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Natural Resources Committee
January 24, 2007

[LB313 LB333]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 24, 2007 in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB313 and LB333. Senators present: LeRoy Louden, Chairperson; Carol Hudkins, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Deb Fischer; Gail Kopplin; and Norman Wallman. Senators absent: None. [LB313]

SENATOR LOUDEN: Good afternoon, we'll open the Natural Resources hearing on the bills today. I'm Senator LeRoy Louden from Ellsworth. The committee members are, to my far right, Senator Wallman, from Cortland; next is Senator Annette Dubas, from Fullerton; next is Senator Carlson, from Holdrege; and Senator Kopplin, from Omaha. To my left is Vice Chair Carol Hudkins, from Malcolm; and to her left is Senator Deb Fischer, from Valentine; and down at the end is committee clerk, Barb Koehlmoos. With that, do we have any pages left here yet? It looks like they're gone at the present time but Erin Frank, from Bassett and Steve Scharf, from Lincoln are our pages this year. I'd ask that you either turn off or silence your cell phones and pagers and stuff in the hearing room. And then those wishing to testify on a bill should come to the front of the room when that bill is to be heard. As someone finishes testifying, the next person should move immediately into the chair at the table. If you do not wish to testify but would like your name entered into the official record as being present at the hearing, please raise your hand and a page will circulate a sheet for you to sign. This list will be part of the official record of the hearing. Now this year we are using a computerized transcription program and it is very important to complete the green sign-in sheets for testifiers prior to testifying. They are on the tables by the doors and need to be completed by all people wishing to testify including senators and staff introducing bills and people being confirmed. If you are testifying on more than one bill, you need to submit a form for each bill. When you come up to testify, place the form in the box by the committee clerk. Do not turn the form in before you actually testify. Please print and it is important to complete the form in its entirety. If our transcribers have questions about your testimony, they use this information to contact you. As you begin your testimony, state your name and spell it for the record, even if it is an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people to testify it may be necessary to place time limits on testimony. If you have handout material, give it the pages and they will circulate it to the committee. If you do not choose to testify, you may submit comments in writing and have them read into the official record. No displays of support or opposition to a bill, vocal or otherwise, will be tolerated. If you need a drink of water, please ask the page. With that, we had Senator Mark Christensen, from Imperial, join us on the committee and also committee counsel, Jody Gittins. With that, we will start the hearing on LB313. [LB313]

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JODY GITTINS: Good afternoon, Chairman Louden, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee and introducing LB313 on behalf of the committee. This bill is brought really, to correct an error that was made last year. Inadvertently, when we were working on the Livestock Waste Management Act, there was a reference to a permit in existing statutes and we tried to clarify that, whether the reference applied to the construction and operating permit, or whether it applied to the National Discharge Elimination System permit which you will hear probably from now on, referred to as the NPDES permit. The one reference to the permit in the act that was inadvertently missed involved the requirements of a professional engineer. The existing statute required a professional engineer only when an NPDES permit was required, not a construction and operating permit. Under the current statutes as of 2006, both permits now require a certified engineer which is not the intent for the department or was required under the NPDES requirements. So that now small and medium operators that submit an application for a construction and operating permit have to have a professional engineer sign off on that application. By enacting LB313, we return the requirements back to the status quo prior to the 2006 legislation where the engineering requirement for small and medium facilities is not necessary. And that's what the purpose of this bill is. It was actually brought to the bill by the department because they felt it wasn't necessary for their construction and operating permit for the small and medium firms to have their applications certified by a professional engineer. I know that members of the department are here and I am sure we will hear from producers that this could have an effect on. [LB313]

SENATOR LOUDEN: Questions for Jody? Thank you. The first testifier or first proponent come forward for LB313. [LB313]

PAT RICE: Good afternoon, Senator Louden and members of the committee, my name is Pat Rice, P-a-t R-i-c-e. I'm representing the Department of Environmental Quality today and I manage the water quality programs within the department. I think legal counsel's given you a pretty good overview of what the bill is designed to do. It's designed to correct an oversight that we didn't catch when LB975 was passed in 2006, and I won't repeat a lot of that. It does, however, leave in place a provision that we can require an engineer for systems that have had problems, maybe have had discharges, or building in locations that maybe are not suitable if they are a smaller one, if we're concerned about that. So it doesn't change that provision, but for the most part it will exempt all of the medium and small facilities from the requirement to have a professional engineer to stamp the plans. It's a considerable cost savings. A lot of the work is done by the consultants. There's a lot of the consultants who are old-time SCS employees or NRCS employees today and are familiar with livestock facilities and are experienced in designing facilities. Basically, we ask that you would support the bill and I'll answer any questions that you may have. [LB313]

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SENATOR LOUDEN: Questions for Mr. Rice? Senator Christensen. [LB313]

SENATOR CHRISTENSEN: Thank you. If I understand right, if there is a question on a permit that somebody wants to put in feedlot or if there's been discharges and problems, then you can require the engineering, correct? [LB313]

PAT RICE: Yes, we can. Even after a facility might be built. If we go out and do follow up inspection and find that there's a problem, we can request that an engineering review be done on the facility as it exists if it would be already constructed. We have that capability to go back or to require, if we believe there is an instance or a problem that could arise at a facility. [LB313]

SENATOR CHRISTENSEN: So we got good protection that way is what I'm saying. [LB313]

PAT RICE: We believe so, yes. [LB313]

SENATOR CHRISTENSEN: Thank you. [LB313]

SENATOR LOUDEN: Other questions for...Senator Carlson? [LB313]

SENATOR CARLSON: Thank you, Senator Louden. I don't have any idea, what would be, what's the cost of an engineer for an owner, to come out? [LB313]

PAT RICE: Well, for a small and medium sized facility, we're probably talking in the \$10,00 to \$12,000 dollar range to prepare the report and sign the report and prepare the necessary maps and diagrams. That would be a typical charge for a consulting engineer. [LB313]

SENATOR CARLSON: There's a threat of having that required at any time, Sir, that would prevent somebody from expanding or starting an operation? [LB313]

PAT RICE: I don't believe so. The requirement on the smalls now do you mean, or...? [LB313]

SENATOR CARLSON: Well, if the requirement isn't there but you said you could go at any time and request? [LB313]

PAT RICE: Yes. [LB313]

SENATOR CARLSON: Is that enough of a threat that it would prevent somebody from expanding or starting an operation? [LB313]

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PAT RICE: Well, as far as starting an operation, if they're going to start small, there would be no requirement to come to us if they're not going to construct any facilities. If they don't have the potential to pollute waters of the state, they don't need to get a permit from us. But if they are going to expand, they should be already familiar with the requirements for design and operation of a system and the necessary permits that are required and the design requirements along with that. I don't know that it's a deterrent, but if they do not comply with those regulations, they are subject to enforcement by the agency. [LB313]

SENATOR CARLSON: Thank you. [LB313]

SENATOR LOUDEN: Senator Hudkins. [LB313]

SENATOR HUDKINS: Mr. Rice, you said after a facility gets a permit but doesn't need an engineering study, do people from DEQ go out there at any time during the construction? [LB313]

PAT RICE: Typically we do not go out during the construction. We do an inspection before construction begins, to go out and look at the facility, familiarize ourselves with the lay of the land and the types of soils that they might be dealing with, the number of head that they might be dealing with, the terrain features that they need to design and take into account. And then we go out and do a post-construction inspection to make sure that the facility is constructed according to the plans that they've prepared and that they haven't varied from those or done something that they shouldn't do. [LB313]

SENATOR HUDKINS: Have there been any instances where they have done something that they weren't allowed to do and they have had then to go in and redo all of this? [LB313]

PAT RICE: Typically it doesn't require redoing all, but yes, there have been instances where people have decided maybe to add or change a location of a particular pen or a feeding bunk. Maybe change the drainage a little bit. Those can all impact where that overland flow might go and if it creates a potential for some of that to get into waters of the state, then we would go back in and ask them to correct that. [LB313]

SENATOR HUDKINS: So it would be in someone's best interests if they were going to make any changes at all to talk to you. [LB313]

PAT RICE: Yes. We encourage that. [LB313]

SENATOR HUDKINS: All right. Thank you. [LB313]

PAT RICE: Um-hum. [LB313]

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SENATOR LOUDEN: Refresh my memory, Mr. Rice, it's a large concentrated animal feeding--what size facility are we talking about here? [LB313]

PAT RICE: Well, the easiest way to explain that is to give you a table perhaps, that shows how many animals of a particular type are involved. [LB313]

SENATOR LOUDEN: Okay. [LB313]

PAT RICE: We reference what the federal regulations have adopted in terms of what used to be animal units and now they've gotten away from that terminology and they just use a specific number of animals. And a large, for instance, would include 700 or more mature dairy cows, 1,000 veal calves, 1,000 cattle other than mature dairy cows or veal calves, 2,500 swine, 10,000 swine less than 55 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers, 125,000 chickens other than laying hens, and 30,000 ducks. So those are all coming directly from the federal regulations. We've adopted those. [LB313]

SENATOR LOUDEN: Yeah, okay. That's that recipe in there and this is anything that or above this, they would need... [LB313]

PAT RICE: They would need to have an NPDES permit, yes. [LB313]

SENATOR LOUDEN: Yeah, both engineers... [LB313]

PAT RICE: Yes. [LB313]

SENATOR LOUDEN: ...anything below that they wouldn't necessarily have to have... [LB313]

PAT RICE: Not necessarily, no. [LB313]

SENATOR LOUDEN: Yeah. Okay, thank you. [LB313]

PAT RICE: Um-hum. [LB313]

SENATOR LOUDEN: Any other questions for Mr. Rice? Senator Kopplin. [LB313]

SENATOR KOPPLIN: Okay, when they reach 1,000 and I understand that permit, what kind of permit do they have to have below that, that could have been affected by engineering? [LB313]

PAT RICE: A construction and operating permit. [LB313]

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SENATOR KOPPLIN: Which comes just from you? [LB313]

PAT RICE: Yes. [LB313]

SENATOR KOPPLIN: Okay. [LB313]

SENATOR LOUDEN: Any other questions? If not, thank you. Next testifier, proponent? [LB313]

DUANE GANGWISH: Good afternoon, Senator Louden, my name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h. I'm here as a registered lobbyist representing Nebraska Cattlemen. We are rising in support of this bill. We have had continued conversation with the department, both in the construction of LB975 last year, and thought we had most of these things appropriately defined and delineated and it was, I guess, we have to bear some of the responsibility for not seeing this. And we're here and have worked this week with the department in conversations to make sure that this is appropriate. We are in support of it. We feel that the people today left to gather these--most of the larger facilities are already permitted; there are some that are not. But the small operations, specifically ranchers, fall into this very, very easily, possibly and smaller family feeding operations. That is very costly to address these and when an engineer gets involved. Anecdotal, I used to work for one (laugh) so I know it is very expensive. We rise in support of it and would be happy to answer any questions that any of you might have. [LB313]

SENATOR LOUDEN: Okay. Thank you, Duane. Any questions for Duane? Seeing none, thank you. [LB313]

DUANE GANGWISH: Thank you. [LB313]

SENATOR LOUDEN: Next testifier in proponent? [LB313]

CRAIG HEAD: (Exhibit 1) Good afternoon Senator Louden, members of the committee, my name is Craig Head, it's C-r-a-i-g H-e-a-d. And I'm the assistant director of government relations for the Nebraska Farm Bureau Federation, here to lead off our support as well for LB313. I think legal counsel and Mr. Rice did a very good job of explaining what is going on with the situation so I won't elaborate any more on that point. Other than just to point out something that I think is important. A lot of times at the state level, as livestock producers deal with regulations today, they are dealing with a lot of regulations that are handed down at the federal level. And so we are, in the next several years, going to go through a process where EPA has revised some regulations and more and more producers are going to be subject to increased regulation which is a concern to a lot of people in the industry. This bill, I think, is important from the

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standpoint that it's one place where the state has authority to provide some regulatory flexibility and provide some regulatory relief to our small producers here in the state. And we think that's very important that we try and do that where we can to try and keep some of our smaller producers out in the field working on the farms and ranches. So with that, I would really appreciate the department for bringing this bill forward to the attention of Senator Louden and the committee and we would encourage you to advance this bill to General File. [LB313]

SENATOR LOUDEN: Questions for Craig? Thank you. [LB313]

CRAIG HEAD: Good. Thank you. [LB313]

JOHN HANSEN: Chairman Louden, members of the committee, for the record, my name is John K. Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union. I appear before you today as their president and also a lobbyist. We are in support of LB313. We were a part of this process that yielded the work product last time around. This certainly was an oversight. I thank the department for helping identify it and all of the parties who have been involved in that, and the committee for bringing the corrective prescription here and I think it's appropriate, and it was certainly not intended. So this, I think, just does a nice job of correcting an unintended mistake which, as we all know, happens when we write law. So with that, I appreciate any and all efforts that the committee can do to continue to try to help do those things that are possible at the state level as we see our hands increasingly tied by the regulations from the federal level. To do that which we have done in the past, which is to try to provide appropriate levels of enforcement and standards for different sized operations and regulatory slope. So as we found out last time around, that was difficult to do. A lot of the classes got scrunched down and I think as a result of that, this was one of the unintended consequences. And with that, I'd end my testimony and be glad to answer any questions if you have any. [LB313]

SENATOR LOUDEN: Any questions for John? Seeing none, thank you, John. [LB313]

JOHN HANSEN: And thank you very much. [LB313]

SENATOR LOUDEN: Next proponent? [LB313]

LAURA KREBSBACH: Good afternoon, Senators, my name is Laura Krebsbach, L-a-u-r-a K-r-e-b-s-b-a-c-h, and I'm here with the Great Plains Environmental Law Center and I, too, wanted to register our support on this bill. Being involved in the process, LB916, LB975, there's a few of you that saw a lot of me during that process and it was very complicated. There was a lot to deal with and it seems again, that EPA changing those class sizes has come back to haunt us and I do know that it was not the intent at all to have the small and the medium fall under these kinds of requirement for

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the engineers and architects. And I think the consultant that, recognized by the state that a lot of these producers hire, are very familiar and capable of helping these producers do what they need to do. I think it's very rare that DEQ comes in and says, well this is very problematic; we need an engineer. And the fact that they have the discretion if the case rises is perfectly sufficient. So we want to register our support. [LB313]

SENATOR LOUDEN: Okay. Questions for Laura? Seeing none, thank you, Laura. [LB313]

ROB SCHUPBACH: My name is Rob Schupbach, S-c-h-u-p-b-a-c-h. I'm a member of the Cornhusker Fly Fishers and Trout Unlimited 710. In recent years both organizations have been active in voicing concerns about the relationship between recreational water and livestock waste control facilities and the effect that the facility may have on recreational water. We can support this bill as it's written and unamended and have no problems with it. Any questions? [LB313]

SENATOR LOUDEN: Questions for Ron? Seeing none, thank you. [LB313]

ROB SCHUPBACH: Thank you. [LB313]

SENATOR LOUDEN: Any other testifiers in the proponents? Any opponents? Anybody in the neutral testimony? Seeing none, thank you. We'll close the hearing on LB313 and we'll open the hearing on LB333 and Senator Johnson is here, I presume, to give the presentation. [LB313 LB333]

SENATOR JOHNSON: Senator Louden and members of the Natural Resources Committee, my name is Senator Joel, J-o-e-l Johnson, J-o-h-n-s-o-n, representing the 37th District. A few months back I was taken around outside of the city limits of Kearney by an inspector and shown what potentially could be a rather serious problem and what this bill is here today is to make sure that such problems don't happen. What it was is this, is that there is a development close to the river, in fact between two branches of the Platte River in Kearney, that is just getting under way. And basically, what we saw was that with the ground water being only two and one-half feet below the surface in sandy soil, we had a development starting up where the well was on the west side, or upstream side of the house, a septic tank and drainage field on the lower side. Well, with just one or two homes this probably wouldn't be much of a problem. However, if a full development were to occur, one could see that the ground water might suffer since sandy soil does not neutralize the products that come out of septic tanks. And the main concern here was that the well fields for the city of Kearney were downstream from this development that was starting. Subsequently, I've seen other ones like this and I won't allude to those, but...s o we started looking into this as to what we could do and what we found is that there was a gap in the laws regarding this as far as the DEQ people

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were concerned. So this bill is a result of those findings in an attempt to put laws in place that will govern this and protect the citizens in the future. LB333 authorizes the Department of Environmental Quality to establish user fees to recover the direct and the indirect costs of reviewing and approving private onsite wastewater systems for subdivisions and development of area proposals, permits and the requirements of the Nebraska Environmental Air Protection Act. Federal funding has been used for these kind of things in the past, but there is a question that this might well be ending. The fees currently authorized by onsite wastewater law can only be used for certification of contractors and registration of the systems, no inspection or this type of thing, just registration. And that's where the problem is. LB333 also authorizes the director of DEQ that he may waive the certification and examination fees for inspectors employed by a governmental agency or subdivision which has the authority to enforce any inspections in compliance programs that are at least as stringent as called for in this act, and the rules and regulations promulgated under the act by the council. In addition, LB333 allows cities such as the city of Kearney to assist in conducting inspections and compliance processes without incurring another cost to make this further personnel available. Now from this point on, it gets a little bit more detailed as far as what the requirements are necessary and so on. And just as we started, we received back from your counsel, AM90, which will be discussed in detail by Mr. Lee Orton, representing the Nebraska Onsite Wastewater Association. I have had good negotiations with this and it is thought that this bill satisfies the requirements of the sides that are concerned. Other than that, I would just urge you to listen closely to Mr. Orton's comments and would ask that you accept the amendment as supplied by your legal counsel and to advance this bill. [LB333]

SENATOR LOUDEN: Okay. Will you entertain questions, Senator Johnson? [LB333]

SENATOR JOHNSON: Yes. [LB333]

SENATOR LOUDEN: Any questions? [LB333]

SENATOR JOHNSON: I think that from this point on they're going to be rather technical. It might be better for Mr. Orton, but I'll try. [LB333]

SENATOR LOUDEN: Okay. My next question is, do you wish to close on this? [LB333]

SENATOR JOHNSON: No, I have other hearings going on and it would be best if I stayed there. [LB333]

SENATOR LOUDEN: Okay, good enough. Thank you, Senator Johnson. [LB333]

SENATOR JOHNSON: Okay. Thank you very much. [LB333]

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SENATOR LOUDEN: First proponent for LB333? [LB333]

LEE ORTON: (Exhibit 2) Good afternoon, Chairman Louden and members of the Natural Resources Committee, I am Lee Orton, O-r-t-o-n. I am the executive director and lobbyist for the Nebraska Onsite Wastewater Association. I want to say thank you to Senator Johnson who was kind enough to introduce this legislation at our request and at the request of the inspector and good friend of his from Kearney who is also a member of our organization. Our association represents contractors and others who are interested in onsite wastewater or septic tank programs across the state of Nebraska. We have been involved in this process since the legislation was first introduced and brought to this Natural Resources Committee back in 2002. We have been in the process of implementing this legislation since that time and some of the things that are taken care of in this legislation are designed to help make that process work more smoothly. We have hundreds of certified or licensed contractors across the state now who are doing their best, I think, to try to comply with the requirements and the standards. But it's important to know that the original construction standards here were adopted way back in the 1970s and until we started registering or licensing contractors, and registering systems, there were a lot of people including those who installed systems, and many people who owned them, who did not know there were even construction standards. So we've made some big progress there. This amendment actually changes some of the provisions of, a real mouthful for legislation, Private Onsite Wastewater Treatment System Contractor Certification and System Registration Act. I don't think you can say that in just one breath but that's the name of the legislation we're dealing with. And this legislation now, essentially is, and we are requesting that you consider it to be, AM90 which, I think, was distributed to all of you earlier this afternoon. That would replace the original green copy. We've worked diligently since late last fall in trying to deal with these issues to make sure that we didn't end up with some gaps both in operation and in funding capability. And we've been working diligently with the department and with industry representatives throughout that entire period and we just finished trying to make sure what we do here will, in fact, accomplish these things without creating or causing problems operationally for the Department of Environmental Quality. And that's really what this amendment is all about, is to try to make that process as smooth in the transition as it can be. So let me just cover the five points that are in this legislation as proposed by the amendment that you have in front of you. First thing that I think is important is it deletes some obsolete language from the original act. When we made the transition from nonlicensed to licensing, we went through some provisional licensing times before people were actually tested and certified in the final process. And because of that, the legislation that dealt with that temporary provisional stuff and other dates that aren't pertinent anymore, we have proposed to take out with this amendment so that it cleans up the language of the act. It does indeed provide new authority to assess fees for special projects and for subdivision reviews, some of the kinds of things that have been done by the department since way back in the '70s when the original standards were put in place, but weren't

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part of our act, if you will, for the registration of systems and certification of the professionals. And that new authority for assessing fees is essential in order to be able to keep those program activities going and keep them as an integral part of the entire package that's available to us in this particular arena. It also provides for the creation of a new cash fund to allow DEQ, then, to segregate these new revenues from the revenues that were generated by the original enactment of this licensing and registration legislation. That way their accounting process works better; we know where the funds go in, we know where they come back out to pay these costs. And that makes the process smoother for them. And that's one of the critical changes that are contained in the amendment. It also, as Senator Johnson pointed out to you earlier, allows for the waiver by the director of the department, of inspectors' fees, the costs they have to incur in order to be certified and to keep their continuing education activity and so forth, in place, to be waived by the department so that their costs don't go up if they are, in fact, administering the provisions of this legislation. We think that's important so that the local subdivisions of government who are responsible for these kinds of things will, in fact, take an active role in the process because it takes eyes and ears in the field to see the kinds of problems that Senator Johnson just pointed out for you just in the Buffalo County area. Those kinds of things occur elsewhere and we need more people in the field to catch those and this in one of the incentives to do that. And then last but not least, this legislation provides for implementation as an emergency provision because we have fees running out and we need to make the changes and the department needs to be able to implement these fees so we can keep the ground moving forward instead of losing some time someplace in the process. Those are the five points that this legislation will carry out. We don't think any of them are significant each individually, but together they make this program take the next step forward and continue to work like we intended it when we adopted it in 2002 and are still trying. I'd be happy to answer any questions that the committee might have, Senator. [LB333]

SENATOR LOUDEN: Okay. Any questions for Lee? Senator Christensen. [LB333]

SENATOR CHRISTENSEN: Okay. One of the first points here laid out is, clarifies that certified professionals must be used when private waste systems are closed. What constitutes how long one sits idle before it has to be closed, or as long as there's a building spot it doesn't have to be closed, and actually, why does one have to be closed by a professional, I guess. Are we, what's the danger if sits there and dries up? [LB333]

LEE ORTON: I suspect if it sits there and dries up and doesn't have any uses taking place over the top of it, it may not be a serious potential hazard. But if it's left in place and the, for example, on a farmstead--when a farmstead removed and this system is there underground, it can, in fact, create some problems if it's farmed over the top of, not the least of which obviously could be collapse, but there are other serious potential problems as well with regard to potential pollution. There are standards in the rules and regulations which is called Title 124 of the DEQ standards now. And those standards

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actually provide for some requirements with regard to what used to be called, abandonment and will be called closure for this legislation. And that abandonment, I guess the term doesn't mean the same thing to everybody, obviously, abandonment could mean you just walk away from it like you've suggested. And there do need to be some things done in order to make sure that that's done properly. And that's what this is designed to do is try to make sure that we have legislative authority to do those things and to continue to implement that process for some kind of formal closure. So the major problem and concern for the closure, the ending of the use of a system and so forth, is just as critical with regard to potential pollution of ground water as is the proper installation of the system to begin with. A good example is if the system doesn't function anymore and is, in fact, not working properly, it's already probably creating some kind of a pollution problem. And so it needs to be closed and discontinued and stopped from being used and a new one put in its place. And those are probably the most critical of the examples as a kind that continue to be used and aren't functioning the way they should be. I hope I've answered your question. I've bounced around a little bit in that regard but... [LB333]

SENATOR CHRISTENSEN: That's fine. I guess I think I know where Senator Johnson was referring to, this problem being, and I would agree it's a problem. But I guess there's surely got to be rules and regulations that you can't even put them in that area where the water table is so close. [LB333]

LEE ORTON: There are alternative kinds of systems that can be installed where the water table is too close to the surface. The most clearly logical one probably is a mound system that actually sits the disposition of the material above that ground water table. But they are not always being constructed that way and that's one of the problems we have at this point is that these systems are going in, continue to be going in, in some instances, now, without recognizing that the standards are being violated by doing so. [LB333]

SENATOR CHRISTENSEN: So are we addressing that here? [LB333]

LEE ORTON: We are, we are. It's a slow and tedious process to do that obviously. We need more people who are competent and qualified to install alternative kinds of technology that will deal with these systems. The mound system is probably the most logical next step, but there are literally many other kinds of systems around the country that have been designed that we'll probably begin to see more of as these kinds of areas are developed. Because there are mechanisms out there that can be used, but they require the special permitting process and to make sure that the engineering is done right and that there is, in fact, an operation and maintenance plan in place to make sure these systems operate correctly. So there are answers, but they are more complicated, they are more cumbersome, and ultimately because of that, they are, indeed, more costly. [LB333]

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SENATOR CHRISTENSEN: Because I guess I noticed there wasn't any in the bill there, statutes that say where they have to be built, like the mound thing, well, I figured that was in some other... [LB333]

LEE ORTON: Standards are already in Title 124 to set... [LB333]

SENATOR CHRISTENSEN: Okay. [LB333]

LEE ORTON: ...what the minimum requirements are for the placement of these systems and it's a question of just being able to continue to develop new systems based upon those standards, properly. And having local inspectors in the field as Senator Johnson has pointed out, is really an important part of that process because we need more people out there watching as these kinds of developments occur and could create some serious problems for pollution. [LB333]

SENATOR CHRISTENSEN: Okay. Thank you. [LB333]

LEE ORTON: Yeah. [LB333]

SENATOR LOUDEN: Senator Wallman. [LB333]

SENATOR WALLMAN: Thank you, Senator Louden. In regards to this here waste, I too have a problem with them putting homes around these lakes. If you have heavy soils, the wastewater goes into the lakes. So what do you get? Algae. [LB333]

LEE ORTON: I expect that's very true, yeah. [LB333]

SENATOR WALLMAN: And me and my brother, we have a cabin up in northern Minnesota. There you have to have pumping stations, you know, tanks... [LB333]

LEE ORTON: Um-hum. [LB333]

SENATOR WALLMAN: You cannot have any kind of a lagoon or nothing. So that keeps the lakes pure. And you think we need something like that in Nebraska? I see it in my area. Everybody wants to build a pond, you know, sell acreages. [LB333]

LEE ORTON: I think we're moving in that direction, Senator, very frankly. We have a lot of technologies that are available that are not yet being used much in the state of Nebraska. But we are making progress in that regard. I don't know that we've gotten to the stage that you're concerned with yet, but we're pointing in that direction for sure. When the soils are too heavy and the percolation doesn't work, then the system is also going to have to look at an alternative mechanism; pumping is one of those. Lagoons

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are part of the solution. You see a lot of lagoons if you drive around Lancaster County where the soils are heavy and in parts of Gage County where you have the same kind of problem. So we recognize the difficulty. We have technological solutions available. It's a question of putting those right solutions in the right place. And this professional industry that we've been working on developing in the last several years is making progress in that regard. But we have some things we have to still do in order to be able to get that done and this legislation will help that process, I believe. [LB333]

SENATOR WALLMAN: Okay. [LB333]

SENATOR LOUDEN: Other questions? Senator Carlson. [LB333]

SENATOR CARLSON: Senator Louden. Mr. Orton, I don't know much about this at all, but listening to Senator Johnson, think of something right close to the river and the water level is two feet below ground, it's so obvious. But then listening to what you also said, there are regulations in place that kind of govern this so if we start that close to the river and then we start to move back, at some point in time it's okay to build, it's okay to have a system. There's already regulation in place to take care of that? [LB333]

LEE ORTON: The regulations are in place to allow for the construction of systems within these minimum standards any place in the state. And there are areas of the state right near the Platte River, for example, that just don't lend themselves to a traditional system. But there are methods in place to provide for special permitting of special kinds of projects that will, in fact, bring these kinds of systems into conformance with the standards and that's really where we are pointing toward in the example that Senator Johnson used. Now you have an even better example in your area with Johnson Lake and the problems that have been going on at Johnson Lake over the last few years with regard to septic systems and the fact that they're going to have to go to a central collector mechanism there because they have homes that were once upon a time built as weekend cabins that have now become permanent residences with all of the amenities of a typical modern home. And because of that, they generate a great deal more waste than they used to and the systems are not adequate to handle it. So that problem will be solved by not individual septic systems, but by larger systems or a central collector system and a central treatment plant which is the only good solution when you have that big of a crowd. So there are alternatives in place now. The regulations are there to do it. The professionals are certified in the industry and are beginning to understand the kinds of things they can and should do. We're working to try to train them to take those next technical steps so that they can do the better, more detailed kinds of things in the future. And we'll make the progress to what Senator Wallman suggested and the kinds of things it might take to help solve problems in your part of the state as well. [LB333]

SENATOR CARLSON: Thank you. [LB333]

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LEE ORTON: Once again, this legislation helps us take a step in that direction. [LB333]

SENATOR LOUDEN: Other questions for Lee? Senator Hudkins. [LB333]

SENATOR HUDKINS: Hi Lee, I've been on this committee long enough that I know how we close abandoned wells. [LB333]

LEE ORTON: Um-hum. [LB333]

SENATOR HUDKINS: How do you close a septic tank? [LB333]

LEE ORTON: Well, kind of the same way except the septic tank, of course, is nearer the surface so you don't have to flood the whole column of the well. You have to go in obviously, and remove some parts of it and refill the area that you are taking that material out of. [LB333]

SENATOR HUDKINS: So all of the lateral piping would have to be taken up? [LB333]

LEE ORTON: In most cases I guess that's probably correct, yes. [LB333]

SENATOR HUDKINS: And then what's on the top of a septic tank, is it cement or something, so... [LB333]

LEE ORTON: Well yeah, the tank is typically a tank with a lid on it, obviously, and that tank needs to be removed if there's a potential for any problem with it, a collapse or otherwise. So not just the top, but the whole tank probably. In some cases you might be able to take the top off and just fill up the chamber. [LB333]

SENATOR HUDKINS: All right, thank you. [LB333]

SENATOR LOUDEN: Senator Christensen. [LB333]

SENATOR CHRISTENSEN: Thank you, Senator Louden. I guess I'll just going on Senator Hudkins here. Why would you have to take out that drain fill pipe? [LB333]

LEE ORTON: Well... [LB333]

SENATOR CHRISTENSEN: I understand pumping the tank dry and refilling it or removing it but I guess, moving that pipe out of the ground makes zero difference. [LB333]

LEE ORTON: Well, first of all let me make sure I couch this in terms of the fact that I'm

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not a technical expert in this area, I don't know the science that's involved in it other than what I can read in the regulations myself. First of all, the one thing that I mentioned to you earlier, potential of collapse in the future, is important. And much of the equipment that is there, the material that's going in now, is plastic pipe. It's not concrete like it used to be in some instances. And if you drive heavy enough equipment over that long enough it's going to collapse and you could create a problem just with that alone, so you probably need to take it out for that purpose. If the system has failed completely and if, in fact, that lateral field is not functioning and is then leaking to the surface, there may be some things you need to do with the material that's underneath that line in order to make sure that you're not going to pollute groundwater or continue to pollute it with the material that's in the area. So there are some circumstances at least where that's really important to have done. There may be other instances where it's not quite so critical. [LB333]

SENATOR CHRISTENSEN: I guess I struggle here having put some in myself or helped a guy. You know, if it was legal to put that there over that gravel pack and then the half-moon pipe and drain it in there, I don't know why you'd ever remove it because either it's a problem now or it should never be a problem. But even that half-moon pipe, removing that seems--maybe they don't have to, but that, to me, is kind of--that half moon pipe, if you crush it to the ground it's not going to move anyway. The septic tank, it would, or a cesspool or something that way. [LB333]

LEE ORTON: Yeah, I agree, I agree, and Senator, there may well be instances where you don't have to remove it. But if, for example, you're using the heavy black plastic half-moon pipe now that's very predominant in these systems. It isn't going to hold up to long-term transportation over the top of it like a concrete half-moon will. So there might be some instances there where you have to do it just simply from surficial safety. I hope you didn't put that in, in the last couple of years? [LB333]

SENATOR CHRISTENSEN: Oh, no. (Laughter) [LB333]

LEE ORTON: Because you needed to be certified to do that kind of work since 2003. [LB333]

SENATOR CHRISTENSEN: No. [LB333]

SENATOR LOUDEN: You look certified to me. (Laughter) [LB333]

SENATOR CHRISTENSEN: I can open mouth, insert foot easy, can't I? (Laughter) [LB333]

SENATOR LOUDEN: Any other questions for Lee? If not, thank you. [LB333]

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LEE ORTON: Thank you very much for your time and I urge you to advance the bill with the amendment and let's get this on to the next step. Thank you very much. [LB333]

SENATOR LOUDEN: Any other proponents? Any opponents? Anyone testifying in the neutral capacity? [LB333]

PAT RICE: Good afternoon again, Senator Louden and members of the committee, my name is Pat Rice, P-a-t R-i-c-e. I'm the assistant director in the Department of Environmental Quality and I manage the water quality programs. We're here today to testify in a neutral capacity on what is now AM90. My remarks referenced LB333 so if you'll just substitute for me, AM90 anytime I say LB333, we are in support of the proposed amendments. The provisions have been discussed with you. It's going to modify the Private Onsite Wastewater Treatment System Contractor Certification System Registration Act and I hope now that Lee and I have both said that, we don't have to go over that again, but it is quite a mouthful. It does give some of the provisions that he mentioned--I'll go over briefly, that we feel are important. The one is to develop a fee system to allow us to do some division and development area reviews. And previously we had funded that as has been alluded to by Senator Johnson, with some federal funding and a little bit of state funds, but those federal funds have run out so it's important that we now be able to charge developers for the review of the plans. We also work on reviewing construction permits in addition to the subdivision and area approvals and we also spend a great deal of time working on construction and environmental standards. And we do have regulations in place. Senator Christensen had asked about whether or not those exist and we do have them. I'd be happy to provide you a copy of those, I have some with me today, that cover both the requirements for setback distances, whether you are building too close to ground water or a stream or a lake and what's required for closure. There are specific regulations already in place for closure requirements. Another provision in AM90 authorizes the Environmental Quality Council to adopt late fees for certified installers who fail to register systems. There's been a requirement that those that are certified do file those registrations with the agency. Those haven't always been turned in, let alone turned in in a timely manner and this would provide for a little bit more of a penalty for failing to turn those in on time. In addition to providing a mechanism for generating the fees as was mentioned, the authority would be given to the director of the department to waive the fees for other inspectors in local government entities. Currently we've only got about 16 of those out there, but we have a number of counties that have indicated to us in the past that one of the reasons that they haven't paid for that registration was because it was just a cost to the city. And they are really helping us out and we'd appreciate their help. They still need to demonstrate proficiency and knowledge in the field, but once they do that, we'd be more than happy to waive those fees for them. And I guess that pretty much concludes my testimony. I'd be happy, if you do have questions about such things as setbacks from rivers, I do have that with me if you'd like to go over that, I can. I'm the technical expert I guess. [LB333]

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SENATOR LOUDEN: Any questions of Pat? Did you say something about federal funding or something? And where does that funding come from, I mean? [LB333]

PAT RICE: It came from a grant from the Environmental Protection Agency and it over the years has gradually been reduced down to the point where we couldn't even fund half an FTE's-worth of effort out of it and now it's going away so we won't have that after the end of this current fiscal year, FY'07. [LB333]

SENATOR LOUDEN: And what does it take to be a certified sewer man? (Laughter) [LB333]

PAT RICE: (Exhibit 3) Okay. I think what I'll do is I do have a little handout here that provides some statistics and we'll go through the handout--if, page, if you'd like to distribute that. And I'll start out by saying the reason for having certification in the first place is to make sure that people are familiar with the requirements and familiar with the waste that they're dealing with and what the environmental and health impacts would be if it's not disposed of properly. In order to do that, you need to be able to construct systems so that they work and continue to work. The first part of this handout shows you the different levels of certification that are eligible under the act and what the fees are in order to become certified. All of these have a two-year renewal on them and there are continuing education requirements. And down below you can see the number of the different types of installers, pumpers, inspectors and we only have a few soil evaluators but other people can perform soil evaluations rather than just a specific soil evaluator. One of the important things that we do is with the subdivisions. We've had a lot of issues in the past where people go out and try to develop an area and try to put too many houses in an area where the soils are either inadequate or they are located too close to ground water. Or, in some cases, there's been just a total disregard for where the waste is going to go. The houses are put in, drains are put in or sewers are put in but they don't hook up to anything. People move into these houses and then we get called in and some of these houses that are being built now are getting to be rather expensive and these people don't like the fact that they've purchased a half million dollar show home and there's nowhere to the waste to go. That's one of the rules that we perform in the agency is try to make sure that that doesn't happen and they do think about where the waste eventually needs to go. There are testing requirements, Senator, for each of these different levels and you have to pass those tests to demonstrate your proficiency in the knowledge of your business and of the nature of the waste that you're dealing with and what it takes to put in a system that works and will continue to operate and protect the public health and environment. [LB333]

SENATOR LOUDEN: Okay. I notice, what's the difference between a \$100 and \$300 between a journeyman pumper and a master pumper? I mean, can a journeyman pumper--you're talking about somebody that pumps septic tanks I presume? [LB333]

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PAT RICE: Yes, that's correct. [LB333]

SENATOR LOUDEN: And you know, you pull up there with the truck, knock a hole in the septic tank and start pumping. Now what's the difference if you're a journeyman or you're a master? Different size hole you knock in the tank or what? (Laughter) [LB333]

PAT RICE: No, the journeyman, both under the installer and the pumper categories, must work for a master. They can go out and do work on their own, but their work has to be done under the supervision, if you will, of a master pumper, someone that's more qualified, has more experience in the business. But they both have to take a test to demonstrate that they understand what they're doing, what our regulations are as far as disposal, if they're a pumper, that they just can't put it in the truck and drive down to the nearest creek and open the valve and let it go; it has to be disposed of properly, so. [LB333]

SENATOR LOUDEN: Then when they do that then, do they have to file papers of where they picked it up and where they disposed of it? [LB333]

PAT RICE: They do keep records, yes. [LB333]

SENATOR LOUDEN: Then where do they dispose of it then, in the city system, or what? [LB333]

PAT RICE: It could be land-applied or it could be going to a municipal facility, yes. [LB333]

SENATOR LOUDEN: Okay, it can be land-applied if you're in the right place? [LB333]

PAT RICE: Yes. [LB333]

SENATOR LOUDEN: And that doesn't mean driving down a country road. [LB333]

PAT RICE: No, it certainly does not. (Laughter) [LB333]

SENATOR LOUDEN: Okay. Thank you. Other questions for...Senator Kopplin? [LB333]

SENATOR KOPPLIN: Yes, I have a question about actually, southwest Sarpy County which you may be familiar with. A whole lot of new developments going in. I'm assuming most of those have individual septic systems rather than a SID-type system. Does that all come under county zoning or do you have a hand in that? [LB333]

PAT RICE: The county can dictate what type of systems are put in where or if the

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county or an SID or a city is going to be expanding out in an area and be putting in a trunk sewer. They could deny the building permits for those homes if they intended to try to put in a septic system to get around the cost of hooking up a sewer system for instance, or a community septic system. [LB333]

SENATOR KOPPLIN: So if at a later time a county sewer line went through there, would that be county or somebody else that could require these people to close their septic systems? [LB333]

PAT RICE: It would be the county. [LB333]

SENATOR LOUDEN: It would be the county...okay. [LB333]

PAT RICE: We do not have authority to force that. [LB333]

SENATOR LOUDEN: Okay. Thank you. [LB333]

PAT RICE: Um-hum. [LB333]

SENATOR LOUDEN: Other questions for... [LB333]

SENATOR CHRISTENSEN: Senator Louden. [LB333]

SENATOR LOUDEN: Senator Christensen. [LB333]

SENATOR CHRISTENSEN: Thank you. Curiosity question. I've been in town for over six years so I'm safe. (Laughter) You see the journeyman pumper, master pumper things this way, you know, so you can't pull up with a slurry wagon like you use on hog confinement things and pump it, your own septic tank? [LB333]

PAT RICE: No. [LB333]

SENATOR CHRISTENSEN: Or something that way anymore? [LB333]

PAT RICE: No. [LB333]

SENATOR CHRISTENSEN: I'll be darned. Just like I said, information... [LB333]

PAT RICE: It's domestic waste, no, you're not supposed to do that anymore. [LB333]

SENATOR LOUDEN: Well, to follow up on that, can, and this is probably irrelevant, but can you actually hook a house up to a livestock waste treatment or your hog slurry or something like that? [LB333]

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PAT RICE: No. Those wastes are supposed to be separated as well. No. [LB333]

SENATOR LOUDEN: Has anybody decided why? [LB333]

PAT RICE: To do that? Yes, we've had new livestock facilities going in where they wanted to dispose of domestic waste in with the livestock waste and that's not allowed under the livestock waste regulations either, so. [LB333]

SENATOR LOUDEN: Is that because of where you apply it afterwards or what is the reason for it? [LB333]

PAT RICE: It goes back to the nature of the waste and again, there's enough of a separation between livestock waste and human waste and the different types of pathogens and viruses and bacteria that you find in the livestock waste that, we're mostly concerned about keeping human waste getting into the livestock and also from being disposed of on the land surface where it might pool upwards or something like that, if you are a land-applying or applying through a pivot, or just having it in a lagoon, the exposure to it. [LB333]

SENATOR LOUDEN: Okay, thank you. Any other questions for Pat? Seeing none, thank you. [LB333]

PAT RICE: You're welcome. [LB333]

SENATOR LOUDEN: Anyone else wishing to testify in neutral? Seeing none, then I guess Senator Johnson has waived closing so I guess we'll close the hearing on LB333. [LB333]

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Disposition of Bills:

LB313 - Advanced to General File, as amended.

LB333 - Advanced to General File, as amended.

Chairperson

Committee Clerk