

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 26, 2026
Rough Draft

BOSN: Good afternoon, everyone. Welcome to the Judiciary Committee. I am Senator Carolyn Bosn from Lincoln. I represent District 25 and serve as chair of this committee. We will be taking up bills in the order posted outside the room. This public hearing 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 on the back table, print clearly, and fill it out completely, listing every organization you represent. When you-- it is your turn to testify, please bring it 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 yellow sign-in sheets on the back table, and these will be included as an exhibit in the official hearing record. When you come up to testify, please state and spell your first and last name so we can get an accurate record. We will begin each hearing today with the introducer's opening, followed by proponent testifiers, then opponent testifiers, anyone wishing to testify in the neutral capacity, and conclude with a closing statement by the introducer, if they wish to give one. In this room, we use a three-minute light system for all testifiers. When you begin your testimony, the light on the table will turn green. When the yellow light comes on, you have one minute remaining, and the red light indicates you need to stop, and questions from the committee may follow. Also, committee members may be coming and going during the hearing. This has nothing to do with the importance of the bills; it is just part of the process, as, as senators may have bills to introduce in other committees. A few final items for today's hearing. If you have handouts or copies of your testimony, please bring up 10 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted, and will be cause for you to be asked to leave. Finally, committee procedures for all committees state 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 legislature.nebraska.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. Also, you may submit a position comment for the record or testify in person, but you may not do both. I will now ask the committee members

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with us today to introduce themselves, starting to my left with Senator Hallstrom.

HALLSTROM: Thank you. Senator Bob Hallstrom, Legislative District 1 in southeast Nebraska, representing Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties. Welcome.

STORM: Good afternoon. Jared Storm, District 23, which would be Saunders, Butler, Colfax County.

STORER: Good afternoon. Senator Tanya Storer. I represent District 43, 11 counties: Dodge, Sheridan, Cherry, Keya Paha, Boyd, Brown, Rock, Blaine, Loup, Garfield, and Custer.

HOLDCROFT: Rick Holdcroft, District 36: west and south Sarpy County.

DeBOER: Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10 in vibrant northwest Omaha.

McKINNEY: Good afternoon, Terrell McKinney, District 11: north Omaha.

ROUNTREE: Good afternoon, Victor Rountree, District 3, the place to be: Bellevue and Papillion. Thank you.

BOSN: Thank you. Also assisting the committee today, to my left is our legal counsel Denny Vaggalis, and to my far right is our committee clerk, Laurie Vollertsen. Our pages for today are Kyanne Casperson, Kleh Say, and Teresa Wilson, all from UNL. With that, we will begin today's hearing with Senator Dorn and LB943. Senator Dorn, I would note for the record, we had 2 proponent comments, 2 opponent comments, and 1 neutral comment submitted online. Good afternoon, and welcome to your Judiciary Committee.

DORN: Thank you. Thank you much. Good afternoon, members of the Judiciary Committee. My name is Myron Dorn, M-y-r-o-n D-o-r-n, and I represent District 30. I'm presenting LB943 today to help protect against public or private nuisance claims against a racetrack facility, if a facility existed before a change in the land use or occupance-- occupancy of land in and around the locality of such facility. I patterned this proposal after the Right to Farm Act found in 2-4401 to 2-4404 of the Nebraska Statutes, and just like the Right To Farm Act protects farms and public grain warehouses from private or public nuisances lawsuits if the operation existed before changes in

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surrounding land use, so too would LB943 protect racetracks and its associated amenities if such track existed prior to a change in land use or occupancy of land near the track. No one denies that racetracks are noisy. If you're sitting in the stands and cheering on the drivers, you love the noise and excitement. However, if you are sitting on your back deck trying to enjoy the evening, the noise is not as welcome. But unlike the chicken and the egg on who came first, this bill settles that question, at least for racetracks. If the racetrack, just like the farming operation, were there first, they have the protection against the nuisance claims. The bill is that simple. I noticed the only online comments-- well, that's when we looked earlier-- against the bill stated that this exemption could allow for bad, bad behavior. This bill in no way allows for illegal behavior to occur; it simply prohibits nuisance claims if a track was there first. I would be glad to answer any questions you may have, and there are a few people behind me who will also be testifying, maybe-- and answer more in details than-- and by the way, just for everybody knows, I do have a car racetrack in my district in Beatrice, so. And that was where this bill came about, was somebody from that operation got a hold of me and asked if I would carry this bill. So, yes, that's why we brought this.

BOSN: Thank you. Are there questions for Senator Dorn? Senator DeBoer?

DeBOER: Do you have a priority for this?

DORN: No, we do not.

DeBOER: OK. All right, then I will visit less with you.

BOSN: All right. Are you staying to close?

DORN: Yes.

BOSN: Well, I guess you have the next bill. So, yes.

DORN: Yes, because I have the bill. Yeah, yeah.

BOSN: All right, awesome. Thank you.

DORN: Thank you. You bet.

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BOSN: We'll start with proponents. Anyone here to testify in support of LB943? Welcome.

VICTOR MUNOZ: Thank you so much. Good afternoon, Chair Bosn, and members of the committee. My name is Victor Munoz, V-i-c-t-o-r M-u-n-o-z, and I'm here on behalf of Performance Racing Industry and the Specialty Equipment Market Association. You may know us from our trade shows in Las Vegas, the SEMA show, and in Indianapolis for the PRI show. And I want to talk to you about LB943. Nebraska has a strong motorsports and racing tradition. Today, motorsports activity in Kansas generates about \$283 million in economic output, supports over 1,700 jobs, and contributes more than \$26 million in state and local taxes each year. That's real economic activity linked to facilities operating safely and legally. Restaurants are-- racetracks aren't just venues, they're small businesses, job creators, tourism drivers, and community gathering places. But across the country, racing facilities are increasingly facing neighbor complaints and nuisance lawsuits, not because they're operating unlawfully, but because development and changing land use have moved closer to long-standing tracks. When new residents arrive and file nuisance claims, even long-standing facilities have been forced to scale back or shut down due to legal uncertainty and the cost of litigation, even when they're trying to do everything right. And just like farm-- a lot of-- just like a lot of farms, if a racetrack goes away, it doesn't usually come back. LB943 addresses this issue in a measured way by reinforcing a simple common-sense principle: if a motorsports facility was established lawfully and has continued to operate in compliance with the law, it should not be forced out by newcomers who arrive later. LB943 gives communities and track operators predictability and protects long-standing facilities from being litigated out of existence simply because a neighborhood changed around them. I respectfully ask for your support of LB943, and I'm happy to answer any questions.

BOSN: Thank you. Are there questions for this testifier? Senator Hallstrom.

HALLSTROM: Is there similar legislation in other states?

VICTOR MUNOZ: Yes, sir. Last year in Iowa and North Carolina this bill has been passed, and we have-- SEMA has, has supported and led bills in 13 other states this year.

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HALLSTROM: OK. Other than Iowa, any of our surrounding states?

VICTOR MUNOZ: Surrounding states, Kansas, just south of you, Missouri, to the east.

HALLSTROM: OK. Thank you.

BOSN: Thank you. Any other questions? Seeing none. Thank you for being here. Next proponent. Good afternoon, and welcome.

TOMMY DENTON: Madam Chair Bosn and members of the Judiciary Committee, my name is Tommy Denton, T-o-m-m-y D-e-n-t-o-n. I am the director of competition and promoter for Beatrice Speedway and Jefferson County Speedway, and I am appearing today in my role with both, both facilities in support of LB943. Dirt track racing began in the late 19th century, with the first recorded race in 1876 in Cranston, Rhode Island. Utilizing horse racing ovals, the sport gained significant popularity during the 1920s and '30s, evolving from modified stock vehicles into specialized high-powered open-wheel sprint cars and dirt late models that race on clay surfaces worldwide. Today, the state of Nebraska has several facilities that are both dirt and paved ovals, as well as drag strips. These facilities continue to host great weekly racing series-- events not at only privately-owned racetracks, but fairground facilities that become statewide and regional destinations for racing, concerts, and yes, fried food. These activities support local economies with seasonal employment, and drive sales and lodging tax revenues that rely heavily on this form of economic development. In addition to local activities mentioned above, most tracks host numerous national touring series events that bring in competitors from across the country, and corresponding packed grandstands is the result, often over, over one- and two-night shows, April through August. In closing, I strongly support LB943. Proposes protecting racetracks, garages, and spectator areas from public or private nuisance claims if the track established before surrounding development. This protection is vital to local economies statewide, but also to the great history of auto racing in our state that is well-documented through the work of the Nebraska Auto Racing Hall of Fame housed at the Museum of American Speed in Lincoln. That concludes my testimony. I would be happy to answer any questions you have.

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BOSN: Thank you. Are there questions for this testifier? Senator Storer, followed by Senator Storm?

STORER: Thank you, Chair Bosn, and welcome to Judiciary Committee. Can you just help me-- give me just a brief explanation or scenario of how nuisance claims-- because I presume that, that you're getting them. That's why-- the impetus for the bill. How that's impacting the racetrack and the whole infrastructure?

TOMMY DENTON: Racetrack-- there's 13 racetracks left in the state of Nebraska. There was a lot more than that. Some of them went out because of financial. One good, good deal is Sunset Speedway that was in Lincoln. Housing closed in around it, and eventually in the early '90s or late '90s, it closed. And the, the, the area where he was at is still there. It's not been developed, but the houses are all the way around it.

STORER: So, what is the cost impact? I'm not familiar with, you know, just even the legal proceedings. What does-- somebody files a nuisance claim against the racetrack, what does that-- what does that look like through the process for you?

TOMMY DENTON: For us, we just-- we try to make it better for them. You know, we, we try to set a certain curfew at night so we don't run too late at night for noise and stuff like that. That's mainly what the complaints are, noise. They call the city council, city council lets us know, OK, guys, you're too noisy. We can put mufflers on the cars if need be to quiet it down. But other than that, you know--

STORER: Are there fines associated?

TOMMY DENTON: Not that I'm aware of. Not that I'm aware of.

STORER: Or can they-- can, can the city council force you to restrict your hours, or--

TOMMY DENTON: Yes.

STORER: OK.

TOMMY DENTON: They can-- I believe in Fairbury, with my racetrack, our curfew is 11:00.

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STORER: OK. Thank you.

BOSN: Senator Storm.

STORM: Thank you, Chairwoman Bosn. Thank you for being here. So, you had your racetrack there first? It was there, correct? And these are houses that built after you were already there?

TOMMY DENTON: Yes.

STORM: Close to you? And they knew there was a racetrack there.

TOMMY DENTON: Yeah, they knew that there was racetrack there.

STORM: Is it any noisier now than it was when you were there to begin with? Or is it the same thing?

TOMMY DENTON: No, it's basically the same thing, yeah. Depends on the car and how the car is set up for-- like, if you look at a car that's on the street, all closed in on the front, some of our cars are open so the headers point out; a lot more noise that way. If you got one with-- enclosed in the front, then that kind of suppresses the noise a little bit, but it hasn't changed over the years.

STORM: Is it multiple complaints or one person?

TOMMY DENTON: It's usually multiple. I don't know of any of the actors right now. I--

STORM: Oh, OK.

TOMMY DENTON: That, that would go to the Fair Board. They're-- they have not said anything to me, so.

STORM: OK. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: Have you ever encountered a driver named Chris Buller at the racetrack in Beatrice?

TOMMY DENTON: Not-- I, I might have.

HALLSTROM: OK.

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TOMMY DENTON: I'm in the infield, so I don't see a lot of names all the time.

HALLSTROM: OK. Good enough. Thank you.

BOSN: All right. Thank you for being here. Next proponent. Anyone else here to testify in support?

TREVOR BAKER: Hello everyone. My name is Trevor Baker, T-r-e-v-o-r B-a-k-e-r. I am here in support of LB943. I'm just going to go through my speech real quick. Good afternoon, Ms. Chairman and members of the committee. Thank you to Senator Dorn for introducing this bill, and for inviting me to testify on its behalf. I am here with Tommy Denton, the race director at Beatrice Speedway and Jefferson County Speedway, and as well as Mr. Victor Munes [SIC], the rep from PRI. LB943 is not just protecting a motorsports racing facility; it is protecting a statewide family legacy, a multi-generational culture, a multimillion dollar business, and one of the most productive grassroots motorsports regions in the nation. It's important to make you aware to some of the towns that this bill would be helping. Beatrice in Gage County, Albion in Boone County, Lexington in Dawson County, Eagle in Cass County, McCool Junction in York County, Fairbury in Jefferson County, North Platte in Lincoln County, Norfolk in Madison County, Stuart in Holt County, Deshler in Thayer County, and Columbus and Platte County. These towns, they anchor for the racetracks they are within. These tracks have local families that have been involved with them for decades. Some of these families are still racing to this day and also have businesses that operate right out of these towns. Families like the Lincolns, the Roths, the Hadens, the Kosiskis, the Saathoofs, the Grabowskis, the Richards, the Wilkensons, and my very own family, the, the Snyders and the Bakers. You'd be surprised to know that some of these families are national champions in the IMCA, which is the banner that they race under. For a state of this size, that's not-- that's very hard to happen. It happens because these local dirt tracks have been around for generations. Motorsports in Nebraska has produced many small businesses throughout the years, but also a million-dollar corporation right here in Lincoln: Speedway Motors was found in 1952 by a racer named Billy-- "Speedy" Bill Smith. Back then, racers did not have major manufacturers that we have today. Back then, we had to build our own parts, scavenge them from local salvage yards, or, if we were lucky, we could find them at local parts stores. Speedy Bill started this company because he knew local racers needed affordable

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parts to keep their cars racing. But now, Speedway Motors is one of the largest motor sports suppliers in the world, which also employs hundreds of Nebraskans. This bill helps protect this company and so many other small businesses owned by Nebraskans. LB943 simply recognizes a basic fairness. If a racetrack exists before the surrounding development, it should not be shut down because the area around it changed. Just like local laws are in place for feedlots, for cattle, and for hog confinement, passing this bill preserves local heritage, local industry, and keeps century-old Nebraskans' tradition alive. Mrs. Chairman, I hope my testimony today will encourage you to exec this bill out of committee and advance it to the floor for a vote to pass. At this time, I'll take questions.

BOSN: Thank you. Are there questions for this testifier? Seeing none. Thank you for being here and sharing your story.

TREVOR BAKER: Thank you, thank you.

BOSN: Yes. Next proponent. Opponents? Neutral testifiers? All right, Senator Dorn to close. Welcome back.

DORN: Thank you. Thank you for letting me introduce that bill. And I think, as some of them mentioned, this is-- if the racetrack was there first and then you come in and build afterwards, then you cannot file-- as we have in some other statutes, then it limits you for the ability to file a nuisance lawsuit at that time. If you were there and every-- and with the racetrack or before it, then no, that doesn't become an issue or whatever, so. And this-- when I visited with Tommy here, they do not know of anyone that's been filed in the state of Nebraska, but they would like this in there just so that it's like some of the other ag ones and stuff, so that it-- people know where everything sits and stuff, so. I know I visited Senator Bosn about how to proceed with this bill or whatever we could, so we'll continue to visit with her and stuff, so.

BOSN: Any questions? Senator Hallstrom.

HALLSTROM: Senator Dorn, in the Farm Nuisance Act [SIC], the, the basic premise is if there's a hog confinement facility or something that might just of its very nature be a nuisance or be objectionable to someone, if you move to the nuisance, then you should not be able to complain about it after the fact.

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DORN: Yep, and that's the same-- what this--

HALLSTROM: Same thing. OK.

DORN: --the same concept that we patterned this after and stuff, so.

HALLSTROM: Thank you.

DORN: Yes, if you move in there, then it's-- the, the-- I call it, the onus is on you that you moved there and stuff, so.

HALLSTROM: Thank you.

DORN: Thank you. Yeah.

BOSN: All right. Any other questions?

ROUNTREE: I do, Senator.

BOSN: Senator Rountree.

ROUNTREE: Thank you, Chairwoman Bosn. And thank you so much. I've appreciated all the testimony as I'm listening and thinking about my own situation back where-- in the home where I grew up, where change happened around us to upset the balance of where we were. But as you go forward, and to the gentleman that had testified, do you anticipate that even if this passed, that you don't get a chance to file a nuisance lawsuit, but would there be some good-neighbor policy type that would be involved with that? Yeah.

DORN: Well, I think for-- the one person here from Beatrice mentioned that, and that is working with the community, working with the city council and working with everybody, and not having races go till 1:00 in the morning or whatever, and all of those things. That is part of being a good neighbor and part of being a good racetrack.

ROUNTREE: Yeah.

DORN: That still will be done, and that part of the concept will still be there. It's just that they were more worried about the fact that, oh, somebody come in and built after the racetrack's been there, and then, then they file a nuisance, and then they have to go through the-- that process. This says no, not if you built afterwards and stuff, so. But it-- and, and I liked his testimony, and that's very

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true. In Beatrice there, they worked very, very good with them and stuff to make sure Beatrice-- and I'll pull a plug in for them, they have the Spring Nationals here coming up in March. They have up to 180 drivers all across the Midwest, have drivers from Colorado, California come in for that, the motels are full for the two, three-day period. It is something to see if you've never been there, if you want to see racing at its finest. They do also broadcast that on-- they have a website that they broadcast that on, because our county was involved with it at one time. They had over 1,300 viewers on that website. So it's kind of amazing, yes.

BOSN: Senator DeBoer.

DeBOER: Thank you. You may recall that in 2019, I was the one that did this negotiation on the, the farm nuisance--

DORN: OK.

DeBOER: --with Senator Hughes. My understanding is, if I recall back, if there's a change in the facility, there's two-year statute of limitations in which you can still file the nuisance.

DORN: OK.

DeBOER: So, I'm not seeing that the whole thing we thought was back then, right? Because you can be operating, operating, operating, and then you change in some way, and then there should be an opportunity to file a nuisance claim at that point.

DORN: Yeah.

DeBOER: So, at least I don't see anything like that, that would, would set up a structure for how to talk about change and when there was a change, a material change, or, you know, how to determine that within this system. Am I missing something in your bill here?

DORN: I could not tell you for sure, because that wasn't-- we, we had not had that discussion when we brought that about. But I would be glad to visit with you about that and to make that-- I think that is a necessary correction that needs to be. If you change it and it changed the concept or the, I call it, the practice of what's going on, then yes, you by all means have a right to.

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DeBOER: So, when we did this the first time, there was a whole-- like, we went into a lot of detail about it, because if there is-- like, how do you determine what's a material change? What constitutes that? And because this is not the same thing as farming--

DORN: No, it's not.

DeBOER: --I have concerns about how we--

DORN: I, I call it, the racetrack is there in the way it's operating today. If you make a material change to that, that would be a change, OK? In other words--

DeBOER: What constitutes a material change?

DORN: --if you went from one or two nights a week to five nights a week, that would be a material change. Yes.

DeBOER: Certainly, that would be a material change. But what if you went from vehicles with mufflers to vehicles without mufflers?

DORN: But there, you're trying to improve what is, I call it, the noise volume out there and stuff.

DeBOER: No, I'm saying going the other way.

DORN: Oh, you go the other way?

DeBOER: Yeah. I mean, I just think that the-- I think there's probably more work on making this actually mirror what we've done with nuisance statutes.

DORN: OK. Thank you.

BOSN: All right. Any other questions? Seeing none. Thank you very much. That will conclude our hearing for LB943. Next up, Senator Dorn, LB952. Welcome back. Can I see a show of hands how many individuals are here to testify in some capacity on LB952? One. All right, thank you. I just-- it helps us kind of call the next person to--

DORN: And that's, that's what we were told, and-- thank you very much for scheduling this back-to-back and at the start so we can get back to Appropriations. Good afternoon, members of the Judiciary, Judiciary Committee. My name is Myron Dorn, M-y-r-o-n D-o-r-n, and I represent

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District 30. I'm here to introduce LB952. The Court Administrator's Office brought this bill to me. It is simply a clean-up bill of cash funds for the Administrator's Office. And Corey Steel is here, and if you want to know the details of that proposal, he will be able to answer that. First, under LB952, the Supreme Court Operations Cash Fund is codified into statute Section 81-111-104 [SIC]. The cash fund was administrator-created, and now we just put it into state-- with the statute authority, statute listed below, and you can see it down there, the 81. Second, the bill eliminates the Supreme Court Reports Cash Fund. This fund received revenue from the sale of printed Supreme Court and appeals court opinions, which are now published electronically. Revenue has decreased, and there's currently about \$64 in the fund. If any revenue is generated, it would go into the Supreme Court Operations Cash Fund. And third, LB952 would eliminate the Court Appointed Special Advocate Fund. This fund was used to provide grants and funding for CASA. The appropriation is now made to the Foster Care Review Office, and the fund balance has been zero since 2018. This fund is unnecessary, and I do know we visited with NACO, and they did send a letter in opposition to this because they thought we were not going to fund that no more, or they had other issues with it. Once we visited with them and told them what was going on, they tried to pull back that letter and couldn't, or they would not have sent that letter in in opposition of this. Again, this bill is strictly clean-up. Corey Steel is here with the court administration office is here and will testify. And I'm glad to answer any questions. And I'll just make this comment before I do my closing, or stay here for it. This bill is-- they have been working with all the people involved, and this is-- somebody that-- it's a bill that everybody is in agreement with, and I've visited with Senator Bosn that hopefully we could have this as a consent calendar bill. Thank you. Take questions.

BOSN: Yeah. All right. Are there any questions from the committee?
Senator Hallstrom.

HALLSTROM: Does the \$64 go back to the General Fund?

DORN: Probably. No, no, no. He'll-- Corey will answer that one, but I think it goes into the other cash fund.

HALLSTROM: OK. Thank you.

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DORN: I think, I think. I'm not sure. He will be able to answer that. Yes.

BOSN: All right. We will begin with our proponents. While they're making their way up, I will note we had no proponent comments, the one comment that Senator Dorn referenced that was listed as opponent that I believe is now resolved, and no neutral comments submitted. Welcome, Mr. Steel.

COREY STEEL: Thank you, Chairwoman Bosn, members of the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I am the Nebraska State Court Administrator. I'm going to hit the last issue that Senator Dorn talked about, the CASA fund. I want to be very clear, as there's been a little bit of confusion. This is not to eliminate CASA, this not to defund CASA. We strongly, strongly support CASA and the work they do through the judicial branch. This fund by the Legislature was moved out of the judicial branch and into the Foster Care Review Office, and there's actually been, I think, some attempts-- and if not, I remember correctly, more money put in that fund. When that happened in 2018, the actual cash fund in our budget category is still there. It is zeroed out, there is nothing there. Since that has moved and the appropriation has moved for CASA, we're asking in our budget that just our cash fund that's authorized to do this be eliminated, and there's no need for it at this point in time. So, we fully, strongly support CASA and the work that they do. Second, our operational cash fund. This is a cash fund that would-- we created for a couple different reasons. As this Legislature has given us appropriate-- the ability to work with local counties for the clerks of the district court that are ex officios-- we have 11 of those counties-- we enter into an agreement to offset some of the costs that we pick up. Those go into that cash fund. So, there are some funds we have grants that we apply for, those grant dollars go into the cash fund from the federal government or from other state entities. So, this cash fund we created in order, in order to hold those funds, and then expend those resources throughout the year. We now, based on statute, need to create that and put that in there statutorily. So, that is our Supreme Court cash fund. The other is the Supreme Court Reporters [SIC] Cash Fund. A long time ago, we used to print every opinion, and we used to then disseminate those opinions and receive revenues from those opinions that were disseminated by the Supreme Court and Court of Appeals. We've stopped that practice; everything is online and digital now. We no longer receive revenue from those

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Supreme Court opinions and those Court of Appeal opinions, so, we no longer need that cash fund. Just to answer your question, Senator, \$63.83 is left in that cash fund. We've asked that that just be transferred to the operational cash fund. If there's a big dispute over that and it needs to go back to the General Fund to offset this horrible shortfall we are in, we would acquiesce to the \$63.83 to go back to the General Fund if that is not possible. I'd be happy to answer any questions.

BOSN: Senator Hallstrom.

HALLSTROM: If you'd be willing to split it 50-50, who'd get the extra penny? You don't have to answer that.

COREY STEEL: Whatever you, you want to appropriate and move forward.

BOSN: At this point, maybe it's to me. OK. All right. Seeing no other questions, thank you for being here.

COREY STEEL: Thank you very much.

BOSN: Next proponent. Opponents. Neutral testifiers. Senator Dorn, do you wish to close? He wishes to waive, so he will waive closing. That will conclude our hearing on LB952. Thank you, Senator Dorn. Next up, we have Senator Hardin for LB909. Good afternoon, Senator Hardin. While he's making his way up, I will note there were 17 proponent comments, 2 opponent, and no neutral comments submitted online. Welcome back.

HARDIN: Thank you, Chairwoman Bosn. And good afternoon, Senators of the Judiciary Committee. I'm Senator Brian Hardin. For the record, that is B-r-i-a-n H-a-r-d-i-n, and I represent the Banner, Kimball and Scotts Bluff Counties of the 48th Legislative District in western Nebraska. I am before you today to introduce LB909. At its core, LB909 is about accountability, trust, and closing a gap in Nebraska law. Law enforcement officers hold extraordinary authority; they wear a badge that gives them power over liberty, safety, and, in many situations, the futures of the people they encounter. With that authority comes a heightened responsibility. When that power is abused, particularly in a sexual context involving a minor, the harm is profound and lasting. Nebraska law already recognizes this principle in other settings. We prohibit sexual abuse by school employees, we prohibit sexual abuse by correctional staff; we recognize that when an adult is placed in a

position of authority over a young person, consent cannot truly exist because power distorts choice. What Nebraska law does not currently do clearly and directly is address sexual abuse committed by a law enforcement officer against a minor who is 16 or 17 years old. LB909 fixes that. This bill creates a new offense, sexual abuse by a law enforcement officer. It applies only to sworn law enforcement officers, it applies only to minors between the ages of 16 and 18, and it is narrowly tailored to address conduct that exploits the inherent imbalance of power between an officer and a young person. Importantly, the bill makes clear that consent is not a defense. That is not radical concept in Nebraska law; it's a recognition that when authority and coercive power are present, the law must protect minors from exploitation. Beyond creating the offense, LB909 does the necessary work of integrating it throughout Nebraska statutes. It ensures that victims receive the same protections as other sexual assault victims; it requires sex offender registration where appropriate; it includes the offense in parole, victim notification, and confidentiality provisions. In short, it treats this crime with the seriousness it deserves. This bill is not anti-law enforcement. In fact, this bill was brought to us by law enforcement officers who take great pride and community care in offering it to address an embarrassing oversight in our lawful protection of minors. The overwhelming majority of officers serve honorably and ethically every day. In fact, this bill protects the integrity of law enforcement by clearly distinguishing professional service from criminal abuse. Accountability strengthens public trust, it does not weaken it. LB909 is also not about expanding criminal law unnecessarily. It fills a specific gap, uses existing statutory frameworks, and mirrors how Nebraska already handles abuse by other authority figures. At the end of the day, this bill asks a simple question: if we agree that minors deserve protection from sexual exploitation by those in power, why should that protection stop at the edge of a badge? LB909 says it should not. I've had conversations with opposition who raise concerns over this legislation, and I'm committed to working with opposition on amendments to find a meaningful compromise that still reaches the goal of ensuring that minors cannot be taken advantage of by someone in a position of authority. Thank you for your time, and I'd be happy to yield any questions-- yield to any questions you may have.

BOSN: Thank you. Questions from the committee? I guess let me-- I'm thinking about the Romeo/Juliet situation, where two high school

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sweethearts, one is still under 19. In Nebraska, you can be a law enforcement officer at 18 years of age.

HARDIN: I believe it's 20.

BOSN: OK. Let's say it's 18. If it is 18, would you agree that we would probably need some sort of a Romeo/Juliet exception?

HARDIN: We would probably need a, a Romeo/Juliet of sorts. We took a look at some other states and what they have, and so we--

BOSN: OK.

HARDIN: --we're all slightly different, but we have plenty of overlap with certain states, so.

BOSN: Certain states that don't have a Romeo and Juliet?

HARDIN: That do have a Romeo/Juliet.

BOSN: OK. And do those states all-- what state-- what age do those people-- or, those states allow individuals to complete law enforcement training?

HARDIN: There seems to be some-- most of them are around age 20 by the time they would leave the academy.

BOSN: OK.

HARDIN: Yeah.

BOSN: But wouldn't you be subject to this even when you enter the academy?

HARDIN: Well, particularly by the time you leave with the authority of that badge, which would be at the end, not at the beginning. But yes, at the of the day, we're talking about creating a law and a line of demarcation somewhere. In other words, it's not a good idea to be a cop and to date the prom queen.

BOSN: So-- well, I don't think you mean that, because the prom queen should be able to date whoever she wishes to date, right? If--

HARDIN: Well, that's, shall we say, on the light side. What we're talking about is, is sexual penetration and so on and so forth here in the context of this bill. And so, you know, we're taking about protecting kids. And so, frankly, it's, again, not an unfamiliar thing to say, wait a minute, there are positions of authority, and given those positions of authority, where do we find that line of demarcation that steps over that person and basically harms that minor? And so, I think in Nebraska, we can come up with better than it's 16- or 17-year-olds, and that's what this bill is about.

BOSN: OK. Any other questions? Seeing none. Thank you very much. Can I see a show of hands how many individuals are here to testify in some capacity on LB909? 1, 2, 3. OK. Perfect. Proponents. We'll start with proponents. Welcome.

MONTY LOVELACE: Thank you, Chairwoman Bosn, members of the Judiciary Committee, Senator Hardin for bringing this bill. My name is Captain Monty, M-o-n-t-y, Lovelace, L-o-v-e-l-a-c-e, and I am the director of the Nebraska Information Analysis Center and the Criminal Identification Division for the Nebraska State Patrol. I'm here today to testify in support of LB909. When troopers take the oath of office, we swear to protect and uphold the Constitution of the State of Nebraska and the Constitution of the United States. This is a massive responsibility that requires all to display-- all that display the badge of office to live their lives above reproach, to maintain public trust in law enforcement. It is imperative that law enforcement agencies support policies and laws that hold our profession to the highest standards, and this bill aims to do just that. Parents should rest assured that no one in this state will misuse the authority of the badge to violate their children in any way, especially engaging in conduct that would constitute a sexual violation. However, if that conduct occurs, this legislation will hold officers that cross that line accountable. In my career, I have talked to parents that wish to file criminal charges against law enforcement officers for engaging in sexual relationship with a child. But in cases where the child was over 16 and under the age of 19, there was nothing that we could do to help them. While there may be circumstances where this may be acceptable, such as a relationship that was initiated before the officer took his or her oath of office, the lion's share of instance-- instances that would cause an officer to develop a sexual relationship with a child in this age range should be absolutely avoided without

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question. At this time, I'd be glad to answer any questions that you may have.

BOSN: Thank you. Are there questions? Senator Storm.

STORM: Thank you, Chairwoman Bosn. Thank you for being here. What's the age to be a state trooper?

MONTY LOVELACE: 21. So the way it works right now is, is you can enter the academy at 20-and-a-half, but you have to be 21 upon the age of graduation.

STORM: So, on local law enforcement, maybe someone else will testify. The-- is it under that age, too, or is it 21?

MONTY LOVELACE: It's 21, sir.

STORM: For the whole state?

MONTY LOVELACE: Yes, sir.

STORM: OK.

BOSN: Any other questions? Senator Rountree.

ROUNTREE: Thank you, Chair Bosn, and thank you so much for your testimony and for being here today. As we've had no law, you said over the course of your career, you've dealt with many parents. Really, how prevalent is this? One is really too many, in my opinion, but how often do we see this happen that we're bringing the law now? And does it have any adverse impact on a law enforcement-- I'm going to say State Patrol, as you're working-- does it having a negative impact upon their job and progression going forward?

MONTY LOVELACE: Well, to answer your question-- first of all, Senator Rountree, thank you for your question.

ROUNTREE: Yes, sir.

MONTY LOVELACE: There-- there's a couple things. In my career, I've seen this go both ways. I've seen instances where law enforcement has used their badge to engage in a law violation with children under the age of 16, which has led to criminal investigation and, and arrest and prosecution. But I've also had instances where I have had-- I had one

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case in particular where a parent called me livid that they're-- that they had gone for a trip and their, their daughter was left at home, 16 or 17 years of age at the time. She had developed a relationship with a 23- or 24-year-old officer, and that individual had sexual intercourse with that, that young lady. The parents were livid, and being a parent myself, I would have been livid too. I took the oath of office to protect the citizens of the state of Nebraska, and with that comes-- I hold myself at a standard of, of ethics and integrity that I don't expect people that I serve to hold. That's what I do, that's what I've chosen to do. And in that instance, other than advocating their case to the, the chief of police about unethical behavior, there was nothing that I could do criminally. Now, the second part of your question in regards to how does that adversely affect law enforcement, obviously, in the, in the day and age that we live in, law enforcement tends to be scrutinized. I'm fortunate to be a law enforcement officer here in the state of Nebraska, and feel great support from our local leaders and our state leaders, and I mean that with, with, with all respect. But each time that this happens, it does erode public confidence in law enforcement. So, I think that-- I've always felt that in my career, you know, the more deterrent we have, the more people think twice about what they do. And if people choose to cross that line in this particular case, law enforcement chooses to cross that line, this gives us some teeth to hold them accountable, and I think that it helps build public confidence up. I think the, the thing that I hear in law enforcement is over the years that if we mess up, we circle the wagons and we don't do anything about it. Bottom line is, is that the Nebraska State Patrol and law enforcement should lead from the front when it comes to accountability in law enforcement, and I couldn't think of a better way to do that when we're talking about a situation where we're holding the most vulnerable lives in our hands. And this just creates another line of accountability that we can use to protect those vulnerable in our society. I hope I answered your question sir.

ROUNTREE: Oh, yes, sir. Your question-- it, it is fully answered. I took an oath to serve our nation as well, 30 years in the uniform.

MONTY LOVELACE: Thank you for your service.

ROUNTREE: Thank you for yours as well. And so, we understand the power of the oath, and we understand that in times past, when members have asked our nation who do you trust most has been members in uniform and

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our law enforcement. So, the oath really means something, and we want to protect that. Thank you.

MONTY LOVELACE: Thank you, sir.

BOSN: Thank you. Any other questions? Can you tell me a little bit about what other states are doing for the Romeo/Juliet situation I presented?

MONTY LOVELACE: You know, it, it varies across the states. I mean, there is-- I think that from what research that I've done into this, because I looked at this from a standpoint of what other states do with people in general. And law enforcement aside, there are states that have taken the age of majority regarding sexual intercourse with anyone up to 18 to be consistent with law enforce-- or, to be inconsistent with child pornography statutes. Currently, our law allows someone to have sex with a minor at 16, but they, but they can't possess pictures of them until they're 18. There is a disparity there. So, some states have filled that gap with legislation like, like Senator Hardin's proposing for law enforcement. But as far as law-- but as far as Julie-- the Romeo and Juliet goes, that, that standpoint, some create a-- and, and I apologize, I can't talk off the top of my head of what those states are, but they create a, a range of an individual that could be a certain age versus an individual that, you know, is close in age. You know, one of those situations. I, I mean, we just talked about this at the office the other day. There-- it is a real possibility that a 20-year, 20-and-a-half-year-old officer could be engaged in a, in a reasonable relationship with an 18-year old student still in high school. We talked through that, and we believe in law enforcement that there are exceptions to be made, and I think that it's, it's up to this body to figure out your level of comfort. But I will say, I don't feel that I'm stepping out on a limb to say that from a law enforcement perspective, we realize that there, that there are situations where it may be acceptable, but those situations that we're talking about today really are the ones where there's a misuse of, of the badge, where the badge is leveraged to gain favor with individuals whose brains haven't stopped developing yet. And, and unfortunately, sometimes in law enforcement, until you reach the age of 25, our brains haven't either. You know, we're, we're asking people to carry a-- to wear a badge, carry a gun, and drive fast, and they're 21 years of age. So-- but we also believe in accountability, and we believe in the, the, the types of individuals

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that we, that we ask to wear-- take the oath and ask to wear the badge of office are able to hold themselves above reproach and make solid decisions. So, there, there is-- I mean, there are many ways that we could go about, or you could go about the Romeo and Juliet. I think that there's some exceptions to be made, and I-- and if you'd like me to do more research and, and provide you that regarding other states, I'd be glad to do that.

BOSN: Well, I, I guess in response to your, to your analysis there, I wholeheartedly share that our age of consent needs some work, because I, I share your frustration with, OK, you can be in a relationship with a 55-year-old at 16, but you can't have pictures of her in a state of undress until she's 18. I don't think that squares well. But I also think when you start making these types of situations, there is no requirement in this bill that the officer have used their position of power to coerce that individual into the relationship, right? In fact, it's the opposite. It's presumed non-consensual, right? In this proposed legislation.

MONTY LOVELACE: I-- I'm going to assume you're right. I-- I've read the parts of the bill that I believe are, are in line with where I've testified today, but I'd have to go back and, and read it fully.

BOSN: And-- but you're-- I mean, even in your answer to my question, you're acknowledging that there are situations where you could have the prom queen--

MONTY LOVELACE: Oh, absolutely.

BOSN: --have her boyfriend. I mean, people get married to people who are five or six years older than them. And so--

MONTY LOVELACE: Absolutely.

BOSN: --I think there has to be some, and it sounds as though you're willing to work with us on--

MONTY LOVELACE: Absolutely.

BOSN: --what that looks like. So, to the extent you have what other maybe surrounding states are doing, that might be helpful to the committee.

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MONTY LOVELACE: Absolutely. And ultimately, I'm just a testifier. I, I-- at the end of the day--

BOSN: Well, you hold a lot of power. We trust you.

MONTY LOVELACE: Well, I-- and I, and I appreciate that, and, and I've, I've-- I'm honored to serve in the capacity that I serve. But ultimately, I trust this body to come up with reason-- you know, exceptions to, to this rule. I realize that. We-- there are, there are exceptions to be made. Ultimately, what we're trying to do, what we support with the Nebraska State Patrol is just holding officers that are misusing their badge accountable, not so much with just a policy violation, but also a criminal violation, too.

BOSN: Thank you. Any questions in light of that? Seeing none. Thank you for being here.

MONTY LOVELACE: Thank you, ma'am.

BOSN: Yes. Next proponent. Good afternoon, and welcome.

GARY YOUNG: Good afternoon, Senator Bosn. My name is Gary Young, and it's spelled G-a-r-y Y-o-u-n-g. I'm the chief of police in Crete. I'm here on behalf of the Police Officers Association of Nebraska and the Police Chiefs Association of Nebraska in support of Senator Hardin's bill, LB909 to prohibit sexual abuse by a law enforcement officer. Law enforcement officers enjoy a great deal of respect in the community. They're placed in positions of great trust, and-- by those communities, and they're held to a much higher standard because of that trust. We must be vigilant for those who violate it. On a personal note, I've given over 40 years of service to the-- to my community and to my profession. I'm proud to be a police officer in this state, a member of the law enforcement organizations, and am humbled to speak on their behalf. I know virt-- that virtually all officers strive to provide professional service to our communities. However, a few predators, as with any profession, enter our ranks. Those who violate the standards of the profession and prey upon our weakest should be ruthlessly weeded out and prosecuted for the good of the community and the good of the profession. This proposed legislation demonstrates to the public that elected officials are concerned and proactive by addressing these terrible crimes and hold those responsible and accountable. As demonstrated by me speaking on

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behalf of the, the Police Officers Association and the Chiefs Association, my fellow professionals support Senator Hardin's efforts. This concludes my statement. I welcome any questions you may have for me.

BOSN: Thank you. Are there questions from the committee?

GARY YOUNG: Thank you.

BOSN: All right. Seeing none. Thanks for being here. Next proponent. Oh, OK. Opponents, anyone here in opposition? Welcome.

SPIKE EICKHOLT: Thank you. Good afternoon, Chair Bosn, and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in respectful opposition of the bill-- to the bill. I did talk with Senator Hardin a couple of times, and I talked to his office as well, when the bill was introduced. The, the source of our opposition is really what Chair Bosn asked about before on that. We don't, we don't disagree with what the introducer said for his reasoning for the bill, or even really for the proponents, because they talked in terms of a law enforcement officer using their official authority to coerce or to consummate a relationship between somebody between 16 and 19. But if you look at the bill on page 4, it does not require that in the text. It simply says a law-enforcement officer shall not have sexual contact or sexual penetration with anyone age 16, 17, or 18, and consent is never a defense. So, that captures, by the text, those-- whether you want to call them Romeo and Juliet relationships, but those truly consensual relationships. As the State Trooper-- State Patrol representative testified, and I referenced it in my testimony, that Section 81-1410 requires that law enforcement officers must be 21 years old prior to completion of their training. So, you're going to have officers who are 20, 21, or in the early 20s. It's not uncommon for people who are 18 to date people in 20s, and that's not necessarily an inappropriate type of relationship. This bill does sort of bring up the issue of, of our age of consent being 16, and it's been like that for perhaps as long as we've had a criminal code. That's another separate discussion. But I think what we'd respectfully suggest and will address our concerns is that there's just a few words that say "a law enforcement officer shall not," and then list the different ways to commit the crime while engaged in their official authority under "cully"-- color

of office or some similar phraseology to explain that when they are on duty or use their power when they are on duty to get in these relationships, that's when the law should apply. If you look at the bill, it references "law enforcement officer," and the term that is defined is in Chapter 81, Section 1401. I should have printed it out and happy-- handed it out. It does include law enforcement officers who are certified, but it also does include part-time employees of various county sheriff's offices, village police agencies, games [SIC] and parks, and other-- including conditional officers, and I don't know if that would capture more likely to be people who are closer to the age of 21. Perhaps it does, I'm not sure. The other category or the other professions' offenses, school employees, inmate, parole employees, those types of sexual crimes, there is that requirement of nexus when you commit those crimes, and we would ask to have it here. I'll answer any questions, if you have any.

BOSN: Questions for this testifier? Senator DeBoer.

DeBOER: So, I think we did this with the pictures. I actually think you can have pictures if you're 22 of your 18-year-old girlfriend or boyfriend or whatever. So, there is that kind of, like, if you are young but you're a little bit older, there is that-- I don't know what we would call that exception, I guess. If we did that here but we don't put the nexus in, what's the problem?

SPIKE EICKHOLT: Well, I understand law enforcement officers are held to a higher standard, but, you know, they're people, too. And admittedly, 16 to 19, those are arbitrary ages as well. So, I, I think that if the Legislature, as a matter of policy, is going to change the age of consent somehow, I think you ought to do it for reasons other than the profession that you just don't like at the time. Because then, you're going to start maybe not going down this road that it's going to be firefighters next, it's going to be so-and-so next. In other words, it's admittedly arbitrary now, but that's somewhat arbitrary then to have an age range. Because, as Senator Bosn said, there's nothing illegal in Nebraska for someone who's 17 years old to date someone who is 20, 25, 30, 35, whatever. You have the age difference, you do have some-- well that's, that's what we have now, and I don't know-- if, if the problem is-- or the, the point of the bill is to not allow law enforcement officers to abuse their trust that's given to them by society, not to abuse their power that they have-- because they do have great power-- and to hold that profession to the respect

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that it deserves, then I think you ought to have that nexus for that reason, not just because if they're a couple of years younger or older.

DeBOER: How does, how does the nexus work in law enforcement though? I can see how a nexus would work if I were-- when we were doing the, the painter at the school, for school employees. How does it work with law enforcement? Because ostensibly, if I'm having an interaction-- I mean, unless you're saying, you know-- I, I, I don't even think it would work to say, OK, here's someone in the Ralston area, so they can't date any Ralston cops because there's a nexus between Ralston and where they live. But they would spend time in Omaha, say, or go to Grand Island and be pulled over by someone in Grand Island. Like, how would a nexus work? Because a cop has a lot more interaction than someone who is at a school who ostensibly would stay at that school, and you could say, do they have a nexus or not? In the case of law enforcement, I would think that as long as I'm in-- I mean, the officer in the back who is from Crete is an officer that I could come across at some point. You know, anybody could come cross. The-- there, there is sort of a built-in nexus, in my mind, between all law enforcement officers in the state and every person who happens to go into that jurisdiction.

SPIKE EICKHOLT: Well, you asked a question in there somewhere, I suppose.

DeBOER: I did.

SPIKE EICKHOLT: So, I think what you're saying-- I think one example perhaps in-- I remember in, in my law practice, an officer is dispatched to a loud party complaint. A bunch of teenagers are there having a party. The officer says, who lives here? The 17-year-old girl says, I've got [INAUDIBLE], please don't do anything. He says, fine, I won't, here's your warning. Then he comes back after his shift.

DeBOER: That's clearly a nexus.

SPIKE EICKHOLT: That's an example of abuse of authority.

DeBOER: That is clearly a nexus, clearly an abuse of authority.

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SPIKE EICKHOLT: Right. If I could answer, because you asked me about five questions--

DeBOER: Sorry.

SPIKE EICKHOLT: --in your statement. The other instance, I think-- you're talking about knowing a police officer, I'm a person, but there are situations where people know police officers outside of the roles of police officers, especially in the smaller communities. They went to high school together, and maybe they didn't date before he became a cop, but they might meet again somehow. You know? I go to court, and everyone looks young, OK? And it's [INAUDIBLE] more and more like that. All the young cops that work the third shift are there, you know, for the city cases. They all look like they're 18, 19, 20. I don't know. Most of them are single, they're probably dating. And it's a different perhaps way of life that I'm certainly used to, and perhaps others are here. But that's how some young people are. In, in other words, you could have somebody get caught up in this where the victim doesn't even know the person is an officer at all, because the status is there, and consent is not defense. It's not even relevant at the trial. It's a strict liability type thing.

DeBOER: So, the question I asked in there, I think, to push back a little bit, is how you would construct a nexus. Because I think that the nexus concept is different for a cop than it is for the law en-- for the school situation that we were talking about.

SPIKE EICKHOLT: Right, right.

DeBOER: So I don't know-- I don't think we could just make them exactly the same.

SPIKE EICKHOLT: No, I, I acknowledge that. I kind of give some alternatives. When I talked to Senator Hardin in his office, I understand he was not perhaps interested in pursuing, because I hadn't really looked or researched anything. But, you know, we've got that 1983 language under color authority kind of thing, which is sort of general and vague. And it doesn't necessarily include when they're on duty, and it doesn't necessarily include whether they're actual, even capable of wielding that state power, but they somehow use it to do something to deprive someone of their rights. Maybe there's something there.

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DeBOER: OK.

SPIKE EICKHOLT: I'm not sure, to be honest.

DeBOER: Because--

SPIKE EICKHOLT: I don't know what other states do. I'm just not sure. I haven't looked at it.

DeBOER: Because I see your argument about the nexus, but you see my argument about the-- this is not like other professions?

SPIKE EICKHOLT: Right. No, I-- and I'm not disputing that at all. But, I mean, here I am defending police. [INAUDIBLE] police are people, too. They're not perfect. The heart wants what it wants. People get in these relationships. And this is a-- I'm serious. This is a felony 25-year registration sex, sex offender act thing. This is, like-- this is worse than Brady Giglio with the lid off, all right? This is much worse than that to a cop's career. This is-- you know, this is catastrophic.

BOSN: I have a question, and you recall the case that occurred in Lancaster County within the last 10 years.

SPIKE EICKHOLT: Yes, yes.

BOSN: Was that charged under 28-320, that being--

SPIKE EICKHOLT: Yes.

BOSN: --that the individual was mentally or physically incapable of resisting the officer's actions at that time?

SPIKE EICKHOLT: I'm not sure, or if they just charged it under-- is it 319? Just as simple that the alleged victim-- the victim did not consent, and it was just a factual dispute. It could have been 320.

BOSN: And was the argument at that time, if you know,--

SPIKE EICKHOLT: Right.

BOSN: --that the victim who was being contacted by law enforcement in a state of mental duress, right?

SPIKE EICKHOLT: Right, right.

BOSN: That was the nature of that contact, that that police officer was using his position of authority to coerce her into performing sexual acts.

SPIKE EICKHOLT: That's right.

BOSN: And so, she wasn't consenting to the action. She was consenting to get out of being EPCed.

SPIKE EICKHOLT: That's correct.

BOSN: OK.

SPIKE EICKHOLT: And he was doing that in his official capacity.

BOSN: Well, he was wearing his uniform.

SPIKE EICKHOLT: In his uniform, while on duty and using access to official records, that sort of thing.

BOSN: Oh, that's right. OK.

SPIKE EICKHOLT: You know? So, so, so those are some of the things. And that was just under traditional or standard, if you will--

BOSN: Her age was irrelevant.

SPIKE EICKHOLT: Her age was irrelevant, and she was beyond that, and you have that. And for what it's worth, that could still be prosecuted now. I understand when you have these "the parents don't like the relationship" kind of thing, and there's probably something to be said about that, but that's not the same thing as a forcible sexual assault, and perhaps arguably should not be, as far as a criminal matter.

BOSN: OK. Thank you. That answers my question. Senator Hallstrom.

HALLSTROM: Would that example have involved incapacity to consent, irrespective of age?

SPIKE EICKHOLT: Yeah.

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HALLSTROM: OK.

SPIKE EICKHOLT: Yeah, that person-- the person was found guilty, and he's in prison, so.

HALLSTROM: Senator Bosn went immediately to the Romeo and Juliet. Are you familiar with other states that have those types of exceptions?

SPIKE EICKHOLT: I, I-- I'm not. I mean, I may have researched it one time.

HALLSTROM: And, I mean, from what limited idea, it seems to be that some of them are predicated upon the difference in age,--

SPIKE EICKHOLT: Right.

HALLSTROM: --and obviously we're talking about 16 to 19, and if I'm 21 when I get out and I'm dating somebody that's 18, it's not going to be too long before they're 19, and then they've cleared the hurdle and we're, we're beyond the issue that's addressed here. I'm just concerned. You know, it's February 26, we're one day away from the end of hearings. You've talked to Senator Hardin. Now, if Senator Hardin was unrelenting and not willing to talk turkey, that's one thing. But it just seems to me that if we were creating our criminal code from whole cloth, I can't imagine that your members would come in and say this type of offense shouldn't be covered. And yes, there are some wordsmithing that we might be able to do, but to be on record in opposition to this type of criminal offense just doesn't seem to flesh well with me.

SPIKE EICKHOLT: We [INAUDIBLE] to that opinion, Senator.

HALLSTROM: Thank you.

BOSN: Senator Storer.

STORER: This is-- you can learn something every day in this committee. But my question is really pretty, pretty straightforward. To your point about how this could destroy a police officer's career--

SPIKE EICKHOLT: Right.

STORER: --in the event that-- OK. And I went back and I looked on the online comments to make sure I wasn't missing something, and I'm not

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saying this to be disrespectful or-- but, but it seems sort of glaringly obvious to me there's no one here representing the police union, the officers--

SPIKE EICKHOLT: That's true.

STORER: --to oppose the bill.

SPIKE EICKHOLT: That's true. That's absolutely true. And that's why I admit I'm in an awkward spot. You know, I, I-- we try to be sort of consistent. We look at these things. I mean, I understand what we're talking about now, but when this bill-- if it gets passed into law, those sentiments that we're all thinking and talking about, that's not going to matter. You're going to look at the text of the statute and how it applies and how this is going to work in practice, in the public, and what could happen and what could be unintended consequence. That's the way that we look at it. The concern that we had is that this would make a status offense for peace officers to never have any kind of relationship with anyone 16 to 19, regardless of their official authority, whether they use it at all. That's how, that's how we read the text of the statute. And I, I don't know why they're not here. It's not fair for me to comment on it. They-- you're right. They know where the hearing room is, they know how to do it. I've been against them probably on multiple bills. It is a bit awkward. But, you know, things move quickly around here. Like, people show up and say, hey, what about this? Have anyone thought about that? Back to Senator Holdcroft's point-- or, Senator Hallstrom's point, I did talk to his office on more than one occasion about this. As a matter of fact, when I first saw the bill, I thought it was perhaps a drafting oversight, and I tried to be helpful. This is what it gets you in this place sometimes, being helpful. And I get that, that's part of the process, but.

HALLSTROM: And I gathered from your comments that you had talked to him, so.

SPIKE EICKHOLT: I got nowhere else to go. I'm going to be here. Right? And I understand no one wants to-- well, anyway.

BOSN: All right. Senator DeBoer.

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DeBOER: So, this you may not know, but usually you know these things better than-- is there a marriage exception? Because you could--

SPIKE EICKHOLT: Well, there is in-- a couple-- a few years ago, remember? Senator Wishart had a bill kind of like this--

DeBOER: Yeah. Yes.

SPIKE EICKHOLT: --that dealt with-- and it's now codified at 28-322.05. It's not in the bill, but it, it makes it a felony crime to have sexual contact or sexual penetration with a detainee. And detainees is just that: temporarily stopped, traffic stop, and that's what it was in response to. Someone in jail, someone being processed, someone at the hospital waiting to get moved to the jail, whatever. They cannot consent. But there is a marriage exception to that for whatever reason. I don't know why, but--

DeBOER: I think I asked for it.

SPIKE EICKHOLT: Well, that could have-- that could have been it. Which is another odd thing, because you can get married with parental consent in Nebraska at 17.

DeBOER: Well--

SPIKE EICKHOLT: And that's-- but that's not envisioned in this bill, right? You could-- it would criminalize spouses.

DeBOER: You could be married-- you could certainly be married at 18--.

SPIKE EICKHOLT: Right.

DeBOER: --to someone. Because you're-- you could be married at 18. You-- that requires parental consent, but there are kids who get married at 18.

SPIKE EICKHOLT: Right.

DeBOER: And so you could marry an officer at 18. There probably ought to be an exception for spouses in here as well.

BOSN: Senator Hallstrom.

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HALLSTROM: And just to clarify, my comments were directed at your members to maybe send a message to them that they shouldn't send you in here and make you feel awkward with some of-- with some of the arguments, so. Thank you.

SPIKE EICKHOLT: There is no-- there is no light between me and my members. I am my members.

HALLSTROM: OK.

SPIKE EICKHOLT: I'm loyal to them.

HALLSTROM: And you have to be. But you can also take the message back to them.

BOSN: All right, in light of-- no other questions? Thank you, Mr. Eichholtz [SIC]. Next opponent. After that warm reception from the committee, I'm sure you're all just neutral testifiers. Senator Hardin, to close. Welcome back.

HARDIN: Thank you. Just for the record, if I ever get in trouble legally, Spike's who I'm going to, OK? I-- and I really do appreciate him, and I mean that very genuinely. Any time Mr. Eickholt comes to me, bills get better. That's just a fact. And so, I, I, I genuinely appreciate [INAUDIBLE]. And so, looked it up again because we did a little bit of work on, you know, how is this handled everywhere else, right? That's kind of our main Swiss Army knife around here. And anyway, what I'm about to show to you is just a few little brief examples. The fact is it's not handled uniformly anywhere. Texas exemption: if the older party is no more than three years older than a 14- to 16-year-old victim, that's how they define those ages. OK? Florida, specific allowance for 16- or 17-year-olds with partners under the age of 24, under defined conditions. Colorado, New Jersey, Ohio, Oklahoma, and others with similar age group gaps, commonly two to four years. So, I think it's that lack of uniformity state-to-state that basically says this is a challenge to handle this. But I think that not handling it is ethically not the best option. So, I'm, I'm more than willing to work with Mr. Eickholt to say, OK, are there ways to, to improve this? Because I, I think there are. Because I think we have to come up with it, and there's no way to do it, I think, that is going to satisfy all situations at all times. But it's a, a matter of addressing it. I do encourage you to read the online comments. A

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summary of those, I could probably submit-- summarize this way: "this is just common sense, fix this." We've discussed, for example, taking individual consideration into these cases, set up some guidelines, and then to say, OK, how do we be responsible adults in the room about this? Yes, one of these cases arose in my district in the last 12 months. It created hardships in the community. Local law enforcement felt their reputations were bruised by what happened. It also created frictions within that local police force, and there was lack of respect that was felt both ways. And so, our sense is to protect minors however we can, and also to protect young police officers, too, so.

BOSN: Thank you. Any questions for Senator Hardin? Seeing none. Thank you very much. Next up, so fresh, so new, Senator Hardin on LB910. While he's making his way back, I will note for the record that on LB910, we had 8 proponent comments, 3 opponent comments, and no neutral comments submitted online. Welcome back, Senator Hardin.

HARDIN: Thank you, Chairwoman Bosn. Good afternoon, again, Senators of the Judiciary Committee. I am still Senator Brian Hardin. And for the record, that is B-r-i-a-n H-a-r-d-i-n, and I represent the Banner, Kimball and Scotts Bluff Counties of the 48th Legislative District in western Nebraska. I'm back before you again today to introduce LB910. This bill addresses a very practical but growing challenge in the investigation and prosecution of sexual offenses against children: the significant cost and resource demands associated with the forensic analysis of electronic devices. In many of these cases, law enforcement must seize multiple electronic devices, including phones, computers, and data storage equipment in order to gather evidence critical to both identifying victims and holding offenders accountable. The forensic analysis of those devices is time-intensive, highly technical, and expensive, and it places a substantial burden on the agencies tasked with doing this work. At the center of these cases are children who have been exploited and harmed, and the adults responsible for protecting them. Thorough forensic analysis of electronic devices is often essential not only to securing a conviction, but also to identifying additional victims, stopping ongoing abuse, and ensuring that offenders are held fully accountable. By helping sustain the resources needed for this work, LB910 supports timely, thorough investigations that reduce delays, strengthen prosecutions, and ultimately serve the best interests of child victims and their families. LB910 seeks to offset those costs in a targeted

and responsible way. The bill imposes a \$100 fee on individuals who are convicted of a sexual offense against a child for each electronic device seized in connection with the offense. Importantly, this fee is assessed only upon conviction. And the bill also provides that the fee is waived if the defendant is found to be indigent. As introduced, the bill directs these fees to the Nebraska State Patrol Cash Fund, with these funds used specifically to defray the costs of forensic analysis of seized devices. The intent is straightforward. When these investigations require specialized forensic work, a portion of that cost should be borne by the offender rather than entirely by taxpayers. Since the bill's introduction, I heard from stakeholders who support the concept but suggested a refinement; they asked that the bill be amended so the fee follows the work, meaning the funds would be credited to whichever agency actually conducts the forensic analysis. Under that approach, if the State Patrol lab performs the analysis, they would receive the fee. If another lab such as the lab in Crete performs the analysis, then the funds will be directed there instead. I'm supportive of that concept, and believe it aligns with the intent of the bill, which is to help sustain the forensic capacity needed for these cases. I would defer to the attorneys in the room to assist with crafting the appropriate amendment language to ensure that outcome takes place, it's achieved cleanly, and that it's done correctly in statute. Following me will be experts in this field of forensic analysis, and so I encourage you to save your specific questions for them. However, if you have any small-worded questions, I'll take those now.

BOSN: Thank you. Any questions for Senator Hardin? Seeing none, thank you very much. Can I see a show of hands, how many individuals are here to testify in some capacity on LB910? 1, 2. OK. All right. That gives us a heads up so we can tell the next people. Proponents, anyone here to testify in support? Welcome.

MONTY LOVELACE: Welcome. Thank you very much. It's nice to be in front of you guys again. Chairwoman Bosn and members of the Judiciary Committee, as I mentioned in my previous testimony, I'm Captain Monty Lovelace, M-o-n-t-y L-o-v-e-l-a-c-e, and I am the director of the Nebraska Information Analysis Center and the Criminal Identification Division for the Nebraska State Patrol. I'm here today to testify in support of LB910. The fees this bill would mandate will assist in defraying the ever-growing cost associated with operating a forensic computer lab. In fiscal year 2025-26, the Nebraska State Patrol will

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expend at least \$310,000 in software upgrades, forensic machines, and other miscellaneous technical equipment to process thousands of electronic devices submitted for examination. The two main forensic tools in the lab, Cellebrite and GrayKey, cost nearly \$206,000 by themselves annually. Additionally, the Patrol will expend over a half million dollars to pay three civilian forensic examiners, one sworn forensic examiner, and one sergeant. The total cost to operate a state computer crime lab-- computer crime lab will be very close to exceeding \$1 million, and will likely do so in the coming years as costs associated with forensic tools continue to rise. This bill will create a revenue stream from the offender to cover the cost of "forensic"-- forensics examinations rather than the entire responsibility falling solely on the taxpayer. I would respectfully request you advance this bill for-- to the floor for further debate, and at this time, I'd answer any questions if you have them.

BOSN: Thank you. Are there any questions? Senator Storer.

STORER: Thank you, Chair Bosn. And thank you, Mr. Lovelace. Is-- about, about how much-- and maybe you said that and I missed it-- about how does it cost? I mean, the, the estimated cost to do the forensics when you confiscate a phone or a computer, or--

MONTY LOVELACE: Well, right now, there's-- right now, there's really not a cost associated with it, because the, the-- or, or there's, there's not a, a charge that we, that we charge in this case. The cost is solely on the Nebraska State Patrol to cover. But there is-- depending on the, the, the device itself, I mean, obviously, the software is covered through our annual maintenance agreements. But where the, where the cost really comes into play here is the larger the device and the more the offenders have devices, it's the time that goes into this. I mean, obviously, we've got thousands and thousands of dollars of, of equipment, but there have been times where our officers will go out on a search warrant and literally collect dozens and dozens of devices. As I'm sure that the chief that will come after me can attest to, the individuals that do crimes where they're collecting images of child pornography, oftentimes, they, they have, you know, collections that are, that are massive. You know, when I started my career and when I started to work internet crimes against children cases, it was, it was kind of a big thing to be able to have a thumb drive that had 64 gigabytes of information on it. Now, people walk around with terabytes of information on their phone in their

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pocket. So, our, our, our main drain right now is, is the-- you know, it costs a lot to operate, but it also costs a lot in time and, you know, depending on the case, we can have hours and hours allocated to one specific case. So, that's the, the beauty of this bill: it does allow us to "recoup" some costs so it doesn't fall solely on the taxpayer.

STORER: Thank you.

MONTY LOVELACE: Thank you.

BOSN: I mean, to sort of follow up on her question, it's not just the software, it's the time taken then in addition to that. I mean, how many employees in your division work on Cellebrite reports?

MONTY LOVELACE: Well, three, three individuals create those-- well, well, three individuals create those reports in last year. And this-- and I'm going to give you a number that, that, that also includes all of our examinations, not just those involving sexual assault or sexual exploitation. But I think, if I'm not mistaken, and I'm actually going to actually low-ball this so I don't you a number that's, that's false. But if my memory serves me correctly that last year they examined or processed over 2,400 devices, and that includes computers, cell phones, and other devices that could be external hard drives, thumb drives, anything that could hold, hold digital storage. So, they're going through an incredible amount of, of processing to get that. And obviously, you know, we've, we've created a flow of fast forensics in the lab. You know, years ago, we would-- we didn't get as many, so you could go things-- you could go through examinations bit for bit. Now, we have to rely on these forensic tools to extract the information efficiently, and then come up with a process to go through them efficiently. So, with that said, there's a number of hours that happen in the lab regarding processing, but then these, these reports are created in such a way that the officer or the investigator will also have time going through to find relevant information to their case. So, it, it extends beyond the lab; it is also an investigative drain on both analysts and investigators as well regarding the information, because there's such a large amount, especially with collectors of child pornography. You can have literally thousands upon thousands of, of images and videos.

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BOSN: Thank you. All right. Thank you very much for being here.

MONTY LOVELACE: Thank you, it's a pleasure.

BOSN: Next proponent.

GARY YOUNG: Good afternoon. My name is Gary Young, G-a-r-y Y-o-u-n-g, Junior. I'm with the Crete Police Department as the Chief of Police. I'm here on behalf of the Police Officers Association of Nebraska and the Police Chiefs Association of Nebraska to support Senator Hardin's bill, LB910. In full disclosure, this hits close to home with our digital investigations unit as well. "Investorgators" regularly use data from computers, cell phones, external hard drives and the like to uncover evidence in the prosecution of CSAM, child sexual assault materials. Criminals possessing and transmitting such CSAM have become more sophisticated in concealing the materials on such devices. The process to recover images and information is time-consuming and labor-intensive, requiring expensive special software, specialized training, and a very dedicated law enforcement officer or analyst. Senator Hardin's bill would allow agencies conducting forensic investigations of electronic devices to recover a small portion of the resources used to investigate, locate, successfully prosecute individuals exploiting children. In discussion with the State Patrol and Senator Hardin's office, they agreed that any agency that conducts forensic investigation of electronic devices leading to conviction for CSAM materials should receive the \$100 per device payment. Using the state for the central hub of such payments will result in costs that need not occur if the payments were made directly to the agencies performing the services. And I'll speak on our behalf, we have one officer doing all the work while also answering calls and spending tremend-- and we spend a tremendous amount of our budget, not, not to the tune of a million dollars, but a big portion of our budget goes to software and his time. We did join with our local sheriff's office, Saline County, to establish a, a digital investigation unit so we can split some of those costs, but recovering some or a small portion would be beneficial to small departments such as ours. That concludes my statement, and I welcome any questions you might have for me.

BOSN: Thank you. Any questions from the committee? Seeing none, thank you for being here.

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GARY YOUNG: Thank you.

BOSN: Next proponent. Opponents? Neutral testifiers? Senator Hardin, welcome back to close.

HARDIN: Thank you, Chair Bosn, and I appreciate our testifiers who came out today to, to share this with us. We're living in a new age, and it's a digital one, and it's an expensive one to move through it. And again, like all other things. These are people's lives, and they're located on devices, and so, it takes a lot of time, there's a lot of sophistication to it. I've actually had the opportunity to see that lab, see how it works. In fact, at least in the case of the Nebraska State Patrol, I can say that they, they serve and not only help solve things for here in Nebraska, but frankly, they catch a lot things in other states, because, well, the digital world spills over to other places geographically. And so, they catch an awful lot that other states miss inside their own borders. So, we do-- you know, they do a lot of help in that way as well. So, I would appreciate your, you help, your support, because again, I think that this bill is something that Nebraska needs, and it's a way of helping defray the costs of this onerously expensive process. Thank you.

BOSN: Thank you. Questions for Senator Hardin? I guess let me ask you this, I-- and I-- I'm just-- it's just coming to me, but right now, I believe the court can order costs of prosecution to be borne by the defendant. So, the defendant would pay for those costs as part of a sentencing order. Are you familiar with where I'm going with that?

HARDIN: I'm familiar with the idea, I'm not familiar with how normalized that is.

BOSN: Well, my question is rather, could this even be covered under that? Because right now, the question is whether law enforcement sends a bill to the prosecutor for the, you know, analysis that's done or not. So, something we should probably talk about and think about, make sure we're keeping that in line.

HARDIN: OK. All right. Thank you.

BOSN: Thank you. Seeing no other questions, thanks.

HARDIN: Thanks.

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BOSN: That will conclude our hearing on LB910. Next up, we have LB1254 with Senator Bostar. While he's making his way up, I will note for the record that LB1254 had 6 proponent comments, 7 opponent comments, and no neutral comments submitted online. Welcome, Senator Bostar.

BOSTAR: Good afternoon, Chair Bosn, members of the Judiciary Committee. For the record, my name is Eliot Bostar, that's E-l-i-o-t B-o-s-t-a-r, representing Legislative District 29. I'm here today to introduce LB1254, a common-sense measure to require that electronic smoking devices sold at retail in Nebraska include a built-in child safety feature. LB1254 makes it unlawful to sell electronic smoking devices manufactured after the effective date of this act without a child safety feature, and establishes a Class IV misdemeanor for violations. This bill is straightforward. If these products are going to be sold in our state, they should, they should incorporate basic mechanical safeguards to prevent unintended use by young children. Young children instinctively put objects in their mouths. When they see adults regularly holding and inhaling from these devices, it does not take much for a child to mimic that behavior. An unprotected device can be activated simply by sucking on it, dispensing nicotine and other toxic chemicals directly into a child's mouth and lungs. That risk is not theoretical, it is predictable. Current federal law focuses primarily on child-resistant packaging for nicotine liquids, not on the internal mechanisms of the device itself. There is no consistent requirement in the United States that vape devices contain built-in child-resistant mechanisms. LB1254 addresses that gap at the device level. Many other countries have already moved in this direction to require child-resistant features for refillable vape devices. In addition, some manufacturers are already producing devices with child lock features, such as a twist-to-lock switch, button-press unlock system, or digital lock modes, demonstrating that this technology is feasible and available. LB1254 does not ban these products, it does not change the age restrictions already in place; it simply says that if a company is going to market and sell a nicotine vape device in Nebraska, it must incorporate a basic child safety feature to reduce the risk of accidental exposure. This is a targeted reasonable step to prevent avoidable harm. We require child-resistant mechanisms on medications, cleaning products, and lighters because we recognize that children are curious and vulnerable. We should do the same with vape devices. I would urge the committee to support LB1254.

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I'd be happy to answer any initial questions, and I thank the committee for its time.

BOSN: Thank you. Any questions for Senator Bostar? All right. Seeing none. Thank you. First proponents.

MATT SCHULTE: Good afternoon, Chairman Bosman [SIC], and members of the Judiciary Commission [SIC]. My name is Matt Schulte, M-a-t-t S-c-h-u-l-t-e. I'm appearing before you to support-- in support of LB1254 both in a personal capacity and as a Lancaster County commissioner. I'd like to just make a couple statements first as an individual. About a year ago, one of my staff members at Youth for Christ Campus Life where I work came to me shocked to have had an experience where she saw a very young child hit a vape. Neither of us understood that there was no child safety lock on these, and quickly began discussing all the things in our house that do have child safety locks, from the ibuprofen bottle to the lighter to the prescription bottle, our-- even our car doors all have child safety locks on them. My hot tub, you cannot simply go and release it. You have to press, pull, and release in a way that protects children from being able to open it up. I've provided for you guys in the-- what I've given you in the packet, some photos of these items, which will just jog your memory on how, how, how common they are. Cleaning supplies, bleach, and many other chemicals all have child safe locks, because we understand that it is important to protect our children from what seems like could be-- what they could be exposed to. So, I would encourage you to join us in protecting children by providing-- requiring child safety locks on vape devices. I don't think that this is a bill to stop "vasing"-- stop vaping; it's a child safety and consumer protection bill, ensuring that adults who choose to vape are the ones using the products, not the children who do not understand the risks. We require child safety protection on products far less harmful than vape pens. Applying these common-sense safeguards here is a reasonable-- is reasonable, and something people across the political spectrum can support. I'd also like to just make a comment now in my official capacity as a county commissioner. It is a standing priority of Lancaster County to support policy initiatives that promote the overall health of the community, especially policies that enhance childhood development and ultimately reduce downstream government costs. As one of the many efforts instituted in furtherance of this goal, the Lincoln-Lancaster County Health Department, the Lancaster County Sheriff's Office, and the Lincoln Police Department

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currently partner to conduct annual tobacco and vape compliance checks at retailers across our county. These are-- checks are designed to ensure compliance with age requirements at the point of sale, keeping potentially dangerous products out of the hands of children. LB1254 represents a common-sense extension of these point-of-sale checks. Thank you, Senator Bostar, for introducing LB1254, and thank you to the members of this committee for your time and your commitment to the safety and well-being of children in Nebraska. I will gladly answer any questions you might have.

BOSN: Thank you. Are there questions from the committee? Seeing none. Thank you very much. All right, next proponent. Good afternoon, and welcome.

BROOKE FULLERTON: Hello. Thank you. Hello, Chairwoman and committee. Thank you for having me. I'm Brooke Fullerton, B-r-o-o k-e F-u-l-l-e-r-t-o-n, and I am here today as a parent. I also work in a capacity with pregnant and parenting teens. I also supervise visitation with parents and their kids in foster care, and I'm a foster parent. So, I was at a home with one of my teen parents last-- about a year ago, and I was looking the other way, and an 18-month-old child started coughing and choking and gagging, and I, like, "oh my goodness." And I turned around, and she had hit a vape, so she had inhaled it. And I've never hit a vape before, so I didn't know what I didn't know, and what maybe some of you don't know. And that is-- it's very, very easy to do. You just pick up the device-- this one looked like a little pink purse. It had lots of lights, it was cotton candy scented and flavored. So, that appeals to, like, four of our five senses right there. Mom has it all the time in her hand, like, more than a phone, she's holding the vape. She had just set it down on the ottoman to grab something else, and toddler grabbed it right away. And mom just said, "you know you're not supposed to do that." Like, they just dismiss it. So, I-- I'm here on behalf of vulnerable children, and it could be my niece, could be my nephew, my grandkids, yours. Anyone could possibly be around a vape that's left unattended because they are so commonly just carried around like phones, just left here and there. And I think we all can agree a baby's first instinct, a toddler's, is to pick up something and suck on it. Like, that's why teethingers exist. And as we all know, all of the safety mechanisms that are needed for kids, that just is that first instinct for a child to pick something up. They've seen mom do it, they mimic it. They just grab it, put it to their mouth. It might play music, many of them have

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games. So, they-- we also did kind of look, what does that do to a child? So, obviously, there's tons of different toxins in there, and I am not here to dispute vaping. As an adult, if you want to do that, that is absolutely fine. We have great laws in place to-- that, that allow that. And-- but my, my point in being here today is just to bring that before you, that children should not be allowed to just be able to pick one up, just like they can't pick up a Tylenol bottle or an Aim 'n Flame, or something like that. And I just want to thank Senator Bostar for bringing this up, and just thank you guys all for your time, and appreciate you caring about the children in Nebraska.

BOSN: Thank you. Are there questions from the committee? I guess, let me ask you.

BROOKE FULLERTON: Yeah.

BOSN: So right now, I don't know of any vaping equipment--

BROOKE FULLERTON: Yeah.

BOSN: --that is manufactured in Nebraska.

BROOKE FULLERTON: Right.

BOSN: Are there child safety lock options available to put on these?

BROOKE FULLERTON: That's a great question. So, there is childproof packaging, which means it's childproof up to 80 percent. As we all know, sometimes kids can get into the childproof things more than we can as adults. But that is on the packaging. So, if you go to buy it from a store, it, it does have some childproof packaging, but once you've opened it and you're holding it, the disposable ones generally do not have that. There is a lot of law and legislation around the refillable vape solutions that you can put in there, that comes in like a concentrate to, to refill one. There's, like, buttons on those, on/off. But most of-- especially all of the, the population that I serve and that I'm with, they're all using the, like, disposable ones, the cheap ones, the, the super fun ones. They have games, they're, they're really fun. They are awesome, for them. But they are just so appealing to kids, like--

BOSN: But, but let me--

BROOKE FULLERTON: --especially little kids.Yeah.

BOSN: So, I guess I'm not-- because I think you kind of answered both ways.

BROOKE FULLERTON: Yeah. Sorry. Yeah.

BOSN: So are the ones that are the most popular--

BROOKE FULLERTON: No. No, there's not.

BOSN: There's--

BROOKE FULLERTON: There's not.

BOSN: So, how do we enforce this?

BROOKE FULLERTON: So, that-- that's a great question. So, Nebraska has the chance to be leading in, in the United States, because other countries like New Zealand, Canada, some in Europe do have laws about that, so the manufacturers are required to do that for them. But they are not in the United States yet. So, we would have to have manufacturers do that. And it could be the ones that they've had in other countries are, like, you maybe push a button five times before you can hit it. Or you-- like an Aim 'n Flame, you have to hold a button down and then you can hit it. Just different little things. Some of them are codes. You can enter, like, a PIN number if it's like a-- because a lot of them have screens and games and stuff, so you could enter, like, a PIN in there.

BOSN: And-- but it's my understanding from your testimony that there isn't something-- that isn't an available option to affix to what is currently on the market.

BROOKE FULLERTON: Right, it would have to be something from the manufacturer, yes.

BOSN: OK. And so I guess my concern would be that that would be a violation of our interstate commerce clause significantly, for Nebraska to implement something like that.

BROOKE FULLERTON: OK.

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BOSN: It almost seems like something we'd have to do at the federal level,--

BROOKE FULLERTON: OK.

BOSN: --or we would have to come up-- and this is a question.

BROOKE FULLERTON: Yeah, yeah.

BOSN: --whether you're agreeing with me--

BROOKE FULLERTON: Yeah.

BOSN: --something that Nebraska could manufacture that you could affix to what is currently on the market to avoid those interstate commerce issues.

BROOKE FULLERTON: Yeah, maybe.

BOSN: OK.

BROOKE FULLERTON: Yeah. I'm not an expert on vapes at all in that way, so I don't know, and I apologize for that.

BOSN: That's OK.

BROOKE FULLERTON: But I'm sure we could come up with something.

BOSN: OK. All right.

BROOKE FULLERTON: Yeah.

BOSN: Any questions in light of that? Seeing none. Thank you for being here, and for the work that you do.

BROOKE FULLERTON: Thanks. Appreciate it.

BOSN: Yeah.

BROOKE FULLERTON: Thank you.

BOSN: Next proponent. Moving to opponents. Anyone here in opposition? Good afternoon, and welcome.

STACY ALEXANDER: Good afternoon. Thank you, Chair Bosn, and members of the committee. My name is Stacy Alexander, S-t-a-c-y A-l-e-x-a-n-d-e-r, and I am the owner of e-TITAN Vapors LLC. My company is based in Grand Island. I have four retail locations in the tri-cities of Grand Island, Hastings, and Kearney. We appreciate the intent of Senator Bostar in introducing LB1254, because at e-TITAN, we share the same goals of keeping vapor products out of the hands of kids. However, I am here today in respectful opposition of LB1254. At e-TITAN, we feel a responsibility as parents. Our goal truly is to do our duty to prevent these products from getting into the hands of minors, which is why we implemented a policy to ID and to sell to customers who are 21 or older prior to state law mandating it. We have been supported of recent steps taken by the Legislature to better regulate the electronic nicotine devices in Nebraska. I actually testified in support of Senator Hughes' LB125 last year, which created the ENDS registry. As of January 1 of this year, Nebraska ENDS registry took effect. Our industry as a whole, including manufacturers, distributors, retail businesses, and our customers have been affected equally, adjusting to this major change in the market as it constricted and eliminated a majority of products that can be sold and bought in the state of Nebraska. The Department of Revenue is currently auditing vape shops, and have had less than two months since Nebraska's implementation of the registry to ensure that local businesses are compliant. It's not clear what manufacturers and products that have already been approved by the ENDS registry would be in compliance with the child safety features included in LB1254. And although we've made the investment within our own business to implement child safety practices, it's not clear within the language of this bill whether that would be sufficient to be in compliance of what the word "feature" would refer to. There are also federal requirements that manufacturers have to follow for child-resistant packaging for liquid vapor products. It would probably be more appropriate for the Food and Drug Administration to develop standards for manufacturers on federal level rather than taking a state-to-state patchwork of regulations. Unfortunately, in effect, LB1254 would probably require manufacturers to reapply and to be re-approved to have their products on the Nebraska registry. Products that have already been approved by the Department of Revenue could be disqualified, which would simply punish retailers and customers by once again changing the products and lines that can be sold in Nebraska. There have been a lot of changes and new regulations in the

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ENDS and vapor industry in Nebraska in the last few years. At e-TITAN, we do see ourselves as good actors in the industry, and we want to continue to see enforcement of the current ENDS registry. For these reasons, we are opposed to LB1254. Senators, I appreciate your time today, and would open myself up to any questions you may have.

BOSN: Thank you. Are there questions for this testifier? Seeing none. Thank you very much for being here.

STACY ALEXANDER: Thank you for your time. Thank you, Senators.

BOSN: Yes. Next opponent. All right, neutral testifiers. And Senator Bostar to close.

BOSTAR: Thank you, Chair Bosn, members of the committee. I think that-- I don't think this is particularly unreasonable legislation. One, I would say I don't share the concerns around interstate commerce, so I-- you know, I'm sure the chair will recall bringing legislation to require different restrictions and regulations on access to children for different online services. This isn't that different, right? And if one's legal, I think this one would be too, which I fully support, by the way. So, this is an interstate commerce issue. If you look at what the state of California requires on different packaging requirements and things like that, things that are "sold" across all 50 states, there are unique requirements that California requires, and they are made and complied with because the states can do this. And there are plenty of rulings, especially in pursuit of protecting children, that efforts like this are perfectly legal. And, you know what? I'm, I'm also willing to-- let's just give it a shot, and if the courts decide that there's a challenge, well, then we can deal with that then. I'm big on that. I'm big on letting the courts decide what's constitutional and leaving the duty to the judicial branch. With that, there are a lot of vape devices that are protective of children, that have some level of mechanism available to make it so that it isn't just instantly available for a young kid who picks it up and puts it in their mouth. There's a lot of those products available right now. So, perhaps that's what retailers should sell. We could pass this, and that's the kind of stuff that they could sell. Wouldn't put them out of business, it would just have a prohibition on selling things that are clearly a danger to kids. And we do it for a lot of products, as you heard. This isn't revolutionary

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legislation. I think it makes sense, and I think it's worth it. Happy to answer any questions.

BOSN: Thank you. Are there questions for Senator Bostar? Seeing none. Thank you very much. That will conclude our hearing on LB1254. Next up, we have Senator Bostar back for LB1255, and I will note for the record that on LB1255 we had 36 proponent comments, 6 opponent comments, and no neutral comments submitted. Welcome back.

BOSTAR: Still good to be here.

BOSN: I suspect it is. It's always a good day in Judiciary.

DeBOER: It's always a good day in Judiciary.

BOSTAR: And with that, good afternoon, Chair Bosn, and members of the Judiciary Committee. For the record, my name is Eliot Bostar, that's E-l-i-o-t B-o-s-t-a-r, representing Legislative District 29. I'm here today to introduce LB1255, legislation to protect landowners by establishing that any public power supplier, including public power districts, municipal electric utilities, and other governmental entities providing electric service may not exercise eminent domain authority going forward. LB1255 amends state statute Section 70-670 to remove the existing statutory grant of eminent domain authority to public power districts. The legislation also goes on to amend Section 70-1409 governing joint public power authorities. Current law provides that joint authorities possess the same eminent power domain powers as public power districts. LB1255 removes that authority by eliminating the linkage to Section 70-670, thereby ensuring that public-- that joint public power authorities likewise may not exercise eminent domain. In short, LB1255 harmonizing Nebras-- harmonizes Nebraska's public power statutes to make clear that while these entities retain their operational authority, such as acquiring property through negotiated purchase, issuing bonds, and entering into contracts, they may no longer compel citizens to transfer private property through condemnation proceedings. Eminent domain is one of the most powerful and absolute tools the government can wield. It permits the government to coerce the transfer of private property against the wishes of the owner. LB1255 reflects the policy judgment that eminent domain is not necessary for public power suppliers to function effectively. Landowners should be trusted to voluntarily transfer their property rights in exchange for reasonable negotiated compensation when a

project is truly meritorious. Nebraska property owners are practical and reasonable people. When projects are fair, transparent, and offer appropriate compensation, voluntary agreements can and do occur. This legislation protects private property rights by ensuring that landowners cannot be forced to give up property for utility projects. It replaces coercion with negotiation. This is especially important for farmers, ranchers, and rural families whose land is not simply an asset; it is their livelihood, and often their family's generational legacy. Public power entities have used eminent domain for high-voltage transmission lines, substation expansions, and utility corridors across farmland. While these projects may serve broader system goals, they do not always directly benefit the landowner, or even the immediate local community. LB1255 stops forced takings for projects where the burden falls disproportionately on individual property owners. As we look toward the future, development should prioritize more efficient use of existing properties, easements, and right-of-way already owned by governmental entities and private infrastructure companies rather than continuing to rely on compulsory takings of new land. Without condemnation authority, utilities must offer fair compensation, respect landowner concerns, work collaboratively, and adjust routes and project designs when necessary. That leads to better outcomes, more thoughtful planning, and fewer conflicts. Removing condemnation authority simply ensures that utilities must earn cooperation rather than compel it. This bill does not dismantle Nebraska's public power system; it does not remove the ability of public power entities to purchase, lease, or otherwise acquire property through agreement; it preserves all operational authority necessary to generate and deliver electricity. It simply removes the extraordinary and coercive power of forced condemnation. Nebraska has a long tradition of defending private property rights. Our state has consistently protected agricultural land, family farms, and private property as a found-- as a foundational right. LB1255 continues that tradition by limiting government takings and reinforcing the principle that private property ownership remains one of the cornerstones of Nebraska law. LB1255 is about clarifying the limits of governmental authority, reinforcing private property rights, encouraging voluntary market-based transactions, and ensuring that future infrastructure development by public power suppliers occurs through willing seller negotiations, not forced transactions. With

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that, I thank you for your time. I'd encourage your support for LB1255. I'd be happy to answer any initial questions.

BOSN: Thank you. Are there questions from the committee? Seeing none. Thank you very much. We'll start with proponents. Anyone here to testify in support of LB1255? Good afternoon, and welcome.

CALEB JACKSON: Good afternoon. Chairwoman Bosn and members of the Judiciary Committee, good afternoon. My name is Caleb Jackson, C-a-l-e-b J-a-c-k-s-o-n, and I'm here today in support of LB1255 because this bill restores a basic Nebraska value. Private property should not be taken by force when voluntary "negotiation"-- negotiation is possible, and is the main way of doing things. LB1255 is a simple and direct-- it prohibits public power suppliers, including public power districts, municipal electric utilities, and joint public power authorities from exercising the power of eminent domain. This bill repeals a broad condemnation authority in Section 70-670 and 70-1409, which currently allow public power districts entities to take private land for transmission lines, substations, generation facilities, and other electric infrastructure. Excuse me. The bill does not stop public power from operating or expend-- or expanding. It does not prevent them from building new lines or maintaining the grid. What it does is require them to treat landowners and partners-- as partners instead of obstacles. When a utility knows it condemn, condemn-- can condemn land, the "negotiation" is-- negotiation is never equal. The landowner can agree, or they can be forced. LB1255 ends that imbalance and restores fairness. Nebraska public power system is unique, and has served the state well. Public, public power is a government power, and intimate [SIC] domain is one of the most extreme tools they can use. LB1255 ensures that tools are not used against Nebraskans for projects that can and should be built through voluntary agreements. The bill also closes a major loophole. Under conjoint law, joint public power authorities have seen condemnation authority as public power district. These entities open up and build large regional projects, and they can condemn land even when the benefits do not flow to the local community. LB1255 removes the authority as well, ensuring that no public power entity, local, regional, or statewide, can force taking. Support for LB1255 is not an opposition to public power, it is support for private property lights, local control, and respect for rural communities. Farmers and ranchers across Nebraska are facing increasing pressure from large-scale energy transmission projects. When a family's home, pasture, or a cropland is in the line, they

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deserve a genuine negotiation, not a threat, condemnation hanging over the table. LB1255 encourage-- encourages utilities to work collaboratively and to offer fair condensation, to adjust routes when necessary. It does not stop development, it is-- simply ensures development happens the right way. Nebraska has a long tradition of protecting property, and LB1255 continues tradition by ensuring that public prop-- public power entities cannot use eminent domain to take land when families who have worked it for generations-- for these reasons, I respectfully urge the committee to advance LB1255. I have provided a packet with some-- with fact sheets and different things, and I went through NPPD's mission statements and went through and answered how this bill still supports this. Thank you for your time. Are there any questions?

BOSN: Thank you very much. That was very nice, and this is impressive.

CALEB JACKSON: Thank you.

BOSN: Is this just a hobby of yours? Or-- tell me what got you here.

CALEB JACKSON: Yeah, I've been recently just starting doing this for different committees, a lot more education and stuff, but--

BOSN: Awesome. Well, good for you.

CALEB JACKSON: Thank you.

BOSN: Thank you for being here.

CALEB JACKSON: Mm-hmm.

BOSN: Are there questions from the committee? Senator Hallstrom.

HALLSTROM: Yeah, I remember getting the email from you. I was going to ask what's your background and where you're from, and a few things like that.

CALEB JACKSON: Yeah, I'm from Seward, so District 24. I just graduated last year, and I go to the University of Nebraska-Lincoln right now for ag economics and a public policy certificate, so.

HALLSTROM: Yeah. Thank you, sir.

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BOSN: All right, well thanks for being here and thanks for the packet.

CALEB JACKSON: Yeah. Thank you.

BOSN: Yes. Next proponent. Any other proponents? Welcome.

JANE KLEEB: Welcome. Good afternoon, Senators. My name is Jane Kleeb, J-a-n-e, and Kleeb is K-l-e-e-b. I'm here on behalf of Bold Alliance. We're an organization that-- most people know us for our opposition to the Keystone XL pipeline here in Nebraska, and the main reason we were opposed to that pipeline was the use of eminent domain against farmers and ranchers. We use, we use the line often, eminent do-- "we're against eminent domain for private gain," but what we have seen increasingly happen in Nebraska is that public power entities are using the threat of eminent domain to build projects, which sometimes then are either transferred to private entities or have engagement with private entities, and we think that there needs to be clarity in our law. If we are a state that defends private property rights, which I believe we are, then I think we need this bill that Senator Bostar has brought forward. As you heard in the proponents versus the opponents, we've worked a lot with farmers and ranchers and other landowners across the state to make sure their voices were heard on this bill in their written testimony, and we really want to make sure that when a private project or a public project wants to be built in our state, that that is done in full partnership with the community, the landowners, and if on-- and if, and if it's crossing tribal land, with our sovereign nations as well. Nobody deserves to have their land taken against their will. People work for decades to earn enough money to purchase land. And when they finally have that land in their hands, it should not be taken away by public power, and it should be not taken away by private projects. Or, we also have, on the other hand, especially out in western Nebraska, land that has been in a family's hand over 100 years because their ancestors and folks like my husband's ancestors homesteaded that land and have steward that land in good faith. And so, they should be able to have the right to develop or not develop projects on their land. So, with that, I'm happy to take any questions.

BOSN: Thank you. Are there questions for this testifier? All right. Seeing none. Thanks for being here.

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JANE KLEEB: Thank you, Senators. And thank you for everything you do. You guys get paid \$12,000, and you work every single day, long hours, and you listen to citizens like myself, and I can't thank you enough for the time that you all give. Thank you.

BOSN: Thank you. That's very nice of you to say. Thank you. Next proponent. Right? Yes. All right. Now, we'll move to opponents. Anyone here to testify in opposition to LB1255? Welcome, sir.

JOHN McCLURE: Thank you, Chairman Bosn, and members of the Judiciary Committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm executive vice president and general counsel for Nebraska Public Power District. I am here in opposition to LB1255. I have over 45 years experience working on a variety of legal matters and public policy issues. NPPD's land management group reports up to me, and I have experience in acquisition of land rights, including the use of eminent domain, dating back to the 1980s, the early 1980s. NPPD is the largest public power utility in the state in terms of our geographic footprint. Our operations go from one end of the state to the other. Our generation serves approximately 400 communities in the state, either at wholesale or retail, and we supply wholesale power to over half of the rural areas of the state. Our 5,000-mile transmission network helps deliver energy to OPPD, to the Lincoln Electric system, and to many other utilities and customers throughout the state. I'm here today, again, in opposition to this bill, which would make Nebraska unique in the United States. No other state prohibits utilities from exercising eminent domain in order to acquire essential property rights. Since this committee is not generally dealing with public power issues, I would like to point out that Nebraska has some of the lowest electric rates in the country, and some of highest reliability. This bill would jeopardize both of those. Eminent domain is legally limited but essential public policy, allowing governmental entities and certain industries in the private sector to acquire private property for a public purpose. Under both state and federal constitutions, private property cannot be taken from citizens without payment of just compensation. If we didn't have this tool in the toolbox, you probably wouldn't have Interstate 80 going across the state of Nebraska, and you wouldn't other essential services that serve the public. Contrary to what's been implied here, our track record in acquiring right-of-way for transmission easements is sometimes 100 percent voluntary easements; many cases, up in the 90s. And so, this idea that there's coercion, that there aren't willing

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transactions-- the formula we have is, is fair compensation, that's why we get so many voluntary easements. And there's a recognition that acquiring land rights for something as essential as the supply of electricity has to have with it a backup tool, which is eminent domain, which is rarely used, but is used on occasion in order to allow a project to move forward. And I can assure you, you'll hear from others in our industry, and their experiences are similar. Most of these land rights are acquired through an arm's-length negotiation. And with that, I'd be happy to try to answer any questions you may have.

BOSN: Thank you. Senator McKinney.

McKINNEY: Thank you, Chair Bosn. Thank you, sir. How often does NPPD use eminent domain every year?

JOHN McCLURE: Well, let me just read some statistics for you, if that would be helpful. In 2009, we had a, a project that went from Lincoln to Columbus. It was 78 miles, we had 4 condemnations. That was 97.6 percent voluntarily-acquired, in terms of property owners. We had another project in 2009, 13 miles, no condemnations, all voluntary easements. Here's a project, 52 miles that was from southern Nebraska down to the Kansas border in 2012. There were 90-- it was 99 percent voluntary easements. We had two condemnations. And again, that-- I could go through more, but that is the general situation. And again, we have to work with these people, we want to work with them, and we have, I think, a very positive working relationship with the landowners because we're, we're their neighbors, we're there for the long term. And while you may have a transmission line that's not providing direct service to the landowner living there, they are getting distribution services that are being impacted by that transmission line, so they're benefiting from it.

McKINNEY: So, what's 100 percent that you mentioned?

JOHN McCLURE: I, I mentioned a project that was 32-- 13 miles. I'm saying 100 percent voluntary easements. So--

McKINNEY: So, that was just one, one project?

JOHN McCLURE: That's one.

McKINNEY: OK.

JOHN McCLURE: But as I look at our projects since 2009, we've, we've typically averaged in the 90s to 100 percent voluntary easements.

McKINNEY: So, why will prices go up, if this passes?

JOHN McCLURE: Why will prices go up?

McKINNEY: Yeah.

JOHN McCLURE: Because if we don't have the ability to stick with a route-- and we do work with land owners. There was testimony earlier that, you know, we just coerce. We work with landowners to make sure that we have the right accommodation. But when you're moving a transmission line from this point to this point, if you're going to go wander all over the place because you can't acquire the land rights that you need, you're going to add tremendous cost to the project because every landowner will say, no, I don't, I don't want to make an, an easement available. And, and in the case of easements in rural areas, if you have pasture, you still have your cattle out there, or your other animals can graze. If you have crop land, you can still use it for crop land. We only can take the minimal rights, and the landowner is still allowed to utilize the easement.

McKINNEY: All right. Last question. So, is that just more speculation, though? Because if you're up in the 90 percentile of voluntary easements and things like that, it's more speculation that prices might go up than actual fact, right?

JOHN McCLURE: We have real examples in the state where wind projects which were privately developed and had an obligation under Nebraska law to build the connection facilities to the transmission grid-- they didn't have the power of eminent domain, and the transmission line that they had to build from their wind project to connect to the grid went all over the place and added tremendous cost, because they couldn't-- they had no power or ability to get the most efficient direction. And so, they were at the mercy of, of any owner to say no, no, no, OK, give me a million dollars an acre, and I'll agree to it.

McKINNEY: All right, thank you.

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BOSN: Senator DeBoer.

DeBOER: Thank you. Thanks for being here. So, one of the things, when I hear you say we're at 93 or 97 or 100 percent voluntary, I wonder how we really know if that really was voluntary, because of course, the power of eminent domain would have been backing up the negotiations--

JOHN McCLURE: Sure.

DeBOER: --on your side. So, wouldn't it-- I mean, it stands to reason that that would have caused some folks who otherwise might not have voluntary-- voluntarily agreed to agree.

JOHN McCLURE: I don't think we can deny that that backstop power may impact things. But on the other hand, the way we compensate them, it's fair compensation. We pay about 80 percent of the fee value just for an easement. And based on other payments we make, we pay-- if there's structures on the property, they get more than 100 percent of the value of the property, and they still own it. So, we try to be very fair in how we pursue that.

DeBOER: I, I understand that. And, and that-- so, I'll put a pin in that, that piece. But the-- so, the number will probably be less if we were looking at, like, actual voluntariness. I-- what was the percentage-- you said it was more expensive when they did the, the projects that needed to be voluntary from the wind farms? What was the--

JOHN McCLURE: Well, I don't have a percent. They, they don't have--

DeBOER: How much more expensive? Do you know?

JOHN McCLURE: I don't know, but I, I, I could find that example. And I know it was-- it-- it's a-- they had to build a lot further--

DeBOER: Ah.

JOHN McCLURE: --to get to-- from point A to point B,--

DeBOER: Uh-huh.

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JOHN McCLURE: --to find voluntary agreements, and they had pay a lot more. I don't have the exact numbers because it wasn't us.

DeBOER: It wasn't you guys? OK.

JOHN McCLURE: But I've seen the distance of it. Transmission lines cost anywhere from \$2 to \$3 million a mile for a high-voltage transmission line. So, if you're on a zigzagging route, you're going to add cost to that.

DeBOER: Mm-hmm. OK. Thank you.

JOHN McCLURE: Thank you.

BOSN: Senator Storer.

STORER: Thank you, Chair Bosn. This is a very important issue to, to, to my constituents in, in our district. And it's a challenge, because where is that line between public need? That's always been the argument, right? What is, what is deemed public need and what is not? And a couple of things that come to mind-- one, your example of the wind farms. I believe, in my opinion, that was an-- taking sort of a liberty that I don't agree with when the law was changed that allowed NPPD to exercise eminent domain on behalf of a private developer. So, we've already sort of extended what public power is when that privilege has, has now, in that case, been extended to private developers. Would you agree?

JOHN McCLURE: Well, I want to correct something, Senator. NPPD has never exercised eminent domain for a private wind farm.

STORER: But they have the authority to now.

JOHN McCLURE: Oh, that authority has been in place since I believe 2016, or maybe even before that.

STORER: Correct. So, whether or not it had, had been exercised, the authority now exists. So, there's always sort of this, this frustration of this, you know, just take it a little step further and a little step further. You know, I think a lot of us that follow the issue of eminent domain-- is it keto, right? Kelo. Kelo? Keto. I think it's keto. The case on the east coast--

JOHN McCLURE: Yes.

STORER: --30 years ago probably, now. Where they took-- that was sort of the, the beginning of what most of us remember as sort of an abuse of eminent domain, where they took land for a private development.

JOHN McCLURE: Right.

STORER: It-- and you know, we've seen the R-line project is still not being completed because of a lot of-- you know, there's all kinds of-- always two sides to every story. But certainly, what I hear is part of that was the, the contracted site folks were not NPPD, they were folks-- in some cases, I don't know if all cases-- but contracted from out of state, didn't understand the culture, didn't understand-- you know, maybe didn't deal with people as respectfully as Nebraskans would have dealt with fellow Nebraskans. Is that fair?

JOHN McCLURE: I am aware of one instance, and there may have been more, where a contractor did not conduct themselves the way we would have if it were our people, and we corrected that.

STORER: And, and so some of those things, I think, could have been potentially avoided, but that's a, a separate conversation. I guess my-- and maybe, and maybe there's not an answer to this. But when I think about-- whether it be that specific situation or others where there isn't 100 percent voluntary easements provided-- when we talk about fair compensation-- and, and we're not recreating, you know, law here. This has existed for years, the, the concept of eminent domain. But in, in, in the private world, fair compensation is what am I willing to sell it for and what are you willing to buy it for? That's how we determine fair compensation, right? I mean, we'd agree in the private sector. Like, when we're just doing a private negotiation, ultimately, the value of something is what am I willing sell for, and what are you willing to buy it for?

JOHN McCLURE: Correct.

STORER: Conceptually, could some of these things-- and to Senator DeBoer's point, you know, there's always that argument of "was it voluntary or was it not voluntary, based on the fear of 'what if'?" You know, knowing there was a backstop. I almost, I almost believe that some of those things could actually be expedited at potentially in quicker time and less cost if there wasn't that fear of eminent

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domain, and there was just good-faith negotiations that were made along the way. Is that-- do you think that, that's possible?

JOHN McCLURE: Well, good-faith negotiations are already a requirement in the law. You cannot exercise eminent domain in Nebraska unless you show evidence of attempts to negotiate in good faith. So, that's an absolute requirement that is a condition precedent to even initiating eminent domain. And there are numerous other protections in state law so that it's-- it is a fair process. There has to be a, a licensed appraiser as part of the eminent-- the condemnation board, when, when that's done in the county. So, again, I, I, I, I, I--

STORER: So, is eminent domain ultimately, in, in your opinion, only exercised when you absolutely-- when you have a landowner who says, "under no circumstances, at no price ever." Is that the only time when that--

JOHN McCLURE: That, or if we're miles away, if, if someone says, well, this, this-- I won't sell this-- make this easement available for less than a million dollars, and an appraiser has said it's worth \$50,000, that would, that would be a similar situation. But again, eminent domain is a tool of last resort, and that's why I was mentioning anecdotally the high percentage of voluntary easements that we acquire. And, and again, the other--

STORER: Do you think there's any room-- and, and maybe this is not a fair question, and I'm not trying to do a gotcha here. I'm just-- do you think the-- do think there's, there's any room in this issue for some modification of how we put parameters around-- you know, eminent domain is obviously defined, is, is-- like, has a long history, right? Not just in Nebraska, [INAUDIBLE] you know, federal government. But is there-- and you don't have to give specific examples-- but generally, do you think there's any opportunity to sort of modify or refine or put some guardrails on how and if and when that's used, that doesn't maybe eliminate it but also puts a little more protection in there for the landowners?

JOHN McCLURE: I think the current law does a good job of making sure that all the requisite steps have been taken. You have to show that you're taking the minimal amount of rights in the land that are required for the project. And again, I come back to-- again, Nebraska can do things differently, but why would we approach things in this

state in a fundamentally different way than every other state does and that we have for a long time? And the other irony here is this still allows private entities to engage in, in eminent domain. And I would say public power is, is more accountable than a private entity. We have publicly-elected governing bodies or appointed governing bodies, we have open meetings. There are many more opportunities to engage directly with the leadership of, of public power entities than a pipeline, private pipeline coming across the state. And there was a statement earlier that we'd used eminent domain and then turned things over to private entities. I-- I'd like to know specifically what's being referred to, because we've never done that at NBPD.

STORER: But the one exception that does exist, if I understand it correctly, is that you can-- even though you haven't, but you, you have the authority to exercise eminent domain on behalf of a private developer.

JOHN McCLURE: For transmission.

STORER: Right.

JOHN McCLURE: For a, for a renewable energy project. That, that was put in the law, and I don't recall if it was in 2016 or even prior to that.

STORER: If that hasn't been used or there's not-- you haven't seen a real benefit to that, is there an argument to be made we could return to pre-2016 law?

JOHN McCLURE: I think that's a separate issue that--

STORER: It is.

JOHN McCLURE: --we should have a separate discussion.

BOSN: All right. Any other questions for-- Senator Rountree.

ROUNTREE: Thank you so much, Chair Bosn, and thank you so much for your testimony today. I've listened to all that's been said, but I wanted to talk about the data centers. We are getting, getting ready to move into those now. How is the availability of data centers coming

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online? How would that impact eminent domain? Or [INAUDIBLE] see no impact whatsoever?

JOHN McCLURE: Well, the, the biggest example I can think of is if there was a need to build additional transmission to move power to a data center. It might not be solely because of the data center, but there may need to be an upgrade to the system, and it's possible that if that transmission expansion-- a new line, for example-- wasn't all voluntarily negotiated for the land rights that, that eminent domain might be necessary. But rarely is it one specific customer that causes the need for infrastructure to be added; it's the cumulative effect. On our system, in the last two years, we have added-- because of all kinds of growth related to the ethanol industry, related to other growth in the state-- we've added the equivalent of, of one and a half cities the size of Grand Island's electric load to our system at NPPD, if that gives you some context. That's the growth that's going on right now, and there's a lot of growth going on, and there is certainly a need to make sure we maintain reliable and affordable electricity for all the customers, for you and all your constituents.

ROUNTREE: All right. Thank you.

BOSN: All right. Seeing no other questions. Thank you very much for being here.

JOHN McCLURE: Thank you.

BOSN: Yes. Next opponent. Anyone else here in opposition? Good afternoon, and welcome.

STEPHEN BRUCKNER: Good afternoon, Chair Bosn, members of the Judiciary Committee. My name is Stephen Bruckner, S-t-e-p-h-e-n B-r-u-c-k-n-e-r. I am a lawyer with the Fraser Stryker Law Firm in Omaha, Nebraska, and I represent and am testifying on behalf of the Omaha Public Power District, and also on behalf the Nebraska Power Association. OPPD and NPA do oppose LB1255. At the outset, I want to make a really simple but critical point. Mr. McClure testified to some extent on this, but it's really important to bear this in mind, and that is that public power utilities simply cannot fulfill their duty to serve the public need, the public convenience, without having the authority to exercise eminent domain on those rare occasions when it is needed. Also, it is important, I think, to bear in mind that eminent domain is not a

private privilege. It's recognized, it's a sovereign power recognized all the way back to the founding of our country, recognized in the Fifth Amendment to the United States Constitution, which said, OK, there's going to be the need to take private property for public use, but that can never be done without fair compensation being paid for that process. The same thing is recognized in the Nebraska compensation [SIC]. So, the protections that are afforded are that condemnation must be for a public use, there must be due process, and fair compensation to the affected landowner. And, of course, as has been alluded to already, courts do oversee that process, and that process includes a right to a jury trial on the question of compensation if a landowner is not satisfied with what is being offered, paid, or provided by the condemnation process. All, all electric utility infrastructure, transmission lines, substations and the like are very much a public use. These facilities serve all of our communities. They don't serve private interests, they serve public communities, and they provide support for our public safety, for our educational institutions, commerce, and of course, economic development. OPPD, like any utility, has a legal obligation to serve everywhere and everyone in its service territory, and needs this means in order-- the, the power of eminent domain in order to do that. One point that I think has not been emphasized quite enough up to this point is the, is the issue that this bill would create, and that is the holdout problem. And that, that, that would come about when all landowners have voluntarily provided an easement that's been fairly paid, but there's a holdout, and simply no way to acquire that right without, without moving in a different direction. Often, that would lead to inflated costs, as Mr. McClure indicated, and these costs are borne by ratepayers, families, farms, and businesses. Our neighbors bear those costs. Condemnation is always the last resort. The overwhelming majority of land rights are acquired voluntarily. When it's used, courts supervise the process and assure that due process and fair compensation are provided. Eminent domain is not about convenience, it is about ensuring that essential public infrastructure can be built and can be built fairly, lawfully, and with judicial oversight for the benefit of the entire community. Thank you, and I'd be happy to answer any questions.

BOSN: Thank you. Are there questions? Senator DeBoer.

DeBOER: I just-- I have one. If we were to do something-- you said the holdout problem. So, OK, if we were to do something and said you have to

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have 90 percent voluntary, or 95 percent, or something like that, would that solve the problem of this bill for you?

STEPHEN BRUCKNER: Not, not in, not in the least. The-- it-- removing the power of eminent domain completely would, would, would lead to the situation where utilities simply are not able to complete a project. And these projects serve entire communities, so if I have-- if I have one holdout--

DeBOER: Right. So, I'm saying if, if 95 percent of the people in your in your, in your project voluntarily get them, it's great. That's not-- like, if you have-- if you have 5 percent, you can still use the eminent domain as long as you have 95 percent of people there. That's what I was envisioning. Would that work?

STEPHEN BRUCKNER: And that's often the case, but the remaining 5 percent would still need to go through the condemnation process in your hypothetical.

DeBOER: And I'm saying-- and I'm saying that you could, in that case. I'm saying, like, if we switch this bill to say, not that you can never use eminent domain, but that you can only use eminent domain once you have 95 percent of the people--

STEPHEN BRUCKNER: Yeah, I, I understand your hypothetical. I just don't think it works, Senator DeBoer. Again, all utilities, certainly OPPD, NPPD, everyone I'm familiar with-- and bear in mind, I work with-- I work both sides. I, I, I-- I've represented landowners in many cases. The process works really well, and it works really well because a landowner has the, has the opportunity, in, in the rare situation when eminent domain has to be used, to appear before an appointed board, court-appointed board of three landowners in the, in the county and present whatever evidence he or she wants to present on the value of, of their land. And even after the appraisers come back and say it's worth X, if the landowner still believes--

DeBOER: That doesn't--

STEPHEN BRUCKNER: --it's worth why, they can go-- they can go further to a, to a jury trial. So, it works really, really well.

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DeBOER: But that doesn't, that doesn't prevent the land from being ultimately taken.

STEPHEN BRUCKNER: Of course not. Because, again, the-- as recognized in the constitution, land can be taken--

DeBOER: I get it.

STEPHEN BRUCKNER: --and has to be taken for public use in certain situations. And when it's, when it's taken, the, the utility-- and these are private utilities and public utilities that have this authority-- when that's done, and only in that situation when that's done, is it, is it required that, that there be fair compensation.

DeBOER: So, I'll grant you the premise that we have to be able to, in some circumstances, let's say. But then, you know, Senator Bostar and others, when they were introducing the bill, said we want to have, you know, some pretty hefty community buy-in to the project before we use eminent domain. So, that's why I suggested having a, a number. And is there a number? So, if it's 50 percent, would you be OK with, look, if 50 percent of the people agree, then-- and it's voluntary for 50 percent, then we'll allow condemnation services.

STEPHEN BRUCKNER: No, because I think it just creates chaos in the process. The process has always worked in-- and in most cases, again, you know, it's a very high percentage that are voluntary. Why? Because you use licensed appraisers, the land value is very fair, it's paid at a very high rate. I understand that, that no one wants to have their land taken by eminent domain, but the process works really, really well in providing an opportunity for the landowner to be heard. And, and even before you get to that point, there-- for at least speaking for OPPD, there are multiple opportunities for engagement with the landowners, route selection discussions. So, the process is really, really well thought-out in an effort to address all of the kinds of concerns that you're, that you're getting at, Senator DeBoer, which are very fair.

DeBOER: So, let's say we don't pass the bill, or any bill like this. Would OPPD go forward with any project that had less than 50 percent voluntary participation from landowners?

STEPHEN BRUCKNER: If it was necessary to serve customers, sure. It's usually not the case. I wouldn't expect it to be the case, I haven't

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seen it be the the case at all, ever. But if that was the case, sure. Again, OPPD has the obligation to serve its customers, has to put a line in. In many cases, that's based on reliability concerns, so a line has to go from point A to another point in order to maintain the reliability of the overall electric system. It's really important not to disrupt that because, again, this is a public purpose that's being served, not a private one, in order to serve all of us in, in, in the community. And, and having a single landowner or even 50 percent of a group of landowners stand in the way of that creates nothing but chaos in the ability to provide that service.

DeBOER: Thank you.

BOSN: All right. Any other questions for this testifier? Seeing none. Thank you very much for being here.

STEPHEN BRUCKNER: Thank you.

BOSN: Yes. Next opponent. Anyone else here in opposition?

DeBOER: Welcome.

JOHN HANSEN: And welcome to be here. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n, and I can't tell you how much I've looked forward to the opportunity to be here this afternoon, because you represent the last of this year's hearings. And so, I believe that's 6 different committees and 38 bills, so this is my swan song for the-- for this session. I am the president of Nebraska Farmers Union. I have passed out things that-- a handout here that I wanted to have in the record. We are an organization that has organized 445 cooperatives across the state of Nebraska since 1911 when we were first chartered in 1913. One of our cooperative projects was to help create the public power system, and that is like a publicly-owned cooperative. So, we have a lot of ownership with public power, we've worked with them for a very long time; we supported their creation, we commend them for their efforts, but we also understand and appreciate and sign off on their need to have eminent domain at the same time that we also represent landowners and private property rights. And so, I have-- during my 36 years of doing this job, I think I've heard about every different kind of argument and concern that can be raised or made relative to eminent domain, relative to road projects, NRD projects, and transmission projects. And so, there-- our

policy, which is-- I'm going to read so that it gets clearly in the record. After a lot of discussion for a lot of years through our grassroots policy says, quote, "NeFU opposes the use of eminent domain for the purpose of acquiring property for private development, profit, and benefit especially in the case of a foreign company. Eminent domain should not be used without a proper permit process which includes a public process for determination of public need, access, and public benefit. NeFU opposes the use of eminent domain without the developer putting into place environmental safeguards and assuming the liability for damages. We support maintenance of overall eminent domain authority to protect Nebraska's public power system. We oppose eminent domain legislation that denies our state public power systems the use of eminent domain for wind and solar energy development in the state." And I would just say at the end of that, that had to do with projects that had power purchase agreements, in our view, with the private-public partnership that exists. So, if we had a really good project in an area that-- where we really needed power, and, and we needed to be able to use eminent domain to be able to connect that transmission from that private project to a public power entity that had a binding power purchase agreement, we wanted to make sure that that was an option so that we couldn't tank a, a, a, a well-supported, a landowner-supported renewable energy project based on one landowner in the right place who had enough leverage to do that. So, no eminent domain, no transmission projects, and we also wouldn't have any roads. With that, I'd be glad to answer any questions.

DeBOER: Let's see if there are any. Are there any questions for this testifier? Thank you for being here.

JOHN HANSEN: Oh, and thank you.

DeBOER: We'll have our next opponent, please. Anyone here would like to testify in the neutral capacity? Senator Bostar, to close.

BOSTAR: Thank you, Vice Chair DeBoer, members of the committee. I thought that was a, a really good and valuable discussion. And I know that there was some remark about the, the conversation happening in this committee, but I actually think when it comes to the government seizing the property of the residents of Nebraska, this is where that conversation should be had. So, I thank you for your time. I want to just talk about a couple of things that came up during that conversation. One is, it was repeated sort of over and over that

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eminent domain is, is an action of last resort. But. as I think everyone here knows, it's, it's a threat of first resort. So, while it may come at the end of the process, it is what opens the conversation with landowners. And if-- I mean, my guess is many of you have easy access to a number of individuals in your districts who have, at least they themselves or others they know, have kind of gone through some of these conversations and can absolutely talk about what that's like. And I agree. I think that you wouldn't see such high initial levels of negotiated agreement if it wasn't for the threat that's bearing down upon the entire negotiation. The other thing I want to talk about is, is public purpose. That was talked about a lot, that this is for the public. You use eminent domain for the public. And, you know-- and I appreciate NPPD coming in, because when they're, I guess, at least purportedly trying to get something for the public, they'll condemn the property. But when, for example, last year, they needed to acquire land, and it just so happened that they needed to acquire the land from two of their own executives, they, they didn't need to use eminent domain for that. They were willing. They-- so they went through their appraisal process, it got an appraisal amount, and they were willing to spend more than double that to acquire that property from their own executives, no eminent domain needed. Didn't have to use that tool then. It was OK for ratepayers to cover the excess of millions of dollars going to the pockets of their own managers and executives. That was acceptable. That tells me they don't need it. That tells me it's unnecessary. If they're willing to spend over 100 percent over the appraised amount, what are we talking about? Why do they need eminent domain? Just offer that to people. You kidding me? But they won't and they don't, unless it's for their own executives, in which case they're happy to take millions of dollars of ratepayer funds so that their own people can pocket it. I'm happy to answer any final questions.

DeBOER: Are there any questions for Senator Bostar? I don't see any.

BOSTAR: Thank you. It's been a pleasure.

DeBOER: Thank you for being here. That will end our hearing on LB1255, and that will end our hearings for the day.