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LB 310

SENATOR WARNER: Mr. Chairman, members of the committee, Jerome Warner, 25th Legislative District, introducer of LB 310. I have amendments too that I'd like for you to look

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at. (Exhibit A) LB 310 (inaudible) a series of things that have occurred, a combination of some of the Attorney General's opinions, to clarify the audit procedures for, essentially for power districts. And the amendment I am offering would also included in this, energy agency in Nebraska, or meaning, as they are in a similar, but as the statutes are in a similar position. And the problem's been around I think a couple of years now is, at least the issue has. And the intention of the bill is to clarify it. And I'll leave it to the, those who will follow me to be more specific on the bill. But be glad to respond to questions (inaudible) if you would like, that I can.

SENATOR BEUTLER: Senator, will there be any accountants of one type or another?

SENATOR WARNER: Pardon?

SENATOR BEUTLER: Will there be any accounting people of one type or another testify? Not sure, okay. Questions of Senator Warner? Will you be closing, Senator?

SENATOR WARNER: I want to stay around a little while, yeah.

SENATOR BEUTLER: Okay.

SENATOR WARNER: I need to, I may have to (inaudible) hear another committee on something else, so I may be called out.

SENATOR BEUTLER: Okay, thank you very much. Are there those who would like to testify in favor of the bill?

DAN SCHAECHER: Good afternoon, Senator Beutler, and members of the committee. My name is Dan Schaecher, I'm Division Manager of internal controls at Nebraska Public Power District, here to, in support of LB 310, and would like to talk basically about the three, what I see the three major components of the bill and address several issues. First while I'm dealing with the Nebraska Budget Act and its applicability to public power districts, I think if you go back and

read the bill and look at the intent of the act you can see, you can see in the act that it defines the governing bodies to which the act was to apply, well, very specifically. And you can determine from that that the governing bodies more of the nature of the subdivisions, political subdivisions identified there, were of the nature that they were taxing type authorities of which public power districts are not. And if you look at the language in the act, you see words such as tax levies, encumbered funds,

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bonding base for the budgets geared towards the August 1 date which is typical for state and local government units. The issue here as Senator Warner mentioned was that there have been Attorney General opinions over the years which have somewhat confused the applicability of the act as it relates to political subdivisions of which public power districts fall under. And essentially some of those opinions kind of took a broad swipe at political subdivisions and, included in the act. And here again, if you go back to the act and look at the definition of the governing bodies there, it is very specific, identifies cities, villages, you can go as far as to identify mosquito abatement districts, but no where in there does it identify public power districts. And so this, this bill will basically clarify that and specify that the act shall not apply to public power districts. Another component of the bill deals with the annual audit of public power districts. One of the ... there are several issues there, and the first one dealing with the approval of the CPA firm or the external auditor who will conduct the audit of the public power district. Right now, at Nebraska Public Power District, and historically, the selection of that auditor is put in the hands of the board of directors, which are publicly elected officials, and are responsible for the rate payers. And so this bill just essentially eliminates the need or the requirement to have the Auditor of Public Accounts approve the CPA firm for public power districts. And we support that. The other issue of the, in the audit area deals with minimum auditing standards. And basically the bill attempts to set out what those standards would be for a public power district. And the bill calls those standard generally accepted auditing standards. Current law has it that the audits conducted against public power districts will be done in accordance with government auditing standards. And those standards are geared towards more government, state and local type agencies, and not of the nature of like public power districts. What is, what that requires by following the government auditing standards is additional auditing procedures, additional reporting, and you don't do it ... none of that is done by outside firms without additional costs. And our concern is that it really doesn't add any value to the audit over that which is currently done, and I'll discuss that in a minute. And so essentially we're, we're required to meet those standards with really very little additional value being provided for the rate payers. Also the governmental accounting standards or government auditing standards are intended to align themselves with typical government accounting practices. And the books and records of NPPD are more in line with

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accounting practices of the private industry, and so there would be some inconsistencies there as in terms of what the auditing, government auditing standards are trying to achieve versus that of which the bill sets out and that is the generally accepted auditing standards. And generally accepted auditing standards are standards which are promulgated by the American Institute of Certified Public Accountants. They have been the standards of which audits have been done of public power districts essentially since their creation, and they are standards which are acceptable to the Security and Exchange Commission in the public filings of, of Fortune 500 and type companies. Also these standards are sufficient to meet the needs of the public power districts bond resolutions in terms of their annual audits and annual filings. One last point I'd like to make is that the bill does not take away the need for audits to be filed annually with the Auditor of Public Accounts. And it continues to allow the Auditor of Public Accounts to review the audits filed annually by public power districts and allows them to take exceptions if they don't comply with the generally accepted auditing standards. That concludes my testimony. I'd be happy to answer any questions.

SENATOR BEUTLER: Are there questions? Senator Preister.

SENATOR PREISTER: I'm just wondering if you have a private CPA firm that you hire, if you can limit the scope of their audit as the person hiring them.

DAN SCHAECHER: No, I don't believe so, just by the nature of the way external auditing firms work. They have professional standards which they must meet in order to maintain their independence and objectivities in performing an audit. And further in line with the professional standards are standards of field work, scope of work type things, that they must abide by. And those types of standards are governed and reviewed by, again, by the American Institute of Certified Public Accountants.

SENATOR PREISTER: But aren't there different things that you can ask an accountant to look at? You're saying there is no limit to the scope?

DAN SCHAECHER: Well, the scope of the audits are basically .financially oriented, and so the auditor will take whatever

steps he feels necessary in order to issue- an opinion as to the financial condition of a public power district. And he will take whatever steps are necessary. And I don't think anybody would be very successful to try to restrain those

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efforts, because they are an independent organization.

SENATOR PREISTER: Thank you.

DAN SCHAECHER: Umhum.

SENATOR BEUTLER: Other questions? Let me ask you just a couple if I may. What do you perceive to be the purpose of the Nebraska Budget Act?

DAN SCHAECHER: Well, I think its purpose was to develop or put into place some consistency in budget practices and procedures, and to essentially allow for the publication of those budgets upon an annual basis. In very brief terms.

SENATOR BEUTLER: Do you think the opportunity for public input on what that budget would be was any part of that...

DAN SCHAECHER: Yes it was.

SENATOR BEUTLER: ... purpose?

DAN SCHAECHER: And I might add in terms of the budgets of the power districts generally are there to establish rents on a cost of service basis. And public power districts are required to have rate hearings even though their not budget hearings. It does allow for public input on those.

SENATOR BEUTLER: On rates.

DAN SCHAECHER: On rates, which are really driven by the budget.

SENATOR BEUTLER: Rates are driven by budget.

DAN SCHAECHER: Yes.

SENATOR BEUTLER: What opportunity does the public have then to have input on budget?

DAN SCHAECHER: In terms of public power districts, other than the rate hearing process, I'm not aware of any.

SENATOR BEUTLER: Okay. And, but all the money that's being spent, even though it's rates, they're public power districts and it's public money, is it not?

DAN SCHAECHER: You could, you can make that argument, yes, in terms of ... and I don't know if I'm qualified to, to speak

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on what might be considered public money, the difference between funds generated from revenue versus funds granted through taxation and what not. I'm not sure if I'm qualified to speak on that.

SENATOR BEUTLER: Are public power districts subject to the open meetings law?

DAN SCHAECHER: Yes, they are.

SENATOR BEUTLER: Why are they subject to the open meetings, law when they're not spending public money?

DAN SCHAECHER: I don't know if I'm qualified to answer that.

SENATOR BEUTLER: You think they should be subject to the open meeting laws?

DAN SCHAECHER: Yes.

SENATOR BEUTLER: You do? Why?

DAN SCHAECHER: because there's a number of things that go on with the public power district.

SENATOR BEUTLER: But it's not mo... it's not tax money.

DAN SCHAECHER: No, but it goes really beyond the expenditure of monies. It deals with the operations of the district, as Natural Resources Committee members know, all the environmental aspects that are involved with the operations of a public power district. I think, you know, from that standpoint alone would bear on an open meetings law.

SENATOR BEUTLER: If there were a part of an expenditures budget and a decision had to be made on certain kinds of environmental equipment, whether to spend that money or not spend that money, that'd be part of a budgeting process, wouldn't it?

DAN SCHAECHER: Yes it would.

SENATOR BEUTLER: Shouldn't the public have some input on that?

DAN SCHAECHER: Certainly. Committee on Natural Resources March 13, 1993 Page 27

SENATOR BEUTLER: The part of the bill on page 4, and I'm not sure if I've read it carefully enough, but it says if any public power district... If any public power district fails to file a copy of an audit within a certain time period, the district will be ... What, what is that intended to do, starting at the page, top of page 4 through line 15.

DAN SCHAECHER: Well, I believe the intent there is that the public power district is required to file an annual audit within 120 days of its fiscal year end. And if it fails to file such an audit within 180 days of the fiscal year end, then the Auditor of Public Accounts can engage a certified public accountant to conduct such audit at the expense of the public power district.

SENATOR BEUTLER: Okay. Or I suppose the auditor could do it himself. Well, okay. Okay, thank you very much. Any other questions?

DAN SCHAECHER: Thank you.

HARRY YOUNG: Mr. Chairman, and members of the Natural Resources Committee, my name is Harry Young, that's Y-O-U-N-G. I'm Assistant General Manager of the Norris Public Power District which is headquartered in Beatrice. I'm also a registered lobbyist for the Norris Power District. The Norris Districts are rural electric utility, and it serves primarily the rural areas in five counties. We serve approximately 13,000 customers including 25 small towns with retail (inaudible) wholesale, just as a way of background. Also the Norris District has, beginning in 1933 and for the past 60 years, has been providing electric service to customers in southeast Nebraska. I'm speaking today on behalf of the Norris Public Power District, and I've also been authorized to speak on behalf of the Nebraska Power Association. Nebraska Power Association has representatives from all segments of the power industry. We're speaking in support of LB 310 and the proposed amendment which Senator Warner has handed out to this committee. This bill is simply an attempt to clarify the statute which govern the power districts audit procedures and the Nebraska Budget Act. 'Now I would say at the beginning, Senator Beutler, I'm not an accountant, but Mr. Healey is going to follow us and perhaps can answer any questions of the technical nature. The previous testifier covered pretty much the testimony that I had written out, and had intended to give to this committee. I'll try not to repeat the things that he said, but I think there are a few points that perhaps need to be reemphasized. He mentioned

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the Budget Act, and there's a lot of language in that Budget Act that simply does not apply to the way a public power district does its budgeting procedures. And the previous testifier mentioned those. A few words that he left out or didn't give to you is the levying board. The Budget Act covers the actions of the levying board, hearings before setting a tax levy and so forth. We do not levy taxes, we do not use tax revenues. The board of directors of each public power district has the responsibility under state statute to fix rates and tolls which are charged electric customers. He mentioned also the conflicting opinions from the Attorney General, and I believe it was Mr. Ray Johnson who asked for an Attorney General's opinion back in the seventies, and at that time his opinion was that we were not under the Nebraska Budget Act. Since that time there has been one or two additional opinions, and those opinions believe that we could be under the Budget Act. And I believe in December of '92 the latest Attorney General's opinion stated that we need to clarify the language as it applies to public power districts. And I believe the concluding paragraph, and I don't have that in front of me, but the Attorney General's opinion said, unless this is clarified, there will continue to be controversies surrounding this issue. And so we're here today attempting to do that. The language in the section to the bill would clarify the exemption for public power districts from the Nebraska Budget Act. We do not believe that we are under that act and this language would clarify that exemption. Section 70-623 pertains to the audit of a public power district financial records. Section .1 of the bill on page 3 you see that the present language requires an audit to be conducted at the close of the fiscal year. This bill

will not change that requirement. What the bill does is eliminate the need for the state auditor to approve the auditing firm which is selected by the board of directors of a public power district. The other language which was deleted from present statute begins (in line 28 on page 2 where it says, the Auditor of Public: Accounts shall charge the expense of the audit to the district and the district shall then pay the Auditor of Public Accounts the reasonable cost thereof. I've been with the Norris Public Power District for 33 years, and during that 'In a time, to my knowledge, this I- as never been done. And the state auditor has never approved or sought to approve the selection of an auditing firm by the board of directors of the Norris District. Most other power districts said they were in the same situation. We continue to hire Our own auditing firms and to pay the firm for that audit. And I think there's probably good reason for some of the present practice. We

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have to think back to the history, and Senator Wickersham mentioned in that first bill a little bit about the development and the growth of public power. The enabling act, Senate File 310 was passed in 1933, which allowed public power districts to come in to existence to provide power to themselves where it was not being done. It was also at that time, I believe, that the language in 70-623 was placed in Nebraska statute. I think there's probably good reason for that . These new power districts that were going to be formed by groups of citizens, somewhat a new and untried experiment. And I believe it was undoubtedly put in that statute to make sure that accepted financial practices were followed. Since 1933, the power industry has grown tremendously. Rural districts have become very vital organizations. Arid if you think ... allow me to think back just a little bit the issue, the Consumers Public Power District was formed in 1939. This was formed to purchase all of the private profit making electric utilities in the state outside of the Omaha area. Consumers Public Power District was later changed, the name was changed to Nebraska Public Power (inaudible). Omaha Public Power District came (inaudible) 1944 to buy out tile last of the profit making electric utilities in the State of Nebraska. So the industry has grown, both in size arid in sophistication, with organizations today that I believe rival almost any other business of their size. Arid, Senator Beutler, I'd like to address a question that you raised about the failure to file an audit. In Section 5, beginning with line 1 at tile top of the page 4 you notice it says, if any public power district fails to file a copy of an audit within tile time prescribed, which is 120 days after December 31 of each year. The state auditor then has the authority to hire a certified public accountant or a firm of accountants or to perform that audit himself. And I believe, Senator Beutler, that this is simply a system of checks and balances that was placed in Nebraska statute at the time that the public power industry had ill's beginnings. Now that's my feeling for that. That language, of course, will stay in the law arid still provide that assurance that audits are going to be conducted and are going to be filed properly. Closing, I would say simply that this language is clarifying language. It will not appreciably change what public power districts have been doing for the last three or four decades. Now during that time we've had annual audits of our records. We have supplied copies of those audits to the state auditor. We have Supplied copies of those audits to the Nebraska Power Review Board. Arid even though there may be some who might oppose this legislation on the grounds that we will be less accountable, let me say to you that nothing in LEI 310 will

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lessen the accountability of a public power district. And nor will it change the way that financial information is provided to the state auditor, the way financial information is provided to the Nebraska Power Review Board, or information is provided to the customers of a rural public power district or any other public power district. It simply makes state law, I believe, consistent with what has been practiced for many years. I would urge the committee to act quickly on this bill. I would hope that you would advance it to the consideration of the full legislative body. If you have questions, I'll be happy to try and answer them.

SENATOR BEUTLER: Okay, Harry. Questions? Just a couple, if I may. Going back to that, that portion on page 4, the first 15 lines having to do with the failure -to file an audit ...

HARRY YOUNG: Umhum.

SENATOR BEUTLER: ... and failure or no failure, let's say the audit finally gets filed with the Auditor of Public Accounts. So what's he supposed to do with it then?

HARRY YOUNG: I was in a hearing in front of the Government Committee, and I think maybe it's two years ago, which the State Auditor's office was talking about this, and somebody testified about the audits and what was done with those when they received them. And it was my, it is my recollection that he said they were filed. They're on file in case anybody wants to look at them. I don't know that he goes through the audit or does not go through the audit. It's my feeling that they're simply filed and made a public record.'

SENATOR BEUTLER: if you look at that section in conjunction with Section 6, doesn't it make him merely, I mean, we just as well file them with the Secretary of State 'cause the auditor can't do anything with them, right?

HARRY YOUNG: I don't know that he can do anything with them now, Senator Beutler. Other, the only thing that the law allows the state auditor to do right now, in my opinion, is simply to approve the auditing firm that the board of directors of a public power district hires to do the audit. Then that audit is provided to the state auditor for whatever purpose he might use it for.

SENATOR BEUTLER: Do you think it makes any sense at all to let the auditor make rules and regulations with regard to

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the standardization of auditing procedures?

HARRY YOUNG: I think we pretty much follow standard auditing procedures. I have in front of me a bulletin or directive from the Rural Electrification Administrators, and there's several pages, and as I said, I'm not an accountant, but I asked our accountant about these standards that we follow. And as a rural electrification borrower, the REA administration in Washington submits directives that tell us what we should do. And one of the things it says, the borrower's board of directors or an audit committee composed entirely of board members is responsible for selecting a qualified CPA. If we then say that the state auditor is to select it, then we have a conflict between federal directive to those who borrow from the Rural Electrification Administration. Now not all public power districts in the state do that.

SENATOR BEUTLER: But let's say we went, we did some kind of halfway measure where you all choose your own public accounting firm and they do the audit. Does it make any sense to have one person from the public sector reviewing those audits, for a variety of reasons, I suppose?

HARRY YOUNG: I don't know what purpose there is in reviewing those. I think that the auditing firms generally follow the same standards, and I believe that most of the firms today are following basically the same standards. This directive also says that CPAs shall comply with professional standards, generally accepted auditing standards. We have to comply with those. I don't, you know ... You can't get some guy who works out of his basement to do what he wants to do. You've got to comply with professional ethics, professional standards, and accepted standards within the, within the auditing industry or auditing firms. And if somebody wants to look over those records, I don't have any problem with that. I don't think anybody does. I don't know what purpose it is, and I think you have to go back to the beginning of public power to realize that at that time, here was something new and different. And someone saying, we need to make, have assurance to the public that these fledgling organizations are following generally accepted standards. And I think we have demonstrated over the years that we have done that. And I think the bond rating that you see put out for firms like Omaha Public Power District, Nebraska Public Power District. We're a capital intensive industry, we borrow a lot of funds. We have good bond ratings and good audit procedures are necessary in order to have that. And so I

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think that speaks for itself.

SENATOR BEUTLER: Let me ask you this. Do you think the City of Omaha ought to be reviewed by the auditor's office? Their audits ought?

HARRY YOUNG: As a city?

SENATOR BEUTLER: Umhum.

HARRY YOUNG: They're a little different than a public power district. You have...

SENATOR BEUTLER: Why are they different?

HARRY YOUNG: They have the ability to levy taxes. I think we saw a move a few years ago to control that with the lid bills. I don't think, I don't have any problem with the public knowing what we are doing. I don't have any problem, and I'm speaking for myself and for the Norris Board of Directors, of having people come to our board meetings and question or ask how we are expending their funds. Now we generate, put out that information, and I know when we have hearings on rates, or when we announce it, that board meetings are considering budgets, we don't have anybody appear. And I think that's generally because they elect a board of directors that they have confidence in. And if they don't like what they are going to do, they're going to put them out of office. These board members are customers of that district. They live amongst the customers they represent. They rub shoulders with them. And you know, they go to church with them, they're in the grocery stores with them, they're in a social, in the service clubs with them, and so there's interaction with them. And I think that's a testimony to the confidence that the public has.

SENATOR BEUTLER: Well, I have mixed feelings about this whole thing, obviously. I mean, private corporations have boards too ...

HARRY YOUNG: Right.

SENATOR BEUTLER: ... but that doesn't mean that stockholders haven't been screwed in a whole number of situations.

HARRY YOUNG: Well I think ... we do not have stockholders that make a profit, Senator. We are a nonprofit organization, we're allowed to make enough funds to cover the operation of the district. And one of the things that

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our customers are concerned about is that when they get home at five o'clock, and I've said this probably before, when a guy gets off work from the factory at five o'clock, he's more concerned that the beer in the refrigerator is cold than he is about the temperature of the water going into the river from a power plant.

SENATOR BEUTLER: Well maybe, maybe because expenditures, because there's no profits and expenditures are essentially the only way that you can be extravagant, maybe there's even more reason for you to be under budget controls and under auditing controls that are directly related to public review.

HARRY YOUNG: When we go before our board of directors with a budget, there's no room for extravagance. And I think that's true in all public power districts. I think they're very cost

conscious. They're answerable to their customers. And any expenditures that we have is shown tip in the rates. And we have a yardstick between all of the districts, the municipalities that surround us. Customers are continually comparing rates. They want to know if they're irrigation rate is higher than the one, than the irrigation rate of their neighbor who lives across the county line. Or if they're residential rate is cheaper or higher than the person that lives down the road. So there is a lot of that going on and that is tied directly to expenditures.

SENATOR BEUTLER: Okay, thank you. Any other questions? Okay.

HARRY YOUNG: Thank you.

PAT HEALEY: Senator Beutler, members of the committee, I'm Pat Healey, this time speaking only for Nebraska Rural Electric Association. We support the bill in general, but from my standpoint at least, I want to concentrate primarily on the clarification relative to the State Budget Act. I'd be glad to try to answer questions on other subjects if you wish. I am thoroughly satisfied from my own analysis that the State Budget Act was not meant to apply to public power districts and does not apply to public power districts. I made quite an analysis and to the extent that anyone wants to appraise the legality by, I'm circulating a memo in which I have reviewed my thoughts on the matter. (Exhibit B) Without going into the elaboration of that, I would say two things about it. First of all, to be covered by the act you've got to first get through the door. Section 13-503 (1) defines the kinds of governing bodies

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that are subject to the act. And it doesn't define them generically, it defines them by terms of specific governing bodies, the municipalities, counties, and a whole lot of others, but specifically not public power districts. And second I would say that virtually all the significant provisions of the act relate to taxes and to those that levy taxes and some people that are unhappy with taxes. Public power districts, of course, have nothing to do with taxing. They do not have tax levying authority. Just an example, Section 13 512 says that anybody that wants to contest the adoption of a budget statement under the State Budget Act, that can only be done by a taxpayer on whom a tax will be imposed as a result of the action of a governing body in adopting a budget statement. Obviously, that makes no sense at all as it's applied to a public power district. The reason we need clarification is this, there are two conflicting Attorney General opinions on the subject not of whether it applies to a public power district. So far as I know the Attorney General has never (inaudible) that the Budget Act applies to a public power district. There are two conflicting opinions as to whether or not the Budget Act applies in the situation of a municipality that has taxing authority, but also has a utility department that engages in a proprietary business such as electric service. Now the state auditor has written to our rural public power districts telling us, we interpret that to mean that public power districts have to comply with the State Budget Act. And if State Budget Act is required to be applied to public power districts, they say they're going to enforce that in some manner. That means, of course, that we're going to be involved in expensive litigation unless the matter is clarified. How I want to say first that I have no problem with people having input into the decisions of any kind made

by a public power district. It is a public body, it is subject to the open meeting laws, it does, it must allow people to come to its meeting, express their views, comment on the budget, complain about the budget, complain about the rates, do whatever they want to do in addressing their concerns. Input is fine. But the nature of our business, understand, we're retailers, we buy the power (inaudible) from NPPD or Tri-State or various other entities and supply it at retail. If we're constrained by that Budget Act that says we can't go over a certain percentage without having an election and things of that kind, we're in a real bind. For example, if there's another Arab (inaudible) oil embargo, fuel prices go way again, and this has happened of course within our memory, and our power suppliers have to increase their rates drastically. Of course, we have no choice but to increase our rates because we have to pay off our bonds

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by the rates, it's the only means we can do so. But if we're limited to the percentage limitations, we're in a real bind. And of course we don't really have the capacity to call an election as a city may. Second, if for example there's a bad ice storm or a bad storm of some kind that rips up all the lines within our district. We've got people out there that say they want power back in a very short period of time. They aren't going to say, well, you can't raise the rates to pay for doing that without having an election, so let's wait a few months till you can have an election before you rebuild the power line. That just doesn't make any sense applying to a public power district. I would urge you, therefore, to enact the clarification that let's everyone know that the State Budget Act doesn't apply to public power districts. So far as the audit part would concern, I don't see that there's anything that makes any dramatic difference from our present situation. It still will require that all audits be done in accordance with generally accepted auditing standards. I think everyone knows what those are, they're nationwide CPA principles. I don't think there's any requirement or need of an auditor to audit the auditors that audit our districts. I think that would be a waste of money to do that, frankly. The only real changes of significance here, relating to the audit as I see them, the only real change at all of significance is to say that it's the elected board of the public body that chooses who the auditor is. It's riot a state official that does that. Senator Beutler, so far as Section 5 is concerned, page 3 and I, I don't think that really does anything significant other than to take out some language that has been in the law for years that says, if you have an REA audit and filing REA audit, that suffices and you don't have to have any other kind of audit. Basically, we're taking that out because while some districts still have REA financing and are audited for REA, they're still in accordance with accepted accounting standards, so it's six to one and a half dozen (inaudible), which ever way the audit's done, it's done in compliance with generally accepted auditing standards so we don't need a provision any more that says if you do an REA audit you have to file that and you can dispense with other types of audits. If there are any other questions, I'd be glad to respond. I really do urge you to clarify the situation relative to the State Budget Act. Otherwise, we may be in expensive litigation to, you know, reel it in, I would suggest.

SENATOR BEUTLER: Okay, thank you, Pat. Are there questions? Senator Preister.

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SENATOR PREISTER: Mr. Healey, you state that Nebraska Budget Act does not apply. I have a copy here of a letter that I'm not sure if the other committee members have, but it's from the state auditor and it says, several Attorney General's opinions lead us to conclude that public power districts are subject to the Nebraska Budget Act. And then when I look at the Nebraska Budget Act, I'm drawn to Section 7 that says, public funds shall mean all money including nontaxed money used in the operation and functions of governing bodies.

PAT HEALEY: Yeah.

SENATOR PREISTER: Which would lead me to conclude that they would be.

PAT HEALEY: Two responses. First of all, the Attorney General opinions do not say what that letter from the state auditor says they say. That's the problem. Those Attorney General's opinions relate only to a municipality that has both taxing authority and a separate utility department, and it's a question of whether the Budget Act applies only to the tax part and not to the nontax part. And there are conflicting Attorney General opinions on that. The one that was issued shortly after the Budget Act was passed said, no, that doesn't apply to the separate departments of a municipality. But the later one says, based on the section you referred to, and I'm well aware with that section, that where there's both tax and nontax, it covers the whole package. We don't have any tax, and the problem with the interpretation the state auditor gives is that you first have to go back to the definition of governing body, which I referred to earlier, because all of the requirements as to what you do under the State Budget Act are terms that refer to what a governing body has to do. And the governing body definition, I suggest is the critical one, and it does not pertain to public power districts. You can look through it, it lists exactly what governing bodies are covered. It is not a generic definition, it's a list, and by no stretch could public power districts be included. So that's why we have a problem. We believe the state auditor's assertion is wrong. We think he's misinterpreting the Attorney General's opinion, and we're here because we'd like to have clarification on that question before we are forced to get into litigation on whether or not it does apply. It shouldn't apply. It was a careful decision when the Act was passed not to have it apply to public power districts because of the way governing bodies are defined, and because of the problems I mentioned earlier in my testimony. Are

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there any other...

SENATOR BEUTLER: Pat, would you be so kind as to forward to us copies of those AG opinions that you consider to be relevant.

PAT HEALEY: (inaudible). I do not have them all here, but I'd be happy to do that. (inaudible).

SENATOR BEUTLER: We'd appreciate that. That'd be fine. Any other questions? Let me ask you just, just one, although I think it slipped my mind now. Tell me, and maybe you're the wrong person to ask. Have you sat through some of the budget meetings or some ...

PAT HEALEY: Oh yes. I generally go to meetings and have been there when budgets been discussed.

SENATOR BEUTLER: Is there any requirement now that public power districts publish their budgets ahead of the budget meeting? Well, I assume they have one meeting at which they approve their budgets. Do they or do they not?

PAT HEALEY: That's normally the case. No, and what is required is that they, of course, on their agenda indicate when the budget's coming out. Now, many of the districts do publicize the fact that the budget will be tip for consideration at a particular meeting. I might say though, that, you know, with respect to a power district, the budget it largely generated by a cost of service study by engineers as to the allocation of the cost the district has to meet against its various classes of customers. So, it's Much more than just deciding how much they want to spend. We also have to decide how much residential customers, how much irrigation customers, how much industrial customers should pay of the total number of dollars we have to bring in there. So we have not only the decision on the available dollars, the dollars that have to be spent to meet the district's bonds and obligations, but the decision on what's a fair allocation in terms of cost (inaudible) ...

SENATOR BEUTLER: As among rate payers.

PAT HEALEY: Among the classes of rate payers.

SENATOR BEUTLER: Okay. Obviously, decisions that are critical to the rate payers in terms of ...

PAT HEALEY: Right. But, but to publish all of that

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information, the cost of service of study can be. inches thick, and to publish that in advance to the meeting as opposed to making it known to people that the information is there if they want to see it or of the meeting, discuss it, would be (inaudible).

SENATOR BEUTLER: Is there any uniform requirement to make the information available ahead of time?

PAT HEALEY- The only re... the only actual requirements that I'm aware of is, of course, the open meeting law requirement that the matters on the agenda be made known in advance ...

SENATOR BEUTLER: But that doesn't require ...

PAT HEALEY: ... and that the material that's discussed at the meeting be available for public discussion. No, I'm not, I'm not sure there is any statutory provision. I don't think we have any great problem with a carefully drafted provision for that. Understanding, though, that sometimes we get our cost of service study relatively soon before the decision has to be made on adopting budget.

SENATOR BEUTLER: Okay, thank you.

STEVE WACKER: Chairman Beutler, and members of the committee, I'm Steve Wacker, I'm the General Manager of the Municipal Energy Agency of Nebraska. And first of all I'd like to thank Senator Warner for introducing the amendment, I'd like to call it the MEAN amendment, and the reason I'm here to testify is to explain why there had to be an amendment rather than having it included in the bill. I'll start off first by saying that there's been a lot of testimony and will be a lot of detail testimony before, and my intention's not to (inaudible) or spend any more time up here than they need to, but I'd just like to say that I believe there is presently a disagreement between the Attorney Generals for the State of Nebraska, the state auditor, and many other attorneys for public power districts and municipalities. I believe that the differences in those opinions are either going to be litigated or legislated. And it's my opinion that the best route and the cheapest route would be legislative, in other words, you decide how it should be and then have it that way and then you won't have to go through the courts to get it done and that might be a more reasonable and cost effective a way to resolve the issue. Having said that, the reason that the MEAN amendment was added by Senator Warner is because we did not, MEAN to not have its act together. Everything that goes on

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essentially to affects public power districts, affect. municipalities, and affects Municipal Energy Agency of Nebraska and the intent of the law was to keep everybody in the same box. And so therefore, if you do not have MEAN included with the public power districts or the municipalities, then you have a different law for a public entity and a public power entity, and I don't think that's good practice. And so all the MEAN amendment does is to ask, or MEAN, or puts MEAN tinder the same requirements as the rest of the law in the state. Try to answer any questions that you may have for me, but I won't take any more of your time than necessary.

SENATOR BEUTLER: Thank you, Steve. Questions? Okay, thank you.

ELDON PAPE: I'm Eldon Pape, Executive Vice President and Chief Financial Officer for the Omaha Public Power District. As Steve indicated, I'll try not to repeat any of the testimony that's already been given, but rather I would like to spend a little bit of time providing some clarifications as to how the process works in public power. One of the questions that came up was, how does the public get a chance to input to their elected board of directors insofar as

expenditures are concerned, and I just wanted to add to what's mentioned was a, was state departmental equipment. In the case of the Omaha Public Power District and I think which most public power districts in the state, they have an annual budget that is adopted by their board of directors. However, prior to the adoption of that budget, it is the subject of discussion at the Omaha Public Power District for two committee meetings prior to the time that the board takes action on that particular budget. Those committee meetings are open to the public. The board meeting's open to the public. So the customer, customer owners if you will, of a public power district had an adequate opportunity to input. The agendas are by law published so they do have the opportunity to know what, what is on the agenda. It was under consideration. Also, it was mentioned earlier about rate hearings. And rate hearings really are the mechanism to raise the initial funds that are necessary for the operation of the utility. Those hearings are by design geared towards the customer owners of the district to get their input first hand. And in our case, when we had rate hearings, any time your rate increase is being proposed, we hold hearings throughout our service area. We hold them in the evenings when people can get there. We don't hold them at ten o'clock in the morning when everybody is working, but we try to accommodate the public. And we do get, good

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participation and good input from' those hearings. One other piece of the statute I think that provides that oversight control is that for purchases of equipment, almost all equipment, if that purchase is \$15,000 or greater, that contract must be done per competitive bidding. So that's another part of a control mechanism I think that, that indicates that the Budget Act really, probably is riot applicable to a public power district. And again, we think because there are no tax, there is no tax authority with the public power district, we are not covered by the Budget Act, as it stands today. I'd like to mention just a couple of things about, about the scope of the audit. In Section 84304.02, the state auditor, or Auditor of Public Accounts, has the authority to say the audit that was submitted by a public power district either is adequate or not adequate. If you will look about halfway through that paragraph it says, such written review shall specifically set forth wherein the audit, accounting, or financial report fails to comply with the minimum standards adopted pursuant to 84-304.01.

SENATOR BEUTLER: I'm sorry. Where are you looking?

ELDON PAPE: I'm in Section 84-304.02, line 17. So the auditor does have the authority to say that an audit that was submitted by a public power district is riot adequate in his, in his judgment and is required in writing to so tell the public power entity. As far as the minimum standards, I think you will find that public power districts probably do more than meet the minimum standards, and that's for a very simple reason, is that they have other people that they're doing business with that require that audits be performed in accordance with general accepted auditing standards. And those would be mandated by a board resolutions that authorize the issuance of debt, in other words, bond resolutions, that are required by the credit rating agencies, and they're also required by bond fund trustees. So if those, if those were a shell audit if you were, if you will, they would never be acceptable, you'd never be able to maintain your credit rating. So they

have to be very thorough audits, they have to be conducted by a certified public accountant. Last but not least, earlier this, it was mentioned that the letter from John Breslow, which was a copy which was provided to the Nebraska Power Association members. He is basically saying, I believe, in that letter that there are, there's vagueness, both as it regards to the Budget Act and the role of the auditor, and he is asking the Legislature to clean up that vague language that currently exists in the statutes. That's all I have to say unless

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there's some questions.

SENATOR BEUTLER: Questions? Senator Preister.

SENATOR PREISTER: Mr. Pape, a chief financial officer does things similar to an accountant, I guess.

ELDON PAPE: They do things like accounting, but I'm responsible for all the financial activities of the district whether it be auditing, whether it's selling bonds, responsible for all the financial records.

SENATOR PREISTER: Okay. I'm just wanting to make sure I'm asking the right person since we haven't had a CPA up here yet. Can you tell me, this bill refers to both audits and performance audits. Can you tell me what the difference is.

ELDON PAPE: Audits are normally financial audits. And this would be something like a, the local here, Peat Marwick would do, or Deloitte Haskin (phonetic)...or Deloitte Touche would do, and what they do ... they come in and they look at all the entities balance sheet, their income statement. They'll do confirmations on debt. They'll write a letter to a debtor and say, does OPPD owe you \$5,000. They'll send confirmations out to people that owe us money, on receivables. So what they do is they go through the whole balance sheet and income statement and they'll do selected testing of transactions to see whether it was properly recorded, if it met generally accepted accounting standards, all those sorts of things. A performance audit, in contrast, normally has to do with how the utility is, is carrying out its electric operations, if you will, how do the dist. ..or the production distribution of electricity. And how efficient that process may be. So it looks at the operational characteristics versus the financial condition and the financial records of the district. That's the basic difference.

SENATOR PREISTER: Okay. As this bill reads then, would this mean that performance audits would no longer be performed either?

ELDON PAPE: You'd have to give me a specific reference, Senator.

SENATOR PREISTER: On line 27 of 84-304.01, page 4. it's got, may conduct performance audits of all political subdivisions receiving more than twenty-five thousand dollars. And then it continues with the new language,

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except as provided in this section.

ELDON PAPE: Again, I think that section refers to entities that receive tax funds, which would exclude public power districts. And I think the language that's added there, basically is trying to get to that clarification. The language on the top of page 5, lines 4 through 8, is a clarification that sets off specifically public power districts are not included in that.

SENATOR PREISTER: If public power districts, whatever the decision is, if they are included, then according to this language they would not have performance audits if we adopt it. Is that correct?

ELDON PAPE: That's the way I would read it, yes.

SENATOR PREISTER: Thank you.

ELDON PAPE: To my knowledge, the Auditor of Public Accounts has never performed a performance audit, to my knowledge.

SENATOR PREISTER: Well, there's some people in the Legislature that might wish they were over there instead of here. Thank you.

SENATOR BEUTLER: Just a couple if I may. I think maybe I misunderstood the intent of the bill in light of your explanation of Section 7 on page 5. You were indicating, if I understood you correctly, that the Auditor of Public Accounts would be reviewing the audits that came.

ELDON PAPE: As I read...

SENATOR BEUTLER: Your intent is that the auditor would be reviewing the audits that were done in accordance with this.

ELDON PAPE: That's, I believe, what that section says. After the, indicated in this case, my own case, the Omaha Public Power District, who submits a copy of their audit each year to the state office, to the Auditor of Public Accounts.

SENATOR BEUTLER: Okay. So it's anticipated that there would still be minimum standards set up by the Auditor's office to which you all would I subject.

ELDON PAPE: Yes, I believe that's what it says. And as I indicated in my opening remarks, I think we're well above

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what is, what you'd consider minimum standards which could be a very cursor review to see that the bank, the bank account really exists, and those sorts of things, because, because we operate as a business, not as a government. You know, we borrow in the credit markets and those sorts of things, we really don't get any different treatment than a, than a private corporation. Invest their own utility for ... maybe as a good analogy. We are really subject to the same kind of requirements and the credit marks, markets that they are. And that's that people will not lend money to the Omaha Public Power District unless they have a nationally recognized firm that has done a comprehensive financial audit of the entity. That's just, that's a basic requirement.

SENATOR BEUTLER: Well, if, understanding that, maybe we need to change how that particular section of the bill reads because it seems to me that it's saying, that if the financial report fails to comply with the minimum standards adopted pursuant to Section 84-304.01, and when you look at 304.01 you've excluded the auditor's standards in that section. Or new 'Language, 70-623. But the only standards in 70-623 are generally accepted auditing standards. So if you intend to reference standards, minimum standards established by the auditor, maybe we ought to, need to redraft some of the language in Section 6.

ELDON PAPE: I believe the, you know, 84-301, 1 don't believe does away with minimum auditing standards. I think that the issue here is whether the governmental auditing standards should really be followed by entities such as Omaha Public Power District because again, we operate as a business and not as a, as a governmental entity. And you get very little if any value from having reported under the government auditing standards, and you incur cost to do that. And I guess we don't see where the value is in that.

SENATOR BEUTLER: Okay. So the auditor's review would be a review to see if you followed generally accepted auditing practices.

ELDON PAPE: Yeah, which is GA, be generally accepted auditing practices.

SENATOR BEUTLER: Okay.

ELDON PAPE: And I might just say for the record that in 1992, the Omaha Public Power District as part as its financial audit that was done by Deloitte and Touche. We

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did comply with the government auditing standards. And it cost us extra money. And we see the ... we fail to see what the value of that is. And that was mandated by the state auditor. And we think that, that it doesn't add any value.

SENATOR BEUTLER: Okay. Thank You. Are there others who would testify in favor of the bill? Anybody like to testify against the bill? Anybody like to testify from a neutral position? Senator Warner, would you like to close.

SENATOR WARNER: Mr. Chairman, members of the committee, I think probably most of the questions have already been answered or raised and will be addressed. I have to tell you, I woke up with a toothache this morning, it's been getting progressively better, or worse, depending. So I'm not real alert today. But I ... the thought occurred to me as you were discussing the Budget Act that was enacted in 1969, and some of the put-poses back to that. And I don't recall specifically, but what I do recall is that many of the people who were most active in the adoption of that, in pushing for the adoption of that Budget Act tended to some extent to be entities that were particularly centrally assessed prior to that. It was no way to ascertain local budgets, as I recall, other than going to each separate entity or each county. And, as I recall, part of the argument for the summation to this state was that you'd have a single source. But then I think the same thing has been critical because they tend to, I believe, tend to be filed. And some of the purpose that was envisioned at that time probably has not been fully accomplished and there's been other options talked about to do that. But in any event; I do not recall the Budget Act being something that was described as a public power or a public power districts is the kind of conversation I can recall that at times at least dealt with primarily with a method of having a single place to look, look at what local budgets are and not have to go to 93 counties. The other thing, the indication that the, I think yes, you're going to have submitted to you some of the Attorney General's letters, but at least one of them that I had clearly recommends a legislative clarification of provisions of the Budget Act, in particular some of the other things would be desirable to have happen. And this has been indicated. Litigation is the other option for clarification, and that is clearly less desirable a route to go in order to accomplish clarification. Other than that, Mr. Chairman, unless there's other things I can assist the committee to acquire what you may need, I'd urge that the bill could be advanced so that the potential for controversy may put behind as far as the uncertainty of the current law.

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SENATOR BEUTLER: Questions? Jerry, maybe one question, perhaps a little bit philosophical, but as I read through the Budget Act it seems clear to me, and I haven't read the Attorney General's opinion, but it seems clear to me *that it was not intended to apply to public power districts. But then I guess the next question is, even though clearly all of the budget provisions could not and should not be applied to public power districts, are there some things relating to notice, relating to availability of materials, relating to the way the budget is presented to the public, in this case the rate payer. Are there any things that should be applicable to public power districts?

SENATOR WARNER: Incurrent to the uniformity across the state?

SENATOR BEUTLER: Yeah.

SENATOR WARNER: Well, I, I guess I would ... well the answer to that is obviously yes when it comes to public notice, I'm not sure to the extent that they are uniformly comply with the open meetings law and those kinds of things. if something in addition is appropriate, I'd be inclined to agree, yes, but I'm not aware specifically that there is something specifically that would need to be done in addition to when (inaudible) required by the public, or open meeting statutes. It's my understanding and I don't know if this is true in every case, but it's my understanding that the most a power entities probably have a public comment opportunity in the course of their- meetings. I'm not sure if it's done in every one, but I think certainly that's required generally by the open meetings law and I assume they do, with the public notice. There is at least some opportunity for that public input.

SENATOR BEUTLER: Okay. Thanks very much. That'll end the hearing on LB 310.
Disposition of Bills:

LB :310 - Advanced to General File, as amended.

LB 577 - Held in committee.

LB 605 - Held in committee.

Chairperson Committee Clerk