

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 8, 2024

BOSTELMAN: Good afternoon. Good afternoon. Welcome, everyone, to the Natural Resource Committee. I am Senator Bruce Bostelman from Brainard, representing the 23rd Legislative District, and I serve as the Chair of the committee. The committee will take up the bills in order posted. This public hearing today is your opportunity to be 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 that are on the table at the back of the room. Be sure to print clearly and fill out-- fill it 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 yellow sign-in sheets back on the table for each bill. These sheets will be entered-- 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 three 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 when the red light indicates you need to wrap, wrap up your final thoughts 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 items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up ten 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 one position comments on a bill to-- that written position comments on a bill, to be included in the record, must be submitted by 8 a.m., the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. I will now have the committee members with us today introduce themselves, starting on my far left.

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

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

BOSTELMAN: And on my far right.

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

JACOBSON: I'm Senator Mike Jacobson, District 42. I represent Lincoln, Logan, McPherson, Thomas, Hooker, and three-fourths of Perkins county.

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

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

BOSTELMAN: Senator Moser also serves as Vice Chair of the committee. Also assisting the committee today, on my left is our legal counsel, Cyndi Lamm, and to my far right is our committee clerk, Laurie Vollertson. Our pages for the committee today are Ruby Kinzie and Shriya Raghuvanshi. Thank you. Thank you both for being here today. With that, we'll open up our hearing today with a gubernatorial appointment. Our first one is Jan tenBensel. Could you please step forward? Good afternoon and welcome.

JAN tenBENSEL: Good afternoon. My name is Jan tenBensel, J-a-n t-e-n-B-e-n-s-e-l. Chairman Bostelman and the committee, thank you for having me today. I am a farmer from Cambridge, Nebraska, and I'm currently the chairman of the Nebraska Ethanol Board. I live in Cambridge, Nebraska with my wife and ten year old twin children who are here today to support their dad, which is my best supporters, to tell you the truth. I've lived in Nebraska all of my life, with the exception of some time spent training with the National-- Nebraska National Guard. Prior to my Ethanol Board Service, I served three terms on the Cambridge School Board, as well as I've served 19 years in the Cambridge Economic, Economic Development Foundation. Also the fire department, the local chamber of commerce, children's carnival boards. I've served on a number of boards, a number of committees throughout my life. I first became interested in it during the Gulf War, the Gulf War one, and my increased-- my, my interest increased significantly during the second Gulf War. And after that, I became what you would consider an ethanol advocate. And I was appointed to

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the Nebraska Ethanol Board in September of 2015, and later became part of the Nebraska Corn Growers. As with most new members to any board, it took me some time to get my bearings and realize the learning curve that I was faced with. I was sitting at a-- at a conference one day, and the speaker pointed me out in the audience and said, Jan tenBensel's here from the Ethanol Board, and I think he can answer that question better than I can, and I had no idea what he was talking about. And I said that would never happen again. And it does happen, but not to that-- I, I try to make that not happen, I would say. So I set out learning as much as possible as I could and hoped to retain that, that, that knowledge and continue the education process as a lifelong learner. Through my attempts to learn more about the ethanol industry and ethanol as a whole, I became a member of the National Corn Growers, and I'm part of the Na-- Nebra-- excuse me, the National Ethanol Action teams. And with my work with the Ethanol Board, I have received a number of accolades. I was the ServeNebraska Adult Disaster Volunteer of the year in 2020. I received the American Coalition for Ethanol Grassroots Leadership Award in 2020, and the Growth Energy TOBI Get Biofuel award in 2021. And I have also been involved in a number of other ethanol teams. National Corn Growers Ethanol Action Team since December of 2020, and I was appointed chairman this last December of 2023. I'm on the U.S. Grains Council, Council Ethanol Action Team since 2021, and I'm also a voting member of the, the ASTM, which is the, the American Standards and Testing Methods organization that sets the standards for just about everything from the glass you're drinking out up to the table we're sitting at today. And I feel my time within the Nebraska Ethanol Board has been very successful with the direction of the board moving towards a research and a technical focus, which is something that, you know, is really necessary to answer the hard questions and really get down to the root of why are we doing this and how can we do it better? And I take my role very seriously, and I wish to do what I can to improve the quality life in Nebraska, improve the economy in Nebraska, and, you know, make rural Nebraska a place that, that we can bring our families back to, and, and, have solid rural, small towns. So thank you, and I'll answer any questions that the committee might have.

BOSTELMAN: Thank you very much. Thank you very much. Questions from committee members? Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you for your service. So can you tell me, is the Ethanol Board's function to be economic development to bring ethanol plants in, or what exactly is the purpose of the Ethanol Board?

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JAN tenBENSEL: Well, I'll defer part of that question to our director, which will come up after me. But over the last 50-some years, we've gone from developing the industry, bringing the industry into Nebraska, and, you know, as we get to more of a saturated point, then becoming more of a promotional and technical advisory position. We are a resource to the Legislature and the Governor's Office, of course. And, you know, going forward, you know, there are many new things coming out, SAF, carbon sequestration. There are so many issues in the ethanol industry that continue to come around that the ethanol board is very, very well suited to deal with, especially with-- from the technical side. And, you know, the idea is with the economic development of getting more plants to Nebraska and the economic development, in, in my feeling we need a SAF production in Nebraska. If SAF production develops in Louisiana and Geor-- and, and the Houston Ship Channel, it'll be imported ethanol, it won't be Nebraska ethanol. And, and Nebraska, Iowa and our surrounding states will not see any benefit from that, that development.

BRANDT: So currently where does Nebraska stack up in the world of ethanol?

JAN tenBENSEL: Well, on a-- on a national basis, we're the number two plant-- number two state in the-- in the country, we've got about 2.3 billion gallons of production. You know, I-- it's, it's, it's a little bit of conjecture, but I believe we could, if we-- if we put the coals to it, we could probably be at 2.7 billion gallons pretty-- we could do that, without major new construction.

BRANDT: So does that get us past Iowa?

JAN tenBENSEL: No.

BRANDT: All right.

JAN tenBENSEL: But if you want to talk about a nice incentive package, I'm sure we could think about that.

BRANDT: Right. Thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thanks, Chairman Bostelman. So, Mr. tenBensel, I, I, I guess as I look at ethanol and the kind of the, the progression of ethanol, you know, we went where we had the ethanol and we had wet distillers, and then we dried the distillers since we've got dry distillers, wet distillers, so we start pulling syrups off, we tried

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to pull oils off, and, and of course now looking-- really looking at aviation fuel, which seems like a huge, untapped market that we would have in the future as, people are trying to get to carbon neutral in the airline industry, but extension cords are just not long enough to follow those trains-- those planes. So, I, I'm, I'm curious, where do you see-- where's the ethanol go from here? What's, what's, what's that next thing that would create more value add to what we're doing besides more gallons. Is there more we can do to really extract more of what I would-- I've always envisioned that one day ethanol would be the byproduct of everything else we're doing. What's your view on that?

JAN tenBENSEL: Well, you're not, you're not, you're not terribly far from the truth. You know, during the pandemic, there were calls from Homeland Security to say, well, can you produce the ethanol and also produce the medical grade CO2? Can you produce the ethanol and continue to dispose of it somehow and continue to-- continue to produce the distillers' grains for the cattle, etc., etc.? And like-- and like you're saying, are we to that stage yet? Not quite. But, you know, ethanol will become just part of the value chain, moving into renewable chemicals, clean chemicals, clean sugar technologies, becoming SAF because, you know, we had a discussion literally this morning and, and you don't actually put ethanol into the airplane. The ethanol is transformed into essentially kerosene that is burned in the airplane. And so it's, it's, it's a-- it's, it becomes a, a, a key into the whole chain of everything else, and not so much the final product, but part of that final product chain.

JACOBSON: Thank you.

BOSTELMAN: Senator Moser.

MOSER: From looking at your resume, you sure look qualified. We should have a consent calendar or something where you could just come in and wave and we'd wave.

JAN tenBENSEL: But I really enjoy talking to you guys.

MOSER: Yeah, it seems like you enjoy speaking. That's good. So, just out of idle curiosity, when do they add the odorant to ethanol? When can you no longer drink it?

JAN tenBENSEL: Oh, you mean the denaturant.

MOSER: Yes.

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JAN tenBENSEL: Denaturant. So, this, of course, is, you start getting into conspiracy theories, but, in about 1863, there was a tax to help pay for the Civil War. And up to that time, most people were using a mixture of turpentine and ethanol in their lamps in their homes. And it was just an easy, easy fix for the government to raise money, so they started taxing ethanol. And if you were going to drink the ethanol, the tax wasn't so bad. But unfortunately, there was no way to get past--

MOSER: Differentiate?

JAN tenBENSEL: --the differentiation at that point. You know, we, we looked, looked later here. So essentially when, when that law was passed, I can't tell you when they started denaturing it. Are you asking what point in the process is it denatured?

MOSER: Yeah, yeah. Do they denature it at the ethanol plant or later on when they bottle it or--

JAN tenBENSEL: OK. So in some cases it's, it's denatured as it leaves the plant, depending upon the final destination for the product. If it's going to go in certain export markets, it's denatured at a different location. The denaturant, I could talk to you an hour-- for an hour about that. It's, it's changed, the reason we denature and how we denature since our rules were all set up. And also the Ethanol Board has a bill coming forward. You know, this, this, this follows-- talks about that. The-- but as it leaves the plant, in most cases, it's denatured, unless it is denatured at somewhere else along the line. But it, by, by law--

MOSER: So you want to do something with it first before they add the denaturant?

JAN tenBENSEL: No. There's, there's just so many choices on denaturant. As I mentioned, I was a member of the ASTM. The ASTM has changed the standards on what counts as denaturant. For instance, on hand sanitizer during the pandemic, we used Bittrex, which is a, a terribly bitter product with just one little gram, one little flake in the air will ruin your taste for several days. Whereas essentially they want to poison this alcohol so you cannot drink it, and they poison it with natural gasoline. And that is, for the majority of, of ethanol in Nebraska, is an issue with natural gasoline. However, there are other ways, lower carbon ways, like with a, a, a product from, from renewable diesel production, renewable naphtha. And that can also denature and essentially poison it so it's not drinkable.

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MOSER: So to get rid of the denaturant, do you have to distill it again?

JAN tenBENSEL: It's virtually impossible. The molecules are so close, it would-- I hate to say impossible, but I've never heard of anybody doing that, and, and there would really be no reason to do that.

MOSER: OK, I'll give up.

JAN tenBENSEL: If, if, if you're going to try to drink from the E80-- 85 pump, I wouldn't recommend it, so.

MOSER: Thank you.

BOSTELMAN: Other questions from-- Senator Hughes.

HUGHES: Just one more, quick. I think you need to volunteer more.

JAN tenBENSEL: Well, I try.

BOSTELMAN: Slouch.

HUGHES: Yeah.

JAN tenBENSEL: I know.

HUGHES: What the-- In your opinion, what's ethanol's biggest challenge at the forefront?

JAN tenBENSEL: Well, I think ethanol's biggest challenge today is several things, and it all kind of deals around carbon. Will we become the low carbon alternative to an electric vehicle? We are the low carbon alternative right now for an electric vehicle if you have the correct-- a scientific based modeling system that gives ethanol credit for everything that's happening along the supply chain. You know, I believe that every gallon of ethanol produced in Nebraska could, with some work, be a negative gallon, a negative carbon gallon of ethanol, possibly -30 grams per carbon for a megajoule of energy, which is significant. Right now, the Renewable Fuels Association is operating a vehicle, and based on average ethanol, Nebraska average electrical grid carbon score, it is a few grams of carbon per mile less to run an E85 hybrid than it is to run and electric-- an electric vehicle. Now, I'd be glad to get you this information, of course, but the, the big challenge that I see right now is currently everybody's waiting on Treasury to make-- to make the determination of pathways for 45Z and 45Q tax incentives. You know, those will

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affect how farm level of carbon sequestration goes, and how, how plant level carbon sequestration, carbon capture and storage, how all that is factored out, and, and the devil is in the details because if the details aren't correctly watched when Treasury and all the other administrative bodies decide these factors and modeling, etc., you know, that could really turn the wagon upside down. Now, another one, I mentioned modeling. You know, there's, there's several game-- several thoughts on modeling. The Europeans use what the IKO modeling, let's see, the CORSIA modeling, and, that's the International Civil Aviation Organization and their own modeling. Unfortunately, it creates, a, a very big difference between, the American modeling from the Department of Energy, for the GREET model, for instance. And the, the difference is huge, you know, 20, 30 points, 20, 30 grams of carbon per megajoule of energy, which in, in the car world is a huge amount. Now we start looking at that, and then we, we have people talk about modified. For instance, Treasury right now is going to look at a modified version of the GREET model for sustainable aviation fuel in the United States. It depends on how far they modify the GREET model. The GREET model's kind of the gold standard, and, you know, it increases and improves every year. And, and, it's, it's just a-- But we'd love to get you that information in a more concise and easier to understand method than me.

HUGHES: Thanks for being here, thanks for your service.

JAN tenBENSEL: Thank you.

BOSTELMAN: Senator Brandt?

BRANDT: Yep. Thank you. A real quick question. Beside corn, what are the commodities are used in Nebraska to make ethanol?

JAN tenBENSEL: Well, right now, corn is the primary commodity, with the exception of corn kernel fiber on a cellulosic basis, with, with the, with the fiber of the corn kernel. We'd like to see more, more sorghum being used. The-- And, and people ask me the question, why don't we use more sorghum? And the sorghum rep will come up behind me, and, and the biggest problem with sorghum right now is it doesn't have corn oil in it. And corn oil is worth about a, a dollar per bushel of corn for the oil that's in that corn, which the corn oil also dispels a lot of the myths about the energy inputs into ethanol. Because at the, you know, the national average of corn yield at 177 bushels an acre, that's 177 pounds of corn oil that can be distilled into renewable diesel very easily. And, well, suddenly you have your, your diesel needs met on the farm. So. But, but that's the, the

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biggest reason why there's not a lot of other stuff going because that-- it's really hard to get over that, that, that-- the value of the corn oil.

BRANDT: All right. Thank you.

BOSTELMAN: Any other questions? Is, is this a reappointment for you? I'm just looking at my-- reappointment or initial?

JAN tenBENSEL: Reappointment.

BOSTELMAN: Reappointment, that's what I thought. Most important question is the young man and young lady sitting there, what's their names?

JAN tenBENSEL: That's Gavin [PHONETIC] and Reese [PHONETIC], and they are ten year old twins.

BOSTELMAN: Well, welcome, both of you. It's pretty neat being here. Seeing no other questions, thank you for being here.

JAN tenBENSEL: Thank you.

BOSTELMAN: And thank you for your service. Anyone who'd like to testify in support of the reappointment of Jan tenBensel to the Ethanol Board?

REID WAGNER: OK.

BOSTELMAN: Good afternoon.

REID WAGNER: Good afternoon, Chairman Bostelman, members of the Natural Resources Committee. My name is Reid Wagner, spelled R-e-i-d W-a-g-n-e-r, and I am the executive director of the Nebraska Ethanol Board. Not only does Jan run a diverse farm, but he possesses a strong technical knowledge, as everybody was able to kind of hear a little bit about. Again, if we need some concise information to get out, let us know. But, but Jan knows a lot and we're able to put that to good use on the board, which is a valuable asset to us in every meeting and every function that we-- that we do. Living and farming within five miles of Nebraska corn processing in Cambridge, Nebraska, Jan has been able to basically experience firsthand, you know, what ethanol production can do in your rural community. Being able to sell his grains into the into the process and watch the Golden Triangle in action, where you process that ethanol or that corn to create ethanol and other byproducts like distillers grains and the corn oil that we

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talked about to make it back into our vibrant livestock industry, and of course, lift up the the rural community from all angles. As we saw, he has a strong passion for ensuring the health of the ethanol industry and working to open important markets for our ethanol producers. Across his two terms, Jan has been one of the most active members of the board. Balancing time from the farm can certainly be tricky, but he manages it, manages it very well and we are very grateful for the time that he does contribute through his efforts. I will also note that, you know, this passion for cementing our industry doesn't just stop with the NEB. He, he hit on a lot of his positions with the National Corn Growers Association. He's been great with our federal cooperators, with the U.S. Grains Council, getting out there and making sure Nebraska always has a seat at the table when we talk about exports of our grains or our products. So with that, I'm happy to be in support of Mr. tenBensel's reappointment. And I would invite or answer any questions from the committee.

BOSTELMAN: Thank you for your testimony, any questions from committee members? Seeing none, thank you very much.

REID WAGNER: Thank you.

BOSTELMAN: Other supporters for the reappointment of Jan tenBensel to the Nebraska Ethanol Board? Good afternoon.

DAWN CALDWELL: All right. Good afternoon, Chair Bostelman and committee. My name is Dawn Caldwell, D-a-w-n C-a-l-d-w-e-l-l, and it's my pleasure to be here today to support Jan and his reappointment to the Nebraska Ethanol Board. I am representing not only Renewable Fuels Nebraska, which is proud to have all 24 plants that exist in Nebraska in our membership; but I also am here today on behalf of Nebraska Cattlemen, Nebraska Corn Growers Association, Nebraska Sorghum Producers Association, Nebraska Farm Bureau, and the Nebraska Dairy Association. Jan is highly respected. As you can tell, his robust technical knowledge is something good for me to lean on as I'm working on policy issues. I'm not going to take up your time because you heard a lot from him, but we certainly wanted to be on the record to, to give our support for him. And I'm glad to answer any questions.

BOSTELMAN: Thank you. Any questions from committee members? Seeing none--

DAWN CALDWELL: Thank you.

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BOSTELMAN: --thank you for your testimony. Any other supporters? Anyone else like to testify in support? Seeing none, anyone like testify in opposition? Seeing none, would anyone like to testify in a neutral capacity? We do have one proponent comment on the reappointment of Jan tenBensel to the Nebraska Ethanol Board. That will close out a hearing on this gubernor-- gubernatorial appointment. We will move on to the next, which is Tracy Zink. Good afternoon.

TRACY ZINK: Good afternoon. My name is Tracy Zink, T-r-a-c-y Z-i-n-k. And I'm a very grateful third generation farmer from the southwest corner of the state, Indianola. I farm in Red Willow and Frontier Counties, and our operation has both irrigated and dry land acres. In our rotation we have corn, soybean, wheat, and sorghum. And it's the last little devil sorghum that pulls me away from the farm for meetings such as this. I currently serve as the chair of the Middle Republican NRD. When I initially started farming full time, it was 2012, which unfortunately with memory that is the drought when it started, and that's when I started learning about the resiliency of sorghum. I also serve as a board member for the Nebraska Sorghum Producers Association. I always root for an underdog, and sorghum is typically the underdog. I've been recently appointed to the National Sorghum Checkoff Board. Some of my passions include research and promotions, and that's where I get to do all of that, primarily. I'm a board member for the Nebraska Rural Radio Association, Association, which is all things agriculture and rural. I'm on the Red Willow Extension Board, which I stay very involved with UNL and all the different campuses, as well as TAPS, which is a competitive event, Testing Ag Performance Solutions. It's a ball. And I think your board would have fun competing on it. I'll suggest that to them. And the reason I'm here today is for your consideration to serve as the sorghum representative for the Nebraska Ethanol Board. And I'll be happy to try and answer some of your questions.

BOSTELMAN: Thank you. Question from committee members? Senator Jacobson.

JACOBSON: So is it permissible to call grain sorghum milo, or is that still off limits?

TRACY ZINK: It still is, yes.

JACOBSON: OK.

TRACY ZINK: It still is.

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JACOBSON: I didn't-- I didn't know whether that was a--

TRACY ZINK: Yep.

JACOBSON: --four letter word that I couldn't--

TRACY ZINK: It is not.

JACOBSON: So, all right. So, I'm just kind of curious. I grew milo many, many years ago in Clay County, Nebraska, when we, we since have gone to corn with everything down there. But-- I-- and I had some really bad childhood memories of milo, cleaning up bins in August with all the--

TRACY ZINK: Yes.

JACOBSON: --dust and no dust mask. But that's a whole different story.

TRACY ZINK: Yeah.

JACOBSON: Different subject for another day. I'm curious, so where do you-- where do you go with your milo now, or your grain sorghum at harvest?

TRACY ZINK: Currently, it goes to the, a, a, a mill or to the elevator, and they are shipping it out on trains, so it's going to a feed base. Some of the producers in Trenton have some premiums that they've established with some bird seed companies.

JACOBSON: Right.

TRACY ZINK: And some different things. But that takes a lot of shipping coordination. And I'm just staying neutral for now on where it goes. Hopeful that one or both of the Trenton or the Cambridge ethanol plants will soon be interested.

JACOBSON: I'm just curious to that effect. You know, obviously, that's what I'm seeing, is that, you know, there is a bird seed factory in-- or plant in Sydney, I believe, that I think they'd use millet and some milo.

TRACY ZINK: I'm more familiar with the millet.

JACOBSON: Yeah, and I think that that's really seems to be the kind of the preferred. And I think a lot of it still get used in some feeding.

TRACY ZINK: Yeah.

JACOBSON: And-- so I'm just curious to ad-- in the ethanol side now, does that have to be that-- does it that have to be kind of straight milo? Can they, can they take grain sorghum blended with corn for ethanol? How is that processed at an ethanol plant?

TRACY ZINK: My understanding is that it runs opposite corn. So--

JACOBSON: Gotcha.

TRACY ZINK: --you're running on this treadmill when it's time for sorghum, you're running on this treadmill.

JACOBSON: Gotcha.

TRACY ZINK: Reid and/or Jan will obviously be your Cliff Notes for that. But we're hoping that when demand for corn ethanol sometimes sways, maybe sorghum can fit into that in a different way. Whether it's a drought situation, we don't have enough corn, we don't have enough bushels. Sorghum may be able to fill the need and keep the production continuing.

JACOBSON: Oh, I was thinking about the corn drought about \$2 ago, and so I'm still got old crop corn that kind of, that the drought must have been a myth, so.

TRACY ZINK: It must, must have been, or something.

JACOBSON: Well, thank you. Thank you--

TRACY ZINK: Absolutely.

JACOBSON: --for being. And thank you for being willing to serve.

TRACY ZINK: Thank you.

BOSTELMAN: Other questions? Senator Hughes.

HUGHES: Thank you, Chairman. OK, so I'm looking through your resume. You grew up in Indianola?

TRACY ZINK: I did, I did..

HUGHES: So I went to Texas A&M. And I so-- That caught my eye right away. This was West Texas A&M.

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TRACY ZINK: West Texas, so you're a little sister.

HUGHES: West Texas A&M.

TRACY ZINK: Yes.

HUGHES: Do you have a ring?

TRACY ZINK: Yeah, go buffs. No, I was a coach.

HUGHES: Oh you're a coach. OK. So you left Nebraska.

TRACY ZINK: I did.

HUGHES: Because you got your--

TRACY ZINK: I went to Alas--

HUGHES: Undergrad in Alaska.

TRACY ZINK: Alaska.

HUGHES: I just, like-- tell me. Walk me through this.

TRACY ZINK: Well, I was ready to be not on the farm.

HUGHES: Amen.

TRACY ZINK: And so i--

HUGHES: This is my life.

TRACY ZINK: Yeah.

HUGHES: You are me. OK.

TRACY ZINK: So I went-- I didn't apply to anywhere that touched the state of Nebraska.

HUGHES: Right.

TRACY ZINK: And it was-- came down to Hawaii, Alaska or New Mexico. And one, I couldn't take my pickup. The other I was never going to play. And so I drove to Alaska.

HUGHES: You drove to Alaska.

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TRACY ZINK: Ten times. I highly recommend, recommend that for any experience.

HUGHES: My generation is fourth generation for Luebbe Farms near Goehner.

TRACY ZINK: Yeah.

HUGHES: And I told my parents I would never live in Nebraska again, which did not work out very well.

TRACY ZINK: I spent thir-- about 18 years trying to get away and 30, you know, trying to find a way back.

HUGHES: Trying to get back.

TRACY ZINK: I can't, the-- I hate the word content, but it's such a wonderful feeling to know I'm in the right spot.

HUGHES: Good for you. So now my question is.

TRACY ZINK: Yes.

HUGHES: How many people are on the board?

TRACY ZINK: On the board-- did Jan say seven?

HUGHES: Seven?

TRACY ZINK: Seven of us, yes.

HUGHES: I see a nod. And then do you each have a specialty, because you say serving sorghum production--

TRACY ZINK: Yes, as a rep. The different commodities. Jan is our, our wheat representative. I'll prime this one. Corn, wheat, sorghum. Then there's grains, or general farming. There's labor, there's petroleum, and I'm missing it.

HUGHES: Oh. That's cool.

_____: Ethanol officer.

TRACY ZINK: Oh, and, and ethanol. That seems like a no-brainer, doesn't it?

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HUGHES: Anyway. OK, that's all I got. Thanks for-- thanks for serving and being in here.

TRACY ZINK: Absolutely.

BOSTELMAN: And that's all you got?

HUGHES: Well.

BOSTELMAN: Since you've been on the board for some time. Yes?

TRACY ZINK: Ethanol-- this will be my-- I've been at two meetings.

BOSTELMAN: This is an appointment. OK.

TRACY ZINK: Yes.

BOSTELMAN: That's a little confusing to when the letters come in. That's why I asked Jan before if it was a reappointment or an appointment, on that. So have you had the opportunity to sit on the board before, attend their meetings or anything like that?

TRACY ZINK: Yes, I, I attended one prior to being appointed by Governor Pillen, and then I have attended one, it's the only ones that have occurred, since, since I was asked. And so we have one tomorrow, so I'm excited to attend that also.

BOSTELMAN: And where are those held?

TRACY ZINK: The-- this is here in Lincoln. The other one was in Hastings where I had-- geez, where'd I go?

BOSTELMAN: So different parts of the state?

TRACY ZINK: We do.

BOSTELMAN: So there's not one, one location.

TRACY ZINK: Yeah. We always try to-- logistically, I believe-- I think they try to set them quarterly.

BOSTELMAN: OK. What do you think most interests you about being on the board?

TRACY ZINK: On the Ethanol Board in particular, is that it's a component of everything that makes what I do work. And the reason that ethanol is of even more interest to me than some of my other

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boards I'm involved in is because of how complex or multifaceted it is, that a lot of my interests I can still incorporate into this same board, whether it's production, whether it's the byproducts, whether it's the conservation with the water. I'm still able to always be a representative for sorghum as well as our state. And so I'm, I'm pretty proud to be a Lady Buff and a Seawolf, but I'm truly a Nebraskan, and I, I hope that I can maybe-- it's kind of funny, hopefully I can be a little bit more of the Sesame Street for ethanol and conveying the message than some of the technical and the Cliff Note versions. So I take that as a real challenge, to be a different voice that can convey a message and try to reach a different audience to, to gain more attention and more support.

BOSTELMAN: OK. Any other questions? Senator Brandt?

BRANDT: Thank you, Chairman Bostelman. Thank you for your commitment to this. Nebraska being the third largest ag economy in the United States, I don't think we're very effective in, in telling our story nationally. When we talk about green or renewable energy, you know, we, we tend to go toward natural gas, or nuclear, or solar, or wind, or something. But as a farmer, ethanol is green and it's only going to get greener with CO2 pipelines. And if you could-- if you could combine different components of this energy side into this and, and, and I guess what-- where this is kind of coming from is last night, we got an opportunity to attend the tourism reception over there. And they, they do a great job of these all these great things about Nebraska, but it's just places to go to. It isn't about what we do. And do you have any, any-- it seems like you'd be a natural for this.

TRACY ZINK: Well, a lot of it is--

BRANDT: To be a spokesman.

TRACY ZINK: --why, why we do it. And there's a big piece there, and that's the story that isn't being told. And often when it's told, it's kind of trivialized. Like, I'm a farm wife. I have three children. There's so much more to Nebraska than just that. And-- but you've got to have people listening for the reason why first, before, before you got to set the hook a little bit and make it fun. It's fun to bring them here to see, to go down Valentine. You know, it's fun to bring them here, too. But we got to find a, a little-- a little niche to get in there. And each commodity is going to be doing something different along that route. Sorghum itself has a lot of consumer interest in food products right now, pop sorghum, the gluten, the celiac disease. Well we can show them that that's grown

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right here. And so I'm working with my niece, she's a teacher in Geneva, which is-- yes. And so she's doing something about the products that, that are made in Nebraska. And so we're, we're trying to design a train, boats and, and cars of what's grown and where does it go? And she goes, can you make it not boring. So so I got a little work to do, but I know we can. Fifth graders are probably easier to entertain than anybody, but I just feel that it's so easy to talk about. But we got visit about it first and make sure they want to-- want to hear it first and don't feel like we're trying to pitch them or sell them something.

BRANDT: If you want to make it not boring, I would suggest that you show them milo pops.

TRACY ZINK: Oh, OK. It does, I mean, and it's--

BRANDT: Most people don't know that.

TRACY ZINK: --and it's going great. We've got the extra cheesy in a bag--

BRANDT: Or you can do the whole head.

TRACY ZINK: Yes.

BRANDT: Microwave it. And then I guess as a final aside, my wife is a graduate of West Texas State.

TRACY ZINK: Oh my gosh.

BRANDT: And My--

TRACY ZINK: That's the original name.

BRANDT: And my daughter lives in Anchorage, so there you go.

TRACY ZINK: Oh my goodness that's fantastic. Have you been to see Anchorage?

BRANDT: Not yet, she just moved up there last March.

TRACY ZINK: I'd still be there if my family ever left the farm, I'm pretty sure, because it's a very special place.

BRANDT: They've had record snow in Anchorage, 8.7 feet so far this year.

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TRACY ZINK: It's-- I kind of giggle, but we did live through some of that. But yeah, so it's a neat place. And so's Canyon.

BRANDT: Yeah.

TRACY ZINK: For sure.

BOSTELMAN: Other questions? Seeing none, I know as a fellow lead fellow--

TRACY ZINK: Yes.

BOSTELMAN: I know you'll do a great job.

TRACY ZINK: Thank you.

BOSTELMAN: So thank you.

TRACY ZINK: I appreciate it.

BOSTELMAN: Anyone who'd like to testify in support of the appointment of Tracy Zink to the Nebraska Ethanol Board, please step forward.

REID WAGNER: Hello again. For the record. My name is Reid Wagner, R-e-i-d W-a-g-n-e-r, and I'm, again, the executive director of the Nebraska Ethanol Board, happy to be here in support of the new appointment of Tracy Zink to our sorghum position. One thing that-- she's very humble. So one thing she didn't really talk much about was her experience with TAPS. So one thing that the board's really looking forward to is Tracy has a really great working knowledge of sustainable farming practices, and participation in research programs, and how to implement these kinds of practices. As Jan kind of alluded to in previous testimony, that's going to become increasingly important as we try to tell our story as renewable fuels. Nebraska is always implementing really great farming practices across many of our growers. We want to make sure that that is accounted for when we're putting our biofuel in our gas tank. We know that we're doing better than those models that are actually using parameters from 2012, to be very specific, are not accounting for. So Tracy has a really great working knowledge of this, and we're really looking forward to being able to tap into that knowledge base to try to tell that story across the industry. Her great relationships and leadership positions with her various local natural resource districts, the commodities at the national and state level, are something that we also look forward to. And as she mentioned, being able to market grains directly to ethanol plants such as NCP out of

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Cambridge and Trenton Agri Products in Trenton, Nebraska. I mean, she's, she's definitely also seen firsthand the full value chain that we can offer in the ethanol industry. So I will put in one more note that in really getting to know her over the last few months since her appointment in November and the couple of meetings that she's either sat kind of on the sideline or ready to go, she's a really eager, willing learner who is a really-- you know, she can really grasp a topic well and ask great critical questions. So we look forward to that kind of, you know, critical thinking and that wisdom and being able to utilize that for the board. So I'm happy to answer any questions you guys might have.

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

REID WAGNER: Thank you.

BOSTELMAN: Anyone else like to testify in support of the appointment of Tracy Zink to the Nebraska Ethanol Board?

DAWN CALDWELL: Hello again. Dawn Caldwell, D-a-w-n C-a-l-d-w-e-l-l, and I'm again representing Renewable Fuels Nebraska, Nebraska Cattlemen, Nebraska Corn Growers Association, Nebraska Sorghum Producers Association, Nebraska Farm Bureau, and the Nebraska Dairy Association. And Tracy is a delight for me to see come on to the Nebraska Ethanol Board. That board has had good representation through the years, but I think she's going to bring a breath of fresh air that, that that board needs. When you heard her just describe different ways of messaging and marketing, that's going to be really cool. Because as several of you had asked, how do we get the word out, if you will, having all the help we can get on that is, is welcomed. So we lend our full support. We ask that you fully endorse her appointment, and I would answer any questions.

BOSTELMAN: Thank you.

DAWN CALDWELL: Thank you.

BOSTELMAN: Any questions? Seeing none, thank you very much. Anyone else like to testify in support? Anyone like to testify in opposition? Seeing none, anyone like to testify in the neutral capacity? Seeing none, that will close our hearing on the gubernatorial appointment of Tracy Zink to the Nebraska Ethanol Board, and our old home week for gubernatorial appointments. Just before we-- before we get started on this one, just so we let the

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next senator know kind of-- since he's on another committee, how many testifiers do we have? Just so we can call down to say no to-- kind of keep things moving, so. All right. Thank you. With that, we'll-- Senator Cavanaugh, you're welcome to open on LB1369.

J. CAVANAUGH: Thank you, Chairman Bostelman. Good afternoon, members, fellow members of the Natural Resources Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. And I just would say that I didn't comment on Mr. tenBensel, but I got to say, his kids, his two ten year olds sitting here were so well-behaved. My-- I have a ten year old who would probably not have fared that well. So that, that bodes well for him. I'm here to introduce LB1369, which is not a net metering bill. Instead, LB1369 puts into place a consistent statewide policy that will allow agricultural producers who generate electricity for their agricultural operations, but do not net meter, to be connected to their local electric grid. Farmers across Nebraska are discovering that they can make their operations more sustainable and more profitable by self-generating some of the electricity needed for their operations. If you can picture the number of solar panels that can be placed on the roof of an 800 foot long dairy barn, then you can understand how livestock producers in particular, have the opportunity to self generate some of their energy needs to power their operations. But producers need more than just solar and wind power to power their operations. When the sun isn't shining and the wind isn't blowing, livestock producers need electricity to power fans, feeders, waterers and other electrical systems that are critical to animal health. In other words, they still need the reliability that comes from being connected to the electrical grid through their local power suppliers. Unfortunately, the rules and requirements for interconnecting a self-generating agricultural operation vary from one public power district to another. What might be allowable in one area is not allowable in another. LB1369 solves this inconsistency by creating one set of rules that will apply statewide. LB1369 makes clear that public power districts can charge rates to this-- to this special class of customer that will allow the power districts to fully recover their costs of service. It also sets limits on the amount of electricity, 100 kilowatts, that an agricultural operator-- operation can self-generate. In short, I think this bill balances the needs of agricultural, agricultural producers and the needs of public power. I want to thank both sides of this equation, Nebraska's ag industry and Nebraska's public power industry, for working with me on this bill. The green copy of LB1369 reflects input of both groups, and is the product of many discussions

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between them. I'm happy to answer any questions you might have, and I know that there are several individuals who will testify behind me about this bill. Thank you.

BOSTELMAN: Thank you, Senator Cavanaugh. Are there questions from committee members? Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you, Senator Cavanaugh, for bringing this bill. Can you tell me what problem you're trying to solve here?

J. CAVANAUGH: Well, the problem is that there are, are some folks who want to produce their own-- some, some of their own power. Obviously, people would like to produce all of their own power, but that's not a realistic option. So the problem is that different power districts have different rules about who they're going to interconnect. So depending on where your operation is, you might be able to generate some of your own power and then still interconnect to your, your generate-- your power district for the remainder, based off of where you are. And if you're in a different part of the state, they may deny you that interconnection. So we're just trying to make sure that every producer has the same opportunity.

BRANDT: OK. Thank you.

BOSTELMAN: Other questions? Seeing none.

J. CAVANAUGH: All right.

BOSTELMAN: Proponents for LB1369. Good afternoon.

AL JUHNKE: Good afternoon. Mr. Chair and members of the committee. My name is Al Juhnke, A-l J-u-h-n-k-e, and I'm the executive director of the Nebraska Pork Producers Association. And I'm here to also represent the Ag Leaders Working Group, which in front of you, you have a piece of paper with all our names and logos. So I won't read them unless you want me to. But I am representing them, and I want to thank the senator for introducing this. He's been stalwart in working with us, and, and with others on, on renewable energy on our farms for a number of years now, and we, we appreciate those discussions. And yes, this isn't a net metering bill, because we've been embroiled in that in this committee, too. What this does is really allow farmers to do what we thought we could do all along. And that's put solar, or small wind, or methane digesters, or something else on our own property, for our own use, for our own energy generation, our self-generation. Unfortunately, not in many cases, and again, I also

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want to-- I'm-- look-- hearing James breathing over my shoulder to the left here. They've been very good at sitting down and working with us. Our, our Nebraska Rural Electrics have had a lot of discussions with us. And so they've been a good partner and they actually helped with the language in this bill, and I thank them for that. So our farmers want to put it up. Our farmers have been told no. Some of our pork producers, when they say, I want to put up a 90 or an 80 or 100, whatever you need for your site, we've had some power districts say, no, you can't do that for a number of reasons, which we can get into. So this just says farmers, ag producers, people in agriculture, are allowed to do at least 100 kilowatts. And why would they want to do that? Well, we've already heard sustainability is becoming a big issue. Our farmers are selling to pork pro-- pork processors who are wondering what their sustainability indexes are. Why? Because we have customers in Japan or Taiwan or other international, besides our old customers here, that want sustainability. And this, this helps market our product, saves money. I have one farmer that makes over \$70,000 a year in savings on his solar array that he put up two years ago on his farm. That's substantial in a time with low profitability out on the farm. And so, to finish up, one more thing really quick. The state is preparing climate, climate pollution reduction grants right now. The grants are going in March 1st. I think you're probably aware of it, but if you're not, you're going to be. These are large, there's, there's billions of dollars of federal money available coming back to states to apply for grants. Nebraska has an ag-centric focus on these grants, unlike what we think most other states will do. So we're going to have a unique application going in. And if we are awarded these grants, some of them can be used for solar installations on our farms or digesters on our farms, or other things, which I-- there's, there's a number other things our farmers can do. So if this doesn't move forward and get passed, we may leave some of our farmers out. If we're awarded a grant at the end of the year, they may not be able to participate in putting up solar if our rural electrics are saying no. And I don't believe they're going to, but this just assures that we will get a yes, at least up to 100 kilowatts.

BOSTELMAN: OK. Thank you. Questions? Senator Fredrickson.

FREDRICKSON: Thank you, Chair Bostelman. Thank you, Mr. Juhnke, for being here and your testimony here. I think I, in general, support this premise, the idea of, you know, people being able to operate their businesses in ways that they see suits them best. You mentioned, I just wanted to kind of get some clarification, you said in the past some farmers have been told that they are unable to do

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this. Is-- Can you elaborate a little bit more on some of the rationale for that?

AL JUHNKE: Well, I don't know what the ra-- well--

FREDRICKSON: Or what you think [INAUDIBLE]

AL JUHNKE: And again, I think, the rural electricians can talk more about it. My simplified view of it is there's a couple reasons. Number one, we have a 5% cap on renewable installations in our power district. That's in statute. I think people have a different read of that. When I read it, I say, yeah, a rural electric district cannot themselves generate more than 5% renewables in wind or solar, large wind arrays, large solar arrays they might be putting up themselves that you see outside of the cities, you see outside of Lincoln. So that, that would be, I think, the way I would read it. Some are reading it, no, you've got to count every, every solar panel on every roof in town and out in the country, and that's going to add up to the five. That's interpretation, I think. I also believe, and again, I'm really drifting out of my expertise here, James, but I also think there's some, a few rural electric districts that when you have a large farm that's buying electricity, because of the amount of power they're buying, they will give them a discount on the lower part of the bill, the interconnection costs and the other fees and things that they have to do. And they say, well, if you're going to buy less electricity because you're producing your own up here on the top part of the bill and buying less, we have no way, or we're going to have to figure out how we charge you more on the bottom to be equal to the rest of the customers. And again, I understand that may be a hassle to some, but I don't think it's something they can't overcome.

FREDRICKSON: Right. And, and to be clear, for, for the purposes of this bill, this this is really for an individual farmer to produce electricity for their own use--

AL JUHNKE: This is--

FREDRICKSON: --on their own property.

AL JUHNKE: --100% up to 100 kilowatts what we call behind the meter.

FREDRICKSON: Yep. Yeah.

AL JUHNKE: So it stays on your farm for your own use. You're not shipping it out, you're not selling it, you're not net metering it. You can, if, if the rural electric wants to sit down and put together

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a power producer, a power producer agreement with you, if you have excess solar or they want to build it into the-- in the future, they can certainly do that, they can negotiate with the farmer or the producer. But this just allows a farmer to do it without that negotiation, power purchase agreement negotiation.

FREDRICKSON: Thank you.

BOSTELMAN: Other questions? One question I have for you mentioned placement of solar panels on top of existing structures. When those structures were designed, made, put in, they were not necessarily engineered for that additional weight or that. Is that the intent really to do that, or just have it on the-- lay on the ground--

AL JUHNKE: Yeah.

BOSTELMAN: --because it [INAUDIBLE]

AL JUHNKE: No, that's true. If you're going to put them on your roof, you'd better have an engineer look at the roof first and look at the plans. But I will say this, I think our builders and our farmers now, any new barns going up, dairy, swine, maybe shades for, for cattle, large shading facilities for cattle. Or we have deep pit cattle barns coming. Any one of them should be designed with the right weights on the roof, with the right angles on the roof to catch the best sun, and the barn in the right configuration to catch this. It'd be crazy not to do that, and it would be kind of crazy not to build that into your plan to put up the barn. Why not finance the whole thing at once? These systems, solar systems now, the payback is getting to be around five, six, seven years, and they're 25 to 30 year systems. So once you pay it off in that six years, you've got 25 plus years of free energy because it's just collecting the sun. So it's really quite the-- it's good for us.

BOSTELMAN: Sure. So I'll talk on-- ask a little bit about the interconnect, and maybe Mr. Dukesherer will be able to answer a little bit more. But as you see that in-- interconnect, how does the array, or the digester, or whatever it is, the, the generation facility, how does that connect to-- if it's to just connect to the barns, or is it connect to a whole farm? And then how do you separate-- how is that separated then from, you know, interconnect for the rest of the facility if you will with, with whoever your local power supplier is.

AL JUHNKE: Again, you're way above my pay grade.

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BOSTELMAN: That's, that's why i want to ask--

AL JUHNKE: So I'm going to let James do that. But I know it's behind the meter. I know they run in parallel, their system and our system. But again-- and it's important that they know where these things are too. I think that's another reason they participate, easily we can have farmers, small, large whatever, putting up solar, putting up renewable energy that they don't know what's out there.

BOSTELMAN: Yeah.

AL JUHNKE: I think it's important they know what's out there too, so we can work together and there isn't anything tripping and going to the other side of the meter, especially when their crews are out there repairing on a downed-- thunderstorm comes through in the summer, it's down, but we're still creating electricity. And that, if that's going out on the line, so we got a problem.

BOSTELMAN: Right.

AL JUHNKE: So.

BOSTELMAN: Exactly. Yeah. OK. Senator Brandt.

BRANDT: Thank you, Chairman Bosttelman. Thank you, Mr. Juhnke, for your testimony. Do you know today what the, the mix, a rough mix of what your livestock producers are putting out between solar, wind, methane?

AL JUHNKE: Well, solar is getting to be and will be probably the largest for self-generation. But methane digesters are starting to pick up, only because-- probably because we're learning more about how to locate them and clean the methane to make a renewable gas, rather than using it to run a genset on the farm and produce electricity, which is a much more costly way to do it. So I think we're going to see more in the climate reduction grants model that we talked about. And I was-- I helped, helped with a couple of the subcommittees on this, Director Macy and the Governor and others. I mean, this is a state application going in. It's a spoke and hub system for digesters. So you'd have a large digester located by Lincoln, dare say, or a larger town, or South Sioux City or someplace, and then you'd have the spokes coming into it. So people that are going to digest their materials, farmers with manure or whatever, they, they bring it into the central hub. It's digested there, turned into renewable natural gas, cleaned and turned into gas, and put right into the systems in the cities. And so-- and then

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the farmer gets back the same share of what he or she put in as a payment back for those energy that is produced. So it's, it's kind of a unique thing Nebraska is looking at too. We've seen one or two of these in the country, but we want to do them here and try and lead the country in technology like that. So this, this helps assure our farmers can be part of those types of systems too.

BRANDT: All right. Thank you.

BOSTELMAN: So does that-- in that example you gave there, what type of-- so I've, I've been to a dairy and to a dairy where they had a digester there, and I've seen how those run. I could imagine how hog confinement would work. But a feedlot would be different. Is that-- how does that work for, for a feedlot, is it [INAUDIBLE]?

AL JUHNKE: Yeah. Again, it's a technology thing I assume. It's, it's got to be a similar product. So it's probably all going to be manure, because you can also digest waste vegetables or, or, or crops or other things too. But I think when you're running, you have to run with more of a singular product. For pork production, yeah, it might be liquid manure, but we are in the-- we're very close now to having a way to pelletize, to remove the water, pelletize and haul that product farther distance than just the field across the road economically. So that's coming too. So you're going to see things like this technologywise that are just going to be kind of amazing.

BOSTELMAN: OK. Thank you. Other questions? Seeing none, thank you for testifying.

AL JUHNKE: Thank you, Mr. Chair and committee members.

BOSTELMAN: Next supporter for LB1369. Good afternoon.

JAMES DUKEHERER: Thank you. Good afternoon, Chairman Bostelman, 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. We're here today in support of LB1369. Since its inception of the state's net metering laws in 2009, NREA has consistently opposed multiple efforts to expand the statute to include larger generators, seasonal loads, or allow aggregation of multiple meters on one account. Net metering at its heart forces all electric ratepayers to pay some of the costs of service for those that choose to purchase a generator and put-- and generate their own electricity. LB1369, however, would allow agricultural self-generation facilities of 100 kW and smaller to be installed on

the customer side of the meter and in a way that need not impact other customers. Two key components of the agricultural self-generation facility are, first, that they're not able to back feed electricity onto the electric grid. Secondly, this is a unique type of customer, and LB1369 protects the power district's ability to design a rate or a fee that appropriately charges this customer for the service they receive. Under this model, a customer generator uses the electricity they self-generate, therefore offsetting their retail electric bill. They continue to be interconnected to the utility and receive electricity when they need it, when their generators down, or when it's not producing as much as they need. From the utility's perspective, they'll simply not demand as much electricity as they once did. The utility will be able to design a rate for this class of customer that will ensure that we're able to fully recover our costs to supply the customer with the electricity they require at a peak moment. With our support of this bill, we also want to make clear that it's not public power's responsibility to make a business case for these projects. We're happy to work with any producer to ensure they have accurate information and expectations about any project they may install. If in the future, however, an ag operator finds that the generation project they installed doesn't pencil out, NREA will oppose any efforts to remove our ability to properly capture the cost to serve a customer like this. It's not public power, nor a customer's, responsibility to find a way to help this generator pay for their project. NREA does have some suggestions we'd like to work with Senator Cavanaugh on some language to, to refine the bill without changing the intent of the bill. For example, the definition of interconnection within, within the bill talks about interconnection between the generator and the utility. There is no connection between the generator and the utility under this model, only a connection between the utility and the customer owning the facility. We also need to ensure that, as was said earlier, we're made aware of the project and the generator does not pose any safety concerns to us or the electrical grid. So with that I'll take any questions you may have.

BOSTELMAN: OK. Thank you for your testimony, Senator Hughes.

HUGHES: Thank you, Chairman Bostelman. Thanks for coming in. Mr. Dukesherer So in the past, the few rural public power, maybe, that declined these kind of businesses, was it because of the, the fear of the back feed? Now, this makes that clear or what-- I don't know why you would-- if they were going to be on their own, I understand the net metering thing. We've had many discussions over lunches about that. But what was the reasoning?

JAMES DUKEHERER: Right. It's a good question. So decline, maybe, is a strong word, one we wouldn't use. There's a-- there's a few different levels to this. First off, federal law for both the Public Utility Regulatory Policy Act requires that our utilities interconnect customers up to 80 megawatts. So a flat no is not really an option. However, there's some caveats here. So if we were to let a customer go under PURPA and interconnect, they would enter into a power purchase agreement, a buy all, sell all model. That's not something that one of these customers is probably going to want to do, because we're going to pay them the same thing we would pay another generator, like our wholesale providers. It's probably not going to be a rate that works really well for them. And-- now, the next level down from that-- but, but under that model, they can-- they can interconnect. Something was mentioned about the 10% margin that we have within our, our contracts with our wholesale providers. So the NREA members, we do not-- we're not generators. We buy all of our electricity for our customers from the wholesale providers, NPPD, or Tri-State Electric out in the Panhandle area. So, under the NPPD contracts, we're only allowed to generate 10% of our own electricity. It's 5% on those Tri-State contracts. So there, there are members of mine that have met their 10%. And so their answer would be, we can't do any more. You're going to have to go under PURPA and be connected through, through your wholesale provider, NPPD. But nonetheless, they still could go that, that route. So that's kind of-- kind of the two different ways to go about it. Under this method, we worked with--

HUGHES: So by having this in statute, it eliminates that-- the 5 or that 10%, or from the fear of that.

JAMES DUKEHERER: So I should-- I should add on there, so in parallel with this, our members have been talking about this issue for, for a year. And in parallel with this bill, we reached out to our wholesale providers and we were able to change the contracts, so that these projects won't count against the 10%.

HUGHES: OK. Well, there you go. Thanks.

BOSTELMAN: Other questions? So, in your last paragraph, it says there's no connection between the generator and the utility under this model, only the connection between the utility and the customer owning the generation facility. So could you explain on a farm, if, if that- if, we'll just say, hog farm, hog facility that you're generating for. If that's located on-- where the-- where the home is. How do you break-- I understand if the-- if the barn or the facility that they have is separate from where you live, that's probably a lot

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easier as far as keeping those separate. But one-- or co-locate on the same area where you are providing power to, how do you-- how are you keeping these separate?

JAMES DUKEHERER: OK, so--

BOSTELMAN: In the two situations.

JAMES DUKEHERER: At a-- At a very basic level, there's an inverter at the meter. And that inverter will make sure that no electricity can ever back feed onto our system. So how it's interconnected on their side of the meter, that doesn't impact us, that's up to them. So ideally, their, their generation unit would be interconnected with their farm and their home and, and everything on that side of the meter in a way that, that when it's generating electricity, they, they're able to use it. It's very much, as opposed to net metering that can bank your electricity over time, unless this, this ag producer had a, a battery system, it would be a use it or lose it model where if it's --if they have that load present and it's generating, they're using it. But if, if they didn't have that load present, there would be nothing they could do with that generation, they couldn't feed it back on the system to us.

BOSTELMAN: Who, who-- I know I'm-- like on net metering there's an inspection to be done to ensure that the inverter or whatever is there, that it's connected properly. I would assume the REAs will have the same thing. It's not up to the-- not up to the generator in this case to do that inspection, but whoever from the REA would be the ones to come out to inspect to make sure that it's done correctly.

JAMES DUKEHERER: Right. So at the point of our meter, we would, as we said, we'd want to know about this facility. We'd want to make sure that there is an inverter present, that it's operating correctly. We, as part of this, we could have them sign a, an agreement with us, an interconnection agreement with us, making sure that everybody understands how we're going to treat this. This gives us that opportunity to say, hey, there's no safety concerns here. Now, on their side of the meter and how it's interconnected, I suppose that, that's the State Electrical Division, and it would be up to them to make sure--

BOSTELMAN: There would be some, I would think, you'd have some inspection to this to make sure that they're following the proper procedures of proper installation of those to want to on the line, so

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there is no accidental, you know, mis-- installation that would allow back feed onto it or allow feed on to all lines. So that's what-- nobody wants that, so I would imagine that you would still have to have someone on inspect it to protect your interest, not-- I mean, and theirs.

JAMES DUKEHERER: Agreed.

BOSTELMAN: So on the-- if you have to build a line, what, what if, in the order of the connection for the self-generator, a new transmission line is required. Who pays for that?

JAMES DUKEHERER: Any upgrades that were needed to meet this customer, they would pay for that.

BOSTELMAN: The generator would.

JAMES DUKEHERER: The customer generator--

BOSTELMAN: Right. Right.

JAMES DUKEHERER: Yes.

BOSTELMAN: And then-- go ahead. I'm sorry.

JAMES DUKEHERER: I was going to say, so in generally speaking, and the bill allows for this, we can create a class, and we can charge these customers that appropriate cost. So just because this customer is generating their own electricity, they-- as I said, they create them, they make themselves a unique kind of a customer. So picture two ag operators, identical in nature, both hog facilities; one's, one's purchasing power consistently every day from us, the other one puts in their own generation system and sometimes they are, sometimes they're not, they're not buying as much. But from our perspective, it takes the same equipment to meet the needs of both, both of those identical customers. So we need to be able to charge, charge this customer with this generator, a fee, a demand charge to make sure that we're going to recoup those costs, even though they're not buying nearly as much electricity from us. And we'll be able to, to do so under this bill.

BOSTELMAN: Yeah.

JAMES DUKEHERER: And that would include any, any interconnection costs.

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BOSTELMAN: Yeah. That-- I mean that was something that was mentioned before and that was of interest that if you have this generation on there, how do you make sure that everyone is still being treated the same as other customers in that area, costwise. And that kind of comes under that metering as well, that we're making sure we're not giving one, one household a benefit over another household pricewise, but they're all treated the same. So ok.

JAMES DUKEHERER: And there is language in the bill dealing in a fair, reasonable, nondiscriminatory-- which is, you know, when we set rates, we don't randomly do that. We'd go out to a study, find out what it actually costs for this customer or this class of customers, and make sure that the rate is set appropriately.

BOSTELMAN: And what's the-- what's the allowable on net metering?

JAMES DUKEHERER: 25 kW is a threshold, although a utility can go above and beyond that if they choose.

BOSTELMAN: So we-- I don't think this will matter because I think it's been a net metering question we've had on more of a power district before. This would allow someone to come in and, and loads are generating for themselves. That's going to allow them to build that generation up to the maximum limit that the statute allows, correct?

JAMES DUKEHERER: Correct. And as, as long-- as long as it's on their side of the meter, it doesn't interact with the grid, 100 kW and smaller, they notify us about it, they could do it.

BOSTELMAN: Yeah, because on the net metering side, we've had some discussions and some things back and forth to different customers and generators, so OK. Other questions? Seeing none, thank you very much. Other proponents for LB1369? Any other proponents? Seeing none, anyone who would like to testify in opposition? Seeing none, anyone who would like to testify in the neutral capacity? Seeing none -that will close our hearing on LB1369, since Senator Cavanaugh had to go to another hearing. There were-- before we start the next hearing, we did receive on LB1369, 10 proponent and 3 opponent comments online. With that, we will open the hearing on LB837. Welcome, Senator Lowe.

LOWE: Finally, my first time to appear before the Natural Resources District. I can't wait--

BOSTELMAN: We can't wait to hear--

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JACOBSON: We're as excited as you are.

LOWE: And I'm sure you are.

HUGHES: In eight years?

LOWE: Did I eat here?

HUGHES: In eight years?

LOWE: It took eight years? Yes.

HUGHES: This is the first time in eight years.

LOWE: Yes.

BOSTELMAN: Well, Senator Lowe, welcome to the fun committee.

LOWE: That is how-- that is how important this bill is. Members of the Natural Resources Committee, thank you for heckling me and for the opportunity to speak today. My name is John Lowe, that's J-o-h-n L-o-w-e, and I represent Gibbon, Shelton and Kearney. I'm here today on behalf of the Rural Electric Association, who worked in conjunction with the Secretary of State's office and the Power Review Board to amend one section of Chapter 70 to address how power district subdivisions can be divided. This bill will expressly authorize public power districts to divide subdistricts, so that only those persons who are served by the power district are able to vote for a director or serve on that district's board of directors. We are all aware of the fact that our public power districts are governed by locally elected board of directors. This bill is intended to enhance and protect that local control. Presently, subdivisions for public power districts can be designed in a couple of different ways. Some rural power districts have board members that run to, to hold districts at large, while other districts have regional districts, maybe in the east, west, and central districts. Others break the districts up into multiple seats based on population or a combination of each of these options. Current state law provides that when designing these board member district town boundary lines, public power districts can either follow county or voting precinct lines without regard to population, or they can divide voting precincts, but only if the district can establish nearly identical populations for each voting district. Unfortunately, the boundaries of rural power districts often do not follow the county or precinct lines. Therefore, to follow the law as presently drafted requires districts to include an entire precinct or county, which inherently results in

the inclusion of areas and people who are not served by that particular power district. This permits a person with no association to the power district to vote for members or against members of that board of directors, or for that person to even run on the board. Additionally, under present law, a power district may only divide the voting precincts when drawing these lines upon establishing that sub-- substantially equal population resides in each subdivision. In rural Nebraska, this can mean that a subdistrict's population can deviate by only a few dozen people. This can be nearly impossible to design when a small town such as Saint Paul, for example, includes a majority of the population of the district and would therefore control the board. LB873, or LB837, would allow public power districts to split voting precincts when determining the boundary lines of subdistricts without regard to population. For public power districts, this will ensure that district board member voting lines could mirror service territory boundaries, ensuring only those who receive power from a district can vote for, and serve on, that board. Finally, it's important to note that the Power Review Board will maintain the final authority to approve the boundary lines and is tasked with ensuring the voting district boundaries do not prejudice the interest of the electric consumer. The board members of our public power districts should be customers of the power district they represent. LB837 will improve the election process, and help to ensure that the board member districts better align with power district boundaries. I know there are a, a lot of, or several others for the power industry that will be testifying as the specifics of this bill, why it is needed and how it would impact public power districts. They will be able to answer any technical questions you may have. And with that, I conclude my testimony.

BOSTELMAN: Thank you for opening. Any questions? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Senator Lowe, so if I understand what you're trying to accomplish here, we've got some situations out there where probably you've got cities or towns that have-- that may or may not be served, but are in this district to where they would be voting and have a lot of rural customers that, that would be disproportionately represented in that group. Are there-- can you, can you give an example of what you're trying to fix here and an example of where we've got one of those, you know, disproportionate situations?

LOWE: Well, I think it could be the people following me will give that example.

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JACOBSON: OK.

LOWE: But, as you say, a small community could be on the outlying edge of this and control the whole rest of that district.

JACOBSON: Right. Yeah. OK. Thank you.

BOSTELMAN: Senator Hughes.

HUGHES: Thank you Chairman. How often do we redistrict these?

LOWE: I'm going to guess, every ten years, the same as we do.

HUGHES: With the matches the census.

LOWE: Yeah.

HUGHES: OK. Thanks.

BOSTELMAN: Think you missed out on that fun.

HUGHES: That's it.

BOSTELMAN: You missed out on that fun.

HUGHES: I did miss out--

BOSTELMAN: Any other questions? Please stay for closing.

LOWE: That was a fun year. Yes, I will stay for closing.

BOSTELMAN: OK. Thank you. Proponents for LB837, please step forward.
Good afternoon.

ELLEN KREIFELS: Good afternoon. Chairman Bostelman and members of the committee, my name is Ellen Kreifels, E-l-l-e-n K-r-e-i-f-e-l-s. I am an attorney at Blankenau Wilmoth Jarecke, and I am here on behalf of the Nebraska Rural Electric Association and the Nebraska Power Association in support of LB837. So my job as an attorney within this industry frequently deals with drafting these charter amendments. And the charter document itself contains the territory description of the territory served, and then how those directors on the board are going to be elected, sometimes through subdivisions, sometimes at large. But we're going to focus on the subdivisions. So those subdivisions, as Senator Lowe mentioned, can be formed in one of two ways. One is a population based system that statutory language says substantially equal. That's been interpreted to mean plus or minus 5% of one

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another. The second way is not population based, that is, by including entire voting precincts or whole counties, so long as that power district serves two or more counties, the customer base is 50% or more rural in nature, and in the Power Review Board's determination does not prejudice the rural users. So option one, the population based system, after the 2020 census, population decline in the rural areas is a significant problem. You combine that with the fact that the size of these boards is what it is, and our population plus or minus 5% is literally dozens of people. So one good Catholic family throws off my plus or minus 5%. So option one in some instances is not available. So then we move to option two. I have to include whole voting precincts or entire counties and the service territory in no way remotely follows that. Voting precincts, we used to have a lot. Now we have a few. They grew larger in geographic size, so now I have to include the entire voting precinct. So I have to extend my lines out to grab, or to match those voting precincts, and I over include people that do not receive electric service from my power district, but because of state law, I have to include them. So not only are they eligible to vote for the board, they can run for the board. So those are my, my two problems. So that brings us to this bill. What this bill is going to do is going to per-- allow us to divide voting precincts without regard to population and with three limited, very narrow purposes. So we still have to serve two or more counties. Those power districts still have to serve 50% or more rural customers. And the Power Review Board must determine that is not prejudicial to any user. So we're not focused on the rurals. Now it's urban, suburban, or rural users. No prejudice to anyone. So the practical result of this legislation is going to mean that our service territories will match our charter territories. We aren't going to have additional customers, those voters are not going to be diluted. This bill is about drawing reasonable voting districts, voting subdivisions. It's about retaining local control. It's about having individuals serve on these boards who are knowledgeable and not simply live in the right spot or, you know, meet my plus or minus 5%. This is a small change that has a very big impact on this industry, and I'm happy to answer any questions.

BOSTELMAN: OK. Thank you. Are there questions from committee members? Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you for your, your testimony. You seem very knowledgeable on this. In Nebraska today, are there people voting in two power districts?

ELLEN KREIFELS: Yes.

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BRANDT: Where?

ELLEN KREIFELS: A lot. Where? So, BWJ represents 16 of the rural public power districts. After the 2020 census, I did nine charter amendments. I would say nine of those, we are going to have more than a dozen counties where that is going to happen that I know of.

BRANDT: OK. Thank you.

BOSTELMAN: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Bostelman. Thank you for being here and for your testimony. If I missed-- I may have missed this earlier, but so given that we draw these districts during periods of redistricting every ten years, should this bill pass, would this trigger a new drawing of these specific districts, or help me understand how that would--

ELLEN KREIFELS: Yes. So by state law, we are required to redistrict every ten years after the census. However, any time something-- a territory change arises, or we need to do something with the board, we can submit a charter amendment at that time. Last year, about May of 2023, a technical defect came to the industry's knowledge with about 14 charters. That has focused-- shined a pretty spotlight on this issue of you know, we have 14 charters that need to be amended. And we have a problem right now where, you know, population based subdivisions are, are not feasible. So we're looking at the second option, whole voting precincts. And we're having to kind of overinclude a lot of people. So I think your question is spot on. But ultimately we have a need now. It's not necessarily motivated by, by the census. It's motivated by this other statutory technical defect.

FREDRICKSON: And, and I agree with that. I guess my question was more along the lines of should this bill pass, would that enable us to redraw the districts immediately, or will we need to wait until the next census?

ELLEN KREIFELS: No, we could do it now.

FREDRICKSON: Thank you.

BOSTELMAN: Senator Hughes.

HUGHES: OK, I think I have two things I think I'm going to ask. So this, this statute as is has been around for a very long time and it-- what I'm hearing you say, correct me if I'm wrong, but there

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were kind of two things that are just happening as more recently that the rural decline in population and that our voting precincts are getting bigger. And that's thrown this off a bit, or am I wrong with that?

ELLEN KREIFELS: I think that's made it, yeah, I think that's--

HUGHES: I mean, are those the two major changes or what else has made this come to head?

ELLEN KREIFELS: That's a primary driver. So rural population decline, but also our communities themselves as the rural REAs serve more of those and those come into service, you know, you add more population centers also. So we've got kind of a double edged imbalance going on.

HUGHES: And then my second question is, has there ever been someone voted on to somebody's board that doesn't get the service? Do we have an example?

ELLEN KREIFELS: Indirectly that has happened, yes.

HUGHES: Indirectly it's happened.

ELLEN KREIFELS: Well, it's kind of a long story.

HUGHES: OK. Maybe that's too long for now. OK. Thank you.

BOSTELMAN: The first question I have is, do you have any concern with the removal of the bias of the rural area review by the Power Review Board?

ELLEN KREIFELS: I don't have a problem with that. I think, you know, these are local boards. They serve constituents. And frankly, in some rural areas, they're not serving a lot of constituents, so they know all of them. And I think from a fairness perspective, we're not here to draw lines for our friends. We're here to draw lines that make sense for these boards, that allow these boards to continue to function the way they have since the inception of public power. So I don't have a problem with it. The industry doesn't have a problem with it. I think if somebody has a problem with the way a power district has drawn the, or proposed to draw these lines, and they want to show up at Power Review Board and protest, which they have the right to do, then it shifts to the power district to prove to the Power Review Board why this is not prejudicial. I don't think the industry at all has a problem with being the one to prove that it is not prejudicial.

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BOSTELMAN: How many of the-- how many of the districts would have a larger town or, or you mentioned before where the greater population's in town versus out in the, call it the rural area? I mean, quite a few districts are like that?

ELLEN KREIFELS: Quite a few. Yes.

BOSTELMAN: Do you think that that redrawing any of these district lines would reduce the number of people within that district, or is it intent to reduce it or to increase it or--

ELLEN KREIFELS: Well, frankly, the true-- the true intent here is that we draw lines to where whoever is receiving service, or sorry, whoever is voting for the, the, the subdivisions are receiving service. So I don't think there's a we want to increase or decrease. We want accuracy. We want our charter territory to match our service territory. We want these subdivisions to be representative, if you will, without having these really restrictive constraints on us.

BOSTELMAN: More than likely some will decrease in size, population size.

ELLEN KREIFELS: That will occur, yes.

BOSTELMAN: So the reason why I ask this, I have a little concern, on LB541, Mr. Dukesherer came in and testified in opposition to the bill. I want to quote what he said. He said in rural areas that these power districts serve, we're not seeing a flood of candidates that are seeking to serve on these boards. In fact, it's often difficult to replace a retiring board member, end quote. So my concern is, is if you redistrict and you get them too small, you're not going to have anybody that wants to run for your board. So it seems like this bill, he wants to do this; LB541, he's saying, no, we're going -- it's --there's, there's not enough people this one is we need to redistrict for-- and make it smaller. Now, you're really not going to have the people to serve. So I'm kind of-- I'm kind of trying to understand which is it. You know, is it-- is it you don't have enough people to serve? And if you do, then I would understand where this will work. But if you don't, I don't understand why you want to restrict the number [INAUDIBLE] to potentially serve.

ELLEN KREIFELS: Yeah. So my response to that would be, sometimes it is difficult to find individuals who are interested in running. I think that happens. But I think what is worse is having someone willing to do it that doesn't have a vested interest in the district

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itself. You know, in these rural areas, a large portion are ag customers. And if, if we're going to have the towns control the boards--

BOSTELMAN: Sure.

ELLEN KREIFELS: --I think that dilutes that truly rural voice, if you will. So I wouldn't say it's a statewide we can't find people. I think that does happen in instances, yes. But recruitment-- I use that term, you know, if we post vacancies in the newspaper and then, local newsletters, you know, you try and find individuals that you believe are-- would be interested. It's posted, frankly, high and low. So anybody who is interested has the ability to-- but with the only kind of, if you will, caveat that they receive service.

BOSTELMAN: Yeah, I appreciate it, I guess. Have you seen harm come from those who may not be members of that area? Have-- has there been harm come to any of the boards?

ELLEN KREIFELS: I, I can't--

BOSTELMAN: By their position, by their actions on the boards?

ELLEN KREIFELS: I can't point to a specific example, no. I think just generally the concept of local control is we want those with a vested interest making the decisions and, and being on those boards.

BOSTELMAN: Sure. OK. Thank you. Other questions? OK. Thank you very much.

ELLEN KREIFELS: Thank you.

BOSTELMAN: Next proponent of LB37? Good afternoon. Welcome.

DAVID JARECKE: Good afternoon, thank you. Chairman Bostelman, committee members, my name is David Jarecke, D-a-v-i-d J-a-r-e-c-k-e. I'm a founding partner with Blankenau Wilmoth Jarecke. Today, I'm here to support LB837 on behalf of several of our clients, including Norris Public Power, Southern Public, and Dawson Public Power. These are the three largest public power districts in Nebraska. Our office has a strong relationship with the Power Review Board. You're going to hear from Mr. Texel later. And again, as was previously discussed by Mrs. Kreifels, again this bill was, was drafted in part with, with their input. And as Senator Lowe said in his opening statement, we do believe this bill is critical for public power. These are explained kind of the methodologies by which these voting districts work, and

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again, Mrs. Kreifels has obviously expanded upon that. My testimony includes a map that I want-- bring your attention to that I think will help respond to some of your questions. So if we-- if we turn to that map, what you'll see, and this is a real life example. So what you have here in, in terms of these, the green block and the blue block, those are present voting precincts within Custer County. But if you look on the right side of that, you can see there's, there's two people located in that-- in that box. That, that, that box happens to be a township, happens to be a very large irrigated farm with a lot of pits. Those two people are Dawson customers. But if Dawson has to use the entire precinct rule, you'll see that in the rest of that green box, there's 326 people. Those 326 people are Custer Public Power customers, and not Dawson customers. But if I can't divide that precinct, if I can't draw-- just carve out those two, I've got to, to grab 326 people that do not receive power from Dawson, rather they receive it from Custer. They could run for the Dawson board, they could, again, vote for Dawson board members, and again have no relationship with them. So you can see that's the inconsistency. That's true on the left side also, with the blue. Similar example. But the disparity of that in this focus of, of your questions, Mr. Chairman, why do we want to do this? This is ultimately about local control. As you know better than I do, our rural agricultural community is, is, is, you know, becoming less and less in population. But that population again, certainly attributable to ethanol as an earlier good example, is creating billions and billions of dollars for this state. Those resources, in terms of irrigation in particular, are being managed by these local boards. Public Power Districts are a very, very unique industry within the state. They have no taxing authority. They, they operate, again, by the revenues associated with their customers. Again, the vast majority of those customers obviously being agricultural. So it isn't necessarily just this numbers game, how many people do I have? And I understand this body and many other political subdivisions have to address subdivision lines and how to create balance. But the balance as it relates to public power is a little different, because again, we're trying to serve our customers and trying, again, with a very agricultural focused interest of how do we make sure that, again, there's electricity available to run your wells so that you can ultimately produce power and, and can continue this economy. So that's a big part of why this bill's in place. Again, to make sure that we have local control, the people that are interested and engaged in this process are ultimately deciding rates, deciding whether it's a net metering question, whether it's, again, establishing the appropriate rate for a, again, the prior bill as it

relates to confinements and other things. We want people that are involved in that industry, involved in that district, making those decisions. I'd be happy to answer any questions.

BOSTELMAN: Thank you for your testimony. Are there questions? My question is, we heard a bill last week on the irrigate-- irrigators.

FREDRICKSON: Yesterday.

BOSTELMAN: Yesterday?

HUGHES: Yesterday.

BOSTELMAN: Is this a continuation of that?

DAVID JARECKE: No. No relationship.

BOSTELMAN: This was Custer and Dawson, and what did we have in Custer with the irrigators and nonirrigators? And you're bumped up next to each other, it seems to be a continuation of that discussion.

DAVID JARECKE: It, it's a great question. It legitimately is a coincidence. And in this particular instance, I utilized this map as-- frankly was the product of a different discussion. But it, it's just-- it showed, it illustrated, it was the best illustration I had to show you why that's true, but.

BOSTELMAN: They're intertwined, right? Fairly well? I mean, one's wrapped around the other, Custer and Dawson or not.

DAVID JARECKE: No. Custer sits on the north side of Dawson, and so they're just north and south neighbors.

BOSTELMAN: OK. OK. Other questions? Seeing none--

DAVID JARECKE: Thank you.

BOSTELMAN: --thank you. Anyone else like to testify in support of LB837, please forward. Anyone testifying in opposition? Seeing none, anyone like to testify in the neutral capacity? Good afternoon, Mr. Texel.

TIM TEXEL: Senator Bostelman and 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 Power Rev-- Power Review Board. As you know, I believe, we're the state agency responsible for reviewing and approving amendments to public power district charters. I think Ms.

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Kreifels covered a lot of what I was going to talk about. But I do have one issue to address. The board itself is neutral on the provisions of LB837. One particular thing that I did want to bring up is something that Ms. Kreifels mentioned, that, that the change would remove the word rural from the current statute, and skipping th-- she did-- I was going to go through the process of how these can be set up with the whole precinct and county boundary lines for following equal protection rules. I won't go through that because I think she set that out very well. But if those requirements that she mentioned are met, the board can approve the petition for charter amendment if the board makes a finding that the rural users of electricity, or if it's a public power and irrigation district, then the irrigation water service customers, will not be prejudiced by the charter amendment. So under current law, the board reviews a proposed public power district charter amendment only to ensure the amendment would not prejudice rural users. By implication, it appears that the non-urban, the suburban or urban could be prejudiced. That seems odd to the Power Review Board. We want to protect all members of any group over which we have jurisdiction. So we think it makes some sense to remove the, the rural from there because it doesn't stop us from protecting the rural. If somebody files a petition in opposition and comes before us and says it's going to harm the rural users, that doesn't stop us from protecting them. But right now, we have no authority if they say it harms all the suburban or all the urban people in the district. There's nothing we can do because that's not a finding we make, it's only the rural ones that we can make a finding on. So I wanted to bring that up and then be available for any questions, since we are the approval authority for this. And this issue has come up on a number of occasions with the-- us enforcing the, the boundary, either you do by equal representation and pick out those two people and not the other, you know, and capture the 300 that Mr. Jarecke mentioned. Or you use the whole precinct and follow those boundaries or counties. And so I want to make myself available. That's all I have.

BOSTELMAN: Questions? Is there a definition for rural in the statute?

TIM TEXEL: I don't believe there's a definition for rural, no.

BOSTELMAN: Because I guess some would see rural different than others. I mean, small towns are still considered rural benefits ou-- you know, outside of a certain area. How did you-- how did you view or how did you determine what rural was before?

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TIM TEXEL: It might depend on the district, because in some districts there's going to be villages or second class cities that might in that district, because it's, it's smaller population might be considered more-- or less rural in nature than the, the farm country, things like that. So it is somewhat subjective to my board. So it's not always the easiest to apply, but we haven't been faced with it a lot. We haven't had any official petition or, or protests based on that. But we'd be faced with that if somebody claimed it.

BOSTELMAN: So part of the-- part of the consideration, I guess, for one of these REAs, one of these public power districts, part of their costs are transmission lines, distribution lines, is that right?

TIM TEXEL: Further--

BOSTELMAN: Or not?

TIM TEXEL: In the rural--

BOSTELMAN: Within their, a little bit in their--

TIM TEXEL: --districts?

BOSTELMAN: Yeah.

TIM TEXEL: Sure. I mean, one of their expenses is putting in the--

BOSTELMAN: So population, right.

TIM TEXEL: --distribution lines.

BOSTELMAN: So when we're talking rural, it's not only population because you may have a pocket of people in a town here, but you've got a big expense out here, meeting all the, the people in the country if you go outside of the city limits. So I guess when they talk about when you're talking about rural, it's-- you're talking about population rather than scope and size, because if you look at the cost, they may have learned-- obviously the cost is greater in the rural side of it because you have all the transmission lines. So I'm just trying to understand why we would take rural out, because I think that's a big part of costs for the members.

TIM TEXEL: But, but when we're doing this, it deals more with the voting rights and not the costs or anything like that. So we're not looking at approving transmission here or the, you know, cents-- or the per mile cost or something like that, or, how many people are on

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each mile of line. We're talking about the voting rights. And under the, you know, equal protections, the Supreme Court has rules for how you look at that, how far the deviation can be and whether you can give a standard deviation for that, versus the following political subdivision boundaries that are established and therefore you don't have equal protection violation if you don't regard the population, but you follow precinct or county boundaries. And so I'm not sure how the transmission costs would come into that because it's a voting rights issue, not a financial issue.

BOSTELMAN: Well they-- well they-- but they vote on rates, they vote on equipment, they vote on all this, so they set--

TIM TEXEL: Well, sure, that will come in to--

BOSTELMAN: --set all that up. So I think they would have a very keen interest, but--

TIM TEXEL: Well they, they-- the voters could very well. But our evaluation wouldn't take in the costs on that particular topic. We do when we're approving it. But, but districts don't have to come to us when they're getting their own distribution or subtransmission lines approved in their service territory.

BOSTELMAN: Senator Jacobson.

JACOBSON: Oh, maybe to clarify this a little bit. I, I guess I'm just thinking through-- so Dawson is-- runs right up next to North Platte, and then North Platte has municipal light and water, and that's, that's where we're getting our power. So we're not part of Dawson, but they're all around us. And, and I'm just thinking about Hastings and Kearney and Grand Island. I don't know neb-- the next smallest community that doesn't have their own power, but then that city itself. So I'm kind of back to this to fi-- this question of rural and what is rural, like, I don't know whether Ogallala is part of Central or whether they are on their own as far as power distribution within the city. Do you have any knowledge of that?

TIM TEXEL: I don't remember-- I don't remember who serves Ogallala for sure. I'd have to look, I don't know.

JACOBSON: Well I'm just trying to think that, that-- It would seem that most all of the first class cities, which technically Ogallala's not, but they cheated and made themselves a first class city, but that's another story for another day. But, so I'm just thinking the first class cities, it seems that most all of them have their own--

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their own agreements with-- for power generation through NPPD and, and so they're not going to be part of these rural districts. And so we're really talking about second class cities and villages. And so-- and I, you know, although I live in North Platte, I've always had concerns for my farming interests that agriculture is a big deal across Nebraska and power gen-- about having access to power for center pivots and so on is pretty important. I'm not saying it isn't in the villages and the towns, but we just need to make sure that, that, that they are represented fairly, because there are additional costs for transmission and so on, and, and making sure that the rates are-- make sense. And so, I, I have a keen concern about making sure that rural is not disadvantaged. I agree, we don't want to disadvantage anybody, but, I just-- it kind of gets back to what is the definition of rural again. So.

TIM TEXEL: And, and if that's a, a-- I guess we normally don't get into policy issues. We're looking at-- looking at a more of a voting issue. But if you want to protect that, because the costs and the customers want to take that into account, I mean, you could leave it in. My view is more when we're looking at this from a voting rights perspective, we're not taking the costs into account for that to [INAUDIBLE].

JACOBSON: And my concern is, is that I don't want to see a disproportionate number of city dwellers or community-- village dwellers on board that to the-- to the extent to where we have fewer true rural ag producers involved on those-- on those boards, that, that's my concern.

TIM TEXEL: And I know there's a lot of districts when they set them up over the years I've worked with them, they're concerned, that's why they don't want to do at-large and things like that, because when you do the at-large, you end up with five members from two villages or two cities. And so there's-- I understand that and I think it's a very valid concern, because historically, that I'm aware of, that happens if you just have at-large elections, the population concentration dictates. And so they try to do the equal representation. And it does create difficulties for them to, to set it up, because I have seen situations, and like you heard the other testimony, where they move a household or two and it changes percentages by, you know, 10%, which can help a lot when you're coming for us. But it doesn't take a lot of movement, and you have to capture these houses and, you know, try to avoid [INAUDIBLE].

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JACOBSON: And I--and I get that. I guess I'm just back again with this example, I think, which is a glaring example of how-- why would we have people that don't even get served by a power district involved in voting and, and actually maybe even serving on a board, that just seems insane.

TIM TEXEL: You wouldn't want-- and I haven't seen the map, I just when you held up, I kind of see it, and I understand from what Mr. Jar-- Jarecke was describing. In that situation, you know, to avoid the 300, I would recommend that, that at least those two households or two customers be certified by the clerk and the district as exceptions, and they still can vote. And it's a little easier when you have one that blatant because when you have 2 members out of 300 and, say, 52, in a precinct, you can certify those two members and not have the whole precinct come into play, is what the clerks have explained to me. It's harder where it's more 50/50 and, you know, you have 150 and 150 customers and non, and then you're trapped because you either, you know, you have to have the whole precinct, but you're catching 150. So that example's a little easier for me, because you can certify them. The clerks hate certifications, but for two people they wouldn't mind. For 150, they would. It would-- they really don't like that at all because it's far too much work. Does that help?

JACOBSON: It does. Yeah. Thank you.

BOSTELMAN: Senator Brandt.

BRANDT: Several things. How is this any different than what happens with our rural schools, where 80% of the money comes from 15% of the people out in the country, and yet our small towns control the school boards and, and everything else? I just see a lot of similarities in what's happening here. And that's just kind of a statement. I probably shouldn't do that. But, back to your problem. Can't-- and you can't do this constitutionally, but it almost seems like the meters belong to the power district that you-- the meter votes. If you have a meter for that power district, that that-- you could set it up so that that meter would get a vote, and if you're a big customer and you have 20 meters you get 20 votes. But constitutionally, I know that the courts aren't-- you know, one man, one vote. [INAUDIBLE]

TIM TEXEL: People vote and not meters.

BRANDT: Yeah, unfortunately. Yeah. But that's you're trying to--

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TIM TEXEL: Understand what you're saying.

BRANDT: You're trying to solve with the bias toward agriculture, these two people that, that consume half the power in that square versus the 350 people that are probably just households that don't have all the pivots and, and, and all the power usage.

TIM TEXEL: And may not be customers.

BRANDT: Yeah. Yeah.

TIM TEXEL: And that is.

BRANDT: Then you throw-- you throw that, that in there. I, I-- does today the, the, the county clerk or the court can't just draw around that--

HUGHES: No.

BRANDT: --individual? I mean, this is what we're trying to solve. This is what this bill let's you do, is draw around those 2 customers and cut out those 300--

TIM TEXEL: It's how to capture the two customers to make sure they can vote, and from a district usually, not the 350, I think it was. So we use those numbers. So that's, that's the districts dilemma. The clerks don't, don't do it, it's the districts, and then the districts bring it to us, and then we approve it, and then we send it to the Secretary of State. And that's how the clerks operate on the voting. So the clerks don't-- they can, the county can redraw its precincts, and-- Oh. Thank you. But the districts are the ones who handle the boundaries for their districts, or for their subdivisions, I'm sorry. And then they bring them to us and we talk-- You heard about-- it's normally every ten years, but they can do it whenever they want in between that. They have to reevaluate every ten years.

BRANDT: But isn't there somebody in the state that butts the maps up to see that this is a clean line, there's no overlap?

TIM TEXEL: Well, they want to capture all their customers, so there wouldn't normally be any overlap because their, their customer's in their their service territory, so they're not going to expand there. I mean, NPPD has a much more expanded--

BRANDT: You're trying to capture the customer using the power, or you're trying to capture where the customer physically lives?

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TIM TEXEL: Well, their voting rights is where they physically live.

BRANDT: Not where the power's getting used.

TIM TEXEL: No, it's not where their load is. It's not where the pivot would be or their farmstead if that's not where they live.

BRANDT: All right.

TIM TEXEL: It's their voting right is where they reside, I guess is the best way to say it.

BRANDT: OK. Thank you.

TIM TEXEL: And I'm not with the Secretary of State, I'm not an elections official, but that's my understanding. I mean, it's where they reside, not where they necessarily farm or where a pivot is or a particular load.

BOSTELMAN: Senator Hughes.

HUGHES: I was just going to say, this bill makes too much sense, so clearly we can't do it. Back to your point. When he-- what he-- when they were talking about this, I'm like, oh my God, that would be like the school district being drawn, and I'm on that board, but yet I'm in the Centennial School District, but I'm on the Seward board because that's how they had to split it up and that's where I live. That is super wrong. So this-- you were just making these districts be who the people are-- I mean, that include the people are going to vote on who have power. And because I have a pivot in Custer Power, but I live in Dawson, I only get to vote for Dawson, even though my pivot's sitting in Custer. Same with schools. I have land in Centennial. I only get to vote for Seward because that's where I live. But I pay to Centennial. That's too bad, but it has nothing to do with-- I don't know, the rural, I don't think, the rural and stuff, it's just-- include the people that are getting the power from-- I mean, this is just, I don't know, I think this is easy. But hopefully we can get it done. That's it. It's not a question I guess, sorry.

BOSTELMAN: OK. Did I-- I may have misunderstood you, or we may have misunderstood you, did you just say-- did you indicate that they can change the boundaries at any time?

TIM TEXEL: If, if-- they're not required to re--

BOSTELMAN: So if they have--

TIM TEXEL: Yes. The answer is yes, they can. A district can, can redistrict whenever it wants.

BOSTELMAN: So can they take-- so in this case, if the two joining power districts agree, can they remove or change that without having a statutory change?

TIM TEXEL: Well, a district can come to us with a petition for a charter amendment at any time the district wants. Yes.

BOSTELMAN: And so they can-- they can do this without the statute.

TIM TEXEL: Yes. But this is how they-- how they can reconfigure their voting subdivisions. It doesn't authorize them to come to us. It's authorizing them to how they can configure the districts when they do come to us. They can come to us at any time now. They have to reevaluate whether or not they need to reconfigure every ten years with the census. They can certify to us that we don't need to reconfigure because there's one district that has their members elected at-large. Well, they just certify we're at-large, we don't have to worry about equal representation, we're good. The other districts have to show that we do use equal representation, and the census changed it, and so we're coming to you. But they can do it in between the ten years any time they want. We do that a number of times with them, usually not on redistricting, but when, you know, they want to reduce their number of directors and a director resigns or passes away and they come in with a charter change to amend the numbers of directors. Different topic, but it's still a petition for charter amendment, same process that they follow. And they can do that whenever they want. It's their choice.

BOSTELMAN: So I guess my last question would be, it was asked to the previous testifier, does this occur a lot? And if it doesn't occur a lot, why don't they just do what you were just talking about, and work together to change those to, to change their lines or to move those people [INAUDIBLE]?

TIM TEXEL: Well, this isn't the service area boundary lines. This is their internal voting subdivisions' boundaries. So it's not really the two adjoining districts that matter, it's a district, how they break up for voting purposes their subdivisions.

JACOBSON: Within it.

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TIM TEXEL: And I don't-- Ms. Kreifels did a really good-- within. And she did a really good job setting that up.

BOSTELMAN: OK.

TIM TEXEL: So they aren't changing their exterior boundaries. They're saying, hey, sorry, we divided up our people, just like you do with legislative redistricting. Here's how the population shifted, here's how we've got to shift to deal with that. Or we follow political subdivision boundaries. And so we don't have to deal with that. And then you're into the situation where the map is, like I said, it's probably a better example if you have half and half. Now we have 150 people, so we've got to accept the others. The two are easy with an exception and certification, but the half and half is not. So you're going to have to have some people in who do not-- or aren't customers, and they're kind of trapped to do that. I know it frustrates them, but that's our requirement to follow state law.

BOSTELMAN: OK. Senator Brandt.

BRANDT: So when Ms. Kreifels was up here, she said people are voting for two power districts.

TIM TEXEL: Sometimes.

BRANDT: But in the Legislature, all 1.96 million people in the state only vote for one legislative district. This is where I'm having a problem. I, I-- in-- Believe me, we've been through this. Wait till you, you guys get to do this. I don't understand what the problem is if, if just, just divide things, just--

HUGHES: They didn't do it in statute, right?

BRANDT: But. OK. I just-- I'm having a tough time wrapping my mind around this, that you would get to vote for two power districts when we figured it out, which is kind of incredible that you guys, you know, because you're only talking one or two or five counties here to do this.

TIM TEXEL: Well, they're a special purpose district. And, and you can have a customer that votes for NPPD because they're a part of their wholesale territory, and a public power district, you know, Butler Public Power District receives it at wholesale from them, and you vote for both. So there's two districts there you get to vote for, or vote in. So a special purpose district is different from a legislative district where you can only be in one and vote for one.

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For a public power district, if you're part of both, like, you could be a retail customer for a district who gets its wholesale from NPPD and have the right to vote for NPPD's board also.

BRANDT: All right. OK.

TIM TEXEL: My-- Did I confuse it worse?

BRANDT: I'm, I'm, I am so confused right now. I'm going to have to work on this outside of the hearing.

TIM TEXEL: And, and if you'd like me, spend more time, or, or me and NREA, I'd be glad to talk to you about it. I mean, it's a different way of setting up from the Legislature when you're talking about a special purpose district like this. And I'm not as familiar with how you do the other districts, or the-- for the Legislature and that as I am with this. But you can be on two, yes.

JACOBSON: I get the sense that our senior senator, John Lowe, is going to come here on a close and clear up all the misunderstanding, so I'm ready to hear the close.

BOSTELMAN: Any other questions? Thank you for your time. Appreciate it.

TIM TEXEL: Yes. Thank you.

BOSTELMAN: Anyone else like to testify in the neutral capacity? Seeing none, oh wise one, Senator Lowe, you're welcome to come in and close on LB837.

LOWE: So tempting to weigh in at this point.

HUGHES: Amen.

BOSTELMAN: We have a list of a lot more questions.

LOWE: Thank you very much for listening to LB837. It was brought up that we can't do this in our legislative districts. I can't vote for anybody in Grand Island. You know that they can't vote for me. Somebody in Wood River can't vote for me, even though they're only a couple miles outside my district. And even though I'd like to throw my vote sometimes into another district, I can't do it. So, and I'm sure most-- all the rest of us would like to do that also. We're talking about servicing the people that use the electricity, and that's all this is. It's, it's plain and simple that those that use

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the electricity should be the ones on the board, should be able to vote for the ones on the board. And that's pretty simple, and I believe after the last testifier, there may be-- we may have to have a little bit of cleanup language in it, but that's about all I got. Keeping it simple.

BOSTELMAN: More questions? Seeing none, thank you very much, Senator Lowe. This will close our hearing on LB837. We did have two proponent comments online. Thank you very much for your day. So we're going to have an Exec.