

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

BOSTELMAN: All right. Good afternoon, everyone. Welcome to the Natural Resource Committee. I am Senator Bruce Bostelman from Brainard, representing the 23rd Legislative District, and I serve as Chair of the committee. The committee will take up the bills in the order posted. This public hearing today is your opportunity to be a part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets there on the table at the back of the room. Be sure to print clearly and fill out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also a white sign-in sheets back on the table. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We will be using a five-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have one minute remaining and a red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It is just part of the process, as senators may have bills to introduce in other committees. A few final items to facilitate, to facilitate today's hearing: if you have handouts or copies of your testimony, please bring up at least 10 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees states that written position letters to be included in the record must be submitted by 12 noon, the last business day before the scheduled hearing on that particular bill. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. You may submit a written letter for the record or testify in person at the hearing. Not both. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

the committee statements. I will now have the committee members with us today introduce themselves, starting on my far left.

FREDRICKSON: Thank you, Chair Bostelman. Good afternoon. My name is John Fredrickson. I represent District 20, which is in central west Omaha.

SLAMA: Julie Slama, District 1, Richardson, Pawnee, Johnson, Nemaha and Otoe Counties.

HUGHES: Jana Hughes, District 24, Seward, York, Polk and a little bit of Butler County.

BOSTELMAN: My far right.

BRANDT: Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster Counties.

JACOBSON: Mike Jacobson, District 42, Hooker, Thomas, McPherson, Logan, Lincoln and three-quarters of Perkins County.

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

MOSER: Mike Moser, District 22, Platte County and most of Stanton County.

BOSTELMAN: Senator Moser also serves as the Vice Chair of this committee. Also assisting the committee today: to my left is our legal counsel, Cyndi Lamm; to my far right is our committee clerk, Laurie Vollertsen. Our pages for the committee this afternoon are Trent Kadavy and Landon Sunde. Thank you very much for being here this afternoon and assisting us. With that, we'll begin today's hearing with LB725. Welcome, Senator Dungan.

DUNGAN: Thank you. Good afternoon. Chair Bostelman and members of the Natural Resources Committee. I'm Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent the people of northeast Lincoln, in Legislative District 26, and today, I'm going to be introducing LB725. LB725 is a bill to prohibit the use of ratepayer funds from being used for or against a political candidate or ballot question. LB725 clarifies that public resources may not be used for the purposes of contributing to a campaign committee, even if they first passed through a membership organization or cooperative. The principle is simple: taxpayer or ratepayer dollars should not be used to advocate for or against a candidate for office. Nebraska has a proud tradition

of public power and the use of this money in public power districts to contribute to political campaigns is not only a betrayal of that tradition, but it's a betrayal of public trust. As you may have noticed, I did hand out AM586 for your review. That is a white copy amendment, so you can refer directly to that. The amendment addresses a couple of issues. First of all, it's much shorter and a little bit easier to read. So that was, I think, a form issue we had them address. Second of all, the bill as it's currently written before the amendment, any person who violates the section shall be guilty of a Class III misdemeanor. AM586 changes that potential penalty to a civil penalty, not to exceed \$5,000. The reason for that change, among a couple of different reasons was, one, I think it's clearer. I think that it becomes somewhat problematic when an entity is donating money and then a criminal charge gets placed against that entity, I don't know who actually would get charged with that, whether it's the secretary or the treasurer. So we thought a civil penalty made more sense for that. In addition to that, it ensures that any fees or fines associated with violating this section cannot be paid for using ratepayer proceeds. AM586 better defines who this applies to. I do want to make very clear that my office has been in communication with stakeholders, including the Power Review Board, NPPD, a number of other individuals. I've spoken with representatives from co-ops and so, we have been made aware of some of the issues that people have with that. We look forward to working with folks in the industry to ensure that we're not causing any undue harm. As I said, at the end of the day, the crux of the issue here is ensuring that public money is not used or utilized for campaign donations. Thank you for your time and consideration. I'm happy to answer any questions and I would urge your consideration of LB725.

BOSTELMAN: Thank you for your opening. Other questions from the committee members? Senator Fredrickson.

FREDRICKSON: Thank you, Chair Bostelman. Thank you, Senator Dungan, for bringing this bill. I, I, I, I agree with this premise. I think that public funds are certainly-- it seems to be a conflict of interest or I don't know if conflict of interest is the right word, not something we were wanting to be campaigning on. I am curious, I don't know if you saw the-- there were some letters that were submitted. There was one letter of opposition submitted from the Nebraska Electric Generation and Transmission Cooperative. They kind of highlight that this is-- it says LB725 only applies to ratepayers of electric service and not ratepayers of gas, water or propane. It says obviously subjective toward the electric industry and not based

on fairness, equity or common sense. I, I, I find that to be sort of, like, a bit of a difficult argument because it's not arguing the principle of the bill per se, but it's kind of saying that they're, they're being targeted. I, I, I just want to kind of get your thoughts on that or if you had any, you know, if you could speak to that a little bit, that'd be helpful.

DUNGAN: Yeah, I mean, I certainly think that-- I mean, it's my bill, so I might be a little bit biased, but I absolutely think it's based on common sense, when the common sense principle here is that captive audiences who are ratepayers shouldn't have their money ultimately be funneled through to candidates or campaigns that they don't support. I think that's the fundamental predicate of this bill, is we just want to make sure that folks who are paying money to a rural power district, that, subsequently, that money as a ratepayer proceed goes to a co-op, for example, that it's not ultimately being utilized for those, those campaign proceeds. As to whether or not it should apply to other ratepayers outside of electricity, I'd be open to having that conversation, as well. You know, this bill is not the beginning of a conversation. It's a conversation that's been going on for a while. I'm new to that conversation, but I know there's been specific instances, I think, specifically talking about some of the allegations or concerns folks have had against NEGT that you're just talking about, where there were concerns that maybe those funds were ultimately going towards political candidates from captive audiences. And so, I guess I don't share their concern that it's not based on common sense. I think it is common sense to make sure that ratepayers' money is not being used for that purpose. But as to whether or not this is too narrow of a restriction and they'd like to see it apply to other things, I would absolutely be happy to have that conversation.

FREDRICKSON: Thank you.

BOSTELMAN: Other questions? Senator Brandt.

BRANDT: Thank you. Chair Bostelman Thank you, Senator Dungan, for bringing this bill. So what inspired you to bring this? Is there a lot of incidences in Nebraska of this happening?

DUNGAN: That's a good question. I think some of the testifiers after me might have a little bit more personal history with this. I know, for example-- actually, let me take a step back and say I, I want to be very clear to the committee as well as folks in the room. I don't think this is a widespread problem. All right. I don't believe we have

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

a lot of bad actors out there. I don't believe we have a lot of individuals who are trying to utilize ratepayer proceeds in order to donate to campaigns, but I do believe there are circumstances where that has happened. I just mentioned leading up to the 2020 election, we know, for a fact, that Nebraska Generation and Transmission Cooperative donated at least \$7,500 and that's what we know. They loaned that money, rather, and that's what we know. And I think there were other concerns about additional money being used and there were NADC complaints that were filed. So we do have documented evidence that this has happened. And again, I don't believe that all of our rural co-ops and places like that are doing this. I don't think that LES or other places are doing this, necessarily. This bill simply seeks to enshrine a protection for ratepayers who, as I said, are essentially captive audiences to make sure their proceeds are not subsequently being funneled through to other entities or organizations that then use it for political gain.

BRANDT: So in your research, are a lot of these funds going toward candidates for those electric utilities or they're contributing funds to national races? What is your research showing?

DUNGAN: That's a good question. I don't have specific-- I, I can get the specifics for you pretty quickly on that. I don't know for a fact if they're going to national races. I believe they're going more to local races in what my research has shown and other committees and major issues they're donating towards. But I can definitely get you information pertaining to who it directly was going to.

BRANDT: All right. Thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Senator Dungan, thank you for being here and nice to have in our committee, I think, the first time for you here, maybe.

DUNGAN: It is.

JACOBSON: All right.

DUNGAN: Happy to be here.

JACOBSON: Well, great to have you. So, I guess in a little bit of follow up on Senator Fredrickson's question, why you've limited it to just electrical utilities and, and why we aren't just doing a blanket

if this is a good-- if it's good for the goose, maybe the gander, as well. And are we not just looking at a blanket issue or is this just because of you're aware of some specific issues as a-- at a particular electric rate supplier. I'm just--

DUNGAN: Yeah. No, that's, I think, a very good question and I appreciate that, as well as Senator Frederickson's point. This is not personal for me. I-- like I said, there are some other individuals out there who I think this has, maybe, affected more, who this conversation started back in 2019, 2020, around that. For me, it's a good governance issue. For me, this is not necessarily left or right or even political. It just makes sense to me when I spoke to individuals about protecting ratepayer proceeds from going to political campaigns. Again, I would be more than happy to talk about whether that can apply to other utilities, as well. I think what makes, what makes this a particularly interesting and unique situation is we're a public power state. And when you have a public power state that uses these rural public power districts, you subsequently use those ratepayer proceeds to pay membership dues, for example, to co-ops. I think that is a unique situation that we don't see, necessarily, with regard to other utilities. If we're talking about water, gas, the structure and the infrastructure for how those payments get processed and sort of, whether it's private or public is just slightly different. Because we are a public power state, I think that is, sort of, the impetus for having this conversation, is because we utilize that public power. And as I've talked about, we have these captive audiences. I think that's why this legislation focuses on that. But I'd be more than happy to talk about other utilities and what they seek to do. What I don't want to do and what I understand some opponents to this may think I'm doing is I don't want to limit the ability for companies to do with their money as they please. Right. A private company is a private company. We all know that we can't necessarily tell a private company what to do in certain circumstances. What differentiates this from just simply saying a company can't do X, Y and Z, is we're talking about ratepayer proceeds from public power that are the sole income source for these co-ops. And so, I think when you start talking about organizations like the co-ops or other individuals, I think we do have the ability to govern a little bit more what they do or don't do with those proceeds, because it's public power proceeds. And again, these are captive audiences. So I think it's slightly different than telling a private company what to do, given the revenue source that they are based off of, if that makes sense.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

JACOBSON: It, it does. And thank you. And I, I must have missed out that that was one of the potential sources. I missed it in my campaign, but thank you [INAUDIBLE].

BOSTELMAN: Senator Hughes.

DUNGAN: Next time.

HUGHES: Thank you, Chairman. It's "George Day" today. So thanks for coming in, Senator Dungan. OK. So there was a Attorney General Opinion and I'm guessing you probably saw it, April 9, 2021, that in it says we conclude that Electric Cooperative Corporation is a private, nonprofit corporation and not a government-- governmental entity. As a corporation, as an entity that is authorized by the Nebraska Revenue Statutes-- numbers and that weird little symbol-- to make contributions and expenditures as those terms are defined in the Nebraska Political Accountability and Disclosure Act. So there's no language within the NPADA which-- that would except-- you know, make an exception for Electric Cooperative Corporation. So with that being said, and let's say this bill would go through, wouldn't it end up getting challenged in the courts?

DUNGAN: I mean, I absolutely think there would be a challenge to that, to a certain extent. I think there's a differing of opinions on this. And again, I like to go back to what the overall purpose and point is, right? That to me, this is different than telling a company what they can and can't do, given the fact that the sole income source or the sole revenue source for their proceeds are from ratepayers. And so, even if the organization that we're talking about here, that's organized under Chapter 70, is not in and of itself a public power entity, I believe that because the money they're using to then, later on, support political campaigns or committees or things such as that come specifically and solely, at least it sounds like based on what I've been able to find out, from ratepayer proceeds, that that's the problem. And so, I would simply disagree that they can be treated just as private companies, but I do understand we have to strike a balance. And as I've said before, what I don't want to do is get into the business of telling private companies, in general, what they can and can't do with their money. But because that money comes from ratepayers and that's it, I think it's slightly different and needs to be handled differently.

HUGHES: Yeah. OK. Thank you.

BOSTELMAN: Senator Moser.

MOSER: So the large utilities all have elected boards, right? So they have to run for office. So if they do something wrong, a candidate could make an issue of it in a campaign and use that to run against a board member. Isn't that a check and balance for what you're worried about here?

DUNGAN: I think that certainly could be one.

MOSER: And then the cooperatives below that, I don't know if they're elected by the whole population of the area they serve or if they are just elected by the members of the cooperative. Do you know that?

DUNGAN: I don't know the specifics. I don't believe they're elected at, I don't believe they're elected at large. I think you're right that elections certainly serve as checks and balances on what people can and can't do. But my issue with it, I think a lot of times, is transparency. And I think you'll hear some conversation with my next bill. As Senator Hughes pointed out, it's "George Day," so I'll be testifying on another bill here in a minute-- with regard to transparency. And I have a concern that the general public may not necessarily know what is or what isn't happening. And I think the fact that we all have been made aware of this issue, this circumstance, with NEGT. is because a few people paid attention and then talked about it. And so I don't think it's the kind of thing that's going to be widely acknowledged or widely known. It certainly could become an issue during a campaign, but my concern is that there's going to be malfeasance or bad actors, again, very few, but bad actors who utilize these rate payer proceeds in a problematic way. And I want to try to prohibit that and stop that at the beginning.

MOSER: OK. Thank you. I got a question for Senator Jacobson. Is it McPherson or McPherson County?

BOSTELMAN: Any other questions? If there's no other questions, you're going to stick around, obviously--

DUNGAN: Yes.

BOSTELMAN: --for closing.

DUNGAN: Yes.

BOSTELMAN: OK. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

DUNGAN: Thank you.

BOSTELMAN: Thank you for your opening. Proponents, please. Anyone who'd like to testify in, in support of LB725, please step forward. Good afternoon. Welcome.

KATE HIGH: Good afternoon. My name is-- well, good afternoon to Chairman Bostelman and committee members. My name is Kate High. I live in Lincoln. However, for most of my life, I lived in rural Nebraska and was a customer--

BOSTELMAN: Spell your name, please.

KATE HIGH: --oh, excuse me, K-a-t-e H-i-g-h.

BOSTELMAN: Thank you.

KATE HIGH: I was a customer and a ratepayer of the Elkhorn Rural Public Power District in Battle Creek. And I'm here today in support of LB725 and LB726. You'll notice that on this sheet. I have, first off, two points. Money paid to public power districts by ratepayers for their electric service is, by definition, public money. LB725 clarifies that when public ratepayer money is transferred from a local public power district to an electric co-op, it remains public money. Number two, it is contrary to Nebraska law for public money to be used for political purposes. Public money, even when it is in the form of a loan, cannot be used for campaign contributions. In 2020, I complained to the Nebraska Accountability and Disclosure Commission, NADC, that public ratepayer money that had been transferred to an electric cooperative, the Nebraska Electric Generation and Transmission, NEGT, was used for political purposes. Public money that came from ratepayers was used to make a \$7,500 loan to a newly created political action committee, a PAC, called Nebraskans for Reliable and Affordable Energy, NRAE. The PAC used the interest-free loan to make contributions-- campaign contributions. I lost the complaint. The reason, according to Darin Bloomquist, executive director of the NEGT electric co-op and a founder of the NRAE PAC, was that once public ratepayer money was transferred to the electric co-op, it was no longer public money and could be used to make campaign donations. And in Mr. Bloomquist's words, was no different than buying a truck tire. Most Nebraskans, particularly us rural folks, are able to discern the difference between a truck tire and a campaign donation, even if Mr. Bloomquist cannot. Let's keep it real. Ratepayer money that has been transferred into a NEG, NEGT co-op bank account remains under the

control of rural public power districts that make up the membership of NEGT. The same cannot be said about truck tires. Ratepayers were left in the dark about the political activity of the electric co-op and how public monies were being spent. Who knew flipping a light switch was the new way to make a campaign donation? Current law exempts all cooperatives from open meetings laws. And I would-- that-- and I'll be talking about that on LB26 [SIC]-- would require both co-ops and public power districts to provide information on their websites that would improve transparency and accountability. Public power districts and NEGT were both publicly created, public officials governed both and both are publicly funded. Public money requires public regulation with full public disclosure. To me, this is fundamental to good governance and accountability. The Attorney General's Opinion, which was requested by the NADC in regard to my complaint, was not clear cut. The Attorney General determined there was no legal restriction against cooperatives in general making campaign donations, but the issue was left dangling in regard to electric co-ops. The provision of law the AG cited as creating the uncertainty was 70-704(17). And I have a quote here. And the, the Section 70-704 is actually 17 reasons there. And, and they say 17 is the one that-- number 17 is the one that stands out. And it would lead out, "each corporation shall have the power" and then, number 17, "to have and exercise any and all powers as may be necessary, convenient or appropriate to effectuate the purpose for which the corporation is organized." The issue for electric co-ops remains unsettled. Are no-interest loans for campaign contributions a wise, necessary and appropriate use of revenue? Is this the best use of ratepayer money? George Norris would be very disappointed to see these ill-considered attempts to politicize our public power system. NEGT has established a legally and ethically shaky precedent. If it would stick to buying tires, we wouldn't be meeting here today under these circumstances. So the committee can do something right here, right now to fix this. And I ask your support for both bills. Thank you.

BOSTELMAN: Thank you for your testimony. Are there any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chair Bostelman. Thank you for being here, Ms. High. So you were a ratepayer in the Elkhorn Public Power District?

KATE HIGH: Elkhorn Rural Public Power District. And I just want to add this to this. I was also on the school board and I also paid the, paid the school board's electric bill. And I realized that a portion of

that electric bill, that was from the school bill, was actually ending up a campaign contribution, because that public money stays public through this entire process. There's no way that you can shake a wand and make it less public.

J. CAVANAUGH: Well, I appreciate that but I'll get back to my question. So you were a, a member of the Elkhorn Public Power District. Did you-- how did you come to choose Elkhorn Public Power?

KATE HIGH: It's a monopoly. I don't have a choice. It's not like I can say, well, I don't like the Elkhorn Rural Public Power and I can have my-- get my electricity someplace else. It's, it's in a monopoly.

J. CAVANAUGH: So it was by virtue of where you lived.

KATE HIGH: Right.

J. CAVANAUGH: You had to have Elkhorn Power-- Public Power.

KATE HIGH: Madison County.

J. CAVANAUGH: OK. Did you have any say in who was on the board of the power district there?

KATE HIGH: Yes. We got to elect a district representative.

J. CAVANAUGH: Was that by district? Was that by--

KATE HIGH: Yes. That's how-- I think so-- is our, our-- at the time I made the complaint, it was a Mr.-- I have a copy of that-- Mr. Zohner, I believe, that was the representative. And they're on, they're on the ballot. I think we vote for those.

J. CAVANAUGH: OK. And you-- so you, you said now you-- you've moved out of Elkhorn or I'm sorry-- Battle Creek.

KATE HIGH: Yes. I live in Lincoln now. Yeah. No, I didn't live in Battle Creek. I lived on a farm in Madison County.

J. CAVANAUGH: OK. I wrote down Battle Creek, I guess. And so, you moved out of the district, so you-- that's how you got out of having to buy power from them.

KATE HIGH: Right. So now, it's Lincoln Electric System.

J. CAVANAUGH: Lincoln Electric System.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

KATE HIGH: I don't have a choice here in Lincoln, either.

J. CAVANAUGH: That was going to be my next question. Thank you.

BOSTELMAN: Any other questions? Seeing none, thank you for coming in today.

KATE HIGH: Thank you. Do I need to come back for LB726?

BOSTELMAN: You would need to come back for LB726.

KATE HIGH: Yeah, if I wanted to, so I, I kind of-- OK. You'll hear it twice then.

BOSTELMAN: Next proponent.

AL DAVIS: Good afternoon, Senator Bostelman and members of the Natural Resources Committee. I'm Al Davis with the Nebraska Chapter of Sierra Club. And just wanted to clarify, Senator Moser, I'm here in favor of a bill today. Took your advice yesterday. I thought Miss High really explained the situation very nicely and I'm not sure that I have a whole lot more to contribute to that. I'm also testifying here on behalf of John Hansen, who is away on Farmers Union business today. But I think that the way that I want to, sort of, put this together is to talk about the Beef Checkoff. Now, you can say how does the Beef Checkoff tie in with this? So the Beef Checkoff was put in place many years ago, requires every cattle producer to pay money into a fund that-- the process is to-- was to promote the industry. What has happened with the Beef Checkoff is there has been co-mingling of money on the political side and the, and the promotion side. And so that has resulted in a tremendous amount of dissatisfaction with cattle producers who don't feel that they are heard and don't want their money used to promote some of the things that the National Cattlemen's Beef Association is promoting. So you say, how does this connect with this? Well, that's what's known as government speech. So in some respects, I think what we have here is the same thing. We've got ratepayers who have no ability to get out of an arrangement with a public power entity. They have to pay their rates to the entity, the entity, then, pays dues to another organization and ultimately, ratepayer dollars trans-- transmit through the system and come out in the form of political contributions. So from my perspective, I think that's very destructive for the, for the entity itself and for, and for public power to go down that road, because I don't think that's a good use of their resources. They need to take the money that they

have, use that in the business in which they are engaged. If they want to make private contributions, then solicit money from the managers, which I think has been done in the past to promote it-- to promote a, a cause. But when you use ratepayer dollars, you're just really getting into dangerous territory. I think that-- there was a question. I think it was Senator, Senator Jacobson asked a question about gas companies and those-- entities like that. And I just would remind you that only in, only in Nebraska are these people elected, because of our public power status. So I think that gives the government a little more urgency in trying to control this, to prevent, sort of, the image of a tainted election. So I think that's about all I have to say. You can read my testimony, also, if you'd like to.

BOSTELMAN: OK. Thank you for your testimony. Committee members, questions? Senator Brandt.

BRANDT: Thank you, Chair Bostelman. Thank you, Senator Davis, for appearing today. In the case of the Beef Board, the courts ruled that they could not use that money for campaign contributions. Isn't that right?

AL DAVIS: Yes.

BRANDT: Yeah. And so subsequently, what happened was the associations were the ones that, that have to raise funds if they want to do something on behalf of beef. But those checkoff dollars, because you used the comparison that was the same as the ratepayer, because it was government speech, could not be used for that.

AL DAVIS: Is not supposed to be used for that.

BRANDT: OK.

AL DAVIS: You know, there have been audits over the course of the years that demonstrate that it was used improperly. And, and then, the policy side had to pay back the checkoff side.

BRANDT: Right. OK. Thank you.

AL DAVIS: But I just thought it was a good analogy. As I was sitting here listening, I thought, well, I'm just going to kind of bring this up because I think you can understand that people who are dissatisfied with essentially some, some of the policy that NCBA [SIC] promotes, certainly don't want to support that policy. And I think you can say

the same thing with this, because ratepayers are captive. They-- there's no way out.

BRANDT: Sure.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. I bet you're-- you did-- you probably already knew, being up in that neck of the woods, that James Birdseye McPherson was-- that-- that's what McPherson County was named after. You probably knew that.

AL DAVIS: Good for you. I did not know that.

JACOBSON: So, Career Army Officer and Union, Union Army Officer, so thought you'd want to know that. The-- I guess digging in a little bit on the-- I, I get the bill's intent when it comes back to electing an individual. But I guess I'm kind of wondering as I dig into this more, OK, you can't transfer money in some way, so I start thinking about-- and, and this can't influence elections of any way, initiatives and so on. So I get a little concerned about if a cooperative, electric cooperative, goes out and and wants to support something as a part of advertising and then it ends up on a stock car that happens to also have a political candidate's name on it or-- you know, in other words, how pure does this get have to be? In other words, I, I get that you don't want to go out. And if there's something that would significantly impact this cooperative that's out there and doing some advertising to set the record straight as to what the initiative might be or the position of that, of that-- and let's just take NPPD as an example or someone like that. Where are those limitations, I guess. Where, where would you see those, with this bill?

AL DAVIS: Well, I mean, this-- in this case, this was an out-and-out political contribution that was made.

JACOBSON: I understand that. But I'm looking more about the language of the bill.

AL DAVIS: I think that, I think that you end up in a gray area, probably. And I suppose it would all come down to complaints taken care of at the board level. But I mean and the--this is a-- somewhat different situation. I can see that happening. I mean, it happens sort of serendipitously. Those kind of things can happen. And people are-- there are people always out there who are looking for those problems. So you'd have to take that back to the board and say what you need to

correct this situation, but this is a statewide issue, not just a regional one.

JACOBSON: Well, I'll probably-- I'm just giving Senator Dungan a chance in his close to kind of work through that. But I'm just concerned about the unintended consequences. Plus, I'm still a little upset that I wasn't-- didn't know about this loophole, so I just thought I'd raise that again.

AL DAVIS: I didn't know about it either.

JACOBSON: Yeah. So at any rate, well, thank you. Thank you for your testimony and, and thank you for your support of, of James McPherson.

AL DAVIS: Thank you.

BOSTELMAN: Seeing no other questions, thank you for your testimony.

AL DAVIS: Thank you.

BOSTELMAN: Next proponent, please. Would anyone else like to testify in support of LB725? Anyone like to testify in opposition to LB725? Good afternoon.

JOHN McCLURE: Good afternoon, Chairman Bostelman, members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm Executive Vice President for External Affairs for Nebraska Public Power District and also its general counsel. I'm here today testifying in opposition to LB725. I'm also speaking for the Nebraska Power Association, which is comprised of the municipal electric systems, public power districts, electric cooperatives and joint action agency, providing electric service at wholesale and retail in the state of Nebraska. I have not had the opportunity to see the proposed amendment, so I'm here testifying on the bill as introduced. I did appreciate that Senator Dungan said this is not a widespread issue and I really want to add some significant context to that, that comment. Municipal utilities and public power districts, which comprise the overwhelming majority of electric utility providers in the state, are already statutorily prohibited from engaging in election activities, with very limited exceptions. I would point to Section 49-14,101.02, which states in relevant part, a public official or public employee shall not use or authorize the use of public resources, and that includes personnel, property or funds of a public entity, for-- in camp-- for the purpose of campaigning for or against the nomination or election of a candidate or the qualification passage or defeat of a

ballot question. So most, most of us are already very strictly prohibited under state law. I mentioned there is a very narrow exception and that is in sub (4) of the statute, which provides in relevant part, that a public corporation organized under Chapter 70, which would be a public power district, is not banned from otherwise supporting or opposing a ballot question concerning the sale or purchase of its assets. So there's a very narrow exception, but certainly for candidates, it's a complete prohibition. Now, again, I'm working off the bill as introduced. We've heard a lot of conversation so far about cooperatives, but this applies to all of public power. So it's redundant, on the one hand, of what already exists in the Accountability Act. And I-- possibly, Senator Dungan has addressed this, but the definition of ratepayer proceeds is highly problematic. Ratepayer proceeds pay the salary of all the employees of a public power district. So by the words of this statute, I couldn't make a campaign contribution to anyone, by the language that's in here. A board member who is compensated for a public power district couldn't take anything they received as their compensation and put that into their campaign or the campaign of another. So that is, is troublesome. I can't imagine that was really the intent. That really hits the key things that are of concern. I will certainly be interested in seeing the amendment, but as written, we do not believe this is good policy. We believe it's duplication of, of prohibition that already exists for the majority-- overwhelming majority of the industry. And I would be happy to answer any questions you may have.

BOSTELMAN: Thank you for your testimony. Questions from committee members? Senator Slama.

SLAMA: Thank you, Mr. Chairman, and thank you very much for being here. I, I appreciated your comments about ratepayer proceeds. Under this definition, do you foresee ratepayer proceeds including all employee salaries, reimbursements, all employees for public power in the state, this applying to them?

JOHN McCLURE: Yes. As I read the definition of ratepayer proceeds, it's very broad. Those proceeds that come from our customers pay all our expenses. And expenses include the, the salaries and benefits of employees.

SLAMA: And the courts have traditionally held, almost across the board, that individuals are free to donate to campaigns as they see fit, especially in the state of Nebraska, right?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

JOHN McCLURE: Yes. Again, we have very express prohibition for public officials, public employees, what they can do with public assets. But once those have been paid to the individual, they're their own dollars to do with what they choose.

SLAMA: Absolutely. And just to drive this point home, how many, how many employees does Nebraska Public Power District have?

JOHN McCLURE: We're at approximately 2,000.

SLAMA: OK. And 2,000 employees, plus whatever employees have retired, left the district for whatever reason, that would apply to them, correct?

JOHN McCLURE: It would not apply to them, because our retirement plan is a 401k and a 457, so it's a-- it's not a pension. It's not coming from NPPD assets.

SLAMA: However, if they were using payment they had received during their time for employment at NPPD, that would apply to them, too.

JOHN McCLURE: Sure. If that was in the savings account, yes.

SLAMA: Thank you very much. I appreciate that.

JOHN McCLURE: Thank you.

BOSTELMAN: Senator Moser.

MOSER: Do you know how that case came out, where they made a \$7,500 loan to somebody's campaign?

JOHN McCLURE: I was not involved in that and I don't feel like I'm qualified to speak to it.

MOSER: Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Mr. McClure, for being here. Just trying to compare the two sections about the ratepayer proceeds. I think that you are-- well, you're, you're reading in the-- green copy's probably closer to accurate, but I would say the white copy probably solves it. And I can just read you the section here, where it says a district corporation shall not use any ratepayer proceeds for the purpose of campaigning against or for-- or, or seeking in any way to influence

the nomination or election of a candidate for elected office. And then it shall include transferring money for the purpose of-- let's see, for the purpose of campaigning for or against or seeking in any way to influence. Do you think that would catch up-- if you're paying somebody their regular salary, do you think that would be characterized as for the purpose of campaigning?

JOHN McCLURE: Depends on what they're dedicating their salary to. A board member might say, I'm going to use all my salary for the next year for campaign purposes,

J. CAVANAUGH: Right. They're deciding what to do with it. But I'm saying the, the NPPD, when you pay the board members, are you paying them for the purpose of them using it for campaigning?

JOHN McCLURE: No. You're paying them for their services.

J. CAVANAUGH: Right. And when you pay your employees, you pay, pay an electrician, you're paying them for the services rendered not for the--

JOHN McCLURE: Correct.

J. CAVANAUGH: --purposes of campaigning.

JOHN McCLURE: Correct.

J. CAVANAUGH: So that, maybe, is too broad of a reading of that paragraph. I'm talking about the new paragraph. The old paragraph, I think you may be-- and in fairness to you, you don't have a new paragraph.

JOHN McCLURE: Right. I'd like-- it sounds like there's been an effort to narrowing, but again, I'd like to study the words to understand what-- what's there clearly. That-- I think all I have is the original bill and it's extremely broad.

J. CAVANAUGH: I, I appreciate your, I guess, is discretion the right word? Or maybe it's your, your reserve judgment on that. So I guess my question, though, is-- and it seems to me like that, you know, that's a technical problem that, I think, maybe, is fixable. And you could clarify that language and maybe this is--doesn't quite go far enough, but it-- I think it gets further than what you were talking about. But fundamentally, the question here is whether-- do you think it would be appropriate for the elected board members of NPPD to vote to direct

some of the funds of the NPPD organization to an organization that's explicitly, explicitly for purposes of campaigning?

JOHN McCLURE: I think that would be clearly prohibited under existing law under the Accountability Act.

J. CAVANAUGH: Well, well I guess-- but we're-- you're saying it's already prohibited for NPPD. It's not prohibited for some of these other organizations.

JOHN McCLURE: Electric cooperatives, it was noted earlier, are not public entities subject to the Accountability Act.

J. CAVANAUGH: So-- and I guess my question is and you can feel free not answer this one because it could get you in trouble, but I'm not asking whether it's legal or not, I'm asking whether it's appropriate that-- they would be directing ratepayer funds to an external organization that then, could make contributions in their own election.

JOHN McCLURE: I-- I'll speak for NPPD only, as, as their general counsel. I, I would, I would be concerned if, if that was what NPPD was doing.

J. CAVANAUGH: Thank you.

BOSTELMAN: How would this apply to someone who is in that metering?

JOHN McCLURE: I'm going to have to think about that one.

BOSTELMAN: Because they're not only selling to, but then you're purchasing from.

JOHN McCLURE: Be-- because they're getting paid? Are you saying if they're receiving?

BOSTELMAN: Well, in, in the new language, it talks about electric supplier partnerships. So. OK, that's fine.

JOHN McCLURE: I don't-- I-- let me think about that one.

BOSTELMAN: That's fine. Senator Brandt.

BRANDT: Thank you, Chair Bostelman. Thank you, Mr. McClure. So the current law expressly prohibits the organization from giving directly

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

to a campaign. NPPD could not write a check for \$7,500 to the Brandt for Legislature.

JOHN McCLURE: Correct.

BRANDT: NPPD, after the board meeting is over, the board members-- somebody, maybe, wanted to donate to my campaign, could poll the other board members if they'd all like to kick in 100 bucks each to give to the Brandt for Legislature campaign. That would be legal.

JOHN McCLURE: Yes. If, again, individual personal contributions, except as the bill as originally drafted, if those board members, they said, well, this came out of my you know, whatever fund, it didn't come from my NPPD paycheck.

BRANDT: Right.

JOHN McCLURE: Because it's drafting. That would be a problem as originally drafted.

BRANDT: All right. Thank you for the clarification.

BOSTELMAN: What about if you have a PPA with a co-- with a generator?

JOHN McCLURE: Again, all of our-- well, there's two different situations. You could have a PPA, you could-- we, we have PPAs with private utilities. We also have PPAs with public power. So if we send a check off to OPPD for purchases we make from Nebraska City, too, those proceeds have left, left us, but they're in the hands of a, a public power entity, being used to pay the expenses of that resource that we were provided. So I, I don't think they could do anything with it. On the other hand, if, if we send it to Acme PPA, let's say, it's a private entity, an LLC. I believe once it's in their hands, they're a private entity. They can do with it what they want.

BOSTELMAN: So if they're supplying you energy or you're paying for the energy, they're buying energy from you or they're supplying it to you, it wouldn't make a difference.

JOHN McCLURE: I think they would have the freedom, but I need to look at this to see--

BOSTELMAN: That's, that's fine.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

JOHN McCLURE: --if we think we can control what a private entity does. I think there was testimony from the introducer that you can't ultimately control what a private entity does with proceeds.

BOSTELMAN: Understood. And what's [INAUDIBLE]. Once you see the amendment there, maybe we can discuss that, so--

JOHN McCLURE: OK.

BOSTELMAN: --thank you. Any other questions? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. I, I guess one quick thing, and as I kind of parse some of the words here a little bit. I'm, I'm kind of coming back again. You're in election cycle and you've got board members and there's board members up for election, let's say. And all of a sudden, there's an ad from NPPD with your board members' pictures out there. Could that be construed as campaigning for or I guess--

JOHN McCLURE: We, we would be-- we've never had an ad with our board members in it. And we would be, I think, even more sensitive during an election cycle on how anything like that could be perceived.

JACOBSON: I, I--

JOHN McCLURE: There's a Supreme Court case several years ago involving another public power district, where there was a significant amount of radio advertising that took place. And it was perceived that it was trying to impact the-- a board race because of the, the topics.

JACOBSON: Well, they're just some of the things I keep thinking about. And if, if not NPD, I start thinking about others that would be impacted by this. The very thing you looked at: a board member's on TV talking about the utility and it happens to be in the middle of an election cycle and, and maybe it's an ad so it's paid for by, by whatever that utility is. And where does that fit into some of that? I, I always worry about collateral damage, which is why it gets so important, tightly, right. And of course, I'm not an attorney, but I, I-- there's times I think I am. And so-- which is a little bit less than-- right now, Senator Slama hasn't gotten her results back yet, so I'm still not up to her speed. And, and Senator Cavanaugh has his, so I'm not [INAUDIBLE] so that's the standard I'm working against. But, but I always like to work at those individual pieces and figure out what, what are we missing here so, thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

JOHN McCLURE: Again, with, with the Accountability Act as a public power district, I can assure you we would err on the side of caution that no one would say you're trying to influence the outcome--

JACOBSON: Sure.

JOHN McCLURE: --of an election or a ballot issue, unless that ballot issue was something very intentional, that involved the sale or purchase of assets.

JACOBSON: Sure. Yeah. Thank you.

BOSTELMAN: How many members are there in NPA, about?

JOHN McCLURE: Well, we, we claim the entire electric industry in the state, which is approximately 160 utilities. It's about 120 distribution, municipal utilities. There's approximately 30 public power districts and then a dozen or so electric cooperatives.

BOSTELMAN: OK. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks again for being here, Mr. McClure. So on NPA, do you pay a membership fee for that?

JOHN McCLURE: Yes.

J. CAVANAUGH: And what do you get for that membership fee?

JOHN McCLURE: It's a-- it's an organization that is, is member driven. And so, we have a part-time staff person who's in this industry. Our, our administrator is Shelley Sahling-Zart, who you all know. But she is-- she helps, I'll say herd the cats. But we have a board and there's a-- the way the bylaws are set up, there are different board members elected from different stakeholder groups within the NPA. And we work [INAUDIBLE] the capability report. We work to be aligned on legislative policy and, and deal with other issues to try to provide information, collectively, about the electric industry in Nebraska.

J. CAVANAUGH: Who do you provide that information to?

JOHN McCLURE: It's on our website. We've started, again, a conference. There was a conference last August that I hope some of you were able to attend and we'd like to continue doing that. And we try to organize other briefings from time to time to, again, provide information about our industry.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

J. CAVANAUGH: But none of the money that goes through the NPA then gets put into political campaigns or PACs.

JOHN McCLURE: No. No. We've had discussions as to whether we would ever want to create a PAC and we've never gone down that route.

J. CAVANAUGH: And when you have that discussion, do you discuss using the user fees from NPA as the funds for that PAC?

JOHN McCLURE: It would be separately raised. But we never got into details. We just decided not to do it.

J. CAVANAUGH: Thank you.

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

JOHN McCLURE: Thank you.

BOSTELMAN: Next opponent to LB725.

JAMES DUKESHERER: Good afternoon--

BOSTELMAN: Good afternoon.

JAMES DUKESHERER: --Chairman Bostelman, committee members. My name is James Dukeshere, J-a-m-e-s D-u-k-e-s-h-e-r-e-r. I am the director of government relations for the Nebraska Rural Electric Association. The NREA represents 34 public power districts and electric cooperatives throughout the state. We're here today in opposition to LB725 and I'll add that I have not seen the, the amendment yet, so I am also speaking to the, to the green copy. In general, LB725 aims to block the ability of our state's public power electric utilities from using consumer dollars for campaign activities. The bill has two sections: one addressing public power districts and one addressing the electric cooperatives. First, to focus on the public power districts. Public power districts are already precluded from the Act's address in LB725. As was, as was stated earlier, the Nebraska Political Accountability and Disclosure Act, 49-14, stipulates that public employees shall not use or authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification passage or defeat of a ballot question. LB725, introduces broad new language that goes far beyond the existing statutes. The bill defines ratepayers, what we typically think of as a person that pays their electric bill, to include wholesale companies, among many others. Under the bill, an employee of a power district

will be prohibited from using their paycheck to make a contribution to a candidate of their choosing. And I think we could argue that the language in, in the bill goes far beyond that. For example, the definitions of the language in the bill that impact any person or the use of any money. We could get into that if there's questions. LB725 says a recipient of ratepayer proceeds shall not use such proceeds for the passage or defeat of a ballot question. As was stated earlier, Accountability and Disclosure Act includes an exemption for public power districts that would allow a PPD to engage on a ballot question concerning the sale or purchase of its own assets. It's true that Nebraska is served 100 percent by public power. We, we are the only all public power state. We do have-- we do not have any for-profit electric utilities in our state. However, we do have electric cooperative-- cooperatives that are private, not-for-profit corporations. They're not political subdivisions of the state and, and they're impacted in this bill. LB725 would say that a private corporation formed under the Electric Cooperative Corporation Act could not use funds for campaign activity or engage in a ballot initiative. Nebraska Statute 49-1469, however, says that a private corporation can make a contribution and can engage in a ballot question and we've seen opinions by the Attorney General that, that reaffirm this fact. As with anyone else, if a corporation engages in these activities, they would be required to file reports with the state's Accountability and Disclosure Office. I would like to make it clear that none of the NREA electric cooperative members have ever made a direct contribution to a candidate. LB725 casts an unnecessarily wide net of limitations on electric utilities where no problem exists. The measure proposes to place restriction on public power districts that are already established in the statute and proposes to limit electric cooperatives that are being good stewards of their electric ratepayer dollars that have not engaged in campaign type activities the bill seeks to eliminate. It's for these reasons that we oppose LB725. Thank you.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you for being here, Mr. Dukesherer. OK. So, trying to wrap my mind around this, but first off, you're from NREA and we heard about NRAE. Two different organizations?

JAMES DUKESHERER: Correct.

J. CAVANAUGH: You had nothing to do with that, the AE?

JAMES DUKESHERER: Correct.

J. CAVANAUGH: OK. I just want to clarify. I get-- I've gotten that confused, I think, in the past. And so I want to make sure so. OK.

JAMES DUKESHERER: We-- just to clarify for everybody, we're an association of 34 rural public power districts. The NRAE would be a PAC.

J. CAVANAUGH: And are any of those 34 rural-- electric-- public rural power districts members of that PAC or that-- have they contributed to that?

JAMES DUKESHERER: No.

J. CAVANAUGH: OK. So, I mean, one of the things, you made a distinction between co-ops and public power districts. And we heard Ms. High came and said when she was in, I guess, Elkhorn Public Power District, that would qualify as a power district, not a co-op.

JAMES DUKESHERER: Correct. That's a public power district and one of my members.

J. CAVANAUGH: And-- but for co-ops, it's-- do you-- are any of your members the co-ops, as well?

JAMES DUKESHERER: Yes. We have nine cooperative members, three headquartered in the state.

J. CAVANAUGH: So for co-ops, how is, how is a, a customer's experience different from a customer of a public power district?

JAMES DUKESHERER: I think from a customer's perspective, you know, 99 percent of what they would see would be the same. It's their electric utility. They're getting a bill each month. Public power district, it's a little bit different on how their board members are selected. They're selected on, on the ballot, whereas a co-operative member-owner has an annual meeting and you, you pick your, your board members at the annual meeting.

J. CAVANAUGH: So and every ratepayer can attend that annual meeting?

JAMES DUKESHERER: Correct.

J. CAVANAUGH: And they have to attend in person to vote for the board, then?

JAMES DUKESHERER: I believe so.

J. CAVANAUGH: OK. And if you are in one of those nine co-ops, can you opt to receive your power from someone else or do you have to receive power from that co-op by virtue of where you live?

JAMES DUKESHERER: No. In Nebraska, regardless of where you're getting your power from, each, each public power district or member cooperative has a certified service territory that they serve.

J. CAVANAUGH: So we-- we've heard that this problem sounds like it's already been solved for public power districts. Right. Is that the issue we're talking about here? They're not engaging in this and you're saying it's not happening with the co-ops. But I guess my question is from what you're telling me, is why do we have a distinction between co-ops and public power districts? Why are not the co-ops all just public power districts?

JAMES DUKESHERER: I don't know the, the history under why, exactly, some of the co-ops are organized as co-ops and why public power districts-- so I can't exactly speak to the history of it. But from the perspective of transparency, members are, are able to come to the, the board meetings, request information, all that. It's, it's very similar. The, the culture of a, of a rural elective cooperative would be very, very similar to that of a public power district.

J. CAVANAUGH: Except for how they're elected, right, how the members are elected?

JAMES DUKESHERER: And there's other differences. For example, rural elective cooperatives pay property tax. So, power districts do not.

J. CAVANAUGH: It's an interesting distinction. Because I guess my other question would be what, what is the reason we shouldn't just convert all electric co-ops to public power districts or at least hold them to the exact same standard we're holding public power districts to?

JAMES DUKESHERER: I, I think my members would argue they, they are-- although they are private corporations, they act very similarly to, to public power districts. And again, I think that, I think that the

senators would prefer that those co-ops probably continue to pay those property taxes.

J. CAVANAUGH: I would bet that-- I don't have to ask anybody, but I would imagine [INAUDIBLE]. So I guess why-- I know you know that I have-- had a bill about requiring open meetings for anybody who has eminent domain. So these co-ops have the power of eminent domain. They have a captive market and they do have elected boards. So I, I guess I'm-- but they get to be treated differently because they are a private corporation and they can't-- they-- they're going to argue, somebody here will probably argue, if not coming up to argue it, will argue that they should [INAUDIBLE] a political contracts. I mean, we've heard that there's an AG's Opinion that says that they are allowed to do that. So I guess that there, there is some distinction in how they are treated, but it doesn't seem necessary [INAUDIBLE] the desire to capture property taxes, I guess.

JAMES DUKESHERER: I guess I don't understand the, the question exactly there, what you're--

J. CAVANAUGH: Well, I just-- why should they be treated differently? Why should they be given these exceptions and treated differently than public power districts?

JAMES DUKESHERER: I just-- just because of the, the sheer fact that they are private, private companies and organized as such.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. And thank you for being here. I, I think and just as a follow up to Senator Cavanaugh's questions, correct me if I'm wrong, but my understanding is that the cooperatives, they actually have owners, the individual cooperative members are actually owners. I would assume under that structure, they also may be getting tax pass-throughs, depreciation, other issues and, and they may have patronage, dividend distributions and that kind of thing. That isn't necessarily happening in your public power districts.

JAMES DUKESHERER: Correct. That's right.

JACOBSON: As well as the fact that then, because of that, they're not public, so therefore, they're private, paying taxes because they're

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

private, but they also have the ability to get distributions, patronage, so to speak, patronage refunds or patronage distributions because they're actually-- the ratepayers are the owners, literally owners, from the standpoint of equity owners, as well.

JAMES DUKESHERER: Right. Correct.

JACOBSON: Much like any other farmer cooperative.

JAMES DUKESHERER: Capital credits.

JACOBSON: Yes. Correct. Correct. And that was a question and you said yes. .

JOHN McCLURE: Yeah.

BOSTELMAN: Seeing no other questions, thank you for your testimony. Next opponent. Good afternoon.

ADAM FESER: Good afternoon, Chairman Bostelman, members of the committee. My name is Adam Feser, A-d-a-m F-e-s-e-r. I am the director of cooperative advancement for the Nebraska Cooperative Council. The Council represents the interests of nearly all of Nebraska's agricultural cooperatives and several rural electric and telephone cooperatives, as well. The rural electric cooperatives that are members of the Council include Midwest Electric Cooperative Corporation in Grant, Nebraska. Panhandle Rural Electric Members Association in Alliance, Nebraska and Niobrara Rural Electric Association [SIC] in O'Neill, Nebraska. We appear today in opposition to LB725. Nebraska's rural electric cooperatives are not public power districts. They are not political subdivisions of the state. They are not subject to the board election procedures of state, nor are their proceeds from the sale of electricity considered in any manner to be public funds. The member users of rural electric cooperatives cover costs of construction and maintenance of the electric infrastructure and maintain capital credits or financial interest in the assets of the cooperative that are eventually redeemed to the member. None of the proceeds received by a rural electric cooperative for the sale of electricity are considered public funds. This was written with-- without the amendment as a lot of the other things. So the next hefty paragraph is going to be about the definition of ratepayer, ratepayer proceeds, but I think we've addressed that. We'd like to see that language and then, maybe we'd have more to say about that, but I don't need to go back into that, I don't think. Clearly one of LB725's

primary goals is to restrict privately-held rural electric cooperatives formed under the Electric Cooperative Corporation Act, which are privately-held cooperative corporations owned by their member-users, from participating directly or indirectly in candidate race or ballot question and it creates a criminal penalty for doing so. I believe I heard that's, that's actually a civil penalty under, under the amendment. Again, this was written before then. This is true, even though the Accountability and Disclosure Act opinions of the Nebraska Attorney General and settled law allow privately-held corporations in Nebraska to make contributions to candidate committees and engage in ballot questions. There are many privately-held utility corporations serving Nebraska's utility needs. The city of Lincoln and many rural electric or many rural communities contract with one privately-held natural gas provider that is paid for providing such service. The same is true in many rural communities that provide only one source of telephone, internet or other telecommunications service. While LB725 seeks to prohibit rural electric cooperatives from directly or indirectly participating in candidate elections and ballot question elections, these other privately-held entities, many of whom have their own political action committees, are not likewise restricted. It is our opinion that singling out rural electric cooperatives in LB725 raises serious free speech and equal protection constitutional questions. For the foregoing reasons, we urge the committee to not send LB725 to the floor of the Legislature. I will say right now I'm relatively new to the Cooperative Council, about six months in. Rocky Weber, our present legal counsel, normally would be here, but he's out sick today. So if we have a lot of technical questions, I may just have to say I get back to you. I'll try my best. And he's sick, but he's still been texting me because he can't, he can't help himself. But I will try my best to answer any of your questions. I think Senator Moser had a question about co-op members, their boards being elected by their members and their members can also recall their board. I did want to clarify that. Differences include, you know, member ownership. I think that's been addressed, in that members can also earn capital through the cooperative. But if you have a lot of questions I might have to refer you to Rocky.

BOSTELMAN: OK. Thank you for your testimony. Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Thank you, Mr. Feser, for being here. And I'll try to be-- very polite, softball questions, hopefully for the [INAUDIBLE].

ADAM FESER: Perfect.

JACOBSON: I, I, I'm-- it's more curiosity, very familiar with, of course, Nebraska public power and then, all of the, you know, Dawson Public and all of the other power-- public power companies that have sections of the state territory, so to speak, that they control. So where do the, the power cooperatives fit in? Is that-- do they fit in around those, those other public power districts so that there is not overlap, so that you own the infrastructure that's carrying the power in those areas or is there some overlap in territory?

ADAM FESER: I actually think our previous testimony probably did a good job answering this, where it seemed like there were territories that are divided up amongst the power-- public power districts and the cooperatives. But if I'm wrong in that, we can hopefully address it, maybe, on the next bill.

JACOBSON: Gotcha. But I think, if I'm not mistaken, I know they've got separate territories. I know where Dawson comes up against North Platte and Municipal Light and Water has their own power within the city limits of North Platte and Dawson is around North Platte. So-- and they're responsible-- you know, Municipal Light and Water is responsible for their infrastructure, Dawson's responsible for their infrastructure. I'm assuming the cooperatives work very similar, like Municipal Light and Water would in North Platte, where you're going to have territories where your members are going to-- the members of those cooperatives are going to own that infrastructure.

ADAM FESER: Yeah.

JACOBSON: And, and then they would be, they would still be, for the most part, the exclu-- then they'd be, basically, the exclusive provider for power, unless you're going to produce your own.

ADAM FESER: That, that's my understanding as well and if I'm wrong, I'm sure--

JACOBSON: We'll, we'll have an opportunity--

ADAM FESER: --you'll be receiving a text right now, probably.

JACOBSON: Perfect. We'll have an [INAUDIBLE] around here. So thank you for your testimony.

ADAM FESER: Appreciate it, Senator Jacobson.

BOSTELMAN: Seeing no other questions, thank you for your testimony. Next opponent. Anyone else like to testify in opposition to LB725? Anyone like to testify in the neutral capacity on LB725? Good afternoon.

TIM TEXEL: Senator Bostelman, members of the committee, my name is Tim Texel, T-i-m, last name is T-e-x-e-l. I'm the executive director and general counsel for the Nebraska Power Review Board. I did not plan on testifying on this bill and my board didn't authorize me to come in. I wanted to simply address Senator Jacobson's question on the service territories. And yes, for purposes of the service territories that the power review board oversees, the cooperatives have service territories just like the public power districts. So in that respect, they both have retail set service area-- territories, where they're essentially monopolies. So I just wanted to clarify that point. So, Rocky, I believe it was, doesn't have to get back with you on it. So unless there's any other questions for me to clarify, that's all I wanted to point out.

BOSTELMAN: Senator Cavanaugh.

TIM TEXEL: Yes.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here, Mr. Texel. So just to clarify, no one in the state can choose who their provider is.

TIM TEXEL: At the retail level, it depends who's-- right. Essentially, you're in somebody's service territory and that utility has the right to serve you. And you can't choose to, necessarily, go to another one. The utilities can trade customers or allow somebody to serve them in their territory, but the customer can't say, I'm insisting to be served by the other entity.

J. CAVANAUGH: When you say that utilities can trade customers, what does that mean?

TIM TEXEL: Well, the utilities could say, NPPD could say, there's somebody in our territory, but we'll let our neighboring utility serve them. So even though they're in NPPD's territory, they could say that's an exception to the service territory and we'll allow you to serve them in there. So they can sort-- and they could trade two customers and say, we'll take this one, you take that one. And it's an

exception to the normal service area rule, so even though you're in NPPD's territory, it, it changes the normal rule, so to speak.

J. CAVANAUGH: How does that come about? Does the customer ask to be switched or does the--.

TIM TEXEL: The customer can and sometimes they call me about doing that and I have to tell them unless the utilities agree, the only way is to file-- if the other utility will file a formal request with the Power Review Board to do that against the other utility's wishes. And then they have to-- the utility has to show they want to take over the customer and the current utility cannot or will not provide adequate or reliable service. So it's very difficult to do that, if they're on the other side of the service territory. The customer cannot say, I'm going to be switched. They can ask, but really, it's, it's the two utilities that have to agree. It's the customer's influence on the utilities that would, that would, maybe, change it, not their legal right to demand it.

J. CAVANAUGH: Thank you.

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

TIM TEXEL: Thank you.

BOSTELMAN: Any other to testify in a neutral capacity? Anyone else in the neutral capacity? Seeing none, Senator Dungan, you're welcome to close. There are four proponent and one opponent letters received by the committee on LB725.

DUNGAN: Thank you again, Chair Bostelman and thank you members of the committee. I don't want to take too much time, but I do want to try to address some of the issues that were brought up. And I can talk to Senator Jacobson more about these, too, in detail. But these are going to go somewhat in chronological order, because that's how I was taking notes. To Senator Jacobson's issue about, sort of, the concern of collateral consequences, doesn't want to have an issue where somebody supports somebody and inadvertently gets in trouble for it. I want to be very clear that the intention behind this bill is to limit the use of ratepayer proceeds. So it-- notwithstanding any other prohibitions that I'm not entirely sure about, they could say, you know, we support this issue, generally speaking, but they just can't use ratepayer proceeds for that. They can't pay for an ad, they can't give a donation. It doesn't prohibit their speech. And so, I think that's an

important thing to point out. In addition to that, this also doesn't prohibit that-- what I'm trying to say here is this doesn't necessarily prohibit a co-op from creating, maybe, a separate arm or a separate branch, like a PAC, like we've talked about and then utilizing that PAC for donations, so long as nothing they're using are ratepayer proceeds. So they could start like a whole separate entity and say, we're going to utilize this to support X, Y and Z. But in order to do so, they would just have to document where that money's coming from-- donations, things like that, which, when we get to my next bill, we can talk about how important it is to document those things. But they can utilize money so long as it's not ratepayer proceeds. So I think that's important to note. In addition to that, some of the testimony we heard from NPPD, which I, again, really appreciate them coming and talking to me along with other stakeholders. I apologize for not getting them the amendment earlier. I just got a copy of it here ready today, so I'll make sure they get a copy of that. They rightfully point out that the public power districts are currently prohibited from participating in electioneering or in any way, shape or form supporting a candidate or a committee. But what we're trying to do here is close a loophole, so they may not be able to actively participate in that. But what we're trying to prevent here is them taking ratepayer proceeds and maybe, unintentionally, providing them to another entity who then utilizes those ratepayer proceeds for those things that we're trying to prohibit. So I don't think this is duplicative. I don't think this is redundant. It addresses a separate and apart issue from whether or not public power entities can donate direct funds and that's why we brought this in the first place. Senator Slama, to your points, too, and I think this was an issue that was brought up to me by LES and a number of other individuals. What we don't want to do here is say employees of an entity now can't participate in elections. That would be, I think, very problematic and probably unconstitutional. We don't want to do that. I am happy to look at language that would clarify that that's not in any way, shape or form our intention. However, as it's currently written under the AM586, on line 10, it defines ratepayer proceeds, which I believe Senator Cavanaugh was talking about. But then, the actual prohibition here is on line 12, sub-- subparagraph 2-- a district or corporation organized under Chapter 70 shall not. And so, what we're talking about here is the district or the corporation using ratepayer proceeds for the purpose of campaigning. Yes, under the penalty provision on line 23, they-- we mention any officer, employee or agent can be subject to that civil penalty. But the actual prohibition on line 12 is for a district or a

corporation, so that's the entity we're talking about. I believe a plain reading of that statute or the proposed language for the statute doesn't prohibit an individual in their own capacity as an employee from donating to anything. Again, that was not our intention. I think a plain reading of the statute doesn't prohibit that. But if clarifying language were necessary in order to ensure that employees of public power districts or co-ops could, with their compensation for their employment, do with it as they please, however you wanted to word that, we'd be open to that. Because the last thing I want to do is try to limit somebody's free speech as an individual. Our main concern, as I said before, is ensuring that ratepayer proceeds are not improperly used, are not maliciously used or even unintentionally used through, some sort of passthrough entity to influence elections. As I said in my opening, I'm more than happy to talk to more of the stakeholders involved and have these conversations. I'm willing to talk about how we can make it better, but the intent behind this is simply to protect captive audiences and ratepayers from having their money used in elections they may not agree with. With that, I would urge your consideration of LB725 and I'm happy to answer any final questions you might have.

BOSTELMAN: Any other questions by Committee members? Seeing none, that will close on LB725. Senator Dungan, you are welcome to open on LB726.

DUNGAN: Thank you. Good afternoon, again, Chair Bostelman and members of the Natural Resources Committee. I am Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent the good people of northeast Lincoln in Legislative District 26. Today, I'm introducing LB726. We hear a lot about transparency these days. It's clear that Nebraskans want to be educated and well-informed about issues that are important to them. More specifically, we all care about our electrical utilities. We turn off the lights when we leave a room. We worry about power outages during severe weather. We rely on electricity as an integral part of our modern lives. And yet, I have a concern that there is a lack of transparency about how certain companies or power companies are operating. LB726 presents an opportunity to increase transparency about electric utilities. If passed, this bill would require electric utility companies to provide ratepayers with a public-facing website with the following information: one, board meeting dates, times and locations at least 10 days before the date of the meeting; two, board meeting agendas at least 10 days in advance; three, board meeting minutes published no later than 10 days after the meeting; four, current rate schedules, fees, rents and other charges made or levied by the board; five, a full and complete statement

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

showing receipts and disburse-- disbursements of the electric utility; six, fiscal year budget; seven, service territories when applicable, the Power Review Board has a map to link for this; eight, a list of all current board members; nine, board member district and subdistrict boundaries, if applicable, published as a map in writing; ten, ways to contact board members; and finally, 11, ways to contact electric utility staff. This transparency is crucial because Nebraska's electric-- electrical utilities are publicly provided, regulated monopolies. We as citizens have no choice but to remain customers of the utilities. We cannot conduct our lives without them. And so therefore, we believe it's only fair that ratepayers be aware of how these utilities operate. In fostering transparency, we as ratepayers would have a clear idea of what our money is going to. Electrical utilities should not only be responsible for keeping the lights on at home, but also for shining a light on their operations. Thank you for being here. Thank you for your, for your consideration and I'm happy to answer any questions you might have about LB726.

BOSTELMAN: Questions from committee members? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman and Senator Dungan, Dungan. I don't always turn off the lights when I go out of the room.

DUNGAN: Neither do I and I get in trouble for it on a regular basis.

JACOBSON: My wife reminds me of that all the time. So just for the record. But I guess my biggest concern when I first read the bill was I'm the banker. And I think about the disclosures that we dump out and the number of trees we kill to just do disclosures, which end up in the wastebasket and then get recycled because nobody cares. And I guess what I'm trying to figure out is that since the-- this is an exclusive, you, you can't buy from anyone else, so you're going to buy from here. What why is all this information necessary and why can't this be available to those who ask for it as opposed to-- I, I-- every time it seems like you get something that's required and you miss something or something changes or I just get really nervous about all of these unfunded mandates that are going out to that, that end up can be "gotchas" along the way. And so, I can tell you as a businessman and particularly, as a banker who deals with regulation all the time, enough already on the regulation, particularly when I start thinking about and, and when I-- particularly, when I get into and I'm guessing there will be some testifiers behind you that are probably going to be opposed to this, you know, when you start looking at, at all of the receipts and expenditures, wow. So I'm trying to figure out, is, is--

are you hearing from people that this is a problem? And, and what, what are they, what are they trying to glean from this, with all this sunshine or sunlight, if you will, or lights spotted on it, showing on it?

DUNGAN: That's a really good question. So, first of all, I think one of the major differences that I guess I would point out or say about, you know, banking regulation, maybe some other corporate regulation versus governmental regulation is, as we've already indicated, because we're a public power state, we are sort of a, a captive audience in, in a certain way. And I want to be very clear. I love that we're a public power state and I support that. That being said, when there is a overarchingly public entity that's responsible for something as integral as electricity, I think accountability is important. You're right. It's not like we can get that information and then turn around and say, well, I'm going to go with the other person now. And I, I think that's a, a well-taken point. However, to me, it's not about consumer information in an effort to direct purchasing power, it's about consumer information that can then later on affect things like elections. And you mentioned in our last hearing that we have these elections. I think Senator Moser might have brought that up, too. And accountability, when it comes to public power, oftentimes, is evident in those elections. And so this information is important because I think it holds these entities accountable in such a way that it allows folks in the world to know what's going on and then, make decisions down the road when it comes to elections and things like that, based on the information. I believe that a vast number of our public power entities are currently doing a lot of this, not all of it, based on a basic review that we had looking at all electrical utilities, including co-ops, who would be involved in this as well. For example, 92 percent currently have on websites that-- their board of directors names. Seventy-seven percent have notice of board meeting dates. Only 62 percent have the location of those meeting dates and only 56 percent have the time of the meeting dates. You go down the line a little bit more-- only 26 percent currently provide financial information, only 18 percent have board of directors district boundaries. And then, getting even lower, 3 percent of the electrical utilities that we looked at, of all of them across the board, have districts as described in their charter. So as you kind of go down the line there, you see diminishment in the information being provided. And to your point and I've talked with other stakeholders about this, a lot of that information would be available if somebody were to go in and ask for it. I think when you start to talk about the difficulties,

whether it's geographic or time-wise that go into that, it can have a chilling effect on the desire to get that information. So let's say somebody wakes up and says, I really do genuinely want to know what the board-director district boundaries are. And only 18 percent of websites have that information. When they start thinking about, well, am I going to take time off work to go in and figure that out and talk to this person, it can have this diminishing effect on whether or not they're actually going to get that information, Whereas if all of that is provided on a website, they can log on, they can take a look at that, have that information and do with it what they will. And so, again, I think the vast majority of our electrical entities are currently abiding by a lot of these things, but not all of them. And I believe that these are all things that the public should have a right to know, given that they are not getting that choice of, of entities. And so, if they are going to be that, quote unquote, captive audience, I think they are entitled to that transparency and that information, because they can make better decisions based on it.

JACOBSON: Thank you.

BOSTELMAN: Senator Hughes.

HUGHES: OK. Thank you, Chairman. Thank you, George-- I said George-- Senator Dungan. Sorry. We're, we're rowmates, so, you know. Anyway, so you kind of answered it with you, you get-- you went through in the percent, 90 percent of [INAUDIBLE]. Because one of the things I did when I was campaigning-- I've got for rural public power in my area, in my district. And one of the first things I did was I pulled each of the websites up, because I emailed them, I wanted to come to one of their board meetings. Every single one of them had the board-- usually they're like a set date, it's the second Friday of the month or whatever. They had all the board members listed, ways to contact, had areas that it-- I mean, some of them are just Polk County. Well, that's pretty obvious, it's Polk County. So I guess I'm a little bit curious why this would need to happen. Another thing, I came from a school board, right? And one of my biggest things and there's a bill out right now, a constitutional amendment for unfunded mandates and I feel like this might be-- and, and maybe it wouldn't be that big deal to have this stuff, but I just hate putting more things on a public entity to do, that ultimately, is going to cost more money, which then costs me more money, You know, on a school board it's property tax. Right. You have a-- you need to put stuff on the website, so that's a person who's not teaching that-- so then my property tax goes up. This case, it would be the my electric rate goes up, because now I'm

paying-- and it might be minor, but it adds up, all the financial things and stuff. So I don't know. I'm just wondering if it's something that, hey, we highly suggest-- can we just go around and say, hey guys, why don't you throw up a little bit more information? That's easy to do. And I don't know, I just I'm not understanding why this needs to be legislated. So can you answer that, please? Sorry. I talked way too much there.

DUNGAN: No. I am often accused of talking too much, as well, so I know how it feels. I think that, again, your point is well taken. I understand that it, it could be potentially burdensome for certain individuals. The intention is not to give an unfunded mandate to an organization where they then have to pass on that cost to anybody else. The fiscal note shows no impact and so, I think that's worth noting here, as well. But in addition to that, I, I just think that in a world where we all agree, generally speaking, that transparency is important, it shouldn't be so much to ask for this information. I guess I-- not to you, but I just, in general, I think, reject the notion that this is overly burdensome when I, as a ratepayer, may have questions about this and may have a difficult time finding out these answers. And again, I think that I run into that maybe less here in Lincoln than other places maybe do. But at the end of the day, if anybody wants any of this information, I don't think it's too much to ask that we know what the meeting's minutes were or what the agenda is for the upcoming meeting and those kind of things, because I think those are important. And I think it's important that people have the opportunity to participate in a lot of these things and be able to attend these meetings, make public comment on a lot of what's going on. And I just have concerns. When we went through and did the research and looked at how few entities, electrical utilities, are currently providing all of this information. So I, I guess I get the concern that it might be a lot, but to me, it's worth it, just given the fact that these are important things for people to know. And I also can't say why somebody might want to know all of these things. It's different for everyone, but if somebody wants this information from their public utility, I think they should be able to get it. Because that's a public utility's job, is to provide information and provide power and utilities for the people they serve. And so, that's kind of what I would hope it serves.

HUGHES: So then, then you just kind of lead me to-- so did, did you have someone come to you and say, hey, I, I called them and they wouldn't give me this information? Or where did this-- I-- what even brought-- what made you bring this bill?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

DUNGAN: I mean, it came from a number of different things. But I think at the end of the day, it was mainly based on the fact that talking to folks who have looked into this and done this research, I was very surprised at how few entities provided some of this information and I thought that should be fixed. Because I'm a general supporter and proponent of transparency, you know, sunshine laws, things like that, I think it's very helpful. So it came from finding out some of the issues here and saying there's got to be something we can do to fix that.

HUGHES: Cool. Thank you.

BOSTELMAN: So I'm glad to hear there, on the transparency side, you're in favor of that. You list, on here, you have board members who are currently serving. What about board members who are serving-- who are sell-- have a business selling power to that utility?

DUNGAN: So disclosing, as a factor on here, board members who have power that's getting sold to them?

BOSTELMAN: Well, I mean, should that be disclosed? Should that be-- let the ratepayers know that, hey, or there are lobbyists?

DUNGAN: I mean, I would definitely.

BOSTELMAN: And, and, and, and to be fair, you may not know, those do exist today and have existed on public power boards. So today, on a public power board, there's a board member who owns a company and sells power to a public power district. And so, you know, also on-- there was, there was two lobbyists that served on a public power district board that affected that public power district, the board and how that voted. So I guess my question is, is we're talking transparency and I'm glad that you're-- agree there, that full disclosure on this should also be, perhaps, included that, that they're doing business with that utility or that whoever, whoever it is, the public power district, the co-op or whichever it may be.

DUNGAN: Yeah. I mean, I think in the name of transparency, I'd be more than happy to talk about what all could be included. But I do think it's important that we get a lot of this across the finish line here to make sure the public has access to that.

BOSTELMAN: OK. Appreciate it. Senator Cavanaugh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

J. CAVANAUGH: Thank you, Chairman Bostelman. I like that question, Chairman. And so I would just put-- I'm pretty sure that the NPPD/OPPD members have to fill out C1 forms. Maybe that-- would you entertain requiring that they include C1 forms on the website, as well, because I think that that would be captured if somebody was in that particular business or whatever their business is, would probably have to be disclosed on a C1.

DUNGAN: I would definitely-- yeah. I, I know they do have to fill those out and I would definitely entertain the idea of adding that on as a requirement here, as well.

J. CAVANAUGH: Do you think it'd be appropriate to add the requirement of a C1 form to all electric generators then, if we're going to require that the public power utilities do that?

DUNGAN: I mean, I think it'd be only fair.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Moser.

MOSER: Well, looking at the bill, I'm kind of wondering what the purpose of it is. I mean, yes, transparency is important, but most of this information can be figured out, to some level, just on your own. So it might be kind of redundant in requiring them to put it on their website. I mean, you know, the power districts have to show who they bought things from. All their disbursements, I think, are public records. And, and then, after I got all that information, I can't buy power from somebody else because of it. I mean, I-- and, and most people scramble just to keep their lives together, you know, kind of week to week, anyway. It would have to take a real activist to want this information. And then if it's still available, you know, why not just let them, those few that would really use it, let them develop this information on their own and do with it what, you know, they think they want to do.

DUNGAN: Yeah. I mean, I, I think that if that information is already readily available, if they do in fact have it, it's just my opinion that it wouldn't be that hard to put on the website. I've spoken with LES and some other folks about whether or not it would be onerous or burdensome to do that, but I genuinely think that if they already have a lot of this information, we're not asking a lot to make it public. And if anybody does want this information, I guess I just don't think

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

they should have to jump through a bunch of hoops to get it, especially if it's a public power entity that we're paying ratepayer rates to.

MOSER: But I think you're creating extra expense for them that's going to be paid by all ratepayers.

DUNGAN: And I don't have any number on that. Again, the fiscal note that I saw here was zero for us, obviously. I've not heard any hard data of what that money would be. I know there's been concerns brought to me by stakeholders about what the cost might be for hiring a new person to gather this information and post it all. Having talked to individuals in-- again, stakeholders. I just have a hard time believing they don't already have enough people that could do this. I think there's tons of people that could very easily add this information to the website. Like you said, this information already exists and they already have it. And so the small little step of adding it to the website, I don't feel like would have a major effect on raising costs to all ratepayers, but I'd have to get the actual numbers on that because it's not been presented to me.

MOSER: Thank you.

BOSTELMAN: No other questions. Thank you for your opening. Will you stay for closing?

DUNGAN: I will.

BOSTELMAN: All right. Thank you. Proponents, please. Anybody who would like to testify in support of LB726, please step forward.

KATE HIGH: I can give you a few more of these, but I think you would have a copy of this, because it's the same. And I've been listening-- I'll just start here. Good afternoon, again. My name's Kate High, K-a-t-e H-i-g-h, and I'm here in support of LB726. And I've been listening to the discussion up here and I think I need to do a point of clarification in regard to the complaint that I filed. This is my understanding, from reading a lot on websites about the history of the Nebraska electric generation and transmission. Twenty rural public power districts, that, one of which was the Elkhorn Rural Public Power District, back in the 1950s, went together and these 20 rural public power districts created a co-op. So the, the members of the co-op are these 20 public power, rural public power districts. And the reason they created this co-op is to-- that they could buy electricity

cheaper, they could buy bigger volumes of it, got a bigger deal so that they got a better price for it. And they also used it to get money to build transmission lines because, you know, it's pretty hard, you know, from one little rural public to another. So it just made sense. So the way that the co-op, this particular co-op, was set up, there were 20 members, and I believe there was one private one on the side. They, they took somebody from their board of directors, which were publicly elected and they all sit on the board of this co-op and they make all these decisions. So there's money that comes from all of these co-ops, rural public power, rural public power districts pay into this co-op for these two specific reasons: electric transmission lines and to buy electricity cheaper. That's the purpose of the co-op. And they bring their bag of money with them and they have a representative that sits on the board and they make the decisions. So this sounds a little bit different than the double Circle co-op down the block, you know, where you might buy other things. This is a, a very specific kind of co-op that serves that. So I got interested in this because I do money and politics research and I found out about this \$7,500 donation, it was kind of popping up in some other research and it was tracking me back. So I wanted to go find out how this NRAE PAC got formed out of this electric co-op. So I went to that website, which is-- they got a lot of stuff on there, not too-- you know, but it's there. And I wondered who made the motion that approved the PAC, because the people, the person who is the executive director and other people that were employees of the NEGT, were the, were the founders, the creators, the treasurer that had people-- their names are on the-- when the NRAE PAC was formed. The NRAE PAC cohabits, has exactly the same address as NEGT. And they-- there's, there's overlap of the officers in this. So I was interested in knowing who made the motion that, that put this in place, that says NRAE can, can have their offices here and they can have some money. So who, who did that? Where is it in the minutes? Who, who, who made that motion? Who voted for it? So there was that. Then, who OKed the \$7,500 to put into that PAC? Was there some discussion about it? Did everybody say, oh, yeah, go ahead, put \$7,500 in it? We just don't know. So I'm kind of feeling like maybe what we need is, is something there that we can hold people accountable for. Because if I would have been living up in Madison County at that time, I sure want to know if that was my guy that was voting for that PAC, because when it comes election time, that's going to be a point that I need to know when I'm going to the polls and vote. So I feel like I should have that as a citizen, as a ratepayer and as a person who's interested in good governance. I, I, I just wanted to clear that up because that's, that's my main point. I, I

really think we all feel the same way that when, you know, for nine-tenths of the time, you see all that stuff out on a website and who cares? But when I wanted to go actually find something like where's the minutes of the meeting, who authorizes this payment, I think I should have a right to know that. But now, because it's, it's a co-op, it's has-- it gets this special status as a co-op and now it's a corporation, I think that's why we need this bill that says you know, let's not, let's not play to legalese here. This is public money that's just getting tracked through different entities, but it's still public money and it's still being-- the members of the co-op are actually elected officials and they're managing this money. And I think we need to follow it through. And let's say, do we want public money? It's against the law in Nebraska to use public money for political purposes. And let's just keep that consistent across the board. So thank you very much. I appreciate your time.

BOSTELMAN: Thank you for your testimony. Hold on a second. Was there any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you for being here, Ms. High, and thanks for that context. So are you saying that-- so this NEGT has members, all of its members are public power districts and not electric co-ops?

KATE HIGH: No, no. They're the, the members that make up the NEGT are all rural public-- individual rural public power districts. And there's one private one off to the side and I can't remember, but there's like 20 of them.

J. CAVANAUGH: So, for just the kind of the discussion we've been having here, there's two sections of the statute, one that governs and I don't remember the, I don't remember the number offhand, but that governs electric public electric districts. And there's a different section with different obligations and requirements for electric co-ops.

KATE HIGH: Yes, I do believe there's, there's a special-- there-- special notations. And that's in 70 dash-- I forget, 70-704. That, that's kind of in that area, that has to do with electric co-ops, I do believe.

J. CAVANAUGH: And so and I'm just trying to make sure we're having the same-- we're, we're on the same page of this conversation. So the entities that are parts of this NEGT are actually under the section of

the statute that applies to public power districts and not electric co-ops or not--

KATE HIGH: Right. So the members, the members that make up the co-op aren't co-ops themselves.

J. CAVANAUGH: OK. And so we heard, I think, at least Mr. McClure's testimony, that says public power districts are explicitly already prohibited from putting money into political campaigns.

KATE HIGH: Right.

J. CAVANAUGH: OK. And so you're-- what you're saying is that the \$7,500 that we've talked about and I know I've heard about at other hearings, as well, was money that came from not co-ops to a co-op, but from public power districts to a co-op. And then to a political--

KATE HIGH: It was a co-op that was founded by and funded by public power districts going together and pooling their money so they can get a better deal on electric, electric buys.

J. CAVANAUGH: And you-- so your interest in this bill is you think that if you were able to, if you were able to capture, look at that information that would inform your decision making about elections of your public power district board.

KATE HIGH: Yeah, well, that was, that was what I was looking for. I mean, that's-- and I think voters like that kind of information when, you know, you go to the polls and who are these people? You know, where I lived, it would be whether you're an Olsen or a Hansen. But so, you need-- so, yeah, that's, that's becoming an informed voter. And I think we-- I think voters and ratepayers, that's an important consideration for them. I, I know that I-- it would have been a consideration for me.

J. CAVANAUGH: Do you think that also publicizing these, sort of, conduct or all conduct would have a chilling effect on what-- on shenanigans, which is what this sounds like?

KATE HIGH: Well, yes, a little disinfect, the, the sunshine. I, I, I don't know if it would cool that down, but I think that being-- holding your actions accountable is an important part of governance. Is that not to try to just, you know, keep it away from people and not disclose it. And I would say nine-tenths of the time, nobody cares. But sometimes it does, it does make a difference.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee March 2, 2023

J. CAVANAUGH: Yeah. Thank you.

KATE HIGH: And I-- and as far as, you know, killing trees, most of us now get our information online. So the kill-- you know, killing trees is not the issue that it used to be.

J. CAVANAUGH: Well, thank you. This has been very informative.

BOSTELMAN: Seeing no other questions, thank you for staying and thank you for your testimony.

KATE HIGH: Thank you very much.

BOSTELMAN: Next proponent.

AL DAVIS: Good afternoon, again, Senator Bostelman, members of the committee, Al Davis testifying on behalf of the Nebraska Chapter of the Sierra Club and the Nebraska Farmers Union today. I think I want to just take the time-- my testimony is pretty short anyway. I just want to take a little bit of time and just say why I think that this bill is an important tool for us, for you and for us. So if you-- if we saw this morph into websites which are-- contain all this information Senator Dungan's put forward, first of all, I want to say I don't think that it's going to be complicated to do that. Most of this stuff is already done and people are putting together a PDF or something. You just load the PDF to the website and basically, that's it. With the minutes and the agenda and those things. So you get into the budget piece, that maybe is a little more complicated and, you know, maybe that needs to be investigated, but there could be minimum, minimum requirements that the committee could put together to address some of those questions. So then what happens is you now have a full overview of the different districts and you can really compare apples to apples to see how well they're performing. Because I don't think the public has a good grasp of that. And we all hope that our public power districts are performing at, at top levels, but I'm not sure how you, how you evaluate that. So why do you want to know that? Well, you obviously-- efficiency is everything in business. These are businesses. They are public businesses in many respects. But, you know, you want to have this business perform as efficiently as possible. And so, I think openness and transparency will make them perform in a, in a better manner. And I had suggested in my testimony that you could even do video. Now, you know, some school board members, some school board-- are conducting meetings through video so that people can participate more. I think any time you have more

participation from the public, you're going to have a better entity.
Thank you.

BOSTELMAN: Thank you for your testimony. Other questions from
committee members? Seeing none, thank you--

AL DAVIS: Thank you.

BOSTELMAN: --for your testimony. Next proponent, please. Anyone else
like to testify in support of LB726? Seeing none, anyone like to
testify in opposition to LB726? Good afternoon.

JOHN McCLURE: Good afternoon, Chairman Bostelman, members of the
committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm
executive vice president for external affairs and general counsel for
Nebraska Public Power District. I'm here testifying today in
opposition of LB726. I'm also speaking on behalf of the Nebraska Power
Association, which is comprised of the state's electric utilities,
municipal electrics, public power districts, electric cooperatives and
a joint action agency. LB726 provides redundant and conflicting
requirements for public entities, regarding compliance with the open
meetings law. And just to look at some specific examples in-- on page
two of the bill, on line 20, it talks about board meeting dates,
times, location shall be published at least ten days before the date
of the meeting. And on line 22, board meeting agendas, which shall be
published at least ten days before the date of the meeting. The open
meetings law in Nebraska that applies to all public entities in
Section 84-1411(1)(a) says that entities are required to provide
reasonable advance notice. So now we're going to carve out electric
entities and put a specific date on them that's different than what's
in the Open Meetings Act for the entire state. I would mention that
while the Open Meetings Act does require that minutes be prepared by
each entity, each entity that's covered within ten days, and we could
certainly post those. But for most entities, those minutes are draft
only. They're not final until the next meeting of that public entity,
where they're voted on, approved, corrected if necessary. You know,
in, in our case at NPPD, we already do most of this and much more. If
you go to our website, again, we're, we're one of the largest
utilities in the state. We have the resources to do this. I'm
concerned, I think you may hear from subsequent witnesses about the
impact of this on the smaller electric utilities in the state, many of
which, as I mentioned in testimony on a previous bill, are municipal
systems. Those are small municipal distribution systems that are
providing other municipal services. Are, are these things that are

going to be imposed across the board on those cities for other activities that are taking place within the municipality? I think it will add and I, I appreciate Senator Hughes' comments earlier about what kind of a burden will be put on these folks. You know, they may not have to hire someone extra, but every month adding all this additional information. In the case of NPPD, we have every month hundreds of expenditures that are made for various vendors, for all kinds of things that we may be purchasing. Again, I would also point out that the open-- the public records law already gives people access to this, and many of us are publishing much of it. I'm not aware of a hankering for this or a lack of response. And I think of an example with a report that we're required by statute to file with the Power Review Board. I was looking at some statutes one day. I saw that. I called Director Texel and asked him-- Executive Director Texel, asked him about it. And I said, what do you do with it? Well, we file it. Does anybody ever ask for it? No. And so, just piling work on to me doesn't seem like it's appropriate because we already have the open meetings law that sets out a lot of requirements. We have a public records law. So much is voluntarily provide-- provided. I don't think there are a number of folks that are asking for these things that aren't available already. So with that, I, I would urge you not to advance this bill and also, have the same concerns about the ratepayer dollar piece of this that I referenced in earlier testimony. I know that testimony is not incorporated here, but you've heard it and I won't repeat it. I'd be happy to answer any questions.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you for being here, Mr. McClure. So I'm on the NPPD website here, just taking a look. It's a good website, you got a lot of information here. How much does NPPD spend a month updating the website?

JOHN McCLURE: We have-- I don't have that number. I'll, I'll see if I can find out. But we, obviously, are updating things with respect to our board meetings. We livestream our board meetings, then we video, we take that video and that's, that's put on our website for board meetings. So if you look under board of directors, you will see a bio of each board member. You'll see a phone number, you will see when they were elected, the area they represent, the-- a map of the district that they represent. You will see, again, extensive contact information. I can only speak for our utility as to what's out there.

And there's all kinds of board presentations for each board meeting that you can find. And that's just on the board side.

J. CAVANAUGH: And, and I appreciate that. You've got a good website. I guess here's my question. Your argument is that this is overly burdensome and unnecessary and wasteful of ratepayer money. So why is NPPD wasting money doing all of that?

JOHN McCLURE: I'm not saying it's wasteful. I'm saying it's a challenge in particular, I believe, for smaller systems. We have a corporate communications department. We have people that are used to dealing with a website. We actually have provided and helped create websites for a number of our customers over the years who couldn't do it. We created a very basic website because it's important to have one. And when I say customers, I'm referring to our utility customers--.

J. CAVANAUGH: Your wholesale customers.

JOHN McCLURE: -- a public power district or a municipality. But whether they have sufficient staff to put all this on, I can't speak for them. We can do it at NPPD. And as you've looked at this, we do it voluntarily now. I just don't think in Nebraska we like to keep imposing new requirements from the government on entities to have to do things, to have to do things, unless there's a good reason.

J. CAVANAUGH: Well, I mean, I think we had some good reasons earlier. As I go through the list of things, I'm, I'm just trying to think through this argument that this is going to be overly burdensome and costly. So I'll just start at the back. Method by which to contact the electric utility staff. It seems like you do that maybe-- you'd have to update that once a year. A method by which you contact board members. If you get a new board member, you might have to change the update, but that sounds like not a pretty regular update. Board member district/subdistrict boundaries. Again, probably have to update that once every two years or something along those lines. A list of all board members currently serving-- again, only when there's a change. Service territory-- probably doesn't change that much, so that's not going to be a regular update. Fiscal year budget-- that's probably going to be updated once a year. A full, complete statement showing receipts and disbursements for electric utilities. That might be a monthly change. Current rates, schedule fees, rents and other charges made and levied on the board. Again, that might be a monthly change. Board meeting minutes-- I guess with the whatever regularity, cycle

the board meetings are. Board meeting agenda-- ten days before, so that is probably monthly, right? Board meeting dates, times before the meeting, and so that's, again, monthly. So there's about four or five things out of the 11 that would need to be updated regularly. The other half of them, or maybe an annual and for the, the fees and schedules and budgets and those sorts of things, are those not things that are already being generated and just not posted on the website?

JOHN McCLURE: In our case, many of these are all ready. I haven't gone through and checked it item for item, but most everything here you can find on our website.

J. CAVANAUGH: On your website?

JOHN McCLURE: Yes.

J. CAVANAUGH: Right. And so I guess for all these other folks, the NPA who are opposing it. So this, from your perspective, this wouldn't change much for NP--NPPD?

JOHN McCLURE: No, not for what we post out there, although there again, there are some exceptions. There are some direct conflicts with the open meetings law, which I find troublesome, that we're singling out the electric industry and imposing different requirements on it than we're requiring of other public entities. And for, again, for many of the municipal electric utilities and I believe there'll be a witness after me who's far more knowledgeable in this area than I am, you're putting a standard out for how they deal with their electric distribution department that's different than what they do with all their other departments.

J. CAVANAUGH: Well, in terms of the date part, I would imagine that's probably solvable in an amendment for this bill. I imagine Senator Dungan would consider compiling these dates with the Open Meetings Act. But I, I guess that if you're-- if these are already documents that are being generated by each one of these entities and most of them don't require any real update, it just would be creating a form website and uploading a link. I just have a real hard time understanding where the cost is coming in.

JOHN McCLURE: Again, I think the, the, the challenge and subsequent witnesses may be able to share more, is for the folks that aren't doing this as much as we are right now.

J. CAVANAUGH: I can stop beating up on you then, I suppose.

JOHN McCLURE: OK.

BOSTELMAN: Other questions from committee members? Seeing none, thank you for your testimony.

JOHN McCLURE: Thank you.

BOSTELMAN: Next opponent. Good afternoon. Welcome.

LASH CHAFFIN: Thank you. Good afternoon. 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 today, I would like to offer the League's opposition to LB726. First, I want to say municipal electric utilities are not opposed to transparency. As a matter of fact, if you get one of them cornered, they're going to tell you for hours about how proud they are of their electric utility. But, but that said, there are 120 municipal electric utilities across the state. And they range from the Grand Islands and the Fremonts and the North Plattes to places as small as Lyman and Talmage. And, and they're all under the same set of laws. And then also, keep in mind, in, in Nebraska, every, every municipal utility is also sub-- in addition to being subject to the laws of electric utilities, they're also subject to all the laws governing public entities. Chapter 13, Chapter 84. They're also subject to all the laws governing municipalities, Chapters 15, 16, 17, 18, and 19. So there are numerous transparency laws that municipal utilities already, already comply with. Going through the list, the-- everything except the service territory map for a municipal utility is already covered by one, a reasonable public notice statute, a required legal publication notice statute or in some cases, a publication and hearing statute. And in one case, a legal publication, reasonable advance notice and multiple hearing requirement. So everything on the list, there is, there is transparency galore on, on all of these issues, with respect to municipal, municipal utilities. You know and also, the list, it does create an additional layer of inconsistency. It uses words and concepts that are slightly inconsistent with the existing transparency laws. For instance, it uses the term minutes. Cities use the term legal-- official proceedings, which is a slightly different concept that has this different series of case law that's established across the country. So in fact, that would become duplicative. You'd have to prepare two separate and distinct documents for, for publication in an additional source. I could go through each one, but you know, I think that's probably a discussion that we could have with Senator Dungan at some point, because that would take a long time. So there are-- but each one has its own unique, inconsistent

characteristics with current transparency laws, many of which cities pay for. When something goes in the newspaper, it doesn't go in for free. There, literally between all the political subdivisions of millions of dollars of ratepayer and taxpayer money goes to officially required publications. And this would be on top of that. Now, I guess there's a legitimate issue of do the current transparency laws in Nebraska translate to the year 2023? The answer may be no, but that's probably a much broader discussion beyond electric utilities. I think you need to involve the schools, the NRDs, the counties. I mean, there's-- every public entity that does publication and has reasonable advance notice requirements needs to be a part of that discussion. It's probably a little unfair to just overlay an additional website requirement on, on electric utilities. Also, with respect to the websites themselves, this, this in some cases this would be a financial burden. Five years ago, I think I fairly easily could have argued, there are villages without websites. Not quite sure I can make that argument today. There might be one, but I don't think I want to publicly make that statement because there probably aren't. There are some without email at this point, but there are some that-- there's probably everybody's got at least a Facebook page or something, But I, I just don't know one way or the other if that's true. But that said, not every web-- website is created equal. The small villages, if they have a website, it's not updated. It's a promotional website that says, this is where Talmage is, please come visit us. Then people forget about it. And so it's not the same as an operational website, where you could upload financial data. For, for instance, particularly, I think this overlaps with, with the broadband issue that the state is facing. If you happen to be a village where the best speed, internet speed you can get, three megabits per second upload, guess what? You're not going to be able to put ongoing financial information on your website. That's just not going to work. So this issue does overlap, and particularly in the smaller municipalities with other issues that the state is facing with respect to rural broadband access. But, but again, we're not against transparency. And if there are specific issues the Senator would like to get in addition to the, the existing transparency laws, we'd be more than happy to work with the Senator on this. Thank you for your time.

BOSTELMAN: Thank you for your testimony. Are there any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. I appreciate your pointing out about rural broadband, especially in the week when there's new episodes of Mandalorian has come out. And I haven't had a

chance to tweak [SIC] Senator Bostel-- Chairman Bostelman about it yet, but just this is my opportunity to do that. So out of the 120-- thank you for being here, by the way-- out of the 120, I mean, like, what's the smallest one?

LASH CHAFFIN: I think the smallest one-- well, that's a good-- I tried to figure that out. I think the smallest one is Talmage, although my personal favorite small one is Lyman. So that's-- they're, they're very enthusiastic.

J. CAVANAUGH: Two great names.

LASH CHAFFIN: Yeah.

J. CAVANAUGH: What size are we talking about? Like, what's the ballpark?

LASH CHAFFIN: Fifty. Forty. Probably 20-25 customers.

J. CAVANAUGH: OK. So if, you know, Senator Dungan were to entertain an amendment to this to limit this size and say this only applies to, you know, providers who provide overview of service to over X number of people, would you have a suggestion at where to draw that line?

LASH CHAFFIN: I could, I could think about that. You know, obviously the devils are always in the details. But, but yeah, we would entertain at least looking at that. You know, I hate, I hate to reserve any judgment on that concept, but, but, but it's certainly-- I will say it does affect Fremont differently than it affects, you know, Nelson.

J. CAVANAUGH: Right. And I should probably apologize to Mr. McClure, because when I said I was having a hard time imagining how this would be a burden to someone, I was not imagining that we were talking about towns of 50 or 40 people.

LASH CHAFFIN: Well, I, I will say Fremont has long had a active utility website. And I noticed over time-- city of Fremont and they used to put all their financial data, regularly, on there. I noticed they've taken it down lately. In part, I think what they do is they put their annual budget on there. They-- and they do this extensive, boring annual report that's not even required by law, but used-- they don't update it that regularly. So there, so there, there is some-- there would be some burdens to even the larger municipal utilities.

J. CAVANAUGH: What about the [INAUDIBLE] rectifying or eliminating those, those redundancy and inconsistencies with the current reporting requirement? If we, if, if Senator Dungan were to consider amendments to this, that would, say, the, the 10-day notice is actually whatever the notice is in the--

LASH CHAFFIN: Sure.

J. CAVANAUGH: --and that would eliminate some of that over-- that duplicative burden. Right?

LASH CHAFFIN: We would be definitely interested in working with Senator Dungan to, to look at those, that type of language. We're not against transparency. We-- like I said, matter of fact, these city utilities, they love to tell you about their utility. They want more people to be interested in it.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Slama.

SLAMA: Thank you, Mr. Chairman. Not a question, but just a statement. Talmage, Nebraska is in District 1. It is a wonderful, small, but mighty community.

LASH CHAFFIN: It is. Oh, it's an awesome community.

SLAMA: And it is very delightful. So that's just for the record. Go Talmage.

BOSTELMAN: Seeing no other questions, thank you for the shoutout for broadband.

LASH CHAFFIN: Thank you. [LAUGHTER].

BOSTELMAN: Good afternoon. Welcome.

JAMES DUKESHERER: Good afternoon, Chairman and committee members. My name is James Dukesherer, J-a-m-e-s D-u-k-e-s-h-e-r-e-r. I'm the director of government relations for the Nebraska Rural Electric Association. The NREA represents 34 rural public power districts and electric cooperatives throughout the state and we are here today in opposition LB726. I will just start by saying Mr. McClure, who testified on behalf of NPPD and the MPA, did a great job of, of providing a lot of the points that I had in my testimony. So I'll try

to amend what I say here today. We have a similar perspective, obviously, on our testimonies. If the goal of LB726 is to promote transparency among Nebraska's public power districts and electric cooperatives, we already have that. As has been said, our state's public power districts are political subdivisions of the state and they're subject to the Public Records Act, the Open Meetings Act. I say try, try making a request in another state to an investor-owned utility to get some of the information that's included in this bill and see what happens. Whereas in Nebraska, you can walk into any utility, public power district or electric cooperative and ask for these things and you're going to receive it. Requiring all public power districts to include in their websites a full and complete statement showing all receipts and disbursements or all charges made and levied by the board could be problematic. Again, I'll say I know of no examples where a member of the public seeking reasonable information from NREA's member systems was denied that information. One additional point I'll make: Section 4 of the bill introduces an additional topic that hasn't been brought up yet. It says that ratepayer proceeds shall, shall not be spent on elections. As stated in my testimony on LB725, public power districts are already prohibited from this type of activity and electric cooperatives. The NREA member system and electric cooperatives do not participate in campaigning type activities. Furthermore, the definition of ratepayer and ratepayer proceeds is overly broad, far reaching, far beyond the ratepayers that receive electric service. So it's for those reasons that we're opposed to the bill and we ask you not to advance it. Thank you.

BOSTELMAN: Thank you for your testimony. Questions from committee members? Seeing none, thank you for your testimony. Next opponent.

ADAM FESER: Good afternoon, Chairman Bostelman and members of the committee. I'm Adam Feser, A-d-a-m F-e-s-e-r, director of cooperative advancement with the Nebraska Cooperative Council. I already referenced who we serve. We serve electric cooperatives in the state. We're here to appear into opposition to LB726. It reports to have the intent of creating transparency regarding the governance and finances of electrical utilities, including privately-held rural electric cooperatives created under the Nebraska Rural Electric Cooperative Act. As with LB725, we believe LB726 is a solution in search of a problem. As privately held cooperative corporations, our rural cooperative members are governed by articles of incorporation and bylaws, setting forth governance procedures, member and board meeting requirements and requirements for financial disclosure to their

member-owners. Bylaws require an annual meeting of the members for the purpose of electing directors and transaction of business coming before the membership. Special meetings of members may be called by the president, a majority of the board of directors or by not less than 10 percent of all members entitled to vote. Bylaws generally require that notice of members' meetings be delivered not less than 10 days, nor more than 30 days prior to the date of a meeting. Each member of a rural cooperative-- electric cooperative is entitled to one vote in the affairs of the cooperative. Elected by members, the bylaws of rural electric cooperatives typically provide that members may request and vote upon the removal of directors. Regarding financial reports, bylaws of the rural electric cooperatives typically require an audit by a certified public accountant of the books and financial records, with the resulting audit reports being made to the board of directors and independently to the members at their annual meeting. Nearly every item that LB726 would purport to require of a rural-- of rural electric cooperatives are already required by their bylaws. In addition, modern websites of these rural electric cooperatives are readily accessible and contain the vast majority of information not otherwise provided to members at membership meetings and contained in the list of topics set forth in LB726. Finally, LB726 in a-- slips in a general prohibition for electric utility providers from, from spending any funds on electoral activity without definition of the specified activity, except to allow rural public power districts to conduct public elections of the directors. No similar allowances made for accommodating the expenses of the election of directors of rural electric cooperatives. As with LB725, we oppose restrictions on the election participation of privately-held rural electric cooperatives. For the foregoing reasons, we oppose sev-- LB726 and request that the committee not advance it to the floor of the Legislature. As before, I'll try my best to answer any questions you might have.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Seeing none, thank you for your testimony. Is there any other opponents of LB726? Any other opponents? Anyone in the neutral capacity? Good afternoon.

TIM TEXEL: Good afternoon, Chairman Bostelman, members of the committee. My name is Tim Texel, T-i-m, last name's T-e-x-e-l. I'm the executive director and general counsel for the Nebraska Power Review Board. The Board is the state agency with primary jurisdiction over electric suppliers in the state of Nebraska. And the Board takes no position on the overall policy of LB726. But I am authorized to

express the Board's opposition to the current definition of what constitutes an electric utility in the bill. The definition of electric utility is set out in Section 2(2), which is lines 7-8 on page 2 of the green copy of the introduced bill. And the definition of electric utility is, quote, any entity organized under Chapter 70 or a municipal electrical-- electric, sorry-- system, close quote. Well, the Power Review Board is organized under Chapter 70, Article 10. So under the current bill, the green copy, the Power Review Board and the state regulatory agency would be defined as an electric utility. My Board has serious concerns about that because we are the regulatory agency, not a utility. I think that would be a, a problematic precedent to set in, in state law. I did contact Senator Dungan's office about this. I, I believe it was just an oversight. So I don't think I need to belabor the point, but it is a necessary change if the committee would put this out on the floor. Another point I would just make, a smaller point, is and it was mentioned in earlier testimony, under Section 3(7) of the bill, utilities would be required to put their service territory on the utility's website. It doesn't specifically allow for links. And Senator Dungan, in his introduction, had mentioned you might be able to have a link to it. But the Power Review Board already has an online digital map of each utility's service territory, so it shows the entire state. All of the state is part of some utility service territory and we're the official repository for the service area maps, on the retail service territory maps. So I think it would make sense to-- for the utilities to link to our official map, as it be opposed to put on their own map and that would help alleviate any concerns about discrepancies between the official state agency map and the utilities maps, putting it on their website. Perhaps a minor point, but it might help to put in the bill that they could link to something like that for the service territories. Particularly helpful for the villages, as was discussed, so that they wouldn't have to go to all the work of creating a map, because I know some of their staffs are very small and don't necessarily know how to do that. We have a contractor that does it for us that does a map and updates it and annual contracts. So with that, that's the two points that I wanted to make and I'd be happy to take any questions.

BOSTELMAN: Thank you for your testimony. Any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you for being here, Mr. Texel. I-- that's a great suggestion. I like it. I'm sure Senator Dungan would take it the-- about linking to the maps. I wondered

about-- I think Mr. McClure pointed-- mentioned that he spoke with you and you have reports that nobody ever asked for?

TIM TEXEL: I, I don't know specifically what he was referring to. It might be the budget statements. Every year, the utilities and the public power districts have to submit their fiscal statement and overall budget to us. They have to give us, also, copies of their annual audit. I, I don't recall an instance, maybe once in the last 20, 25 years, that anybody has asked for them. The utilities have to keep them available at their site, too, but nobody-- I'm not sure how many people outside the utilities know we have it. So it's just-- not something-- that's why we don't put on our website. Nobody ever asks for it.

J. CAVANAUGH: Well, that was going to be my next question. Do you think nobody asks for it because nobody knows you have it?

TIM TEXEL: Could be. All I know is that they don't ask for it. I mean, the utilities have to have it, too. So I assume most people that would want it would go to the utility and request it and the district would provide it to them. So maybe in the past that was different. I don't know the background of that requirement in state law. So we have it, but if it's been requested, it's been once or twice in 25 years.

J. CAVANAUGH: And that is publicly available information anyone can request.

TIM TEXEL: Anybody that requests it can have a copy. We don't put it on the website, but it's, it's a public document. It's kept in our files. I think we keep it under the records retention policy for two years and then we cycle them through. And you know, we just don't have a request for them. So it's-- you know, we keep them and nobody requests them. So it's a bit of busywork, but that's my job under the statute.

J. CAVANAUGH: Wow. I mean, I-- we hear a lot in the Legislature. We ask a lot of study-- people to do studies and provide information and then we always hear, nobody ever asks for these things. But then, you know, I'm looking at your website. I can't figure out what information you have available on here. And so, I wouldn't-- it wouldn't occur to me to ask you for it, I guess. And I'm sitting here having this conversation. So I, I guess that's one of-- maybe one of the arguments for the bill is to put the information online. I know you're neutral, but isn't the argument you put it out there so people don't know what

they're looking for and if they come across it, they say, oh, this is available information to me. Maybe I would like this, as opposed to make-- putting that hurdle there where you have to know what to ask for to get information.

TIM TEXEL: That's a policy decision for the Legislature. I mean, I guess the one concern I'd have is how much information do you put on a website that people need to sift through? Because the more you have on there, the more difficult it is to find any individual thing. We-- I put on our website the things that the people request most often. Certainly, the service area maps has been a huge help to a lot of entities and the public and developers. Everybody seems to love that. We-- anything that I get a lot of requests for, I try to put-- make it available on our website. We have other documents that I don't put on there and that's my response, always, is nobody really asks for them. We could make them available. We don't make the charters available for districts, either. I could, but we don't get requests for those other than by the utilities. So I'm certainly open to doing more, but I don't see the public demand for them. If the Legislature would like me to and believes people would stumble across them, I could certainly do that, make them available.

J. CAVANAUGH: Thank you.

BOSTELMAN: Seeing no other questions, thank you for your testimony.

TIM TEXEL: Thank you.

BOSTELMAN: Next neutral testifier. Anyone else like to testify in the neutral, neutral capacity? Seeing none, Senator Dungan, you're welcome to close. There are four proponent and one opponent letters on LB726. Senator Dungan.

DUNGAN: Thank you, Chair Bostelman, and thank you, members of the committee. Just to touch on a couple of points that were brought up during the testimony. With regards to the concerns about the discrepancies between the Public Meetings Act and the Open Meetings Act and what was in the bill, I'm more than happy to work on amendments for that. I believe Senator Cavanaugh opened up a number of amendments that I'd be open to, with his questions. And it's true. I would be very open to discussing with the entities involved here ways to make this congruent or at least, in line with a number of those other obligations. To the point, though, of why I think maybe we should impose a slightly, slightly more onerous burden, to a certain

extent, on these companies versus other things that are subject to the Open Meetings Act, is that a number of things are subject to the Open Meetings Act that don't deal with the massive amounts of money and the massive amounts of public dollars that go through these public entities. For example, I'm on the Lincoln Pedestrian Bike Advisory Committee and we're subject to the Open Meetings Act. We handle different things than major public power organizations. And so, I do think that not everything is the same and not being-- not all things should be necessarily considered equal, just because they're subject to the Open Meetings Act. But if there are actual times and dates and things that we can fix in this bill to make it align more easily with that, I'm more than happy to look at those amendments. In addition to that, I just would highlight, again, my concern. This is about transparency. More information is always better than less. I think Senator Cavanaugh, again, made a good point when he said a lot of times people may not know what they're missing if they don't know that it, it-- that it's even out there. I think that's a point very well taken. And I also don't think that we, as a government, should necessarily just be in the business of providing information that we think is, maybe, the, the most popular or the most asked about. We put books in libraries for a reason and it's because we don't know what people are going to want. They're going to go find the stuff they're interested in and far be it from us to tell them what that is. If every public library just had the New York Times Top 40 bestseller list, that might be a problem because we don't know what information people are looking for. I can't sit here today and say why somebody might want all of this information. But you did hear specifically from a testifier who said I was looking for these things and I couldn't necessarily find them. And in the circumstance that was outlined at the prior hearing with regard to the NEGT money and the way that that money is being spent, that's information that perhaps, would have been maybe a little bit more easy to find or more easily obtainable if this information was public. The last thing I want to do is put too hard of a burden on small entities like we talked about, with towns of 50 or something like that, more than open to talking about thresholds. But at the end of the day, I just think it's important to provide more information than less. So I would be happy to work with the committee and to work with any other stakeholders on how to improve this. And I appreciate everyone who came in and testified, both in favor of and opposed to the legislation. I think it was very informative and I'm happy to continue to talk to stakeholders in this, in this circumstance.

BOSTELMAN: OK. Thank you. Are there any questions from the committee members? Seeing none, that will close our hearing LB726. Thank you all for coming. We are going to go into an Exec session, so please clear the room. Committee will take a five-minute break.