you know, they, they helped with the issue of transmission because we don't have to push power so far. We can have them located in areas so they can cover a particular area without, you know, putting that huge tax on running the giant power lines and the energy we lose on those. So yes, and if I could, I would have added nuclear to that package, but it's just not there yet.

GRAGERT: Oh, well, we have nuclear.

BREWER: We do. But we're a ways from being able to expand it--

GRAGERT: All right.

BREWER: --because of limitations.

GRAGERT: OK, thank you.

BOSTELMAN: So the-- just part of what I heard from you-- Senator Moser said it in a different way, I guess I'd characterize another way-- I know when Fort Calhoun shut down, we lost about a thousand jobs at \$84,000 a year pay, and that was devastating to those communities. And I think what you're talking about is of a baseload situation, the plant's going to shut down, you either replace it with with another baseload, if not, then there's something there for that community and those people. Because that community, those people in some of these areas, if you shut down these plants, those communities dry up and go away. And what you're, and a part of what I'm hearing, and I don't put words in your mouth, so I'll, I'll let you talk to that.

BREWER: No, you're right. That's where it is. And you know, if we, if we get rid of coal and we go to natural gas-- and there's a number of folks that will tell you that, you know, part of what contributed to the collapse last year was the natural gas not being able to get where it needed to be. So, you know, just a thoughtful process to make sure that, if you're going to shut down baseload, that, that it has an alternative and that the employees are protected or there is, you know, a way to take care of those employees beyond the closing of that plant.

BOSTELMAN: So part of it is, you know, you mentioned the security out there at the plant. I know I've talked to the union folks from-- representatives from OPPD, and they said that when that plant shut

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down, there's promises made that we were going to transition people over, and that never happened. And then there were-- and I know, 'cause we knew several people who were employed out there, they basically kept them along until they finally quit and walked away. So they didn't get their severance packages and those type of things. So those are the concerns we have, I guess, what I hear from you, and I appreciate that. And if there's any other comments from--

BREWER: Well, what you're describing there-- I was going to save it for close, but we'll hit it now-- was exactly what Senator McDonnell sat down and talked to me about. And he'd, he'd gone one-on-one with members of the union and got their explanation of how things kind of went in those sequences as it was closing. And again, I understand it, it may be about making money or the bottom line, but there's a point, too. There has to be a human factor and there has to be a, you know, how you treat communities because, ultimately, that's, that's what we're here for.

BOSTELMAN: OK. Thank you. Other questions? Seeing none, I'm sure you'll stay for closing.

BREWER: I will.

BOSTELMAN: Thank you. Anyone like to testify as a proponent for LB1058? Please step forward. Any proponents? Seeing none, anyone like to testify as an opponent? Good afternoon.

NEAL SUESS: Good afternoon, Chairman Bostelman, Vice-Chairman Moser, and members of the Natural Resources subcommittee. My name is Neal Suess, N-e-a-l S-u-e-s-s. I'm the president and CEO of Loup River Public Power District of Columbus, Nebraska, and I'm the current president of the Nebraska Power Association's board of directors. The NPA represents all the electric utilities in the state of Nebraska. Loup Power District is also a customer of NPPD under a long-term power purchase contract signed in 2016. Except for a small share of renewable wind energy, the district purchases all of our power from NPPD. There are several issues, concerns with LB1058, and these include, it's not clear within the bill what type of generating facilities would be considered baseload. LB1058 indicates that a baseload unit would usually mean a facility housing high-efficiency steam electric units, but is not definitive within the bill. LB1058 calls on the utility to pay a severance for any permanent employee employed at these facilities that are retired, shut down, or substantially altered before the end of the facility's contract life. There are several questions with this. What is the definition of

contract life? Most generating facilities have a useful life depending upon wear and tear and economic justification. Contract life has little meaning for a specific generating utility facility. Keeping the facility open, even if it's uneconomic, would cost customers money and increase costs for the utility. Each utility must have the opportunity to decide which types of operating units best fit their needs and provide the lowest overall cost for its customers. Placing undue economic stress on the utility could hamper good long-range decision making. Making the utility pay for expenses, such as labor and tax payments, beyond the life of a facility of a facility would harm the economics of the, for the utility. Placing, paying for unneeded expenses after shutting down a facility increases costs and raises prices to consumers. Utility management and their board of directors must have the flexibility to run their utilities to best serve the needs of their consumers, customers. Restricting one utility could shut down generating plants, and then forcing additional costs on the utility is bad policy and harmful to consumers. Utility management and board of directors are tasked to make good financial decisions in order to continue to provide reliable, affordable, and safe electricity to the citizens of Nebraska. In order to do this, utilities make educated decisions on doing so by controlling costs and operating facilities that are economical, reliable, and safe. By forcing additional costs on utilities, this would dilute these factors when making decisions and ultimately affect the cost, reliability, and safety of the services provided to the citizens of Nebraska. I appreciate the opportunity to provide this testimony to the Natural Resources subcommittee. I would be happy to answer any questions you may have.

BOSTELMAN: Thank you. For your testimony, we are the Natural Resources Committee, not the subcommittee.

NEAL SUESS: OK, [INAUDIBLE].

BOSTELMAN: Any questions from committee members? So I guess one question I have for NPA is that you've had-- say you have a power plant in the city and it's been there for a number of years, and now you're going to leave it.

NEAL SUESS: Um-hum.

BOSTELMAN: And you don't think that you have any obligation to that city at all to-- for all the support, all the work, all the people that are there, everything that that city did for that, that plant, for those, all those employees, that there's, that there shouldn't be

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something there-- I think what Senator Brewer was getting at-- there shouldn't be something there for those people? And you're taking that tax, those taxes away from that county as well.

NEAL SUESS: I, I believe that would be taken into consideration, but also forcing the additional costs on the utility might raise electricity prices. And all of that would have to be taken into consideration when finalizing and determining whether that plant needs to be kept in place or not. Again, those are all the decisions and all the things that are looked at by boards of directors when deciding whether to keep a plant open and whether or not to keep a plant open.

BOSTELMAN: Well, so it--

NEAL SUESS: And, and, and, and yes, very much so. The costs associated with the people that are there, and especially in the city, who are going to be parts of that city, are going to be a part of what you think about when you do all that.

BOSTELMAN: So what's that cost associated with that plant? So what, what we see happening now, what Senator Brewer was talking about is, whether you have wind or solar that comes into an area, you don't pay for that construction. So now alls [SIC] you're doing is contracting with them, got pass-throughs so you don't have a cost in that. So obviously, that baseload plant, whatever it is, if it's a gas plant, if it's a nuke plant, if it's a, it's a coal plant, if it's a hydro plant, that now becomes a liability for you because you, you don't have any costs for this generation over here, so-- well, then you could shut down all your plants.

NEAL SUESS: Well, there is, there are, there are, there are taxes that are paid by the solar and, and the wind facilities that would affect the county, that those facilities are associated with. I know in Platte County, we have a couple of wind towers that we purchased for them, that they pay income taxes or they pay property taxes to the county for the land area that they take over, and there are other taxes that they pay. They've gone to improve roads in the area, so there is, is something there. But again, all of that is-- it needs to be taken into effect. I'm not saying you should just ignore it, but it does need to be taken into effect. And it's the whole package, the whole lifetime, life, affordable package that needs taken into effect. I will tell you one of the concerns. One of the concerns that I would have is if this bill is passed the way it's written, going into the future. And now let's forget about the plants that are actually out there now. But going in the future, it would be hard, if I was on the

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board that was building a power plant, to recommend that we build any power plant of this type of baseload because, if I have these additional costs associated with it, why would I ever build a plant in a place like that? Because the lifetime economical costs associated with the plant would go up, and it would cost the consumers that would buy that plant at that point in time. Again, you have to have a nice mix, and, and, and we understand, and, and I understand where Senator Brewer is coming from with this bill. But I'm-- from the utility standpoint, those additional costs mean something to a board of directors when they're making their decisions.

BOSTELMAN: I appreciate that. I mean, I do. It, it's not-- now the nameplate capacity tax that you talked about, that's never been changed. My taxes and everybody else's taxes in here has gone up every year, and that's never changed. Maybe that's something we need to take a look at, because now they're paying that, and that nameplate capacity tax that's being paid on is something that's been paid, that was, that was-- I don't know, was it ten years ago that was established? I think that--

NEAL SUESS: I understand that it--

BOSTELMAN: --that may be unfair to the, and to the local communities.

NEAL SUESS: It's, it's possible.

BOSTELMAN: And it would, it would be interesting to-- and it would be interesting. Your point is-- well, I mean, your point is well taken. It's-- it'd be very interesting, also, to understand the difference, if you had a unit-- again, you're a hydro plant, you got a hydro plant, right?

NEAL SUESS: Right.

BOSTELMAN: So if that thing would, if that would be shut down-- and you pay any of those taxes with that or not?

NEAL SUESS: No, we, we pay-- no, very little. We have a small portion of a payment in lieu of taxes that we pay, but not that much.

BOSTELMAN: And that's right. I mean, some of the, some of the different plants, units in the state, it's a different amount. And I would just be kind of curious as to how those compare. But anyway, I appreciate you coming in today and your testimony.

NEAL SUESS: Thank you very much.

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BOSTELMAN: Any other questions? Seeing none, thank you very much for being here.

NEAL SUESS: Thank you very much.

BOSTELMAN: Next opponent, please. Good afternoon.

JAVIER FERNANDEZ: Good afternoon again, Chairman Bostelman and members of the committee. My name is Javier Fernandez, J-a-v-i-e-r Fe-r-n-a-n-d-e-z, and I am the president and CEO of the Omaha Public Power District, OPPD. Thank you for the opportunity to testify in front of the Natural Resources Committee for the second time in two days. I am testifying on behalf of OPPD, in opposition to LB1058. This bill substantially erodes, again, local control related to decisions affecting generation facilities. Any decision to retire or take other action regarding a baseload generation unit is best decided by the professionals who manage these units every day, and the elected board members who have a fiduciary responsibility to act in the best interest of ratepayers. Baseload units are retired, refueled or otherwise reconfigured for many reasons, including economics, safety, and regulatory requirements. Such decisions should be governed by business judgment, just as they are for other aspects of the electric power business, and not by an arbitrary requirement that would keep a plant running even if it was demonstrably uneconomic or unsafe, or unsafe. If OPPD believes a plant should be retired due to safety concerns or because regulatory requirements make it too expensive to run, then OPPD should be able to make that decision on the merits. With LB1058, an otherwise proper decision to close a plant would lead to punitive costs, \$50 million imposed on ratepayers. LB1058 also reflects a misunderstanding of how payments in lieu of taxes, or PILOT, work. Those payments for us today are based on retail sales, not on generation sources. OPPD distributed PILOT payments of more than \$34 million in 2021. As our track record shows, we do, and we will take care of our employees who are affected by resource decisions. But decisions regarding compensation and severance are best left to the professionals who manage public power entities with the oversight of elected boards. OPPD always makes efforts to retain employees who are displaced. Any severance paid should be reasonable under the circumstances and certainly should not require excessive payments that cause rate increases for customer owners. LB1058's requirement to pay five years of severance at full pay would create an incentive for employees to be terminated. Rather than accept all their positions in the utility, employees may opt to be terminated and receive five years of pay without working. The bill seeks to punish OPPD customer-owners for doing the right thing for the people and

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communities we serve. Maintaining reliability, resilience, affordability, and pursuing environmentally sensitive services. I want to thank you for considering my testimony. OPPD respectfully urges this committee to indefinitely postpone LB1058, and I'm happy to answer any questions you may have.

BOSTELMAN: Thank you for your testimony. Are there questions from the committee? Senator Gragert.

GRAGERT: Thank you. Real quickly, whenever you decide to close some-- I don't know how many you've closed down, I know of one, I guess-- but there's a feasibility study completed on that for the closing of that facility?

JAVIER FERNANDEZ: Correct. So, so we-- all utilities-- and I'm going to speak for, on behalf of OPPD-- we have resource planning, resources that happen continuously throughout the year, so that is feasibility. We always have to make sure that we have adequate resources to meet our, our, our load, our demand. Yesterday, we talked a lot about reliability, resilience, our membership in SPP. We have to consider all of those aspects before we consider making any long-term decisions. Decisions take, take a long time to make and even longer time to complete. Retiring a unit, as well as building units, takes sometimes five to ten years. So, so we are constantly assessing and making these studies to make sure that we, we are making the right decisions without ever putting the public at risk or limiting the reliability or resilience.

GRAGERT: So in the past, has severance pay take, you know, that kind of thing [SIC], that kind of thing involved in the feasibility study, as far as maybe not five years, but two or three? Is that, is that also in the feasibility study?

JAVIER FERNANDEZ: It is part of the consideration. So as, as we, as we approach the different possibilities for decision-making, we take, we have to take into account the cost of operating a unit, the cost of decommissioning a unit, which includes then, at that point, depending on market conditions, depending on who's employed or not, depending on the many circumstances we take into account. What else would it take for, for us to reasonably close down the plant?

GRAGERT: Would there-- is there also the possibility of transferring those people and keeping on, on with the job?

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JAVIER FERNANDEZ: Absolutely. And, you know, in, in the introduction to the bill, and a few of these [INAUDIBLE], Fort Calhoun was mentioned and, and emotions were mentioned. So I mean, the emotional part was mentioned here on, on, on the decarbonization. I would say there, there is probably even more emotion that goes into when we're talking to our employees. Those considerations were made in Fort Calhoun. I can tell you today we have, of the 651 employees who were working at Fort Calhoun at the time before, right before the decommissioning decision, we have been able to, to keep-- 272 of them continue to work at OPPD. Some of them continue to work at the plant, and a lot of them continue to work now at other functions of, of the organization. That didn't happen by accident. That was a coordinated effort with their human capital team, making sure that we are, we are training and we're trying to reabsorb employees that would otherwise, would have had to leave the organization.

GRAGERT: And you mentioned it takes a long time to make that decision. And can you tell me, like, as you work to train new employees in the, in the closing, from the time you start planning a closing to when you close it, what, what's the average? Is it two years, one year?

JAVIER FERNANDEZ: It depends on the, on the unit. There are many, many factors involved. We have to plan for different scenarios. These studies really don't, they don't happen overnight. There are many studies that happen beforehand, sometimes a year in advance, but we don't know, right? And there, there is a lot of thoughtful process that needs to happen before we can start moving some decisions to the floor for our board to consider.

GRAGERT: And I, and I can understand that you're not going to tell employees, well, two years, we're closing this down. But what, what kind of advance do they get be-- before that plant is actually closed, that, you know, you may be out of a job?

JAVIER FERNANDEZ: Let me tell you right now. So I just joined my-- I, I'm relatively new in my position. I took over as the CEO on July 1, after serving four years as CFO. One of the, one of the first things that I did, as I took over the new job, was go around the organization and meet with employees, listen to employees. I call that a listening tour. And very clearly, some of the questions that I received from, from employees, especially at our Nebraska City Station and North Omaha Station, were: What's going to happen with my job? When are we going to close these down? I want to know because I have a family that I need to feed. Very clearly, I've been hearing those, those, those questions. I've been engaging with, with employees, and my commitment

to them is we will work with you well in advance to make sure that we have good, skilled training plus opportunities, that we talk about different things that you could do before we get to the point that we have to make a decision that could potentially threaten your job. At the same time as we, we are considering this, this scenario with, with employees, we're, we're also talking about expanding the capability of the organization. Batteries, right?-- either owned by customers or owned by us. Solar-- we talked about utilities getting solar, but there's a lot of roof, rooftop solar. What will be the role that OPPD will continue to play in maintaining and operating some of these assets? We're going to need a lot of people, and we're going to need some, some lead time for us to be able to, to skill our employees so that we can make transitions and they can actually, they can continue to pursue their career in the company.

GRAGERT: Thank you.

JAVIER FERNANDEZ: You're welcome.

BOSTELMAN: Other questions? So your E-3 report shows that in-- you're going to shut down Nebraska City 1 in 2030, and Nebraska City 2 in 2035. When are you going to shut down your North Omaha plants? It's on your report.

JAVIER FERNANDEZ: I respectfully disagree, Senator. We, we have never made a decision to shut down Nebraska city units. The report that you're probably seeing is the decarbonization pathways to decarbonization, where we are studying the different pathways that the organization could take that could lead us to decarbonization.

BOSTELMAN: So it--

JAVIER FERNANDEZ: If my memory serves me correctly, all the pathways to decarbonization that look at mature technology only, we plan to continue to operate Nebraska City Station through the life of the study, through 2050. We need to have reliable, dispatchable fossil generation in the study in order for us to be able to integrate all of these renewables, whether it be wind, solar or batteries. The presence of dispatchable fossil generation is clear and evident in, in, in the results. This is, again, with, with available mature technology. There could be possibilities where we may not need that, but that would require a significant leap in, in the evolution of emerging technology that we just don't have today.

BOSTELMAN: So in there, also, it says absolute zero emission scenarios are substantially higher cost and very dependent on future technology development. And you're talking about its lower costs, but here you report, your study says it's going to cost a lot more money. And in fact, you've already raised rates this year.

JAVIER FERNANDEZ: So that report, as you said, it says absolute zero. Our board has set a goal of net zero, which is not absolute zero. We are not considering today that, that, that's, that is one of many scenarios that we considered at the request of our stakeholders. They wanted to know, what if we, what if we aimed at absolute zero? And we ran that report then. We showed, well, it would, number one, would take a lot of technology to evolve really quickly, that we don't have today, and it would cost a lot of money. That is what that scenario, one of the many pathways showed.

BOSTELMAN: Could you show me the document or documents where your stakeholders asked for this report and not your board of directors?

JAVIER FERNANDEZ: It is-- we can get-- definitely get back to you.

BOSTELMAN: I'd appreciate it.

JAVIER FERNANDEZ: This was openly done through our OPPDCommunityConnect, a very lengthy public stakeholder process. I, I believe you participated, probably, in one of those workshops. So it was through that process where we, we received those comments--

BOSTELMAN: Sure.

JAVIER FERNANDEZ: --and requests.

BOSTELMAN: It talks in here, also, about-- and by 2050, basically you're going to have zero, zero to, maybe, four gigawatts of, of, of hydrogen power, it looks like. And everything else is-- either be storage, wind or solar. My question to you is, in that scenario, one storage I don't think exists today-- and in Australia they had a large storage facility; it burned to the ground. Hawaii has had two of them, and they've both burned. So I think their technology there-- and I think you addressed it, in here or elsewhere, some technology that needs to be done there. But my question also goes to the amount of, of land, because in here it says you're going to need, if you use solar-- and your mature-only scenario requires significantly more land use due to very large solar dishes-- 231 square miles of solar panels, 231 square miles of solar panels. Omaha metro, Omaha metro is 145 square miles, it says right here. Where is that going to be put?

JAVIER FERNANDEZ: So let me-- and I don't have that study in front of me, and--

BOSTELMAN: I mean I, I know it sounds [INAUDIBLE].

JAVIER FERNANDEZ: I think we're, we're confusing different scenarios. The first scenario, you talked about the-- with, with hydrogen, that is one of those technologies that I would love for that technology to mature. It is not mature today. So that scenario, again, it's one of those scenarios that we put in as, as a hypothetical that does not have mature technology in it. Some of those scenarios, again, it shows, in order for us to, to achieve that, it, it would require a lot of land, both, for both solar and for, for wind. I do not think that is one of the scenarios that we're seriously considering as, as a feasible scenario, because we don't have that, that technology. Again, the, the scenarios that we're talking about, feasible scenarios are the ones that are, that don't require that maturity of alternative technology. The ones that require us to continue to have dispatchable fossil generation through the study, those would require less land. However, to your point, regardless of whether it's 230 square miles or significantly less, it is still a large amount of land. We are working with communities, with counties, and it, it is probably one of the biggest lifts that, that we're going to have to make as an industry, collaborating with landowners, with counties-- across the state, not just-- and across the country, not just in Nebraska. And we are, we're working with, with different commissions.

BOSTELMAN: So I appreciate that, and, and I understand. So if you would build out in this scenario where there's three to five gigawatts of solar, up to six and a half gigawatts of wind, three gigawatts of storage and four gigawatts of hydrogen or other enabled gas-- or maybe nuclear will be in there-- how would you maintain reliability? How would you maintain a firm generation in that scenario?

JAVIER FERNANDEZ: Thank you for the question. So first of all, the hydrogen piece would provide a significant boost to the system, hydrogen meaning we would have dispatchable generation fueled not by fossil fuels, but fueled by hydrogen. So that's, that's, that's the importance of that piece in there. But thank you for the-- your question leads me to, to another very important point here. Our decarbonization studies, it, it took us a really long time to come up with, with these studies. And one of the reasons was that we, in addition to just running the traditional resource planning process that I described earlier to you, we, we incorporated a very robust transmission reliability study around. And so if you, if you see

through the, all the workshops that we have recorded-- they're available online-- the results that we presented included, very clearly, results about reliability, statistics about the loss of load hour probability, and making sure that any scenario that we contemplated met the reliability requirements that we needed to meet. That was a gigantic assumption, a very important constraint that we run all of our scenarios on. Now there were other entities that were working, that were submitting their own models to us, and we respectfully listened and we looked at those scenarios. And, and those scenarios did not achieve that reliability. By, by order, er, magnitude, we, we are very proud that all of these scenarios that we're showing, again, they all have many challenges-- land use and availability of technology-- but they all focus on maintaining reliability of the system. That, this is where we, we take away the emotion piece. Emotion cannot be part of this, of this analysis. It has to be incredibly and thoughtfully done because the lives of the people we serve depend on it.

BOSTELMAN: I appreciate you answering questions and sticking with me. I think there's questions-- I mean, there are questions that-- they're tough questions, and questions need to be asked, I feel. And, and I appreciate that. One, one question and maybe, maybe I can get to the end here. The last question, maybe, I have with it is, there's a solar array that is being proposed to be built in Saunders County.

JAVIER FERNANDEZ: Yes.

BOSTELMAN: And my understanding is, is that OPP [SIC] has gone to the Power Review Board and has got permission to build a gas peaking unit as a backup to that solar. So with that, your-- the SPP person from OPPD was here and testified yesterday, and he made mention that natural gas is unreliable in the sense that's what happened. Well, he said, you know, one, if, if you go out on the, if you go out on a 30, 45 day thing, that we can't answer that question because it's a contract. We can't answer that question because--

JAVIER FERNANDEZ: Um-hum.

BOSTELMAN: --what happened down in the south, it's, it's a contract. The lines, you know, they-- what happened in Oklahoma, I know, talking to the oil fields down there, is the power was shut off to them. They couldn't pump. They couldn't pump, then it froze up. So we have those scenarios. We may not have natural gas also. How do we, how do we address that?

JAVIER FERNANDEZ: Yeah, great question. And related to the Power Review Board, this is one of the great examples of how the state of Nebraska comes and works together to make sure that we, we can ensure people with reliable and resilient power. The Power Review Board gave us the authority to build two new gas peaking stations in the state of Nebraska. This is, this is not very common in other states. Our state takes reliability very seriously. I am the envy of some of my colleagues across the country because we have the ability to build these, these peaking stations. To the point that you were making about SPP and, and gas, the, the notion of storing natural gas on-site is noneconomical, as we disclosed yesterday. We, we rely on, on natural gas vendors and partners and pipelines for that gas to be delivered. And it is because of that rely, that reliance on natural gas that we consciously agreed to put in fuel oil dual-fuel capability on both units. Now the market today does not compensate us for that. No one is going to compensate us for that. That's an additional expense that we're incurring. But that is one expense that we are absolutely taking to make sure that if anything were to happen ever with, with natural gas, that we have the option of running those, those units on, on fuel oil. As my colleague shared yesterday, by the way, those 72 hours of, of fuel oil tanks could be replenished as a unit continues to run. So it's not 42 days or 45 days, but it is certainly something that could be replenished. That is what--very, very clearly one thing that we're doing to, to ensure reliability of those units.

BOSTELMAN: So I'm, I, I guess, my-- I'm sorry, but I thought that was my last question, but my follow up question would be, why do we need those peaking stations when you already have generation in place? We already have, we-- or you already have a whole, you already have maybe another natural gas. Maybe you have it, you know, whatever-- you already have-- why do you need those peaking stations? Because that-- isn't that-- doesn't that cost a lot to build those?

JAVIER FERNANDEZ: That is a great question. This is exactly the question that we had to answer to the Power Review Board. They wanted to ensure that we were not building redundant generation. That-- very complicated, but I will touch on a few points. One is diversity--diversification of geographical location. Those units are not by the river. We all know what happens when the river levels go pretty high. And we have had floods at Fort Calhoun Nuclear Station and Nebraska City Station. These two, two new units are, are separate from that. They sit in a different parallel territory. They rely on a different fuel mix. They rely on different pipelines to deliver that fuel. We are diversifying our assets because things happen. Today-- as I speak today, one of our units at Nebraska City Station is offline on

planned outage. Things happen to those units, too, and so we need to have, to make sure that we have modern units that could, could last a long time. The last thing I will mention on this one, these two units are modern engines that will adapt to the market. We have a market in SPP that, that-- where prices, prices fluctuate to entice generation or backup or back generation. These units can ramp up really quick. We can turn those units really quick to really, to adapt to the demands of the market today. Units, older units, that will take sometimes half a day for the fire heat to, to fire up. These modern engines, some of these modern engines, especially the ones on Standing Bear Lake Station, could be up and running within 5 minutes-- 5 to 15 minutes and we have those units running. So that, that diversification of resources is, is incredibly important for our fleet. And understanding that a generator is not a generator is not a generator, there are different qualities that each generation site offers, and that's the beauty of that diversity in the, in the fleet.

BOSTELMAN: I appreciate that. I've probably overextended my questions, and I appreciate you answering them all. But it's, it's a fascinating thing that I like to dig into a little bit to understand better, you know, where you're coming from and those type of questions. But I will say that both Fort Calhoun and Cooper, and both those flooding, both state operation, well, neither of them shut down during those times. They were both, they both ran the whole time; they both generated. I think Fort Calhoun may have had a shutdown 'cause they had a breaker box or something had an issue there, but that was the only thing; it wasn't because of the flood.

JAVIER FERNANDEZ: Oh, for sure. But, but we have, we've had floodings.

BOSTELMAN: We do.

JAVIER FERNANDEZ: We actually had floodings later on, and the, the, the ability of our employees to safely go into those plants is compromised.

BOSTELMAN: Sure.

JAVIER FERNANDEZ: So it's, it's important for us to have that diversity of geographic location--

BOSTELMAN: Sure.

JAVIER FERNANDEZ: --to make sure we have {INAUDIBLE}.

BOSTELMAN: I appreciate that. Senator Moser.

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MOSER: So could this bill potentially increase the cost of producing electricity if you have to plan for these expenses? So actually-- and, and then you sell power into the power pool based on its cost. So if you have to factor in a 10 or a 15 percent or whatever percentage increase that is to cover these decommissioning costs, then that's going to make that power more expensive, and you're going to increase reliability on, say, solar, which has no energy cost, or wind, which has no energy cost.

JAVIER FERNANDEZ: Yes, Senator. So, so as my, my colleague right before me said, this, this bill would add a lot of costs to baseload generation. It would, it would provide an incentive not to build more, more, more of this type of generation in the future because it's, it's expensive. It would make existing generators a lot more expensive and, therefore, less competitive in the marketplace.

MOSER: Yeah, that's what I was-- it might do the--

JAVIER FERNANDEZ: It could.

MOSER: It might do the opposite of what the intent of the bill is.

JAVIER FERNANDEZ: That is exactly right. Now--

MOSER: The bill is kind of to protect baseload generation, but by making it more expensive, you might cause it more harm than help.

JAVIER FERNANDEZ: That, that is correct. So, so using the analogy of the carrot and the stick, this is a stick that wouldn't work very well for these, for these generators. On, on the contrary, and, and the interpretation of the bill-- Senator Brewer mentioned SPP and I, I agree. I think there are a lot of things that, that can and should be done with SPP, and we are working on those. One of them is, for example, having a capacity market. Today we don't-- that, that doesn't exist in, in SPP. We are paid for the energy that we provide, regardless of whether you have capacity or reliability in, in the market. If a capacity market were to be developed-- and by the way, there are other RTOs that do have some capacity market structures-- then, then you can entice more of this type of generation that provides capacity, whether it's coal, nuclear or natural gas. Those units would become, then, more competitive. Without necessarily costing more to our current ratepayers here in Nebraska, we would actually be extracting value from the remaining of the marketplace and truly acknowledging the value that, that these units would bring from a capacity perspective.

MOSER: Thank you.

JAVIER FERNANDEZ: You're welcome.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman. I'm interested in, you know, I think your goal-- and you can correct me. Is your goal to be net zero by 2050?

JAVIER FERNANDEZ: That is our directive. Our, our board of directors has 15 strategic directives. One of them has a, a directional goal for us to be net zero by 2050.

GRAGERT: How can they make that-- even that timeline? And now this is what I'm interested in, is your opinion on battery storage.

JAVIER FERNANDEZ: Um-hum.

GRAGERT: Where is batteries-- where is battery technology to make that kind of stick, you know, to make that kind of directive for 2050?

JAVIER FERNANDEZ: If I may, let me take the first part of the question. How can they make this, this directive? We don't know. We don't have the answer. And so what the, what this directive really allowed us to do was to make studies to that after this, this resolution was passed in, in the fall of 2019. And at that point, we got to work and we got to developing all of these scenarios and these studies for transmission, reliability, and generation, research generation so that we can understand what are the paths that we could potentially follow that could get us to that net zero by 2050. By the way, this is only one of 15 strategic directives. We have very clearly other strategic directives that tell us you need to keep rates affordable, you need to keep the system reliable. So, so that's, that's a construct of, of that, under these goals. Batteries-- to your specific question of batteries, batteries are considered in the study. We, we researched, we consulted with many experts, and we're taking into account their, their expertise. Based on the development of battery storage technology, we, we included some of that in our studies, but we discounted some of that, that technology based on their maturities. There are many different flavors of battery storage. Some of them are not ready for commercial use today. We did not include those in, in our study. I would take the opportunity to, to share here-- very exciting. We are starting to test battery storage. We are building today our very first utility-scale battery. It's a one-megawatt battery; it's a small one. But we are, we're very

interested in that technology. We believe that that technology, along with nuclear technology, have a lot of potential for us in the future. We want to be at the table, we want to continue to explore that, and so that when it's ready, we're, we're ready, too.

GRAGERT: Thank you for enlightening me on the directive versus a goal. It's not a goal; it's a directive.

JAVIER FERNANDEZ: Correct.

GRAGERT: Thank you.

BOSTELMAN: Thank you for answering all our questions. I really appreciate, appreciate you coming in today, Mr. Fernandez. I thank you very much for your testimony.

JAVIER FERNANDEZ: Thank you for having me.

BOSTELMAN: Um-hum. Next opponent, please. Good afternoon.

JOHN McCLURE: Good afternoon, Chairman Bostelman. Members of the committee, my name is John McClure. I'm executive vice president and general counsel for Nebraska Public Power District, and I'm here today testifying in opposition to LB1058. But I want to begin by saying that Senator Brewer has certainly raised issues here. As you know from our discussion yesterday, also, on different bills that are of great significance for you, as a committee, and are of great significance for us, as an industry, we absolutely agree that reliability is extremely important, and we need to make sure that we're doing the right things to protect the reliability of the electric system. We also agree that there's significant and essential value in baseload generation. At NPPD, we don't have any plans to shut down any of our baseload generation at this point. And we will run that generation so long as it's cost-effective and reliable and safe. And cost[-effective covers a lot of things. It could be regulations that we're facing could make existing baseload potentially not cost-effective. But at this point, our desire is to continue to have the diversity of resources in our portfolio in order to best serve our customers. I think one of the things that's come out of today's hearing and yesterday's hearings is an opportunity for us to have more informal dialogue, as an industry and as policymakers. We think these are very important subject matters. As you've heard many times, electricity is a foundational building block of our society. We take it away, we lose commerce-- you know, commerce, comfort, convenience, communication, you name it. And so it's very important. I'd like to make a few

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comments very quickly about the bill. Our concern is, is how it's structured and some of the language in it. And, and hopefully I can get to that in some questions. But there's been a lot of conversation about these 2050 goals, and I'd like to share with you NPPD's 2050 goal because I think it's probably been of interest to this committee. It's only seven sentences long, and I'm not going to read all of them. But I think, if you listen to these words, you'll be much less concerned than you may have been in the past. So NPPD adopts the goal of achieving net zero carbon emissions for NPPD's generation resources by 2050. This will be achieved by continuing the use of proven, reliable generation until alternative, reliable sources of generation are developed, and by using certified offsets: energy efficiency projects, lower or zero carbon emission generation resources, beneficial electrification projects, or other economic and practical technologies that help NPPD meet the adopted goal at costs that are equal to or lower than, than current resources. So there's significant qualifications, and I know the red light is on, so I'll stop and take any questions. I'd be happy to answer questions. Again, we look forward to ongoing dialogue and believe that Senator Brewer has, has raised important issues with his proposal, so--

BOSTELMAN: Thank you, Mr. McClure. Are there questions from the committee? Senator Gragert.

GRAGERT: Thank you, Chairman. I'm interested in, in when you were cut off, that saying on your 2050 goal.

JOHN McCLURE: Well, the last, the last sentence, and it says the board of directors may evaluate and reconsider the district's carbon emissions goal if it is determined that meeting or progressing toward the goal will adversely impact the district's ability to continue to meet the board's strategic directives concerning reliability or cost competitiveness. So again, those two things are at the foundation of what we're doing with this.

GRAGERT: Thank you.

JOHN McCLURE: And we're not trying to get to, to absolute zero; it's net zero. And we'll look at all available options.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you for being here again, Mr. McClure. Just looking at the bill, what is your interpretation of contract life?

JOHN McCLURE: As the earlier witness--

J. CAVANAUGH: I, I wasn't here. I wasn't here probably.

JOHN McCLURE: Oh, I'm sorry. Well, that is a phrase that we're not sure what it means. The life expectancy of a power plant is typically-- I mean, there may be sort of a generic expectation that maybe a wind turbine is good for 20 years, but we have a hydro plant that's over 100 years old in Kearney. Sheldon Station, southwest of, of Lincoln, is, is 60 years old. Gentleman Station is 40 years old. Cooper Nuclear Station is, I believe, 48 years old, and is running in its 451st day of continuous operation.

J. CAVANAUGH: I think yesterday was 451.

JOHN McCLURE: Yes, where it would-- day 100-- 451st-- I'm saying today.

J. CAVANAUGH: All right.

JOHN McCLURE: And that provides about half of the power for our Nebraska loads, and that's all carbon free and it runs round the clock.

J. CAVANAUGH: Do you have-- I mean, are there a labor union or employee contracts that are over all that cover all the employees or cover sections of the employees?

JOHN McCLURE: NPPD is somewhat unique among the utilities in the state and the country. We're nonunion. And-- but, but I can assure you that we have in place already severance language in our human resource policies. If we were to eliminate a position, eliminate, you know, workforce, we already have in place a program, how we deal with that if we eliminate a job. But I can assure you right now, no utility wants to lose workers. We're in a very tight market. So a number of years ago when we eliminated the need for meter readers because of advanced meter technology, we didn't need that anymore. A couple of years before we implemented that, when we knew we were going to implement it, we told those meter readers, your jobs will be eliminated. We'd like you applying for other jobs. And so we're going to do everything we can to keep those employees because they're valuable.

J. CAVANAUGH: Another question about the statute here, the bill, the part about, the "in lieu of taxes" for 10 years or \$50 million, whichever is greater, my assumption is this would be on one, on a

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by-facility basis. Do you have any concept of what-- I don't know-- Cooper or any of your facilities pay as in lieu of taxes a year?

JOHN McCLURE: Cooper does not pay any in lieu of taxes, and, and that's, that's the, the whole concept here, I think. There, there are some fundamental issues. We'd like to have more dialogue as to what's intended, how it's supposed to work, because again, and if you think about it, the sites where these plants are, they are prime sites to build the next plant. And so to me, one of the fundamental issues is: Was a plant closed prematurely and improperly? There might be a good reason to close a plant if there was a safety issue that developed with a major component, and you said we can't run this safely anymore and we can't afford to replace that component. Maybe it's the boiler. Who knows what it might be? But there's a lot we'd like to have more dialogue about so we're, we're, we're all reaching a common understanding.

J. CAVANAUGH: Thank you.

BOSTELMAN: Other questions? Seeing none, thank you, Mr. McClure, for your testimony.

JOHN McCLURE: Thank you.

BOSTELMAN: Next opponent, please. Good afternoon.

TIM LUCHSINGER: Good afternoon, Senator.

MOSER: That's all right.

TIM LUCHSINGER: My name is Tim Luchsinger, T-i-m L-u-c-h-s-i-n-g-e-r. I'm the utilities director for the city of Grand Island that I'm representing, along with the League of Municipalities. You've heard from the smart guys in the room, so now it's my turn. I just wanted to fill you in on the situation in Grand Island, which is similar to Fremont and Hastings. We all have coal generation facilities, and they're very small compared to what some of the big districts have here, the-- you know, a tenth of the size. Our one coal unit, for its life, most of the time we ran that thing all year round. We might shut down two or three weeks during the year for maintenance. In the last few years, we found that we're shutting that plant down for three or four months out of the year because of the market that, that we're selling or buying into. We feel it's in the interest of Grand Island's customers that we look at other generation. And because you've got a plant shut down for two or three or four months and you've got 50-some employees there that are basically tending after an idle plant. We

think that the natural gas units that, that was talked about earlier, the quick start ones, we have other natural gas units that we back up with, with fuel oil, which carried us through the February event here last year. We think that's the best way to go, but we are also concerned about our employees. We, we've been looking at the ages of our employees and we think that probably, in the next eight to ten years, we'll get that sweet spot where we'll have a lot of retirees-- will minimize the impact on our employees. With the new generating facilities, we think we can transfer those employees to the new facilities with retirements of that, that through attrition, that we can minimize any impacts that went to the, to our workforce. So I think we've got a pragmatic plan in place here, and, and to me, anyway, this legislation, it's got good intents, but if you look at our situation, it, it throws some wrinkles into that. And so I just want to bring that up today. So thank you.

BOSTELMAN: Thank you, Mr.-- is it Lukesinger [PHONETIC]?

TIM LUCHSINGER: Luchsinger.

BOSTELMAN: Luchsinger? Thank you. And I want to say, too, you know, on the polar vortex, that you all did a, a heck of a job getting, keeping everybody on. I mean, this wasn't done just by our larger generators. You all played a very, very important role. And, you know, we-- if you will, I think the state burned everything, generated every way that it could to make sure that we stayed up; and you all did a fantastic job. And I want to thank you for that.

TIM LUCHSINGER: Well, I'll give you a for instance on that, is that we have backup free oil on all our natural gas units, and this last February was the first time in my life-- I've been there 35 years-- that's the first time that we've had to burn that oil out of, you know, need.

BOSTELMAN: Well, fortunately, we had it.

TIM LUCHSINGER: Yeah.

BOSTELMAN: Well, we're very fortunate. So thank you. Are there any questions from committee members? Seeing none, thank you very much for coming in--

TIM LUCHSINGER: Thank you.

BOSTELMAN: --and testifying today. Next opponent, please. Good afternoon, Senator Davis.

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AL DAVIS: Good afternoon, Senator Bostelman. How are you?

BOSTELMAN: I'm fine, how are you?

AL DAVIS: Good, thank you.

BOSTELMAN: Good.

AL DAVIS: So it's very short testimony, and a lot of things have been said already. I'm Al Davis. I'm A-l D-a-v-i-s. I'm here today as the registered lobbyist for the 3,000 members of the Sierra Club. If legislation of this type was carried out in a state where the power industry was operated by a private corporation, it would be viewed as an incursion of government, and regulatory interference into the affairs of private companies, and a significant overreach by government to the business affairs of the corporation. The passage of LB1058 would drive up the rates for customers sometimes down the line if the business models indicated a need to shut redundant plants, and potentially impose a \$50 million cost for the entities, requiring them to pay taxes on property they no longer own or operate. NPPD and OPPD have a demonstrated history of exemplary performance over the last 80 years. The public power entities have connectivity statistics, which are in the top three nationwide, while also providing a rate structure which has not changed for several years, in large part, at least in the NPPD region. LB1058 will drive up costs for public power and inevitably result in higher rates over the long haul. It really does nothing to assure reliability, and imposes barriers on public power to adapt to the new dynamics in the industry. The Nebraska chapter of the Sierra Club urges the committee to indefinitely postpone this bill or let it die in committee. I was very impressed with what Javier friend [SIC] has had to say today about all the work that they have done to assure that we're going to have reliable sources of energy. And so I think the bill does not-- is not needed and we should just let it go. Thank you very much.

BOSTELMAN: Thank you, Mr. Davis. Are there questions from the committee? Thank you, Senator Davis, for being here today.

AL DAVIS: Thank you.

BOSTELMAN: Appreciate your testimony. Next opponent, please.

JOHN HANSEN: Good afternoon, Mr. Chairman, members of the committee. For the record, my name is John Hansen, J-o-h-n Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. As I look at this bill, it strikes me-- several things that we're, we're obviously trying to

use additional in what most folks would recognize as excessive government regulation intrusion into at least the public power marketplace and the generation marketplace, in order to put our hand on the scale. We have folks in public power who are competent, capable folks, whose job it is to take a look at the generation sources and figure out what they need to do when, in an appropriate, and in an appropriate kind of timeframe, when the time comes. And so as you look at where we're at today and where we're going to go in the next 20 years in electrical generation, to some of the comments that were made yesterday, look at where we've come from the last 20 years to where we are now. And so there was, there was a time not long ago when we were working on renewable energy issues, that if you told public power that you were going to have to get to 10 percent of your retail load coming from renewable energy, they would have jumped up and down and yelled: That's crazy. We can't possibly get there. That's, that's just, you know, wild, reckless statements. But thanks to the, thanks to the efficiency of generation, thanks to the ability to be able to incorporate more renewable energy into the grid and all of those things, we now have-- one of our utilities has 10 percent, one has a little less than 40 percent, and one has over 40 percent. And so these are numbers that would-- just absolutely would not have-- well, they would have been crazy numbers. So when you were talking about trying to get to 10 percent, when we were doing some of the previous legislation efforts to at least begin the conversation about how do we move forward with more renewables-- and it is in our benefit to use as many renewables as possible and reduce the total amount of coal that's being burned because, if we're going to be fair and we're going to actually keep track of costs on both sides of the line, we need to take a look at the amount of high-intensity weather events and the amount of damage that's been done to-- certainly agriculture, but the rest of our society in the last just five years. And I suggest you go to NOAA and their website, and they keep track of the amount of damages that have been caused-- just the 2019 flood alone, which is a 500-year flood, was over \$3 billion. So there's a lot of costs that are being incurred on both sides of the line. And with that, I would end my testimony and be glad to answer any questions, if you have any.

BOSTELMAN: Thank you, Mr. Hansen. Do you have-- do we have any questions? I'm curious, and I always wanted to ask this, and more of a curiosity thing. And if you don't, if it's not an appropriate place to answer it, that's fine; we can talk later. So you're, you're-- the Farmers Union comes in and you testify a lot on a lot of these type of bills, and I appreciate that. But I don't see other financial institutions and stuff come in and testify on these things. Does

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Farmers Union have a significant portfolio and investment into these type of renewals?

JOHN HANSEN: In terms of our financial investments that we would have in National Farmers Union-- I sat on that board. I sat on that budget committee. I help oversee those investments. It's a general portfolio. It's not loaded in one direction or the other. It's mostly mutual funds and, and equities. And that's also where our Nebraska Farmers Union Foundation is just general equities. But I would say that, relative to financial investments-- trying to be careful of how far I go-- we-- I do, I am the vice chair of our, of Farmers Union Midwest Agency, and we are a two-state insurance sales organization that sells farmers union products and other products, with a little over 60 agents in two states. And so I just got done reporting to my board of directors this morning the size of the financial hit that we just took, thanks to the 26 tornadoes and the property and casualty damage that we have a very, very small slice of in Nebraska from the December storms. So those were-- those were very real storms. They caused a lot of damage. And I know the size of the hit we took, and we're a very small player.

BOSTELMAN: OK, thank you. Any other questions? Seeing none, thank you, Mr. Hansen, for being here today.

JOHN HANSEN: Thank you very much.

BOSTELMAN: Appreciate it. Next opponent, please. Seeing none, is there anyone that'd like to testify in a neutral capacity? Seeing none, Senator Brewer, you're welcome to close.

BREWER: Well, I start by thanking the different public power representatives that came in today. I was very impressed with OPPD's explanation. It was educational. It was enlightening. I think I better understand things because of it. I think NPPD did a, a good job of describing what they see as their vision for the future, which is helpful. Again, the case of Grand Island, what I'm trying to do here, the intent would be to help them, not to hurt them. Understand if they have to transition from, from coal to gas, the, the bill really wouldn't apply to them because they're not closing the plant, they're not firing anybody. They're not doing anything negative; they're doing something good. But what that means is that we may have to change some of the language so that it's perfectly clear that, if you have a footprint and that footprint will transition from coal or natural gas to nuclear, or however that, that swap might be, there should be no penalty for that. You're doing something good. So that we have to take

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a look at, on how we make that, that clear. If we take a look at the, the other issues that come up-- and, and I know everybody needs to get home, so we'll, we'll kind of just blast through these real quick. Your point on nameplate capacity tax is, is completely accurate. It's, it's 12 years. There is LB818, that I did last year, that's sitting in Revenue Committee. I will ask on Monday to have them Exec on it because, obviously, there's support for that and it's a good bill that needs to happen, so we'll push forward with that. Some of the comments basic were to listen. You know, we have a good board of directors. We're concerned. We have to do what is safe, reliable, economical, and I think everybody's good with that as a goal. But understand, after what happened last year, there are folks that question that-- and, and rightfully so. It depends on where you were and how much time you spent without power. But there were folks in the district that that happened during calving, and it had some very negative impacts. So if we're concerned, I think there is some justification for that, and that's why we're kind of walking through this. And along those lines, the decarbonization, probably what we need to do is have-- I guess I can get away with using this term-- a powwow and we bring in those power, public power groups, and we, we sit down and go through-- what does that look like? How do you determine it? Because that's something that I struggle with, is how we know what we're trying to replace and how do we, how we go through that process, and what does right look like. So then that might be a goal that comes out of this. That would be a very positive thing. Now, when they say that we are out of our lane with what we're trying to do here, we need to understand that this is a shared responsibility between public power and the Legislature. That's the whole idea of how public power was developed in Nebraska, and that's the overwatch of it. So I don't believe we are. I think we'd be doing an injustice if we weren't having some oversight. So that one, I, I'll have to struggle with that. Now, I wasn't here for the testimony yesterday. I'm just picking up on bits and pieces of it. But if transparency is, is really where we want to be and, and where we want to make sure that there are no concerns that maybe some of the players aren't really doing it with the full concern of the citizens of Nebraska, I think when it comes to issues like, like decommissioning agreements. With wind, those were always kept in secret; nobody knew about it. You could be a landholder and be in a critical position, whether it be a board member or a commissioner or in a position of influence, and no one would ever know it; everything is kept secret. And I'm sure they'll do the same with solar. I think that is something we have to take a look at, and I'm not sure exactly how we're going to address that, but that, that is coming. But maybe, if we go back to this point I just made, and we have the powwow where

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we bring together the, the different public power groups and we, we slow-walk through some of this so everyone kind of understands it better, and we need to figure out where that void is or where that, that point that we can agree, and then we build legislation off that. But it-- of the things that were brought up today that are actually of, of significance, a description of, of what is-- what does a baseload look like? What is, what is that? That's something that is verbiage. We can, we can figure that out rather quickly, and we can, we can do an amendment to do that. And along with that contract life again, so it's perfectly clear, we adjust accordingly. That's what we do with bills that aren't absolutely perfect, but I think we have to go back to the intent of the bill. We're trying to take care of the communities. We're trying to make sure that our baseload is guaranteed and that we take care of the workers. That's what this bill is trying to do. We can adjust as needed to make sure that's what it says, but that's what we want to do, and that's the goal I have. And, and like I said, on LB818, on the baseload capacity-- or on the nameplate capacity, I will address that on Monday. I'm subject to any questions you have.

BOSTELMAN: Thank you, Senator Brewer. Are there questions from committee? Seeing none, that will close our hearing on LB1058. We do have-- before you shut it off, we do have 9 proponent and 29 opponent position comments that we've received. Thank you. That will close the committee. Thank you all for coming, and have a good weekend. Happy birthday.