

Transcript Prepared by Clerk of the Legislature Transcribers Office

Natural Resources Committee February 12, 2025

Rough Draft

BRANDT: Welcome, everybody, to your Natural Resources Committee. I am Senator Tom Brandt from Plymouth. I represent Legislative District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties. And I serve as chair of this committee. The committee will take up the bills in the order posted. 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 that are at the table by the door. Be sure to print clearly and fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets back on the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name. Spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, then finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We will, we will be using a five-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the light-- when the yellow light comes on, you have one minute remaining. And the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It is just part of the process, as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least 12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees 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 nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. I

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

CLOUSE: Stan Clouse, District 37: Kearney, Shelton, and Gibbon in Buffalo County.

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

DeKAY: Barry DeKay, representing District 40, representing Holt, Knox, Antelope, Cedar, northern part of Pierce, northern part of Dixon County.

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

RAYBOULD: Jane Raybould, Legislative District 28, which is the center of Lincoln.

BRANDT: Also assisting the committee today: to my right is our legal counsel, Cyndi Lamm; and on my far left is our committee clerk, Sally Schultz. Our pages for the committee today are Emma Jones, a junior at the University of Nebraska-Lincoln, and Kathryn, a junior majoring in environmental studies at the University of Nebraska-Lincoln. With that, we will begin today's hearings with LB105-- or-- I'm sorry-- LB309. Welcome.

HUGHES: Thank you. Chairman Brandt and members of the Natural Resources Committee. I am Jana Hughes, J-a-n-a H-u-g-h-e-s. And I represent Legislative District 24: Seward, York, Polk, and a little bit of Butler County. I'm here today to introduce LB309, the Safe Battery Collection and Recycling Act. LB309 is de-- designed to address a serious public safety concern impacting both the private sector and our property taxpayers by bringing forth an industry-led solution where the costs associated with the program are reimbursed by battery manufacturers. This will be a statewide program with direct oversight by the Nebraska Department of Ener-- of Environment and Energy. During my first session in the Legislature, I introduced an interim study, LR163, on recycling. During our work on LR163, I became aware of this public safety issue impacting the public. The use of lithium-ion batteries in consumer products has taken off in recent years. These batteries are in a host of consumer products. They have high-energy density, are quickly rechargeable, and can be recharged many times and last much longer than traditional batteries. Cell

phones, laptops, power tools, lawn equipment-- whatever the product there is, there's probably a version that has one of these kind of batteries. When they are damaged or defective, lithium-ion batteries can pose a serious hazard, as they quickly heat up to over 2,000 degrees and cause fires, burns, and/or explode. For decades, consumers have been conditioned throwing away our more traditional, nonrechargeable batteries. Today, consumers either throw the lithium-ion batteries away or they wishcycle them and place them into bins at recycling collection sites. These batteries are frequently damaged when they enter our waste and recycling streams. They can then cause fires, and many of these fires are very serious events. We've seen in recent months fires in garbage trucks in Gretna and Seward. Over the past few years, we've had fires at landfills in Hastings and York, fires at material recovery facilities or rece-- recycling processors in Omaha and other places around Nebraska. The recycling industry is reporting 5,000 fires a year, resulting in their property insurance increasing tenfold as a direct result. There is an average of three catastrophic fires per year at the nearly 300 material recovery facilities across the country. These catastrophic fires result in complete loss of a facility and an average of \$22 million per claim. The aforementioned-- mentioned recycling center in Omaha estimated a loss of over \$1 million over a 12-month period due to battery fires. The costs of these fires are high for those impacted. Private companies face increased insurance costs, damage to their equipment and facilities, loss of revenue while they recover from the fire. Our property taxes support local emergency services here in Nebraska. The cost to combat these fires has a direct impact on property taxes. The same is true for our community-owned landfills. The ultimate price is paid by our people who are sent out to fight these often intense fires. One fire at the Omaha Recycling Center in 2023 caused by a battery resulted in a fire captain on scene issuing a mayday call when he fell down onto a belowground conveyor belt that he could not see due to the intense smoke. Fortunately, he was not seriously injured. Colleagues, LB309 brings forth a unique option to help reverse the trend of these batteries ending up in the waste and recycling streams. The Safe Battery Collection and Recycling Act will create the battery stewardship organization made up of battery manufacturers who will be responsible for the cost and management of collecting, transporting, and recycling batteries, along with educating the public. There will be no ongoing impact to the taxpayer to run this program. Currently, 11 states have passed similar legislation, with 15 more-- including Nebraska-- being-- considering it this year. Iowa is considering expanding their existing battery

recycling program to include these kind of batteries. For the past year, we met with stakeholders across the state, as well as organizations representing the battery producers, waste haulers, recycling, landfills, local communities, and others to develop a consensus on how we would design a similar program for Nebraska. I've provided you each with a section-by-section summary of this bill. The heart of the legislation is the BSO, or battery stewardship organization. These are the battery manufacturers. As stated, they will be responsible for formulating a plan with the approval of the Nebraska Department of Environment and Energy, NDEE-- which may be changing its name coming up-- to set up collection sites, transport these batteries, and ultimately recycle them. They will also be responsible for educating the public about the program and additional information regarding how to safely handle these batteries. The BSO will also pay an annual fee of around \$100,000 a year to reimburse the taxpayer for the costs of NDEE to provide oversight of the program. What types, what types of batteries are we talking about? As I mentioned earlier, the consumer is used to throwing away batteries. From the experience of other states, we've learned that a large amount of nonrechargeable batteries will also be dropped off at collection sites. These are your AA-type alkaline batteries for the most part. As you can see from the second handout in the packet I shared, the consumer has a lot of different battery chemistries that share the same battery size and similar look. Rather than fight an unwinnable battle to educate the public about the many different types of batteries, we simplify the process for the consumer to cover both rechargeable and nonrechargeable batteries. There are two sizes of the batteries covered: the small format batteries, like the AAA or AA size, up to just 4 pounds. The mid-format batteries are your power tools and rechargeable lawn equipment batteries. We exclude batteries in medical equipment and we don't include large format batteries like those in electric vehicles or large industrial batteries or grid-scale batteries for electrical storage by our public utilities. We are also not including embedded batteries in products like vapes and toys, as these are glued into the product and extremely problematic to remove at risk of fire or explosion. In the case of vaping devices with embedded batteries, these are classified as acute hazardous waste because of the nicotine, and these are currently incinerated when collected. These embedded products are part of the public safety issue and one that we do need to address at some point. However, no state has figured out a good way to do this other than outright banning them, which no one has done as of yet. Colleagues, this legislation is not a model bill. We've simply cut and

pasted. We've worked very hard to reach out to stakeholders and work in a collaborative manner to bring forth a program that is designed to address the main issue of public safety in keeping batteries out of our waste and recycling streams. LB309 also does not place the burden of collecting, transporting, and recycling used batteries on our Nebraska retailers. There are a number of retailers here in Nebraska that voluntarily collect used batteries at their own expense. The cost to run this program, including that of NDEE to administer it, will be paid for by the companies who join the batter-- battery stewardship organization. We have engaged with and have the full support of the PRBA, the Rechargeable Battery Association, representing 76 companies who manufacture batteries and battery-powered products. And that list is also included in the handouts that I provided. I have also shared with you AM219. This is an amendment I'm offering to LB309 to make it so we don't have to reopen the-- this statute as NDEE's administrative costs change. This was brought to my attention by NDEE after I introduced the bill. There are a number of communities, companies, and organizations that are supporting this legislation. Many of them had planned to be here in person to testify, but due to weather did not make it in. And I have provided a list of that for you as well. We have the opportunity to bring forward a program that won't cost the taxpayer, will work to prevent fires, allow consumers to recycle batteries in a scalable manner across our state, and have the battery industry work with local stakeholders to find the best way to do all of this for our communities. Thank you for your consideration. And I'm happy to answer any questions. I want to mention too, I've got a frequently asked questions document in your handout if you want to have that for future ref-- future of reference.

BRANDT: Let's see what we've got. Questions?

HUGHES: I'm staying all day, so we can have these in the close, so. I'm not going-- it's Jana day in Natural Resources.

BRANDT: You gave a very thorough opening. The one question I have: on the fiscal note in year one, it shows \$51,000 in expenditures. It shows no revenue. Where's that money coming from?

HUGHES: That we're working on. So the money will in arrears come to cover NDEE. And we need to work on the initial start of that. And we're in the midst of working with NDEE on something for that [INAUDIBLE], so.

BRANDT: OK.

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HUGHES: But ultimately, there will be no costs, right, because the, the-- yeah.

BRANDT: OK. Senator Raybould.

RAYBOULD: Thank you, Senator Hughes. You know, you talk about the battery stewardship organization. And are-- the battery stewardship organization is different from some of the retailers you listed that offer collection sites, correct?

HUGHES: Right.

RAYBOULD: Can--

HUGHES: But they-- but what can happen is this battery stewardship organization can work with, like, the places that already have it set up and either take it over so then that retailer doesn't have to-- because they're doing it out of their own cost, like at True Value or, you know, Home Depot or something. So they can partner with them. And, and, and then that-- and then that retailer won't have that cost. They're doing it today on their own. Is that what-- I guess [INAUDIBLE].

RAYBOULD: Yes. Exactly. And so can you tell me a little bit-- you said Iowa does this program already.

HUGHES: Iowa has a battery collection program, but they're talking about expanding to this kind of battery.

RAYBOULD: OK.

HUGHES: Is that what you mean? Yeah.

RAYBOULD: OK. Thank you.

BRANDT: OK. I don't see anything else. You'll stick around to close?

HUGHES: You betcha.

BRANDT: OK. First proponent. And while the first proponent is coming forward, I would ask the senator to introduce herself.

CONRAD: Good afternoon. Hi. I'm Danielle Conrad from north Lincoln.

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BRANDT: OK. Any proponents on this bill? Proponents. Opponents. Oh, wait. You're-- wait, wait, wait. Are you a proponent? OK. We've got a proponent. Yeah. Got to move faster. Welcome.

AL DAVIS: Thank you, Senator. Good afternoon. My name is Al Davis, A-l D-a-v-i-s. I am the contract lobbyist for the 3,300 members of the Nebraska chapter of the Sierra Club. The Sierra Club, of course, as you probably know, is the nation's oldest entity focused on environmental protection and has chapters in all 50 states. So we want to thank Senator Hughes for introducing LB309, a bill focused on trying to manage the increasing problem associated with battery disposal. When the bill appears-- while the bill appears to be complex and multifaceted, the primary objective of the bill is to contain and recycle the increasing number of batteries we use to drive the modern-day economy. Almost all batteries you might consider household batteries are covered by the act, as well as the larger batteries, which could be associated with cordless chainsaws, leaf blowers, weedwhips, and the like. The deluge of batteries which has reached the end of their useful life is daunting, and the solid waste industry needs a solution to prevent the increasing occurrences of fire associated with discarded batteries, which are a real threat to air quality as well as the risk of fires spreading and destroying property. Unfortunately, until this bill appeared, there's been really no easy way for consumers to dispose of these batteries in an environmentally friendly way, and almost all are disposed of with the household trash by the local waste pos-- disposal service. While the scope of the bill is wide, the fiscal notice is minimal, owing to the establishment or affiliation with national entities which are specifically established to address the issue. These entities, called battery stewardship organizations, are affiliated with manufacturers who will cover the costs associated with pickup and disposal and will benefit by the recapture of materials from batteries which are captured in the recycling effort. NDEE is simply charged with minimal oversight efforts. Several states have either already established similar programs or are in the midst of doing so at this time, and we encourage the committee to bring this bill to the floor for full discussion. We want to thank Senator Hughes again for introducing and shepherding the bill to this point. It's an important issue which will only grow more daunting as we-- if we don't begin to address it soon. And I'd like to say that this is kind of the first concrete solution I've ever seen proposed to how we're going to deal with it, because we always hear, you know, on the, on-- battery, it may say don't recycle it. And I'm sure that almost everybody doesn't know what they're going

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to do with these batteries. So they discard them into the trash and they end up in the, in the dump. And there are, you know, obviously materials within both lithium batteries and other ones that can be recycled, and this is just a good, commonsense way to do that. So when an industry itself comes in and says, we're willing to manage this and take this on, I think it's a great opportunity for Nebraska [INAUDIBLE] want to thank Senators Hughes for that. And I guess I will say one more thing. I really wish we could find a solution to the vaping issue, because in my neighborhood here in Lincoln, every time I go for a walk, I see two or three of these vapes lying on the ground, which do have batteries in them. So that's something for people to think about down the road. Thank you.

BRANDT: OK. Let's see if we have questions. I see none.

AL DAVIS: Thank you.

BRANDT: Thank you. Proponents. And you, you're a proponent.

ANDY POLLOCK: Here as a proponent.

BRANDT: Yes.

ANDY POLLOCK: Chair--

BRANDT: I like it when they fight over this. OK. Ready for takeoff.

ANDY POLLOCK: Thank you, Chairman Brandt, members of the committee. My name is Andy Pollock. That's A-n-d-y; Pollock is P-o-l-l-o-c-k. I'm here as a registered lobbyist on behalf of Waste Connections. It's a waste disposal and recycling company that does business all over the U.S. and all over Nebraska, including my hometown of Ogallala. We're here to support. I was kind of waiting. Senator Brandt, the reason I didn't get up here quickly is I was waiting for a person from Waste Management who I thought was going to be here. I'm not a subject-matter expert on this, so I would defer questions to my clients, and I'm happy to relay them on. What we will say is thank you to Senator Hughes for introducing this bill. Waste Connections, when I asked their personnel about this bill, they said they have fires caused by lit-- lithium batteries all over the place, both in Nebraska and nationwide. It's-- it is truly a hazard and it needs to be addressed. I'll just give you one example. That was not here in Nebraska, but there was a recycling facility in Pennsylvania that burned to the ground because of a lithium battery that caused the fire. The cost of replacing that facility: \$30 million. So this is

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serious stuff. And we ask the committee to take it seriously, advance the bill. And we'd be happy to work with the committee and Senator Hughes if any changes need to be made. Thank you, Senator Brandt.

BRANDT: Questions? I see none.

ANDY POLLOCK: Thank you.

BRANDT: Thank you. Next proponent.

JOHN HANSEN: Mr. Chairman, members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n; Hansen, H-a-n-s-e-n. I'm the President of Nebraska Farmers Union. My organization has been a strong supporter of all efforts to recycle. And we participate with other organizations, like-minded NGOs and others to help be supportive of recycling efforts. We've participated in grant programs in the past for litter reduction, and we look for any and all ways that we can try to get ahead of the, the issue of what do we do with those kinds of things that clearly pose a threat to the environment but also can be recycled and reused. And so the-- I come from a family that, that survived during the Great Depression because they threw nothing away and they used pretty much everything. And so the idea of just throwing things away has always been for me difficult. And the whole idea of not having a place to go with something that you think should be recycled is a problem. And so in, in the past, we have supported other legislation to try to help move things forward. We thank Senator Hughes for doing the legwork to create a solution to what is obviously a problem and a risk. But it's also at a time where-- when we look at sort of the national picture of all of the different kinds of rare earth materials and elements that are used in a lot of these batteries. When we have a-- don't-- and don't have a program to capture what we can and recycle what we can, it seems extremely wasteful and nonproductive. And so with that, we are enthusiastic support of LB309. Thanks, Senator Hughes, for bringing it forward. And it's always good when you can see a, a systematic, statewide solution to a, a known problem. And with that, I'd be glad to answer any questions.

BRANDT: OK. Let's see. Questions? I don't see any. Thank you.

JOHN HANSEN: Thank you very much.

BRANDT: Any more proponents? Seeing none. Opponents? Welcome.

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RICH OTTO: Good afternoon, Chairman Brandt, members of the committee. My name is Rich Otto, R-i-c-h O-t-t-o. And I'm here to testify on behalf of the Nebraska Retail Federation in opposition to LB309. While we recognize the importance of responsible battery disposable and environmental stewardship, we do have concerns that LB5-- LB309 places burdens on retailers, disrupts supply chains, and creates some compliance challenges. First of all, Senator Hughes did acknowledge some of the other concerns that she has with the embedded lithium-ion batteries. And just from quick glance, it looks like over 90% of lithium-ion batteries are in-- embedded devices. So-- and Sierra Club, Mr. Davis commented on the vape as well. I just want to point out that we do think these are continually going to be thrown away, these are disposable devices, and that fires will persist with over 90% of these items still not covered under the bill. LB03-- let me get back to LB309 specifically. It does create the battery stewardship organizations, the BSOs. Retailers do not manufacture the products with these batteries, nor do we have control over whether these producers join the BSO by 2028 and then comply with the labeling requirements by 2029. However, retailers will be held responsible for ensuring compliance, creating significant administrative burden. Many retailers carry products from multir-- multiple suppliers, including national and international brands. Ensuring compliance with all of those brands may be difficult. Smaller retailers lack the resources to comply and may be required to remove products from their shelves. So as Senator Hughes did comment, I think a lot of the power tool industry will be members of the BSOs, Home Depot, Lowe's, or members, and they do voluntarily take back batteries of the manufacturers that they have in their stores. Some of my concern comes from my smaller toy stores, actually, where we're seeing these devices in scooters, hoverboards, your RV, little drones, cars. A lot of kids' toys have these in them. They have-- many manufacturers that-- when we look at the list of the 76 that are on there, I'm not seeing a lot of them today. Now, hopefully they would join the BSO by 2028, but we don't know for sure if that will happen. Also, we're concerned with products that are sold by international retailers, like Temu, that can sell these types of toys into the States. They will not join the BSO. None of the teeth as far as the fines can go after these international sites. And typically they have knockoff and worse types of these lithium batteries that are more prone to fires. Yet those batteries will still be recycled and brought in to stores that voluntarily have the recycling centers. Some of the biggest concerns are the January 28 deadline that basically, if the product isn't part of the BSO, we're going to have to take it off our shelf. How do we recognize that? When

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do the manufacturers have to join the BSO? I don't see a specific date for when producers need to join the BSO. We think that they should need to be a part of the BSO well prior to the date when we potentially have to remove it from the shelf. So a producer could join on December 31, 2027 and then they're fine? And the retailer gets little notice that they're part of it or not part of it and may have already discontinued ordering of those products. I can go into more specifics of the bills on high-level concerns. Again, I did touch on compliance and administrative burdens. We need clear collection and respi-- recycling responsibilities within the store. I can talk about that further, but Call2Recycle, Lowe's, Home Depot, lot of e-bike stores in town will voluntarily take these back. On those sites, they voluntarily only take back the batteries they're selling. It's not clear if they're going to be required to take back all batteries if they participate with the BSOs in these recycling campaigns. We also have safety and liability concerns. The fires, they are going to persist. We've seen fires at retailers due to the lithium batteries. So we get that the fires are a problem for the collectors and recyclers. That's understandable. But we still will have fires, potentially more fires in retailers that take these back. We've also seen trouble with the recyclers that are supposed to have things in place to limit fires. Have had substantial ones in Missouri. How the public education is rolled out. Insurance and financial risks. Meeting the target collection rates under the proposal. Other costs and increased cost to consumers. I see my light's up. Happy to answer any questions you might have.

BRANDT: OK. Let's see what we've got. Questions? I guess I've got a few if nobody else has got some. Does any state have a deposit on batteries like they do on pop cans?

RICH OTTO: I'm not aware of one, Senator. I believe what Senator Hughes said as far as this model being in ten or so states seems to be the model that most states are looking to. We do admire the funding source. I'm not trying to question manufacturers stepping up to fund this. That's probably the positive piece. It's really the execution after the fact.

BRANDT: So do you think you could work with Senator Hughes to get that resolved to the point that you would have no objections?

RICH OTTO: I doubt we'd get to neutral, but I am committed to working with her. I have told Senator Hughes's staff that the funding model isn't our concern. It's just the timing. How do we make sure that

we're not selling these? It has some pretty stiff fines or civil penalties of \$10,000 per instance. So I think a lot of my little retailers are going to say, hey, Rich. We're taking these off the shelf till we know. Again, when you're looking through the list, it can be difficult to tell, OK. I don't see the brand of my manufacture on the list. Is the battery under a different manufacturer? Is that covered? Is it not covered? It doesn't seem to require a lot of the BSO to give the retailer great direction on which products in fact are covered.

BRANDT: And it seems the concern is specifically with lithium batteries. Do you know what percent of batteries are lithium versus nonlithium?

RICH OTTO: I don't know that. I just know, of the lithium, over 90% are embedded. So this will--

BRANDT: I mean, if it-- if this got bad enough with these fires and-- aware-- I'm very aware of what happens to these garbage trucks. Somewhere once a week when they crush this, the fire starts inside the truck. Then you've got a flaming mass that you dump out somewhere. What would happen if we were to ban lithium batteries?

RICH OTTO: Well, I think consumers would be the first to be upset. Nearly every device that we love, fun devices, things that we want to-- tools, phones, all kinds of things use these batteries. Now, the bill does have a list of exemptions of some of the most popular. But I think kids' toys, power tools, other things of that nature would be-- consumers would, I think, be very upset if you-- if we flat out ban them.

BRANDT: Yeah, I guess I kind of see we're on the cusp of, of-- a lot of these old power tools, the batteries don't hold charges anymore. You just throw them in the trash and then it ends up in that garbage truck. And then who knows? All the tools that you buy anymore are battery powered. And if anybody's ever looked inside of these devices, they literally have 20 or 25 little lithium batteries inside of there. And I don't know. Do you-- in your industry, do you hear many stories of fires unintentionally starting because of these batteries?

RICH OTTO: The, the fire concern is real. I'm not denying that these batteries are prone to fires. It's just, OK. We may have less fires at recycling and waste areas. Now we'll have regulated fires that we're aware of and why they are. We've seen-- Missouri had a plant that

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burned down and it was somewhat unregulated, but they supposedly had safety procedures to handle these devices. So they-- it-- they are tough to recycle. The fires are going to continue to persist. I just wanted to point out that I don't think this completely eliminates the fire risk for the collection agent.

BRANDT: OK. Senator DeKay.

DeKAY: Thank you. How are these batteries now disposed of and how are they recycled and what's taken out of them for recycling? How much of that original battery can be reused again?

RICH OTTO: The recycling question's a great question, Senator DeKay. I, I don't believe there's any Nebraska recycler that fully recycles them. We may have somebody behind me that can answer that better as far as the recycling. Again, I know many of my retailers voluntarily collect and take these back. The concern is when they're damaged or something else has happened that then the retailer needs to look and take a different step. Because once they're damaged, they're more prone for fire. They basically have a bin and then they-- someone can come pick them up. I, I get that the BSO will, will streamline that a little bit more. But right now on the voluntary basis, we can take back just those that we manufacture. I was going to say, I think on Call2Recycle, they have five different types of batteries with locations you can go to. So you can specify the type of battery you want and who will take it back. So, like, a bike store that has just e-bikes, they only take back the e-bike batteries. With this, if they voluntarily take back batteries, are they required to take back all the batteries? Can they take back just those that they sell and the-- work with the manufacturer on? It's not clear on what the expectation would be going forward for each collection site.

DeKAY: So when the retailers take them back, what do they do? Do they go to a central deposit place where--

RICH OTTO: That's my understanding, but I-- again, this site in Missouri-- I know there's some around the, the country that do recycle them. I know the recycling of these is difficult. It's not real simple. There are valuable resources within the batteries. And we can get you more details on the recycling. That's something that I need to hear more of. How do we in fact recycle them, in the end? Or is it just collection and getting these in one place so we have less fires in more spots? It seems like it's just kind of getting them all in one location is part of the, the goal.

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DeKAY: Thank you.

BRANDT: One last question. If these batteries are going into our landfills now and getting compacted with these huge compactors, is there any evidence that the fires start at a later date, two or three weeks, a month later, and, and then start that whole landfill on fire?

RICH OTTO: I'm probably not the best to answer that. My understanding is that when it's compacted, it's fairly quickly after it. And that usually is part of the chain reaction. But somebody that knows lithium batteries and the components within them would be better to answer that.

BRANDT: I would think if I ran a landfill, I'd certainly want these in a separate, separate-- segregated--

RICH OTTO: I did read about underground fires at landfills, so I think they can start after the fact. I've been kind of doing research on these batteries as well because of this. So I don't want to-- I'm not an expert on that.

BRANDT: All right. Thank you. Next opponent. Welcome.

JOEY ADLER RUANE: Thank you, Chair Brandt. My name-- and members of the committee. My name is Joey Adler Ruane, J-o-e-y A-d-l-e-r R-u-a-n-e. And I am a registered lobbyist here on behalf of the Recycled Materials Association. So we've had a lot of these questions. I am not an expert, but if you-- I will take your questions back and get you answers for-- that you have been having so far. I'm not going to read the whole letter, but the three big points that they wanted to bring up-- and, and just to be clear, I have talked to Senator Hughes and her office and we want to work with her to address these concerns so we can get a bill like this moving forward. The first one is that existing electronics and battery, battery recyclers should continue to be able to independently collect and manage covered batteries while the reporting information is still, you know, required and the information on the volumes collected and the efficiency rates of that recycling program also we'd be happy to report. The other thing is that we would love to see con-- a comprehen-- comprehensive infrastructure assessment to report on the education and training needs for the public and first responders that have to deal with these fires when they do happen. We can make the best regulations in the country here in Nebraska and we would still have these fires. And we feel that we need to continue to do those educational things. And

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finally, provide oversight through an advisory committee of relevant stakeholders to try and come up with the best way that we can continue to handle these products as we continuously see more and more of them put out into the marketplace. I'd be happy to try and answer any questions or get you answers to questions that you have.

BRANDT: Questions? So specifically, why are you opposed to this as opposed to neutral?

JOEY ADLER RUANE: Because we have not been able to get the language drafted on our end yet. So they wanted it officially as opposed until we have language to give to Senator Hughes to work on.

BRANDT: So really, you have no dog in the, in the-- I mean, you really aren't as-- opposed, you're just waiting on language.

JOEY ADLER RUANE: Yes. We would like to get to neutral with an amendment.

BRANDT: And you feel that you can get there?

JOEY ADLER RUANE: I think so.

BRANDT: OK.

JOEY ADLER RUANE: Yeah.

BRANDT: That sounds good. Senator Raybould.

RAYBOULD: Thank you, Mr. Adler Ruane. The question I have-- you mentioned establishing an advisory committee of stakeholders. Is that something that NDEE would be doing, having that advisory committee to review all the BSOs and make sure they're in compliance? You know, I-- my mind races to someone who's a-- signs up to be a BSO. They run around and collect all the, the batteries and then go out in the country and dump them for something--

JOEY ADLER RUANE: Yeah.

RAYBOULD: Evil, bad stuff like that, so-- but that is something that your group is recommending, an advisory committee.

JOEY ADLER RUANE: Yeah. Of all of the relevant stakeholders under the department to try and come together with how we can get these best recycled I think is [INAUDIBLE].

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RAYBOULD: OK. Thank you.

BRANDT: OK. That looks like it's it. Thank you--

JOEY ADLER RUANE: Thank you.

BRANDT: --for your testimony. Next opponent. Any more opponents? Anyone in the neutral capacity? Neutral. Senator Hughes, you're welcome to close. And while she is coming up here, we had 26 proponents online, 3 opponents, and 2 in the neutral capacity.

HUGHES: All right. Thank you, Mr. Chairman, Chairman Brandt and members of Natural Resources Committee. I do want to encourage everybody to look at the online comments that-- my proponents that were going to come in that couldn't we're able to submit. So I think there's actually a lot of good-- I shouldn't say actually a lot of good information. Online comments are always good. But in this case, there's a lot of information there that I think you can read. I-- one of the things-- we know of three places-- Oklahoma, Nevada, and Indiana-- that actually do take these batteries and actually recycle them. And they can be recycled, pretty much every speck of it. They break them apart and can get the, the, the lithium out, that-- just the different pieces out. The problem comes-- like we said, we're not doing the, the glued-in batteries, the vapes, like Mr. Otto had mentioned. That is still going to be a problem that I said. But because you're not getting all doesn't mean you shouldn't start somewhere and get some. So I think this is the step in the right direction. I think we do need to-- and I think Mr. Davis mentioned it too. I see them too. You walk-- you don't see cigarette butts on the ground anymore. You see disposable vape-- plastic vapes on the ground. And when those get broken and punctured, that's when the fires can start. So that's definitely not a good place for those. That is a future thing to address. But with this bill, we're addressing what we can and what we can get our hands on. And I want to address what Mr. Otto was saying. You might have an e-bike store that says bring your e-bike battery back to me, this brand. They can still do that. There's nothing in here that says that that retailer can only take their batteries back or whatever. Nothing is stopping that. Home Depot can still do it for their brands that they sell, do all-- what-- whatever they have there. These-- the place that the, the, the-- this organization will set up collection sites. They might not even be in a retailer. It might be in Lincoln down by the recycling yard or whatever. But the-- and then they'll take all the batteries. So I guess I don't understand why we're hesitant to-- because if-- as a

retailer, if they were going to voluntarily do only these certain batteries and want to sort them out, that's great. If that retailer wants to join in with this and take all of them, then they'll do that and, and it'll be-- get paid for and they'll figure it out. Anyway. I know there's a lot of information here. This is kind of a big bill. And I, I don't like, you know, making mayonnaise doing it, but this gives us an opportunity to partner with good manufacturers of batteries. I think somebody mentioned stuff coming in from China and whatever. A lot of times those are not high-quality items and probably do maybe lend up-- or, end up causing more fires. But let's collaborate with manufacturers of good products that we're using. I know-- I was just-- I was just telling Matt. We've switched to-- we actually have a battery chainsaw now, which I was, like, super skeptic of, but it's super great. Really strong power. And, and that same battery, we have a leaf blower, we have a weed eater, and our chainsaw, all with the same rechargeable battery that we go between the three. We're going more that way, right? We're getting more electronic products. There's more batteries out there. You ban all, all these batteries-- I think Senator Brandt said that-- we're going to be in a-- people are going to uprise, right? But that's where we're going to. So let's finish the-- let's, let's capture this instead of throwing it in our landfills, because they are really, really causing problems. We are not asking the taxpayer to pay for this. Local businesses are not asking to pay for this. And so I just think this is a good step forward. Other states are pursuing this legislation. We've actually been contacted by states that don't have anything similar to go down [INAUDIBLE]. This is a problem for the United States. This is not a Nebraska issue. And I think that's also why you see that huge list of manufacturers. And more are going to join that list if this is a requirement to address this problem, because they know we're selling more of these things and they-- there is some issue with the end of life of these components. The other thing-- in these batteries, there's-- the minerals can be taken out and recycled. And there are minerals that maybe don't come from the United States. So maybe China can send all their batteries here and we'll take the lithium out and reuse it, and then we don't have to mine it somewhere else. But we have worked really, really hard on this bill. We are still willing to work hard. There's clearly possible some amendments that need to, to come. But I think this is a good bill. I'm open to feedback. We're going to work with people. I appreciate you guys' time. I want you to take time and digest it, but I think we can move forward and, and come up with amendment to take it further. So.

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BRANDT: OK.

HUGHES: And I'm open to any questions. And thank you.

BRANDT: Let's see if any questions. Senator Raybould.

RAYBOULD: So thank you very much. I learned a lot more than I--

HUGHES: I know. It's just a lot to take in.

RAYBOULD: It is.

HUGHES: Yeah.

RAYBOULD: So kind of walk us through the process. And, and I'm not sure I have it right. I'll-- I can-- I'll start out and then you can just correct it. NDEE reaches out and gets bids from the BSOs to service areas of Nebraska. Do I have that right?

HUGHES: Right. So the, the-- that battery organiza-- what will probably happen is that group of battery manufacturers will honestly, they'll probably hire a third. They'll pool their funds, plus they're getting [INAUDIBLE] and, and get a third party to do this is probably what's going to happen. And then that third party will say, OK. For the state of Nebraska, do we partner with other recycling organizations that are already out there or do we set up something, you know, two spaces in Omaha and one in Linc-- or whatever. And now they'll get that line up. And then that organization is also responsible for-- I mean, I don't know if they'll be, like, a label slapped on the box when it gets old. Hey, when your-- when the-- this product life is done, take it back. You know, go to this website and here's where you can bring your battery back and, and dispose of it or-- but they'll do-- they're responsible for the education for folks too of it. Is that, I guess, what you're asking?

RAYBOULD: Well, I'm, I'm just, you know, trying to think of the logistical steps. So the BSOs would be working with the manufacturers. But the manufacturers--

HUGHES: The manufacturers are, are--

RAYBOULD: --[INAUDIBLE] obligated--

HUGHES: --joined together in the BS-- yeah.

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RAYBOULD: --are obligated to put, like, that little sticker. I-- this is recyclable.

HUGHES: If that's what it is, a sticker or however-- right. Or website or--

RAYBOULD: --look for the recycling center near you for this, or something that.

HUGHES: And, and the reality is, just look at that picture of batteries, right? They all look-- to, to me and you, we're not going to pick up a battery and go, oh, this is a lithium, this is alkaline, whatever. That's why we've included all-- like, they have to take all the batteries. Now, your e-bike or cy-- or whatever specific-- you know, if that person just wants to take their kind, they can sure do it. But we're saying for this overall collection site, we're not going to-- you know, we'll take this one and not that one. They're going to bring them all in. So that gives us options for other ones too. Because it's almost impossible-- I mean, I, I wouldn't know the difference either. And I'm actually now paying attention to these kind of things, so.

RAYBOULD: But then-- I guess it, it would all be under NDEE, the umbrella of NDEE. The BSOs would have to, to pay-- they have to pay something to NDEE for the program, right?

HUGHES: They'll oversee it and make sure it's happening. Yes. But then the, the manufacturers will have to pay-- yes. And they'll help cover the costs at NDEE. The fiscal note, I think, half a person.

RAYBOULD: Yeah. Half a person the first year and a full time the next year.

HUGHES: Which seems-- well, you know. We all know it's hard to figure out [INAUDIBLE]. So, yeah. That would help. That would cover that, so.

RAYBOULD: But, but no retailer would be obligated to--

HUGHES: No retailer has to collect.

RAYBOULD: --to participate.

HUGHES: If you sell their batteries, it doesn't mean you have to be a collection site. Is that what you're asking?

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RAYBOULD: Mm-hmm.

HUGHES: Right. No. You would agree to it if you choose to. OK.

BRANDT: OK. What else do we got? Senator DeKay.

DeKAY: Thank you. First off, rather than take any information and digest it, I'm going to recycle it for you, so. But more importantly--

HUGHES: Enter eyeroll now.

DeKAY: More importantly, if you go to a retailer or whoever that's going to be a collection point with these, if you-- how do they store them until they are taken someplace so that they aren't-- if you have a damaged battery in there that you don't have spontaneous combustion, like grease rags or something like that happening.

HUGHES: And that-- I, I cannot answer what that would look like, but that would be the specifics. This organization would say, OK. If-- let's say I own a, a lawn and garden store and I've agreed to be a collection site for these kind of batteries. That would have to come from-- you know, it's going to be in this kind of container. Usually there are certain container that helps-- like, if something would happen, if it got punctured or whatever. And maybe it's-- I-- is it inside the building? Maybe it's outside the building. I-- yeah. I can't answer that, but that would be part of the requirements that that organization would come up with if you're going to be a collection site for these kind of batteries.

DeKAY: OK. Thank you.

HUGHES: I'm going to-- can I answer one more thing?

BRANDT: Yes, you may.

HUGHES: I just thought of it with your question. So I think there was a video the other day. You Google lithium battery fires, it's kind of horrifying. But you know how the internet is. You can find anything, get down a rabbit hole. But I think it was in Denver. A waste management truck crushed their thing and it lit into fires. And what-- do you know what they do? Instead of letting a \$250,000 truck just, you know, be destroyed, they dump it. And so in the middle-- like, this flaming pile of trash, basically, is in the middle of the highway. And I just think, you know, you go out in-- well, we've had a drought for how long? And you're driving down a-- and one of your dump

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trucks has to do that or your garbage trucks have to do that. Just a mess it's going to make. But that's what they do, because otherwise your whole piece of equipment goes down in flames. And that's happened. And I'm not saying this is going to stop that from happening, but if it lessens it, it's one step closer to less of these things happening. That's the way to go, so.

BRANDT: All right. Well, thank you. With that, we'll close the hearing on LB309. And the next one is LB590. Senator Moser. Welcome.

MOSER: Thanks for that rousing welcome.

BRANDT: Yes. Yes, it was.

MOSER: Thank you, Chairman Brandt and members of the Natural Resources Committee. My name is Mike Moser, M-i-k-e M-o-s-e-r. I represent District 22 in the Legislature. I'm here today to introduce LB590. This bill gives the Department of Transportation the authority to operate a mitigation bank or an in-lieu fee program by contracting with public and private parties to meet its mitigation obligations for endangered species and other environmental impacts under state and federal law. This is a bill that is a continuation of effort building on last year's LB1335 to improve the project delivery process in partnership with the Department of Transportation and the Nebraska Game and Parks. The committee has examined ways to streamline delivery and find ways to make the environmental permitting process more efficient. I appreciate the work that's gone into this effort and the support of the department and the governor. In current practice, the NDOT performs its own compensatory mitigation, including managing property placed in mitigation banks to offset the impacts to endangered species or wetlands from highway improvement projects. The work entailed in identifying, obtaining approval of, acquiring, and maintaining such property can significantly delay transportation project-- projects due to the limited tools and authorities regarding wetlands. While NDOT has authority to develop wetland mitigation banks, it lacks the ability to be creative when it comes to mitigating for threatened and endangered species. It's become apparent that this lack of authority is driving costs up. The NDOT needs to-- needs this authority for consideration of endangered species and pollinators, as well as for working with third parties to perform mitigation activities. Extending NDOT's authority to develop an in-lieu fee or a mitigation bank program for endangered species, wetlands, and other natural resources will ensure efficient delivery of highway improvement projects. The in-lieu fee program is considered a best

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practice in other states. They allow third parties focused on conservation to more efficiently perform mitigation activities on behalf of agencies like NDOT. Their expertise and mission is focused specifically on development and management of land for conservation purposes. And these programs also require property tax revenue to be collected, which doesn't happen when the NDOT currently purchases land to hold in mitigation banks or conservation easements. After the introduction of LB590, a few amendments have come forth. This language is available in the document in front of you, and the changes can be explained by the testifiers after me. However, these are primary cleanups to definitions, and the amendment does not substantially change the overall purpose of the bill. Essentially, the bill allows them to pay third-party organizations to do mitigation activities required by federal and state law on its behalf rather than to have to do these mitigations on project-by-project basis, which is slower and more inefficient. Thank you for your time. I urge you to vote in support of LB590. I'd be happy to try to answer any questions. Following me, there will be further testifiers that would be more technically qualified to answer some of your questions.

BRANDT: Senator Hughes.

HUGHES: Thank you, Chairman Brandt. Thanks for bringing this in, Senator Moser. So-- I like an example. So let's say-- you're saying that NDOT needs to have 20 acres of land mitigation because they've torn up part-- something along the highway, right, and then I can hire-- who would a land mitigati-- who would a third party be that might do that for me? Like--

MOSER: Well--

HUGHES: Is that-- I mean, is that what it is?

MOSER: It could be another governmental agency--

HUGHES: Right.

MOSER: --in the Game and Parks, if they wanted to. I don't know that they're all that excited about, about--

HUGHES: But, like, the Crane River Trust, I could hire them maybe to--

MOSER: Well, I mean, they could-- it could be some conservation group--

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HUGHES: Right.

MOSER: --somebody who's already trying to protect--

HUGHES: Or Audubon Society or whatever. You could say, hey--

MOSER: And maybe they're already, you know, trying to make duck habitat or pheasant habitat or-- you know. I don't know that there's a--

HUGHES: But it's like-- it's basically-- it's hiring people that do this all the time where NDOT should be not maybe doing that all the time and working on roads, letting people that know what they're doing do that and sharing the--

MOSER: Yeah.

HUGHES: And maybe I'll-- I see people behind you. I might ask the same questions [INAUDIBLE].

MOSER: Yeah. I think, I think you're correct in your observation.

HUGHES: OK.

MOSER: Some of these third-party groups would be better at it. Their hearts' in it.

HUGHES: Because that's what they do all the time.

MOSER: Yeah. Their hear-- their passion is doing this. For the Department of Transportation, they build roads.

HUGHES: Right.

MOSER: And they do this because they have to. And they put land into perpetual easements that they can never sell, no tax is ever paid on. And it, it, it, it's a lot of overhead. Where if they contracted with somebody to do it, they could do it maybe in conjunction with a project they already have going somewhere and they may not have to buy more land. All they have to do is mitigate the loss of whatever species are going to be affected. Our solution is-- currently is buying land. You know. And maybe somebody else would be better at it than, than Department of Transportation.

HUGHES: Thank you.

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BRANDT: Senator Raybould.

RAYBOULD: Thank you very much. Are there other states that do this type of land mitigation banks?

MOSER: I believe there are, but I am not the best expert at that. So there will be testifiers following me that would be more up to speed on what's going on in other states.

BRANDT: OK. Quick question. Am I to understand there's an amendment coming?

MOSER: Yes.

BRANDT: It wasn't in our packet, so that's why I asked.

MOSER: Yes. We'll get you copies.

BRANDT: OK. So we'll, we'll look for that then [INAUDIBLE].

MOSER: Yeah. The, the amendment pretty much replaces the bill because there were some definitions and a few things that were not 100% correct.

BRANDT: OK. Let-- oh. Senator Raybould.

RAYBOULD: I just noticed-- it did not have a fiscal note?

MOSER: I don't believe so. It probably would save the Department of Transportation money because it-- they'd be getting this service handled more efficiently by somebody else who's more knowledgeable, got more passion for what they do. You know. I, I just think it'd be a better option. They could still do it the old way, but it would give them the option to do it. And it, and it is allowed by federal law. So it's not trying to get around some federal regulations, trying to do the mitigation quicker, cheaper, better.

RAYBOULD: OK. Because I know it says extending the Nebraska Department of Transportation's authority to develop an in-lieu fee or mitigation bank program. So wouldn't the De-- Nebraska Department of Transportation have to have some--

MOSER: They're going to follow me.

RAYBOULD: OK.

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MOSER: And, and so it would be just way more intelligent of me to deflect that question to the people who really know.

BRANDT: OK. I don't see any other questions.

MOSER: Oh, sure. I'll be here to the bitter end.

BRANDT: Certainly will.

MOSER: I got-- I have to listen to another bill with--

HUGHES: Hey.

BRANDT: You might want to quit while you're ahead. OK. Proponents. Welcome.

VICKI KRAMER: Thank you, Senator. Good afternoon, Chairman Brandt and members of the Natural Resources Committee. My name is Vicki Kramer, V-i-c-k-i K-r-a-m-e-r. And I'm the Director of the Nebraska Department of Transportation. Here in support of LB590. I want to thank Senator Moser for his continued efforts to increase the efficiency of project delivery, specifically within the environmental practices. From implementing internal practice to enacting legislative changes, we have worked hard to influence the mitigation processes, which are required by state and federal law to offset the impacts of endangered species, wetlands, and other resources resulting from transportation projects. Currently, NDOT performs its own compensatory mitigation for highway projects, which, for species such as the American burying beetle, means identifying, obtaining approval of, acquiring, and maintaining property long term to offset each project in their habitat range, which covers more than a third of Nebraska. This can significantly delay projects. Although LB1335 makes commonsense improvements by exempting the right-of-way for existing highways, limiting the amount of mitigation required, there are still impacts we must mitigate for when disturbing land. LB590 goes beyond LB1335-- which only affected state law-- and creates a tool to meet requirements of the federal Endangered Species Act, or ESA. LB590 will authorize NDOT to create an in-lieu fee program, a tool used for offsetting the environmental impacts of future projects. This increased efficiency by allowing NDOT to contract with a third party which is dedicated to conservation and protection of land for mitigation purposes. Essentially, NDOT would have a preapproved third-party providers to whom they could simply pay a fee to to meet NDOT's mitigation needs on a project instead of having to actually

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complete the mitigation activities themselves. These entities are better suited and financially motivated to run conservation programs. NDOTs in these third parties are also required under the bill to pay a fee in lieu of property taxes in order to protect the revenue going to counties where conservation easements or mitigation banks would be located. There is an amendment we have worked with Senator Moser to introduce that simply clarifies some of the terms within the bills but does not change the intent or the effect of the bill. As introduced and amended, LB590 will allow NDOT to complete necessary mitigation efforts for the environmental impacts of our projects and meet federal and state permitting requirements in a more efficient and programmatic manner. This bill is a commonsense approach to protecting the environment and habitat of our state while reducing delays in the highway building and repair projects that we need. LB590 does not reduce or eliminate any of any NDOT's obligations under state and federal law to consult with federal or state agencies on projects affecting threatened or endangered species, nor does LB590 affect NDOT's obligation to obtain certain permits when required. Also, the affected agencies would need to approve of any of the in-lieu fee or mitigation bank or co-- arrangements that NDOT contracts for under the bill. Due to the regulatory environment-- specifically the ESA-- NDOT has dealt with significant project delays and anticipates this to continue. The in-lieu fee is a recognized best practice for mitigation strategies by Federal Highway Administration, with 36 states and the District of Columbia having some sort of in-lieu fee program. As we have, the department will work with stakeholders to minimize the impacts of mitigation while developing a program rooted in our guiding principles of stewardship and efficiency. Thank you for your time. I urge you to pass LB590 out of committee and onto the floor. Be happy to ask-- answer any questions.

BRANDT: OK. Let's see what we have for questions. Senator Hughes.

HUGHES: I'll just say ditto to my question for her. Thanks for coming in, Ms. Kramer. So-- yeah. You would say-- OK. Is, is it by a-- like, who decides what-- this is just-- now I just want to know. Who decides what-- OK. It's the burying beetle out west Nebraska, who decides how much-- what do you have to do for it? Do you know what I mean? Who, who comes up with what that mitigation is?

VICKI KRAMER: Absolutely. And it's a good opportunity for us to explain why we're here. So the American burying beetle, for example, was a reason between LB13-- LB1335. So if you remember, that species was essentially downlisted under the 4(d) rule. Well, what happened

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was when you downlist a proj-- or, downlist a species or uplist it, the mitigation practices can change. And so with the American burying beetle, the only approved mitigation strategy be-- was-- became putting land in a "conservationment" in perpetuity. So in the past, when we had been able to do research and partner and do some of the other things, we couldn't-- we can't do that now. It's only land in a conservation easement in perpetuity. And so as we work through this, any time you, you-- inside a take-- meaning you're over 3.8 acres-- you essentially have to put land in a conservation easement at a one-to-one or a three-to-one type ratio, depending on the species. So we began--

HUGHES: So by species, it specifies--

VICKI KRAMER: Yes. It'll-- you'll have an agreement.

HUGHES: --one, this one you need-- OK.

VICKI KRAMER: Correct. So by the species, it'll be dictated from Fish and Wildlife on what that is-- that is required. And we work with Game and Parks on the approval of that mitigation strategy. And so for this species, this would allow us to, once we trigger a take, to tally up that amount of acres, go to a public-- go to a public or a private partner, and essentially provide incentive for them to go out and find those mitigation banks.

HUGHES: And the, and the land doesn't have to be-- does it have to be in the same county as where you're working, it-- just in the state somewhere?

VICKI KRAMER: Has to be in the territory of the species. So right now, you've got a third of a state. It would-- it gives more flexibility and it also allows the-- as written, the legislation also allows them to bundle, meaning you may have local federal projects where we would-- or other owners that want to also get in on this. And so you'd have a more programmatic approach to the mitigation strategies outside of us maybe just mitigating project by project.

HUGHES: And I, I just want to highlight what you said. 36 states do-- have some-- something like this in place--

VICKI KRAMER: Yes.

HUGHES: --already. OK. Awesome. Thanks.

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BRANDT: Senator DeKay.

DeKAY: Thank you. When you're working on, like, road right-of-ways and things of that and you're dealing with wetlands, how do you come up with a number of acres that you designate for wetlands and how-- and go back and purchasing land from a property owner to replace those wetlands?

VICKI KRAMER: So it, it's quite similar. So it depends on how much the take is going to be or how much the impact is. So we always want to avoid and then we want to minimize before we have to mitigate. And so for wetlands, it's a little bit different. We have an established program for wetlands and wetland banking already, but it's going to depend on how much land we're still disturbing or how much wetlands we're disturbing till we-- then we have to go back.

DeKAY: So is it like-- if you're taking ten acres, is it a one-for-one trade when you--

VICKI KRAMER: Yeah. I'll, I'll talk to my environmental staff and we'll get that confirmation because I don't know by district how it varies or by the location for wetlands.

DeKAY: OK. Thank you.

VICKI KRAMER: Mm-hmm.

BRANDT: Senator Raybould.

RAYBOULD: Thank you, Director, for coming in. So tell me, ultimately, whose responsibility then is it to make sure that that endangered beetle is protected?

VICKI KRAMER: So there's a variety of different steps in there. Ultimately, it would be the, the-- we still have the onus to protect it and work with Game and Parks so as not trigger jeopardy for the species, which then would come down from Fish and Wildlife. And so it's very complicated, but we are essenful-- essentially shifting some of that burden over to that public party in order for them to say we have an established habitat. By the contract, they would be required to meet the requirements of that land mitigation as dictated by Fish and Wildlife and Game and Parks. Does that make sense?

RAYBOULD: It, it does. It does. And so I guess the follow-up question, is that other entity always a government entity or is-- can it be a

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private sector entity? You mentioned Game and Parks. Ultimately, they have to secure the environment for that species.

VICKI KRAMER: So we specifically wrote the language so as to incentivize both public and private. So NRDs, Ducks Unlimited, Sandhills Trust, Grain Trust, really the parties that are-- deal with this on a daily basis, whereas we're not land managers. Those that are financially incentiva-- incentivized can manage it. As well as knowledgeable.

RAYBOULD: OK. Thank you.

BRANDT: So I guess the question-- example I'm going to use. You're going to-- you bid ten miles of highway. You've got 25 acres that's going to have this burying beetle in it. Is that just amortized into the cost? You know you've got 25 acres, so that raises the cost of the project. And then you take that cost to go buy 25 acres from Game and Parks or ag-- whoever the aggregator is on this. And then you're done with it. The G-- we, we as a state-- five years from now, something happens to that, that mitigation, that's on, on them and your department is not involved.

VICKI KRAMER: So starting from the beginning of your question, Senator, yes. We, we would essentially have that-- we-- agreement where we do have to have mitigation, right? So we move forward. We say, OK. 25 acres. We're going to buy credits for 25 acres within this Sandhills Land Trust or, or cr-- and those credits come back. We manage those credits. They are responsible for maintaining that property in-- within the requirements of the contract, which would meet the requirements for that species. So they are contractually liable for that.

BRANDT: Is your department on the hook for the next 100 years? Because now we've done this and, and, you know, 2025 and going forward, who knows what's going to happen? But you have to maintain that inspection and enforcement?

VICKI KRAMER: That's the way it currently is. So as of right now, when we-- for these species, unless there would be a change and it would be downlisted or completely unlisted-- which you do see this happening with it. I mean, it wa-- the American burying beetle was downlisted. But it would be very rare to pull land out of a conservation easement in perpetuity, which is why we're trying to find different ways, whether it be finding research or other elements that would be

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approved by the federal Fish and Wildlife to be able to do mitigation practices outside of just land.

BRANDT: So this, this proposed bill does not change that?

VICKI KRAMER: It doesn't-- it, it actually makes it easier for us to do research and things outside of just land conservation.

BRANDT: All right. Senator Hughes.

HUGHES: I think I know this, but one more question. All these are set by the federal. These are federal regulations, by species, by-- what a--

VICKI KRAMER: We do have the Nebraska Nongame and Species Act. But yes, we are basing this off of the Nebraska Enda-- or-- sorry-- the federal Endangered Species Act.

HUGHES: OK. Thank you.

VICKI KRAMER: Section 7.

BRANDT: All right. Thank you. Next proponent. Welcome.

TONY BAUMERT: Welcome. Thank you, Chairman Brandt, members of the committee. My name is Tony Baumert. It's spelled T-o-n-y B-a-u-m-e-r-t. I am a senior scientist and ecologist with OLSSON, and I specifically work on environmental issues, including threatened and enspec-- endangered species and mitigation throughout the state. OLSSON is a nationally recognized employee-owned planning and design firm located here in Nebraska. I'm also testifying on behalf of ACEC Nebraska, the American Council of Engineering Companies, which is the business association representing the engineering and design industry. And we collectively believe LB590 is a crucial step towards balancing responsible transportation infrastructure development with the vital need to protect our biodiversity across Nebraska. Nebraska's current process for mitigating impacts that threaten an endangered species can often be cumbersome, time-consuming, and often not result in the desired outcomes for the target species or resource. Project proponents face a complex web, web of regulations, individual consultations, and potentially costly project delays. This uncertainty can both discourage beneficial projects and hinder conservation efforts at the same time. We believe a, a well-structured mitigation bank or in-lieu fee program offers a streamlined and predictable alternative. And I, I think I'll skip kind of going over the details

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of a bank and in-lieu, in lieu fee programs. I think it was kind of covered. So I will, I will move on from that. Both mitigation banks and in-lieu fee programs offer several key advantages to other forms of mitigation. First, they provide greater certainty for project proponents, simplifying the permitting process and reducing project timelines. Second, they consolidate mitigation efforts, leading to more effective and ecologically valuable conservation outcomes. Third, they leverage the expertise of conservation professionals and resource agencies who specialize in habitat restoration and management. And finally, they can provide a more cost-effective solution for both developers and conservation agencies. And so I, I urge you to consider the establishment of a mitigation bank or in-lieu fee program as a proactive and effective solution for addressing the incidental take of threatened and endangered species. We believe the approach through LB590 really offers a win-win scenario, streamlined project development, and also enhanced protection for our natural resources. And with that, I thank you for your time and consideration.

BRANDT: OK. Let's see what we got for questions. So you're the guy they call.

TONY BAUMERT: Some, some-- sometimes. Yeah. Yeah.

BRANDT: So the difference-- we have in-lieu and land. Are those are the two options here?

TONY BAUMERT: Well, an in-lieu fee program could involve putting land aside for mitigation. An in-lieu program, in, in terms of what's developed in other states or other things I've been involved with, is just a program where someone developing a project pays into a fund and-- or an agency or a group, and it's that group's responsibility to really develop the mitigation. It could be a lot of different things. It could be restoring wetlands. It could be putting money-- or, land aside for a species. That's really dictated by what the resource is. Really, it's just-- it's a, it's a, it's a program to make it easier to, to mitigate because you're not doing these piecemeal project-by-project mitigation efforts that are oftentimes somewhat unsuccessful and not great for the species and just complicated and cumbersome. So it, it's kind of like viewing it as like a central clearinghouse is the way that, that I would describe an in-lieu fee program.

BRANDT: Can you use the same piece of ground for multiple species and get credit for it?

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TONY BAUMERT: In terms of credit, that I think would-- I would generally doubt it, but I think it'd be possible. I think that would really be up to those resource agencies that would develop that program.

BRANDT: OK. Any questions? I guess that'll do it. Thank you, sir.

TONY BAUMERT: Thank you.

BRANDT: Yep. Next proponent. Welcome.

ROB WEMHOFF: Welcome. Good afternoon, members of the National-- Natural Resources Committee. My name is Rob Wemhoff. R-o-b W-e-m-h-o-f-f. And I am testifying on behalf of the Associated General Contractors of Nebraska. I'm also a employee of Perrett Construction out of Valentine, Nebraska. In support of LB590. Associated General Contractors is a trade association of highway contractors who perform highway, bridge, and municipal utility infrastructure work across the state. AGC-- Associate General Contractors-- believes strongly in being good steward, stewards of the environment. Our association has a standing committee that works solely on this issue. We support reasonable and achievable environmental laws and application of environmental regulations. To that end, LB590 helps NDOT and contractors fulfill both our obligations to build infrastructure in Nebraska and protect one of the things that makes our state great: our natural landscapes and its wildlife. LB590 is a commonsense bill that lets NDOT modernize its approach to environmental mitigation by involving expert third parties who bring considerable expertise to the table. In short, this change will help the project delivery process while helping ensure that we meet our important environmental obligations. We thank Senator Moser for introducing this important bill. And I am happy to answer any questions you might have.

BRANDT: OK. Let's see what we've got. As a land contractor, do you encounter this quite often in your work?

ROB WEMHOFF: The-- I'll, I'll focus on the beetle because that's really changed things in the Sandhills.

CLOUSE: On, on, on what?

ROB WEMHOFF: The burying beetle. It's, it's really changed things in the Sandhills. Currently, we-- a lot of jobs will have to get-- buy dirt from a private landowner for the state project for widening shoulders or whatever. Currently, you can't get a borrow pit-- is what

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we call them-- in the Sandhills with the new regulations on the burying beetle. So you might-- let's, let's just say you're in Mullen. You have-- the only way to get dirt in Mullen is to go to some farm ground. Not many ranchers are going to let their pivot get tore up in the middle of the Sandhills. So you might be hauling dirt 50, 60 miles to build a project. And that's very, very expensive. But we pass that cost onto the NDOT. If we could get this mitigation to where we do an in-lieu fee, as in pre-bid-- hey, I need ten acres for a borrow pit. It's-- whatever. \$5,000 an acre. I put that in my bid. Pennies on the dollar from hauling that dirt 50 miles. Now I have a borrow pit right on the job.

BRANDT: So this would save the taxpayers of the state a lot of money?

ROB WEMHOFF: Oh, yeah.

BRANDT: OK.

ROB WEMHOFF: Yeah.

BRANDT: Senator DeKay.

DeKAY: Thank you. Like, when you're overlaying a highway, how mu-- I mean, when you're repaving, how much extra dirt are-- in most cases, if you're just going back over the same two lanes or whatever, is required for--

ROB WEMHOFF: There's much less dirt there unless they're widening the shoulder. We, we need dirt for earth shouldering. When you-- if you make the asphalt thicker, you got to put more dirt out there to match it. If you're widening, which is what the NDOT does a lot out-- especially out on the Sandhills. They're narrow roads now. They're adding a shoulder to it. It's-- you know, we're talking a normal four- or five-mile overlay, if you're widening the shoulder, is probably 50,000 to 100,000 cubic yards of dirt that you would need.

DeKAY: Does any--

ROB WEMHOFF: Each truck, each truck hauls 16. So 16 cubic yards. So you're hauling-- if you have to haul it 50 miles, very expensive.

DeKAY: Is there much of that dirt stockpiled so that when you are done with the paving project and you're building up the shoulders that that's already in, in the area to reuse or it--

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ROB WEMHOFF: No, it's-- 90% of the time, you're going to a rancher and you're saying, hey, I want to cut this knob off and use it for shouldering or for new alignment, anything like that.

DeKAY: All right. Thank you.

BRANDT: OK. I don't see any other questions. Thank you for coming down from Valentine. Next proponent. Welcome.

JOHN HANSEN: Mr. Chairman, members of the committee. Good afternoon again. For the record, my name is John Hansen, J-o-h-n; Hansen, H-a-n-s-e-n. And I'm the President of Nebraska Farmers Union. Our organization has aligned ourselves with efforts to try to speed up the rate at which our state is building and completing highway projects, including Highway 81, projects in the west end of the state, projects in the Norfolk area, a lot of different projects. And so we have associated ourselves with efforts in the Transportation Committee and in other areas to try to figure out how it is that we can better finance and speed up the process of, of going forward with, with highway construction. And it's frustrating for someone like me who, who drives across these highways around the state and, and a lot of times the, the, the-- a four-lane-- the, the two-lane is worn out before the other two lanes are built. And so you're-- we're, we're not moving forward as fast as we can or should. And so these projects linger. And the more they linger and the slower they are, the more money they cost in the end. Because by the time we get to the point where we can actually do construction, costs have gone up substantially. So there's no money being saved here by not speeding up the process. So the two things that we look at in this bill is that it does streamline the process. And yet it also at the same time does protect biodiversity because it creates a bigger pool from which to draw from and to mitigate into. And so you might be hard-pressed in that one particular area to find that particular piece of ground that is suitable for mitigation. So I, I commend the Department of Transportation for their support of this bill and commend Senator Moser for looking at this, this issue and seeing an opportunity to I think better serve the state of Nebraska and still protect biodiversity. And so we are in support. I would be glad to answer any questions if you have any.

BRANDT: OK. Are there any questions? I don't see any. Thank you.

JOHN HANSEN: Thank you. I'm trying to be more on the ball [INAUDIBLE].

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BRANDT: You're doing, doing better.

ROB WEMHOFF: I'm working on it.

BRANDT: Yeah. Any more proponents? Proponents. Seeing none. Opponents. Any opponents to the bill? Seeing none. Anyone in the neutral capacity?

AL DAVIS: Senator Brandt, members of the Natural Resources Committee. It's always good to sit out there and listen to what other people have to say because you pick up things that you're a little bit unclear about. So I appreciate the testimony that we've had here. It's been good. So my name is Al Davis, A-l D-a-v-i-s. I'm the contract lobbyist for the 3,300 members of the Nebraska chapter of the Sierra Club, which is the nation's oldest environmental entity with representatives in all 50 states. So we're testifying in the neutral capacity on LB590. Last year, Senator Moser brought a bill which modified how takings had a-- of endangered species were managed and significantly changed the rules and regulations addressing the issue of endangered species. Although we testified in the neutral capacity at the time, we eventually felt that we had made a mistake and should have opposed the bill because of the fundamental changes incorporated in the bill which made it easier for the DOT to sidestep the protections of endangered species in the name of streamlining their activities. One of the last testifiers last year did not feel that the department had tried hard enough to meet existing requirements and was looking for an easy way out. We agree with that statement. To a point, we feel the same way about LB590. LB590 will authorize the department to enter into agreements with other state agencies or the state's nonprofit entities for mitigation purposes, which would replace the need for the department to purchase or lease private land to meet their federal mainten-- mitigation requirements. But land which is already managed by private environmental entities is probably already being protected by the land management philosophy of the governing body-- board of that entity, and therefore mitigating on lands owned or controlled by those entities is not going to be as valuable as mitigation which is located at or near the site where the mitigation is needed. There appears to be no regional locus for where the mitigation should occur, and a wetland in Sioux County is certainly not the same as a wetland in Richardson County but when considering the needs of the endangered species for which the mitigation is required. The Department of Transportation once again looking for an easy, easy fix to their problems. In addition, the exchange of fees with the environmental entities could result in a conflict of interest for them and

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additional pressure upon them to comply with DOT or face retaliation from the state government. Although we understand the needs and desires of the department, we cannot give the bill full support. That said, we appreciate that NDOT is seeking constructive solutions to the questions associated with how the work is conducted. And as I was listening to the discussion, there was a question about responsibility to, to see that the mitigation agreement was in compliance over the term of the contract. Someone testified to that. And I wanted to know-- I, I think a good question is, what happens if these perpetual agreements are made with DOT and, and a-- environmental group we'll say-- and the environmental group ceases to exist? [INAUDIBLE] perpetual question, is that re-- liability come back to the Department of Roads? So that's just a question to maybe ask. Thank you.

BRANDT: OK. Do we have any questions? I don't see any.

AL DAVIS: Thank you.

BRANDT: Anyone else in the neutral capacity?

TIMOTHY McCOY: Good afternoon, Chairman Brandt, members of the committee. My name's Timothy McCoy, T-i-m-o-t-h-y M-c-C-o-y. Serving as the Director of the Nebraska Game and Parks Commission. And our headquarters at 2200 North 33rd Street here in Lincoln. Speaking broadly, we-- the commission supports the intent by NDOT to, to create this, this mitigation bank or in-lieu of fee program because this provides them more flexibility, which is a lot of the challenge they're facing. And it would allow them to either-- it-- the way it's written, it could allow them to either use their own mitigation bank to mitigate impacts-- similar to what they already do with their wetland mitigation-- and would allow them also then-- you know, I think the strength of it's working with another-- other entity to provide mitigation credit. Now, typically if you're working with a, with an external entity that's doing that, that follows federal mitigation banking requirements that are already there for T&E species. So, so in most cases in Nebraska, the species they're going to be doing mitigation for on road projects is really going to be tied to those federally listed species. And so there are, there are a lot of professionals and companies available to do that. They're very good at it. In terms of the protection over the long term, they are required to have a permanent conservation easement, typically, or permanent ownership of that property to ma-- ensure that that mitigation lasts through time. So that's all part of those requirements. We do have a couple of concerns with the bill, and, and

the first one is probably the one that isn't-- the, the-- that I see. It's very unusual for a bill in Chapter 37 on Game and Parks to provide additional duties for another state agency. This is a very unusual circumstance. I don't know if there's another place that that would be more appropriate, similar to the language they already have in Chapter 39 for their ability to do wetland banks. That is probably the, the biggest concern. The other thing that I worry about in the long run, I-- there might be some needs for some definitions in here to defini-- def-- define a mitigation bank and an in-lieu of fee program. Now, it's possible under their rules and regulations that's how they want to handle that. But just to make sure that everybody knows they're talking about the same thing. And then I ha-- I have one other comment and I'll wrap up, and that's in Section 4. I did, I did look it up. I hadn't saw the amended bill. I didn't just look at it. In Section 4, it, it creates this-- it-- this requirement that says, state agencies shall make a good faith effort to use and give priority to the mitigation bank and in-lieu of fee program when consulting mitigation plans. As the consulting agency when we look at T&E species, the mitigation that the decision of what mitigation process is used or if they wanted-- if they wanted to look at some sort of in-lieu of fee research is from the project proponent. In this case, it would be NDOT would be preferring that. Because as, as the, the consultant on the project, we're just trying to-- our job is to make sure that the issues of the species are either met by avoiding or minimizing that impact or by, or by mitigation. With the burying beetle, part of the biggest challenge we have is we had some ways to avoid and minimize impacts prior to the change in listing and to a, a decision made at the federal government level, level by the U.S. Fish and Wildlife Service, which is resulting in now, I'd say, potentially more-- especially relating to burying beetle-- more issues for roads. That's been a very specific one. And I would just remind everybody with the actions we took last year, the only thing Nebraska Game and Parks will officially be consulting on in the future would be new highway right-of-way or additional right-of-way. So for those existing projects, really this is tying back to those federal requirements. And I do know they need the flexibility.

BRANDT: OK. Let's see. Questions? Is-- does Game and Parks serve as a mitigator for projects for NDOT?

TIMOTHY McCOY: We have never served in that role for a couple of reasons. One is because we are also a consulting agency. Under our state T&E Act, it creates a pretty potential apparent conflict of interest for us to be taking that role. The other thing is it's taking

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on a, I would say, a long-- huge long-term commitment. And our budget and our authority is determined by the Legislature on a biannual basis. So it does, it does create some uncertainty for us. We've never played in that role. I know there are other private groups. There are other organizations that do this, that do it well and do it, do it professionally and follow those mitigation banking standards.

BRANDT: OK. I think that's it. Thank you.

TIMOTHY McCOY: Thank you.

BRANDT: Anybody else in the neutral capacity? I see nobody. Senator Moser.

MOSER: Well, again, I'd like to thank the committee for allowing us to talk about LB590. There have been some questions about the effectiveness of mitigation, but mitigation is always subjective. I'm-- or, well, shouldn't be subjective. Supposed to be scientific. But sometimes it works really well, I would imagine, and sometimes it needs some management as you move along. So, you know, whether they contract with somebody else to provide this mitigation, the De-- Department of Transportation is still responsible to make sure it happens. And just because they buy 80 acres somewhere doesn't mean that that's going to perpetuate the burying beetle. You know, there's science involved that they have to follow to, to make that work. And allowing them to contract with somebody who does that sort of thing on a regular basis and is in that business, has that passion for mitigating those losses, I think could develop-- could deliver a better product than just buying another 80 acres somewhere. I mean, buying the 80 acres almost seems like just a punishment for taking the ground to build the road. You know, they're more focused on you got to have equal amount of ground to the take that you use when you build the road. But with this in-lieu kind of contract arrangement, they could be more nimble in how they do. Could go faster. They don't have to reinvent the wheel. Somebody is already studying the latest endangered species and they know more about it. I, I just think it could be-- it could be a big plus, I think.

BRANDT: OK. Let's see if we have any questions. Senator Raybould.

RAYBOULD: Yes. Thank you very much. The-- some of the questions were raised by Mr. McCoy with Game and Parks, and I think they're really good. You know, he talked about a need for definitions. Do you think-- and I have the amendme-- amended version. But do you think that's

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something you would consider including in another amended version to have the definitions?

MOSER: Mr. McCoy is usually right. So if he has questions about some definitions, I'm sure that, you know, we would-- the Department of Transportation and he could work out those things. We had quite a discussion on last year's bill because that was really a, a fissure from how we used to do it. And so there were some long discussions with the experts and attorneys to make sure we had the wording and the-- everything right. And so I would anticipate there might be some of that involved in this. And, and he, he mentioned his conflict of interest. He consults with the Department of Transportation now. And so if he consulted with them and told them what to do and then his agency got paid to go do it, that would be a conflict of interest. So-- or could be conflict of interest. So now they're going to have to go to a, you know, some third party.

RAYBOULD: And some of the other question was really another one from Mr. McCoy. And in the amended version, it talks about any state agency. But it-- his concern was it's a little bit unusual to provide a duty for that other state agency to fulfill. And I didn't know-- I mean, I've only been around three years doing the legislative stuff. I know you've been around a lot longer. Is it customary or typical for a state agency like-- we're talking about NDOT here-- to require Game and Parks to take a duty to do something?

MOSER: Well, I don't, I don't think it would be Game and Parks because I don't think they want to get involved in providing the service and consulting at the same time. But the Department of Transportation is responsible for making sure that the mitigation happens. So it's on them to make sure this works. And if they hire somebody to do it and it doesn't work, then they're going to have to put a-- put together a contract with somebody else or they may have to go back and do it themselves. I don't-- you know. You, you-- there are federal regulations that you just have to follow. But this is a, a more sensible, maybe, way to address the, the requirements of what they have to do.

BRANDT: Yep.

RAYBOULD: So one last question. You know, going back to the definition-- and it is in Section 4, talking about make a good faith effort to use and give priority to the mitigation bank in-- and

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in-lieu fee program. So, I mean, what would you consider a good faith effort?

MOSER: Whose, whose good faith effort is it, the Department of Transportation?

RAYBOULD: State regulatory agencies.

MOSER: Well--

RAYBOULD: Not just limited to NDOT.

MOSER: --the Department of Transportation, I don't think they can get away with just saying we gave it a good faith effort.

RAYBOULD: OK.

MOSER: I, I think they have to make sure it happens. So I think that's in there just to say that people should try to get along and come up with the best end result and not just go through the motions. Because sometimes buying ground doesn't solve the-- I mean-- you know. Just because you buy 80 acres somewhere else doesn't necessarily mean that you're going to grow more burying beetles or more rattlesnakes or whatever it is that we're trying to protect from extinction. There's, there's science involved and they have to follow it.

RAYBOULD: OK. Thank you.

BRANDT: All right. Any other questions? For the record: online, we have 2 proponents, 1 opponent, and 1 in the neutral capacity. And that will close our hearing on LB590. And we will go to LB105. Senator Hughes. Are you ready?

HUGHES: Sure am.

BRANDT: OK. Let's go.

HUGHES: Senator Brandt, fellow members-- Chair Branch, senat-- fellow members of the Natural Resources Committee. Hughes day, Natural Resources. I'm Jana Hughes, J-a-n-a H-u-g-h-e-s. And I represent Legislative District 24. Today, I'm here to introduce LB105. LB105 was introduced to me on behalf of the Nebraska Rural Electric Association, who worked in conjunction with the Secretary of State's Office and the Power Review Board to amend one section of Chapter 70 to address how power district subdivisions can be divided. LB105 will make it easier

for public power districts to divide subdistricts, which must currently follow precinct or county lines or contain substantially equal populations. We are all aware of the fact that our public power districts are governed by a locally elected board of directors. This bill is intended to enhance and protect that local control. Presently, subdivisions for a public power district can be designed in a couple of different ways. Some rural public-- some rural public power districts have board members that run to hold a district at large seat, while other districts have regional districts, maybe east, west, and central district. Others break the districts up into multiple seats based on population, or some kind of a combination of these options. Current state law provides that when designing these district boundary lines, public power districts can either follow county or voting precinct lines or they can divide voting precincts, but only if the district can establish nearly identical populations for each voting district. Unfortunately, the boundaries of rural public districts often do not follow county and precinct lines. Therefore, to comply, it requires districts to include an entire precinct or county. This results in the inclusion of entire-- of areas and people who are not served by that particular power district. This permits a person with no association to the power district to vote for members of a board of directors that they are not served by. This could even allow for someone to run for the board who isn't served by that public power district. Under current law, a power district may only divide voting precincts if they draw the lines based on establishing a substantially equal population among each subdivision. In rural Nebraska, this can mean that a subdistrict's population can deviate to-- by only a few dozen people, and this can be problematic to design. It becomes nearly impossible to draw these lines when the majority of the public power district population is in one community in a county, like Howard County, Nebraska, population 6,500, where you have 2,400 people living in the center of the town, in the town of St. Paul. You're setting up a situation where the majority of the board members from the entire district could come from one community. LB105 would allow public power districts to split voting precincts when determining the boundary lines of subdistricts without regard to population. For public power districts, this will ensure that the district board member voting lines could mirror service territory boundaries, ensuring that only those who receive power from the district can vote for and serve on that board. It is important to note that the Power Review Board will maintain the final authority to approve these boundary lines and is tasked with ensuring the voting district, voting district boundaries do not prejudice the interests of

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the electorate consumer. The board members of our public power districts should be customers of the power district they represent. LB105 will improve the election process and help to ensure that board member districts better align with power district boundaries. There are others for the power dis-- industry that will be testifying to the specifics of this bill, why it is needed, and how it would impact public power districts. They will be an-- able to answer any technical questions you have. And I am always welcome to questions for me as well.

BRANDT: OK. Any questions? Senator Clouse.

CLOUSE: Thank you, Senator Brandt. The question I have is-- one of the, the letters we had is from Dawson Public Power and Irrigation District. OK? So public power's kind of a misnomer in my mind. But does that change from the irrigation piece of it? The public power [INAUDIBLE] they have generation, and they sell generation, but I don't believe they serve any-- or, not Dawson, but I'm thinking--

HUGHES: Central.

CLOUSE: Central. Yeah. I'm sorry. Yeah. Dawson, they're out-- yeah-- I-- the central--

HUGHES: Can I have you ask that question of people behind me?

CLOUSE: OK.

HUGHES: I think they might be a better answer for that. OK.

BRANDT: OK. Has anybody else got any questions? All right. You'll stick around to close?

HUGHES: You bet.

BRANDT: OK. Let's go for our first proponent. Welcome.

ELLEN KREIFELS: Good afternoon, Chairman Brandt and members of the committee. My name is Ellen Kreifels, E-l-l-e-n K-r-e-i-f-e-l-s. I'm an attorney with Blankenau Wilmoth Jarecke. And I am here on behalf of the Nebraska Rural Electric Association in support of LB105. At a high level, I just want to establish what we're talking about today. So all public power districts have a charter that is approved by the Power Review Board. Separately, they have a power review board-approved service territory. The charter deals with the geographic location of

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the electorate. How-- who can serve on the board and who's going to vote for the boards. The service territory is the geographic area for which they can provide service to their customers. Two different things. LB105 only talks about the charter. We're only talking about, you know, the territory from which we are electing our boards. So it does not impact service territories, and I want to make sure that's clear. As Senator Hughes correctly noted in her opening, the methods by which we can elect our boards is limited. Currently, you can elect at large or you can elect via voting subdivisions. Voting subdivisions, you have a couple different methods of creating those subdivisions. The first would be population based. That means that those subdivisions have to be within plus or minus 5% of each other. Then you have a second option: whole counties or whole voting precincts. That option is available when three conditions are met: the public power district has to serve two or more counties; the constituents and customers of the-- that PPD have to be 50% or more rural in nature; and number three, the Power Review Board has to make a determination that, that system does not prejudice the rural customers. So when we go to do these charter amendments and, and kind of decide how our boards are going to be elected: option one, the population-based subdivisions. After the 2020 census, we're all aware of population migration and rural population decline. This option, practically speaking, is very difficult to achieve in some communities, like Senator Hughes noted, where, you know, 20 people is that swing. It makes it very difficult to draw those lines in any sort of manner, manner that makes sense. So now we're looking at option two. Option two, we don't have to take population into account, but we have to include whole voting precincts and counties. I've handed-- in my handout, there's a map. Page 3. This is going to demonstrate exactly what we're talking about. So as Senator Hughes noted, we're going to have an overinclusion. On the handout, you can see this lime green. Do you guys have it in front of you? OK.

BRANDT: Yeah. Go ahead.

ELLEN KREIFELS: So we have a lime-green box and we have a light-blue box. These are real-life voting precincts. You see a black line. It's kind of jagged. That is the service territory line between Dawson Public Power and Custer Public Power. Dawson is on the south side. You'll see in the lime-green they serve two customers in that voting precinct. Custer serves 326. Moving to the blue, Dawson serves 85 in that voting precinct. Custer serves 234. To use option two, the whole voting precinct system, we have to include all those Custer customers. And now they're going to vote for and be eligible to run for the

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Dawson Board, which is what brings us here today. So LB105, we're going to modify this to say that we don't have to take population into account in three instances. We can ser-- we can divide those voting precincts when we serve two or more counties, more than 50% of the constituency is rural in nature, and the Power Review Board determines that it's not prejudicial to any user-- not just rural users, any, any customer. And my final point here today is not only is this needed, but it's urgent. We have a dozen or so public power districts who are waiting on the outcome of this legislation before they can update their charters. Their charters have to be fully compliant with all laws; and in order to do this-- to be compliant, we need this law to pass. If it does not pass, we've got a number of them that are unable to access bonding. And, you know, a storm event, anything of that nature, any sort of emergency in nature, we would potentially run into a funding issue, which is why this bill has the emergency clause attached to it. See my light is red. I'll take any questions.

BRANDT: OK. Let's see what we've got. Senator Clouse.

CLOUSE: Yes. Thank you, Senator Brandt. So we're, we're not talking charter. We're just talking-- I mean, ta-- talking service territory. We're just talking charter.

ELLEN KREIFELS: That's correct.

CLOUSE: And, and then follow up my other question [INAUDIBLE].

ELLEN KREIFELS: Yep.

CLOUSE: So I freaked out when I said Dawson. I meant central. This doesn't have anything to do with irrigation districts.

ELLEN KREIFELS: Well-- so they're-- central's organized under Article VI of Chapter 70, which is the same as what we're talking about here. So they would have that same ability.

CLOUSE: OK.

ELLEN KREIFELS: Does that make sense?

CLOUSE: It makes sense. I'm just trying to figure out-- OK. What's, what's up with that? But that's OK. Thank you.

BRANDT: OK. Other que-- Senator DeKay.

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DeKAY: Thank you. For the customers that NREA represent, are they 100% excited about moving forward with this, all 32, 35 customers or--

ELLEN KREIFELS: I can speak for the-- I think-- clearly, yes. This is something that they all deal with. After each census, they're required to review their charters. They're required to update them. We're halfway-- we're at the halfway point from the 2020 census to the 2030 census. This population issue is not-- you know, we're not forecasted to have a mass influx into rural Nebraska. So, yes. You know, this, this impacts statewide.

DeKAY: Would they-- power district versus co-ops. Would co-ops have to be in compliance with the same type of--

ELLEN KREIFELS: No. Co-ops are, are organized differently. They're not organized-- no is the answer. They only have a service territory. They don't have a charter.

DeKAY: All right. Thank you.

ELLEN KREIFELS: Mm-hmm.

BRANDT: I don't see any other questions. Thank you. Next proponent. Any more proponents? Opponents. Any opponents? Neutral. Anyone in the neutral capacity? Senator Hughes, you're welcome to close.

HUGHES: Was a short one. I think the bottom line is it-- just on the one example, right, that you've given, you've got almost 600 people here that if you-- you have to include now these two big precincts. You have 600 people voting for a board that they are not rep-- that they get no power from, that they're not-- that they shouldn't be. It'd be like we split this out and-- I mean, things are drawn on school district line, but I get a vote on-- even though I live in the Seward Public School District, now I get a vote for Milford Public Board members. That doesn't make sense. So I think you should be voting for people that are representing you. I mean, that just, that just makes sense. So thank you for your time today. I think it's a commonsense fix. I would love your support to advance this to General File. And if you have any additional questions to me, Hughes day is over in Natural Resources.

BRANDT: Well, we don't know that yet. Are there any questions? Does anybody got any questions? For the record, we had 1 proponent, 1 opponent, and 1 in the neutral capacity. And that will close our

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hearings for today. Thank you, everybody, for, for coming. If the committee would just stick around for a minute before they take off.