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Natural Resources Committee  
January 24, 2008

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[LB923 LB939 CONFIRMATION]

The Committee on Natural Resources met at 1:30 on Thursday, January 24, 2008, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB939 and LB923 and gubernatorial appointments. 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. []

SENATOR LOUDEN: Okay. We're ready to start the session for the Natural Resources Committee hearing today and I want to welcome all of you. I'm Senator LeRoy Louden, chairman of the committee and I'll introduce the senators first off. Senators to my right start with Senator Gail Kopplin from Gretna; Senator Tom Carlson from Holdrege; Senator Annette Dubas from Fullerton; and Senator Norm Wallman from Cortland. Senators to my left are Senator Carol Hudkins, who is vice chair of the Natural Resources Committee from Malcolm; Senator Deb Fischer from Valentine; and Senator Mark Christensen from Imperial. On the end is our committee clerk, Barb Koehlmoos, and to my right is committee counsel, Jody Gittins. Today we have Kristen Erthum from Ainsworth, is our page, and she's a sophomore at Doane College. I'd ask that you turn off or silence your cell phones or pagers, and so forth, in the hearing room. And now 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 you'd like your name entered into the official record as being present at the hearing, there's a form by each door that you can sign. This will be a part of the official hearing...of the official record of the hearing. This year we're using computerized transcription program and it is very important to complete the green sign-in sheets for testifiers prior to testifying. They're 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're testifying on more than one bill, you need to submit a form for each bill and 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 to the page and she 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 and no displays of support, opposition to a bill, vocal or otherwise, will be tolerated and if you need a drink of water, please ask the page and they will be, graciously will bring you one. With that, we will start with the confirmation hearings and the first one will be Michael Jensen for the commissioner to the Game and Parks Commission.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

[CONFIRMATION]

MICHAEL JENSEN: (Exhibit 1) Mr. Chairman, members of the committee. My name is Mick Jensen, I guess it's Michael Jensen to be more proper. I live in Blair, Nebraska, and I guess I'm here to answer your questions. [CONFIRMATION]

SENATOR LOUDEN: Okay. Questions for Mr. Jensen. Senator Hudkins.  
[CONFIRMATION]

SENATOR HUDKINS: Mr. Jensen, thank you for being here. What got you interested in being a member of the Game and Parks Commission? [CONFIRMATION]

MICHAEL JENSEN: Well, I've been a farm boy all my life. I've enjoyed the outdoors, hunting and fishing, going to the parks and it's been kind of a goal of mine. I'm in the telephone business in rural Nebraska and rural Nebraska is kind of in the throes economically. I see this commission as a...kind of an interface between eastern Nebraska, western Nebraska, if you will, the opportunity to bring some economic development dollars to rural. I see the hunting permits going down. Our youth are not taking up the hunting and fishing activities that I grew up in in my generation and it's my hope that I can do something back for Nebraska for all it's done for me over the years, and I really enjoy the outdoors. I think it's a wonderful part of mainstream life and I don't know that enough people are taking advantage of it now. [CONFIRMATION]

SENATOR HUDKINS: What special attributes or expertise do you feel that you bring to the commission? [CONFIRMATION]

MICHAEL JENSEN: Energy and enthusiasm perhaps, the ability to learn, a desire to help understand their issues and provide an opportunity to carry those issues forward.  
[CONFIRMATION]

SENATOR HUDKINS: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Senator Christensen. [CONFIRMATION]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Thank you, Mr. Jensen. We've seen Game and Parks ask for closing of the Lower Platte NRD and things this way that has extreme effects upon farmers and other things. You said you've got an ag background. Can you share any thoughts on that or have you been able to study that issue? [CONFIRMATION]

MICHAEL JENSEN: I haven't studied it in the depth that I need to but I can tell you this, I had the opportunity to go to western Nebraska with the Omaha Chamber Ag Committee. And as I went out there I thought it was a fairly simple issue and perhaps a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

simple solution. The thing I found out is it's very, very complex and it's...there's...it's going to take a great degree of discussion by all parties involved and we're not, not everybody is going to be happy. Water is the most precious resource we have and it's becoming more and more precious and I guess I have a lot to learn. My ag background would tell me that you need water to grow crops and you need water for your cities and towns and you need water to come downstream for recreation, so somehow all of those groups need to get together and figure out the answer. I don't have it yet. I intend to become much more versed in it but today I can't give you an answer of what the solution might be. [CONFIRMATION]

SENATOR CHRISTENSEN: I just appreciate your openness. Thank you.  
[CONFIRMATION]

SENATOR LOUDEN: Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Louden. Mick, you indicated a real concern and an interest in rural economic development and I know several of us share that. And you have an opportunity here to, as you mentioned, encourage tourism and a renewed maybe interest in hunting and fishing so we can get our numbers back up to where they need to be. Do you have any other thoughts about ideas on rural economic development? [CONFIRMATION]

MICHAEL JENSEN: Well, the interesting thing is in my business we're losing our customers at 2 to 3 percent a year to the moving van and to the mortician. And we started working with a number of people across the state about four years ago and we have formed an organization called The Nebraska Renaissance, and we are working very hard to find ways to provide jobs so that young people can come back to these smaller towns and find significant employment opportunities so they can raise their families and children, and I believe that we need to continue to expose urban citizens to our way of life in rural Nebraska. I think the opportunity for the Game and Parks Commission, and here again, I'm getting beyond where I really know the issues, but it seems to me that a more concentrated marketing effort would help bring people into these communities even if it is only for a deer season or a weekend for pheasant hunting or something of that nature. But also we have a great set of state parks here and when those people come even from eastern Nebraska to western Nebraska, or from other states into Nebraska, that's all fresh money into those towns and I just think a clever marketing approach would help us in many ways. The other thing I think is somehow drawing on my hunting background. I was in South Dakota a number of years ago. I think it was Winner, South Dakota, and I'm guessing the normal population there during the non-hunting season would be about 2,500 people, based on the size of the town. I saw three jets, four or five twin-engine airplanes, five or six single engine airplanes, all parked in a space that was way too small for that number of planes in there. And on Saturday night you could not get into a steakhouse or a restaurant until

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

9:00 and I'm guessing, I think I heard that it brought \$6 million into that town over the hunting, the space of the hunting season. Now, those are not small dollars and when they turn over in a town that size I think that's significant. What do we get to? We need more habitat. I don't know exactly how we do that and more access, but hopefully I can bring an emphasis to the commission that will help us develop habitat. Maybe it's paying farmers some extra money for their unfarmable ground. Maybe it's something else. I'm not sure yet. But we really desperately need to balance out the economic opportunity in this state, in my opinion. [CONFIRMATION]

SENATOR CARLSON: I appreciate your answer there and also you're sensitivity on the water issues because it is a challenge for all of us and we need to be able to solve that. Thank you. [CONFIRMATION]

SENATOR LOUDEN: Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Louden. Thank you, Mr. Jensen, for coming to visit with us today. I see that you are a member of or have participated with the Nature Conservancy. [CONFIRMATION]

MICHAEL JENSEN: Yes, ma'am. [CONFIRMATION]

SENATOR DUBAS: Could you tell me your level of participation with them. [CONFIRMATION]

MICHAEL JENSEN: I was chapter president for two years as well as on their board for six. [CONFIRMATION]

SENATOR DUBAS: So what are some of the activities that you worked on in that capacity? [CONFIRMATION]

MICHAEL JENSEN: Well, the Nature Conservancy is kind of a soft spot in my heart because they're trying to preserve our landscape in certain areas, not to exclude people but to include people. They pay property taxes. We purchased a number of tracts of land through that period of time and a number of easements, grazing easements, can't think of what you call them right now. But in effect they were a grazing easement so that it would not be necessarily developed but it would remain in the best interest of the ground. And at that time there was much harvesting of natural, natural seed, natural grass seeds, natural flower seeds, replanted the landscape, maintained what they already had. We had a beginning rancher program that was successful out in, I forget the name of the town right now, but a young ranching family was able to get on to a ranch and we provided some funding for them to help them get through the first years and they will have an opportunity to purchase that ground as they can as they become more successful. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

SENATOR DUBAS: Very interesting. Thank you very much. [CONFIRMATION]

SENATOR LOUDEN: Senator Fischer. [CONFIRMATION]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you, Mr. Jensen, for being here today. I do appreciate the knowledge that you have of rural Nebraska and that you do understand the challenges that we face in rural Nebraska with population decline, with our economic challenges and with the importance of agriculture, not just rural Nebraska but to the entire state. I appreciated your comments on water also. That's an issue this...not just this state, but especially this committee is very sensitive to. As you know, Game and Parks have made the news lately with some of their actions on certain river basins. I won't put you on the spot asking you anything about that, but I would hope as a commission member you would be open to discussing issues with all those people that are involved in those areas. So I would ask you if you would be open to that. [CONFIRMATION]

MICHAEL JENSEN: As I think I stated before, we have many divergent interests in water and they're all going to have to come together somehow. And I believe science has a part in it. I would try to strike as much emotion out of it as possible but all of those varied interests must come together to form a relationship and a successful answer to that issue and I apologize, but I don't have the answer today. As I said before, I went out west with the Omaha Chamber Ag Committee. I thought it was a fairly simple issue and solution. It seemed very obvious to me based on what I'd read in the paper. The thing I found out was it's not obvious. It's terribly complicated and there are many, many people who have a stake in this issue and we just have to come together. We have to have discussions. [CONFIRMATION]

SENATOR FISCHER: You just made the comment, you believe science has a part in it. Explain that. Just a part in it? Shouldn't we be basing decisions on science and not emotion. [CONFIRMATION]

MICHAEL JENSEN: I think they're one of the players. Absolutely. Absolutely. But we all know emotions are going to be running high on this issue. I mean, they already are. (laugh) But science is very important and that gives us a black and white base line, if you will, to try to draw some judgments from. And I believe that we need to study this very, very carefully before we will ultimately come to a successful conclusion, which we'll have to. I mean, it's not an inexhaustible resource. [CONFIRMATION]

SENATOR FISCHER: You also talked about your involvement with Nature Conservancy. Can you tell me if Nature Conservancy land is open for public hunting. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

MICHAEL JENSEN: It is on a limited basis. That's one of the issues that we were discussing about three months ago, trying to rewrite a new set of regulations and as you might imagine, some of the donors to the Nature Conservancy and other groups are pretty emotional about hunting. They're...I can't think of the word I want to use. But hunting to them is not exactly what they had in mind when they donated to the Conservancy. The rest of us all feel like we've all donated to that and we should all be able to use it, not abuse it, but use it to the advantage that it was so intended. And so it's one of the reasons I supported that agency because you can get on and hunt. They have rules and regulations like everybody else and they're not going to overuse the ground and this kind of thing. So it's a balancing act also. [CONFIRMATION]

SENATOR FISCHER: You're saying way too many things. I had come up with more questions. When you say it's a balancing act and we need to use the resource, I guess from those comments I would assume, you should never assume, but I would assume you're not the preserve and protect type of person, then, or are you just fence an area out in order to let... [CONFIRMATION]

MICHAEL JENSEN: No, I'm perhaps not as strong in that area as some people are. I believe in preserving and protecting but I also believe that... [CONFIRMATION]

SENATOR FISCHER: Do you fence it out and let nature take its course?  
[CONFIRMATION]

MICHAEL JENSEN: You know, I hadn't thought of it in that term. I presume there's some element of that. Nature Conservancy, I think, (laugh) has fences around their ground. I just didn't really look at it but yeah, they try to maintain it in its natural state but also allow people to use and look at it and enjoy it in whatever fashion they will such as camping, waterfowl hunting. I know they have deer and turkey opportunities for hunting. They...I think they have a prescribed number of animals that they would allow to be taken each year, based on the population and this kind of thing. It's more, it's perhaps more thoughtful than some other areas of the state but they don't fence people out.  
[CONFIRMATION]

SENATOR FISCHER: I appreciate that. Thank you, Mr. Jensen. [CONFIRMATION]

SENATOR LOUDEN: Senator Hudkins. [CONFIRMATION]

SENATOR HUDKINS: Based upon some of the things that you have said, Mr. Jensen, reminded me of some other questions and they're really in two different areas. But let's take the Nature Conservancy first. That property that you were involved in procuring, was that around Blair then? [CONFIRMATION]

MICHAEL JENSEN: No. That was in the northwest corner of the state. Cherry, Cherry

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

Creek, Cherry, I didn't read it before I came here, but... [CONFIRMATION]

SENATOR HUDKINS: Okay. That's fine. I was just curious though as to whether that land originally was farm ground or ranch ground or... [CONFIRMATION]

MICHAEL JENSEN: Ranch ground. [CONFIRMATION]

SENATOR HUDKINS: Ranch ground. And you said that the Nature Conservancy pays property taxes. That's true, but what was the value of that ground when you bought it, if you remember? [CONFIRMATION]

MICHAEL JENSEN: I wish I could tell you. That was early in my board tenure and I don't recall. [CONFIRMATION]

SENATOR HUDKINS: Yeah. Well, my understanding is that if you purchase farm ground, ranch ground, it has the value based upon it that's use, it's use. And that after it's purchased by the Nature Conservancy the use changes drastically and so therefore it could be considered to be, wasteland isn't a good choice of words... [CONFIRMATION]

MICHAEL JENSEN: No. [CONFIRMATION]

SENATOR HUDKINS: ...but it's not tilled anymore. So the value goes down. [CONFIRMATION]

MICHAEL JENSEN: You know, I'm not sure I understood it that way. It seems to me that the purchase price, and it was a fair market value, is the way that was determined, but I do not stand here as an expert. I can't remember. [CONFIRMATION]

SENATOR HUDKINS: Well and myself either. But I was just curious as to whether that value for taxing purposes stays the same as when you bought it or are you able to get that value reduced by the county assessors. [CONFIRMATION]

MICHAEL JENSEN: I do not believe that the goal of the Nature Conservancy is to get the taxes reduced. [CONFIRMATION]

SENATOR HUDKINS: Okay. Homework for me. And the other one, you said that when you went down in the Republican River basin you thought there was an obvious solution for the water problems down there. Would you mind sharing that solution with us? (laugh) And we won't hold you to that. (Laughter) [CONFIRMATION]

MICHAEL JENSEN: My solution was to get together and talk about this and irrigate less probably. But then I found out that we have a number of treaties, a number of contracts

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

with other states and a huge vegetation problem and I didn't hear very many people that had the same answer. And so it became fairly obvious to me that there needed to be a lot more discussion and thought process out there. [CONFIRMATION]

SENATOR HUDKINS: Well, and that's appreciated because the value for irrigated farmland is definitely higher than the value for dryland. [CONFIRMATION]

MICHAEL JENSEN: Drastically different. And you know, in my opinion, irrigation has been one of the stabilizing influences in our economy in rural Nebraska and that can't be discounted. On the other hand, if we're going to run out of water, we've got to figure out a way to get both done. [CONFIRMATION]

SENATOR HUDKINS: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Well, Mick, now it's my turn I guess. I live and ranch in the 49th District, northwest Nebraska. I think the place you're talking about is in there south of Harrison. [CONFIRMATION]

MICHAEL JENSEN: Exactly. [CONFIRMATION]

SENATOR LOUDEN: And those people, yeah... [CONFIRMATION]

MICHAEL JENSEN: Cherry Creek Ranch perhaps, does that sound right?  
[CONFIRMATION]

SENATOR LOUDEN: They bought that land back and they're operating it. That's one of the bright spots. There's another spot up there that the Environmental Trust got messed up in and they purchased ground to get it off the irrigation roll and the guy took the money and went away from the river a little farther to put down another irrigation well, so that's one of the other. My, I guess, questions when you, you know, Nature Conservancy and all that you've been and most of these other senators have covered that quite a little, but the Game and Parks owns a lot of land, you realize that.  
[CONFIRMATION]

MICHAEL JENSEN: I know they own some. I don't know how much. [CONFIRMATION]

SENATOR LOUDEN: We can ask Rex, but I think it runs into the thousands of acres that they have under their wildlife management and Game and Parks services and all that. And from time to time they have chances to acquire land and some times they encourage ways to acquire land. Now where do you come down on that? Do you think the Game and Parks should continue to acquire more land or do you think they should be some kind of a zero base so that if they want to acquire some property they got to sell some someplace else. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

MICHAEL JENSEN: I don't know that I know the answer to that, Senator. I will say this. Access to hunters and fishermen is a huge issue. I think that's one of the reasons that we're seeing declining numbers of hunters and permits sold which the commission derives a great deal of revenue from. And it seems to me that when people wish to go hunting or fishing, they've got to have a place to do it. I don't think that's an opportunity for a blank check for the commission but I do believe that if certain territory is, what's the word I want to use, you know, they don't buy the fertile farm ground I wouldn't think, the fertile ranching ground. But I would think, I think they would have more interest...  
[CONFIRMATION]

SENATOR LOUDEN: That was my next question. Do you think they should buy productive ground, I guess? [CONFIRMATION]

MICHAEL JENSEN: Well, with what little I know about the finances of the commission, I'm guessing they'd pay much more for that than they would the good habitat and if they're trying to conserve their dollars at all or drive the best bargain, I would think they wouldn't be buying the fertile ground. I don't know, but not having been there, I can't answer that question and very seldom have I ever hunted on public property. I've had the good fortune in knowing a lot of people around the state so access for me has not been a problem. But if you get somebody from the eastern end of the state, and I believe there's an opportunity here for urban and rural to mix, so that they understand each other more thoroughly and are more likely to come to the same conclusions on water and other issues. I believe it's important for people to have access to ground to hunt and oftentimes that has to be public ground, I guess. [CONFIRMATION]

SENATOR LOUDEN: The district I represent is...has the Pine Ridge area in it. And since I've been down here in Legislature, why they've purchased, and Rex can correct me if I'm wrong, but they've purchased over 5,000 acres of land in Dawes County alone in the last few years and I don't have a problem with them purchasing ground as the locals up there call it, land that's straight up and down, but I do have a problem with them purchasing productive land. Because whenever they do that, that puts that productive land out of production where people go into town and buy supplies to operate that ground and that sort of thing. And this is where I'm wondering, what kind of people will be coming on to this commission and what they're thinking is, if whether they want to continue that program or whether they want to more or less back off. And yeah, you can buy all the buttes you want, I don't have any problem with that but I do have problems with buying productive land. [CONFIRMATION]

MICHAEL JENSEN: That's an issue I'll have to pay attention to. [CONFIRMATION]

SENATOR LOUDEN: Okay. Thank you. One other thing, are you familiar with some of the forests or anything in the state of Nebraska and some of the forest land that the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

Game and Parks have and how it's taken care of and handled? [CONFIRMATION]

MICHAEL JENSEN: No. [CONFIRMATION]

SENATOR LOUDEN: Okay. That will be something that I would be quite interested in is the thinning process in your forests and also in the northwest corner of Nebraska we have a lot of problems with weed control in some of those forested areas and on the game management areas. We have a new director out there and we all have high hopes but if we have a new commissioner, I would have high hopes. [CONFIRMATION]

MICHAEL JENSEN: I will watch that carefully. [CONFIRMATION]

SENATOR LOUDEN: Okay. Thank you. Other questions for Mick? Seeing none, thank you. And thank you for testifying today. [CONFIRMATION]

MICHAEL JENSEN: Thank you very much. Thank you. [CONFIRMATION]

SENATOR LOUDEN: (Exhibit 2) Senator Kent Rogert has submitted a letter in support of Mick Jensen's appointment to the Game and Parks Commission. Are there other testifiers in favor of Mr. Jensen's appointment? Testifiers against his appointment? Testifiers in the neutral? Seeing none, that closes the hearing on Mr. Jensen's appointment to the Nebraska Game and Parks Commission. The next appointee we'll have is to the Ethanol Board, Tim Else. How do you pronounce your name? Is it Else or Elsie? [CONFIRMATION]

TIM ELSE: (Exhibit 3) It's Else. It's spelled E-l-s-e, and I'm here today in front of you to consider my confirmation for the reappointment for my second term to the Ethanol Board. I presently farm in south central Nebraska outside a little town of Belvidere and I'm here today to answer any questions, I guess, that you might have. [CONFIRMATION]

SENATOR LOUDEN: Any questions for Mr. Else? Where's all of our corn board farmers there? (laughter) There is Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Louden. Tim, give us a little idea of your feelings about the future of ethanol. [CONFIRMATION]

TIM ELSE: Well, it's very bright, first off. And it's very diversified or will be in the future. Currently right now, it's mainly grain based, of course. In the future, cellulosic ethanol will become a bigger player. Right now there's some economic constraints or hurdles yet to be gotten across. And like I said before, it's very bright. It provides a great economic boost for rural Nebraska. We're fortunate enough to have a new plant not too far from where we farm and I can tell you personally, it's provided a boost to many area

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

farmers that sell corn to them and also the livestock sector that is able to obtain valuable feed product from them. So in all, I guess I see nothing but good things down the road for ethanol. [CONFIRMATION]

SENATOR CARLSON: The plant that's near you, are they optimistic and pleased with the way things are going? [CONFIRMATION]

TIM ELSE: Well, I think they're optimistic. They have to be. Everybody in agriculture has to be, I think, (laugh) to be in this game. The corn price that they're paying now is considerably higher than it has been in the past and probably what they had projected. But it's only one component of the ethanol equation, the others being the natural gas and also the ethanol price and also the by-products price that they're selling. So I don't think they'd be there if they weren't optimistic. [CONFIRMATION]

SENATOR CARLSON: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Senator Fischer. [CONFIRMATION]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you, Mr. Else, for being here. With ethanol plants it seems like we've read, we've heard a lot about plants that aren't going into production in the time period that was expected. I'm from the 43rd District. I'm thinking of Atkinson and also plants that there was great hope for in communities and they haven't broken ground on them yet, such as Broken Bow. Do you have any comments on that? You said you're optimistic about the industry. I'm still hearing a lot of optimism within my district and across the state but I've also heard this is not a mature industry yet. They're facing, facing many problems. We are not going to see all the plants that we had anticipated seeing in the state. How would you respond to that? [CONFIRMATION]

TIM ELSE: I think the biggest help that we could have expected to have gotten was the new energy bill that was signed with the new RFS standard in it and it increases, ratchets up the level of biofuels that are needed to be consumed in the United States and that alone, in my opinion, will help ethanol more than anything else. Some of the luster has come off of the industry as far as finding financing and things like that. The returns from the early plants were almost too good to be true you might say. And the industry, while not mature, it is maturing and those returns have come back to realistic levels, you might say, and more in tune with what other investments there might be for investment capital to flow towards. So while I don't see those plants necessarily being scrapped altogether or those plans for those plants, each one has to be weighed on its own merits and...but I do think, just to reiterate, the new RFS will continue to do nothing but prod this industry along. [CONFIRMATION]

SENATOR FISCHER: Thank you. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

SENATOR LOUDEN: Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Louden. Thank you, Mr. Else, for being here. You know, of course, all grain farmers and especially corn farmers are really excited right now with the increasing price of corn and things are looking good for us and there's some concern as we talk about the development of cellulose and other types of products that we would use for ethanol that we would lose this profitability that we're seeing or this increase in prices anyway that we're seeing in corn. Do you think there's room for all types of ethanol development in the state where we can broaden this, I hate to use the word profit, because the profit margin is so narrow no matter what we do, but that we can expand those opportunities for making money to different types of producers. [CONFIRMATION]

TIM ELSE: Well, I certainly see why not. I guess I don't weigh the ethanol industry as an either-or. I think it has to be a win-win for everyone, not just the grain farmer, but also the livestock operation and the cellulose people down the road. While the plants, you know, might not be as large as the current grain based ones just because of the logistics with the inputs and the storage and things like that, I certainly think there's room for everybody in this ball game. And the new RFS sort of states that with the way it ratchets up the portions of cellulose ethanol. So I certainly am, once they get some of the things worked out with the cellulose, with the enzymes and the storage and the process itself, I don't see why everybody can't survive in this new environment. [CONFIRMATION]

SENATOR DUBAS: What would you consider your most important role as an ethanol board member? [CONFIRMATION]

TIM ELSE: That's a good question. I would say mainly just trying to dispel myths in the local community. It's amazing for almost forever, not forever, but while grain prices were low everybody wanted something that would help us out, you know. Get the price of corn to three dollars. Well, now we've surpassed that by quite some margin and now it seems like everybody's question they have, not only for me but for each other is, what price is it that these ethanol plants are going to close up, you know, and can't make money and are going to be gone. I just, you know, to me that just is almost hard to imagine that people could be that shortsighted and not, you know, look what it's done to each community. If not each community, the whole state as a whole and given us an advantage for cattle feeders in the state, for the public power industry, the natural gas people. It's done a lot of things but, you know, it seems like, be careful what you wish for almost because now that we've got it we're almost wishing that we didn't have it, seems like. And so on my own personal level that's, I'm not a real lobbyist here in Lincoln but I certainly am back in the local community. [CONFIRMATION]

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

SENATOR DUBAS: I appreciate you mentioning the livestock industry because, you know, for the most part it's the cattle industry that is reaping the most benefits from ethanol production. Our other livestock producers aren't quite able to use those same by-products in the same way and hopefully we can continue to work with those industries so that...you know, unfortunately, it always seems like one segment of our industry has to profit while the other segment gets left behind. And so if we can find ways to get everybody a little piece of that pie so everybody can make it, I think that's important. And so do you see the Ethanol Board, I think you probably have a pretty good working relationship with the livestock industry now. Do you see that expanding in the future? [CONFIRMATION]

TIM ELSE: Yes, I certainly do. We have a good relationship with the university and the livestock professors there. Continuing research on using the by-products has brought us in constant contact with the livestock people, mainly, like you said, the cattlemen. Hopefully, there will be some new developments in the future where some of the derived distillers can maybe be worked into the hog rations or possibly dairy or turkeys. I'm not exactly sure on that. But as far as your question, yes, I...we'll continually work with the livestock people because of the equation for the ethanol plant themselves. One of the factors that makes or breaks them is being able to, I don't want to say get rid of, but market their by-product. [CONFIRMATION]

SENATOR DUBAS: Thank you, very much. [CONFIRMATION]

SENATOR LOUDEN: Senator Wallman. [CONFIRMATION]

SENATOR WALLMAN: Thank you, Chairman Louden. Thank you for running for this board. I can see the smoke from my area, Adams E Energy. I think they're grinding 54,000 bushels a day. And they're always out of product, you know, the by-products, their trucks are waiting. So it's been a success, you know, I think, tremendous. And the negative press we've been getting as I'm a corn farmer, I think it's bad. You know, I don't know where it's coming from but I think, you know, public relations that's one of our jobs as farmers, as ag producers, as cattle feeders. So they feed all that stuff in my area, you know, it's all gone. So it's been a win-win I feel for our area. Thank you. [CONFIRMATION]

TIM ELSE: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Questions I would have, Mr. Else, is, I'm not that familiar...we don't grow grain or nothing, we just grow cattle and what do you do as the Ethanol Board? Now do you have monies? Do you have any, does your board have control over checkoff money or do you have money of any kind that you have to work with on the Ethanol Board? [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

TIM ELSE: Not really. We do not really have any discretionary funds. You mean like research projects? [CONFIRMATION]

SENATOR LOUDEN: Any kind of funds, yeah. If you don't have any money what do you do? [CONFIRMATION]

TIM ELSE: Well, mainly promote and promote sites, promote the product, help with consumer information. We have a advertising, you might say, campaign with the E10 stickers or the E85 stickers just to mainly promote the use of ethanol and while we are involved in some research projects, a lot of those monies are not from state funds. They are from outside sources and that money passes through our board. The staff at the Ethanol Board provides in-kind services and that money just goes right through to the research institution. I'm not sure I answered your question quite. [CONFIRMATION]

SENATOR LOUDEN: Well, I think so because, you know, as you were here when we did Game and Parks, those guys have a \$60 million budget to work around, you know, and I was wondering if you guys were near that or not. (Laughter) [CONFIRMATION]

TIM ELSE: No. Steve from the board is back there and you'll answer to that...(Laughter) [CONFIRMATION]

SENATOR LOUDEN: I see Steve. Yeah, he wondered where that come from. (Laughter) Anyway, what I'm wondering is, I've had some discussion with some...with college professor there today and they're working on wood chips and of course when that comes about, the Pine Ridge area and that area will be...well, they figure there's quite a little ethanol can be made out of them and they not only will make it out of the wood chips but they will also use wood chips to cook the hootch, where you guys have to use natural gas. And of course, that's in competition with most all of us in the rural areas for propane or natural gas. And I was wondering if that comes about, how will you...what will you do...or how will these grain ethanol plants, what will they do for product or will they find other uses to do with that? I mean, are you going to sell corn whiskey or are you going to use that different kinds of ethanol or what are you going to do with these, a lot of grain ethanol plants if you find a biomass way of making ethanol? [CONFIRMATION]

TIM ELSE: Well, hopefully there will still be room for everyone at the table, I guess, as far as energy consumptions. It keeps going up in this country so my feelings is there will be room enough for not only the grain based ethanol, but also the other cellulosic types. I guess I'm not a scientist or a chemist. I'm not sure exactly how these plants could be retrofitted or anything and such. So I guess, I'm not sure, but the demand side of the equation in my mind, there will be room for all the ethanol, I guess. Not only...no matter what the source of it is. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

SENATOR LOUDEN: Okay. Thank you. Other questions? Senator Carlson.  
[CONFIRMATION]

SENATOR CARLSON: This will be quick, Senator Louden. Tim, I meant to ask you before. In your farming operation, do you irrigate? [CONFIRMATION]

TIM ELSE: Yes, we do. About three-fourths of the acres are irrigated, yes.  
[CONFIRMATION]

SENATOR CARLSON: Okay. You don't have to give me an answer. Specific, do you know how much water you use? [CONFIRMATION]

TIM ELSE: On a per acre basis or gallons or... [CONFIRMATION]

SENATOR CARLSON: Well, do you have a way of measuring how much water you use? [CONFIRMATION]

TIM ELSE: Well, some of our wells are metered, some are not. At this point, before long, they'll probably all be metered. [CONFIRMATION]

SENATOR CARLSON: Do you think you use, do you use as much water today as you did ten years ago? [CONFIRMATION]

TIM ELSE: No, not even close, I don't think. We have more center pivots now than, then they had a lot more pipe irrigation back then and so we're much more efficient not only with our water use but chemicals and fertilizer and everything. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

SENATOR LOUDEN: Well, seeing no more questions I guess that, thank you for testifying here today and coming before us with your, for the Ethanol Board. So with that, I'll ask for any other people who wish to testify in favor of Mr. Else for the Ethanol Board. Anybody opposed to his confirmation for the Ethanol Board? Seeing none, thank you for being here today. [CONFIRMATION]

TIM ELSE: Thank you, Senators. [CONFIRMATION]

SENATOR LOUDEN: You would be Steve Hanson with the Ethanol Board?  
[CONFIRMATION]

STEVE HANSON: (Exhibit 4) Yes, Steve Hanson. It would be my first time on the Ethanol Board. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

SENATOR LOUDEN: Okay. Well, tell us a little bit about what you know about the ethanol business, Steve. [CONFIRMATION]

STEVE HANSON: Well, what I know about the ethanol business is not a huge amount. We have an ethanol plant next to us in Madrid, Nebraska. [CONFIRMATION]

SENATOR LOUDEN: Okay, can you spell your name for the... [CONFIRMATION]

STEVE HANSON: H-a-n-s-o-n, first name, Steve, S-t-e-v-e. [CONFIRMATION]

SENATOR LOUDEN: Thank you. [CONFIRMATION]

STEVE HANSON: We have a plant next to us and I have a small investment in that. We also have cow-calf operation and we feed our calves out and I use the by-product and it's been a huge plus for us economically. We're feeding the by-product today. We're feeding the by-product to our cows, to our calves, and to our heifer replacements. And the ethanol plant fits in wonderfully with what we do and the big difference for me is there's no transportation involved. The plant's six miles away and we take an old dump truck in there and pick it up and we don't look like the rest of them do in line but we take it home and use it. I think that it's been one of greatest things for our little community to have it there economically. We haven't come in and asked for economic development money. We've got that plant there and we've got new jobs. We've got three or four young people who have graduated from our school who have also graduated from a college, and have got a college degree they're using, and we just have not seen that type of thing in our community. I mean, yeah, we get young people back once in a while but we get very few college degree people back working in our community and this has done that. And it's really a positive thing. [CONFIRMATION]

SENATOR LOUDEN: You're feeding it wet? [CONFIRMATION]

STEVE HANSON: Yes. [CONFIRMATION]

SENATOR LOUDEN: You're feeding it to your cows and your calves?  
[CONFIRMATION]

STEVE HANSON: Feeding it to every... [CONFIRMATION]

SENATOR LOUDEN; Everything? [CONFIRMATION]

STEVE HANSON: Everything. [CONFIRMATION]

SENATOR LOUDEN: What percentage of your ration are you feeding it?  
[CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

STEVE HANSON: On our finished cattle, we're feeding 43 percent of our finished stuff and on our cow-calves we're feeding, they're feeding ten pounds of grain, or excuse me, ten pounds of hay and ten pounds of distillery grain every other day. [CONFIRMATION]

SENATOR LOUDEN: What do you do about the sulphur content? Do you have any problem with sulphur content when you feed it wet? [CONFIRMATION]

STEVE HANSON: We have very sandy ground. Sulphur is not a problem in our area. I mean, it's not a digestible problem and it's not a problem on the ground. [CONFIRMATION]

SENATOR LOUDEN: Okay. You're not getting a high sulphur content out of your distillers grain? [CONFIRMATION]

STEVE HANSON: Well, it's not causing any problems. We've had it analyzed and we have a nutritionist who analyzes that stuff. Basically, they take samples out of our feed bunks monthly and look at it and then give us recommendations as to what are to feed our stuff with. [CONFIRMATION]

SENATOR LOUDEN: Okay. That's what I was curious about because some of the places are feeding a lot of...we feel a lot of it up in our country but we feed it dry. And I was wondering, is your plant around there...they hauling it, selling it all wet or are they... [CONFIRMATION]

STEVE HANSON: It all goes out wet. As Senator Wallman said earlier, you have to be in line early and there's a big demand for it. The cow-calve thing and the feedlot deal is just a phenomenal thing. [CONFIRMATION]

SENATOR LOUDEN: How much a ton do they charge for it wet? [CONFIRMATION]

STEVE HANSON: Our first this year, the first three months of the year were at 34 and then it went to 48 and now for the first three months of this year, we're at 54. That's dollars a wet ton. [CONFIRMATION]

SENATOR LOUDEN: Okay. Other questions for Steve? Senator Fischer. You ought to know something about feeding cattle. [CONFIRMATION]

SENATOR FISCHER: Thank you, Chairman Louden. Mr. Hanson, I believe we know each other. (Laugh) [CONFIRMATION]

STEVE HANSON: Yes. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

SENATOR FISCHER: So, it's nice to see you. [CONFIRMATION]

STEVE HANSON: Thank you. It's good to see you. [CONFIRMATION]

SENATOR FISCHER: It's been like 26 years, I think. [CONFIRMATION]

STEVE HANSON: Quite a few. [CONFIRMATION]

SENATOR FISCHER: Yes. So it's nice to see you. [CONFIRMATION]

STEVE HANSON: Thank you. [CONFIRMATION]

SENATOR FISCHER: This is your first appointment to the board? [CONFIRMATION]

STEVE HANSON: This would be my, yes. I've been appointed and I'm hoping to be confirmed. [CONFIRMATION]

SENATOR FISCHER: I was kind of saving this question, but would you know how many plants are on line or currently operating in the state right now? [CONFIRMATION]

STEVE HANSON: At one time I was thinking there was plus twenty but I don't know if it's anymore than that or not. It's nearly twenty-one. [CONFIRMATION]

SENATOR FISCHER: Okay. And I do hate to ask you that because you haven't served on the board but I appreciate your willingness to serve on the board and I can tell your excitement on the issues, so, thank you. [CONFIRMATION]

STEVE HANSON: Thank you. [CONFIRMATION]

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

SENATOR CARLSON: Senator Louden. Steve, you in Perkins County, in your operation you irrigate? [CONFIRMATION]

STEVE HANSON: Yes. [CONFIRMATION]

SENATOR CARLSON: And have for some time? [CONFIRMATION]

STEVE HANSON: Yes. [CONFIRMATION]

SENATOR CARLSON: So you know what you're using? [CONFIRMATION]

STEVE HANSON: Yes. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

SENATOR CARLSON: What are you using today as compared to ten years ago?  
[CONFIRMATION]

STEVE HANSON: Probably 25 percent minimum less, maybe 30 percent less water. We've been in the Upper Republican NRD. You know, I can talk days about that little deal (laughter) but we've been shut off drilling wells out there for twenty-some years and we've been under every well we have has meters on it. You know, I have not much sympathy for Kansas and their problems but I understand that what they have is going on. But we've done all, I wouldn't say we've done all we can but we certainly have cut back in our country. Like I say, we have not drilled a well in Perkins County. Well, in the Upper Republican NRD there have been no wells other than replacement wells drilled for over twenty years and that is the upper end of the Upper Republican, as you are all aware of. [CONFIRMATION]

SENATOR CARLSON: And if you've reduced water consumption 25 to 30 percent in the last ten years, how do your yields compare? [CONFIRMATION]

STEVE HANSON: Well, our yields have gone up. The hybrids there today are just...they're doing wonderful things with genetics. I mean, we all know that the hybrid is a way better product today than it was ten years ago and with the new drought genes and the other things they're doing, it's great. Our weed control is better than it's ever been and we don't go to the field with cultivator. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. One other question. Why do you think you were recommended for the board? [CONFIRMATION]

STEVE HANSON: I don't know. I've always kind of been a little outspoken in my home community and when I asked a couple of people there to support me, they thought I would be a good voice for the support of ethanol and I've always supported ethanol. I think it's one of the greatest things that we've ever had. It's just that its never come to the forefront until now. [CONFIRMATION]

SENATOR CARLSON: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Senator Wallman. [CONFIRMATION]

SENATOR WALLMAN: Thank you, Chairman Louden. Thank you for getting on the board. It's a challenge and we need good public relation people, so thanks.  
[CONFIRMATION]

STEVE HANSON: Well, thank you. [CONFIRMATION]

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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SENATOR LOUDEN: Seeing no more questions, why, thank you, Steve. And is there anyone that wish to testify for, in favor of Steve Hanson's confirmation? Anyone wishing to testify against Steve Hanson's confirmation? Anybody in the neutral? Seeing none, that closes the hearing on Steve's confirmation hearing and then we'll go to...the next thing we'll go to is LB939 hearing. Good afternoon, Senator Heidemann.  
[CONFIRMATION]

SENATOR HEIDEMANN: Good afternoon, Chairman Louden and members of the Natural Resources Committee. I'm Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n and I represent District 1. I'm here today to introduce LB939. This bill deals with sealed bidding. It removes the restriction on negotiating a contracted with a bidder in instances where there is on-site labor and all bids have been deemed either nonresponsive or in excess of the estimated fair market value. I will keep my testimony brief, as there are others that are following me that are more closely involved with the sealed bidding process. They're here to testify and they may be more able to speak to the details of this process better than I. Currently as directed by statute, when the public power districts request sealed bids and the bids they receive are nonresponsive or in excess of the estimated fair market value, the board of directors may reject or negotiate with bidders on a contract if there is not on-site labor. If there's on-site labor, the contract may not be negotiated and they must be rebid, they must rebid the contract. This starts the process over, adding time and cost. If an entity that is required to request sealed bids has followed the sealed bidding process and received only bids that are nonresponsive or in excess of the estimated fair market value, there should not be a restriction on negotiating a contract with a bidder just because there is on-site labor involved. I am going to stop there. It was brief. I want to thank you for your time. If you have any questions, I can try to answer them, or again, there are people following me that I am sure can probably answer these questions a whole lot better than I. With that, are there any questions? [LB939]

SENATOR LOUDEN: Yeah, I got a question first. How come you came and testified Senator Heidemann, because you got everybody on the committee to sign on to your bill? (Laughter) [LB939]

SENATOR HEIDEMANN: I appreciate that very much. This is something that's important, that can be important to my district. I've Cooper Nuclear in my district which is one of the major employers in my district and definitely it helps the state of Nebraska and this is going to help their process when they're out for contracts. So I appreciate your support and hopefully you'll continue on with that support to see this bill gets moved forward. [LB939]

SENATOR LOUDEN: Well said, Senator. Senator Fischer. [LB939]

SENATOR FISCHER: Thank you, Chairman Louden. Senator Heidemann, it's nice to

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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see you before the Natural Resources Committee. I appreciate that your bill has no fiscal impact. (laughter) No comment necessary. [LB939]

SENATOR HEIDEMANN: If there are no further questions? [LB939]

SENATOR LOUDEN: Any other questions? I don't know why they should, Senator, because like I say, (laugh)...seeing no further questions, thank you for your testimony. [LB939]

SENATOR HEIDEMANN: If it would be all right so I can get back to Appropriations, I'll waive my closing? [LB939]

SENATOR LOUDEN: So done. [LB939]

SENATOR HEIDEMANN: Okay. Thank you. [LB939]

SENATOR LOUDEN: Okay. Those proponents for LB939? [LB939]

JOHN C. McCLURE: (Exhibit 5) Good afternoon, Chairman Louden, members of the committee. My name is John C. McClure, J-o-h-n, middle initial C., M-c-C-l-u-r-e. I'm vice president and general counsel for Nebraska Public Power District. I'm here today in support of LB939 which has been introduced at our request and we appreciate all of you and Senator Heidemann cosponsoring this legislation. This bill applies to public power districts to our procurement statutes which are generally unique for public power districts. The bill would also apply to power entities created under the Municipal Cooperative Financing Act which operate under procurement statutes nearly identical to public power districts. This bill is designed to enhance the efficiency and effectiveness of certain procurement activities which are subject to the sealed bid process. Under present statutory requirements, when a public power district follows the sealed bid process, and receives no responsive bids or receives bids that all in excess of the fair market value of the work to be performed, the power district's board can reject the bids and negotiate, if the contract does not include on-site labor. For example, if the utility is buying equipment which it will install with its own workers, and the bids are all nonresponsive or above the estimated fair market value, the utility can reject the bids and negotiate in an effort to achieve acceptable pricing or acceptable commercial terms. However, if the contract includes on-site labor and all bids are deemed nonresponsive or in excess of the fair market value, then the district must start the whole sealed bidding process over to try and obtain new responsive bids. When you repeat the process, you usually get the same bidders the second time. We have even experienced several situations where a second round of bidding does not produce a responsive bid or a proposal at fair market value. Forcing a public power district to start over with the sealed bidding process when you receive all nonresponsive bids or bids that are above the fair market value, only because there is on-site labor in the contract, adds delays to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

the project and additional costs for the time and extra work to go through the bidding process twice. The statute already allows public power districts to negotiate with the vendors when the contract only covers equipment and materials, and no on-site labor. Since it is currently permissible to reject and negotiate when on-site labor is not involved, we strongly believe that option should also exist where on-site labor is part of the contract since we see no compelling public policy argument for the distinction. In closing, while this situation may only arise a few times each year, we would encourage you to advance this bill to the floor, as we believe it is an important enhancement for the public power districts' sealed bidding process. I'd be happy to try to answer any questions you may have. [LB939]

SENATOR LOUDEN: Questions? Senator Wallman. [LB939]

SENATOR WALLMAN: Thank you, Senator Louden. How do you establish fair market value? With other power companies or with... [LB939]

JOHN C. McCLURE: Under the statute when a project is estimated to cost over \$100,000 and it fits within the type of work that falls within sealed bidding, we have an engineer do an estimate. Now, they may do a number of things. They may contact other utilities. We may look at previous work we've done, but they do that in an attempt to establish what is the fair market value of the work to be performed. So there's a fairly detailed analysis so that our board has a sense when those bids come in, yes, this was a competitive proposal from a cost standpoint. It's...well, I'll just stop there. [LB939]

SENATOR WALLMAN: You probably have trouble getting bids on some things, probably, huh? [LB939]

JOHN C. McCLURE: It's frustrating at times. We will get one or two sealed bids. We've had instances, for example, where we will have a mandatory pre-bid conference. We want to make sure that potential bidders completely understand the scope of the work. So you have a mandatory pre-bid conference and one bidder shows up. What are you going to...you can imagine what that bid can look like. And if it's all labor, it could come in well above fair market value. Under this, we just have to go bid again instead of having the opportunity to negotiate. [LB939]

SENATOR WALLMAN: Thank you. [LB939]

SENATOR LOUDEN: Seeing no other questions, why...oh, there's one. Senator Carlson. [LB939]

SENATOR CARLSON: Senator Louden. Following up on estimated fair market value of a project, and I may show some ignorance here. If you get those sealed bids and all but one are over and one, another one is close but a little bit under, do you have to take the

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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one that's a little bit under? Or can you reject them all? [LB939]

JOHN C. McCLURE: There, as far as awarding a sealed bid contract, if you would not have a basis under this statute, under this provision of the statute if it was below fair market value to reject on that basis. There is another provision in the statutes however, that gives the board of directors of a public power district guidance on criteria that can be considered. It's not simply low bid. It's the lowest and best bid, so there are other quantifiable considerations. So it is possible that you could be below fair market value and reject it on other reasons. But again, that would still bring you back to the sealed bid process if you reject it and if there were on-site labor, you'd have to start all over. [LB939]

SENATOR CARLSON: Well, I'm taking it from here, if they all exceed the fair market value but one or two of them just barely exceed, if it doesn't involve on-site labor you can go into negotiation? [LB939]

JOHN C. McCLURE: That is correct. [LB939]

SENATOR CARLSON: If one of them is a little bit below, can you go into negotiation figuring they're all pretty close here, we might be able to... [LB939]

JOHN C. McCLURE: If one was slightly below, we'd either have to accept that as... assuming all other factors met. But we would not have a right to negotiate if under the statute, because the statute says you can reject and negotiate if it exceeds the fair market value or if it's nonresponsive, which typically involves the commercial terms, warranties, and other performance considerations. [LB939]

SENATOR CARLSON: Okay. So if on-site labor was included in this, it'd be the same thing. If there's a bid that comes in that is slightly below you'd have no grounds to renegotiate? [LB939]

JOHN C. McCLURE: On that particular provision. You might chose again to not award a bid and rebid it. [LB939]

SENATOR CARLSON: Thank you. [LB939]

SENATOR LOUDEN: Now, seeing no other ones, thank you for testifying, John. [LB939]

JOHN C. McCLURE: Thank you. [LB939]

SENATOR LOUDEN: Other proponents for LB939? Are there opponents for LB939? Anyone wishing to testify in the neutral? Seeing none, that closes the hearing on LB939

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

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and we'll go to LB923, Senator Dubas's bill. [LB939]

SENATOR DUBAS: Good afternoon, Chairman Louden, members of the Natural Resources Committee. I forgot to fill out my sheet, Barb, so I'll get that taken care of for you. (laugh) My name is Senator Annette Dubas, D-u-b-a-s, and I represent the 34th Legislative District. Today I present to you LB923, which I consider a consumer confidence bill. We have a new and developing industry in our state dealing with wind and solar industry and I think LB923 creates that landowner protection status but it is limited to just wind and solar energy rights. I'm not introducing this bill because I think or I know of any unscrupulous businesses that are out there trying to take advantage of landowners. I think we have good and reputable businesses that are looking to get involved in wind and solar energy. But again, I introduce this as a consumer confidence bill. I think the people that are going to be approached for these issues need to feel good that they can trust the businesses that are coming to them. This legislation sets a 50-year limit for a lease on land for the use of wind or solar power and also puts into place that if no wind or solar power has occurred on that land or if it hasn't been developed after five years, then that lease option or easement expires. This legislation also disallows severing of those rights from the land. And as we were looking at what kind of language we wanted to use to develop this legislation, we looked at what other states had and it seemed like what South Dakota had put into statute best fit what we were looking for to introduce, or what I was looking for to introduce into our state statute. So we based a lot of this language off of South Dakota's Best Practices and Policy Recommendations. I know that there are couple areas in the bill that deal with specific contract issues and that's not where I really wanted to go with this bill. And I've already visited with legal counsel and I think we'll be able to address those concerns through some amendments and get those concerns cleaned up. But I'll keep my comments short and brief and be happy to answer any questions that you might have and I know there are people behind me who will probably be able to give you a little more specific information also. [LB923]

SENATOR LOUDEN: Questions for Senator Dubas? I have one, Senator. [LB923]

SENATOR DUBAS: Sure. [LB923]

SENATOR LOUDEN: How would this compare with oil leasing and production of oil? I mean you're talking about, are you doing it because of the easement part or are you doing it because of the, that the wind...is that wind a resource that's going across there. I'm wondering if there's any kind of a comparison between this and oil rights or mineral rights or that sort of thing? [LB923]

SENATOR DUBAS: Well, I am aware of easements that deal with the mineral rights and, but that's about all I have, is an awareness. I'm not...I don't understand the differences or what have you and I guess again, what we're looking for here is, you

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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know wind isn't something that's actually taken off of the land or out of the land. Like you said, it goes over and above it but it still is attached in some way to that property. And so that's, you know, again what I was looking at is if people are being approached to enter into some kind of an agreement for the use of the wind that crosses their property that we're able to put some kind of protections in place. But I'm not sure that I probably answered your question, but I'm not really sure what the answer is. [LB923]

SENATOR LOUDEN: Okay. Thank you. Other questions for Senator Dubas? Seeing none, I guess we're ready to start in with the...those wishing to testify in favor of this, LB923. [LB923]

KEN WINSTON: Good afternoon, Chairman Louden, members of the Natural Resources Committee. My name is Ken Winston, last name is spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB923. And I often end up testifying at the end of hearings so I thought for a change I'd testify, would be the first testifier in support of a bill, so. Our support for LB923 is due to our support for renewable energy development in the state. Wind energy, in particular, provides vital opportunities for Nebraskans. Nebraska has great potential for wind development. This provides financial opportunities for rural communities, opportunities to reduce pollution and greenhouse gas emissions, and also to reduce water use through traditional power plants. We believe that LB923 provides a mechanism to encourage renewable energy development. Their primary is for wind or solar development. Those who hold those rights should not be permitted to act like the preverbal dog in the manger which neither uses the resource nor allows anyone else to develop it, so, and we believe that five years should be a sufficient amount of time, a reasonable amount of time for someone to develop this energy. We'd ask the committee to advance LB923. Thank you. [LB923]

SENATOR LOUDEN: Questions for Ken? Senator Fischer. [LB923]

SENATOR FISCHER: Thank you, Chairman Louden. Nice to see you, Ken. [LB923]

KEN WINSTON: Nice to see you, Senator. [LB923]

SENATOR FISCHER: And first up? [LB923]

KEN WINSTON: Yes. [LB923]

SENATOR FISCHER: So good. [LB923]

KEN WINSTON: And I probably won't be able to answer your question but I'll give it a shot. [LB923]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

SENATOR FISCHER: Well, sure you will because I'm asking your opinion. [LB923]

KEN WINSTON: Okay. [LB923]

SENATOR FISCHER: What does this bill do that encourages development of wind energy? Shouldn't it be up to the property owner to make an informed decision? Even if the property owner enters into a contract under this bill, they're still in that contract 50 years, which I like better than a perpetual easement, by the way. But what does the bill do specifically to protect any consumer? I don't see it. And what does this bill specifically do that's going to encourage any kind of wind development? I don't see that. [LB923]

KEN WINSTON: Okay. The part that I see encouraging wind development is the five-year use-it or lose-it provision that says that if you don't develop it within five years, then the contract is void and I guess I would be interested in legal counsel's opinion as to how that can be enforced. But the idea is that if a person enters into a contract like that, and frankly, I don't have direct firsthand knowledge about the kinds of contracts that people may have been entering into. But part of what I see a potential problem would be, say, I'm...well, I happen to be a rural landowner myself. But say someone comes to me and they say, I think you've got a good site to put wind, to develop wind on your property and so I say, well, okay, what kind of deal can I get. Well, here's the kind of deal we're giving all of your neighbors, and you better sign up now or we're going to go down the road and we're going to develop on somebody else's land. And I'm sort of...I'm thinking, well, you know, I don't know, I don't have time, you know, if I don't sign this now then they're going to sign up my neighbor and they'll get that good deal. And so in the meantime...so I sign away my wind rights and then it sits there. In the meantime, years pass, nothing happens with it. Someone else comes in and wants to develop wind rights but they can't because it's tied up. And so that's the mischief that I think this bill prevents is having some, an area that where somebody has the right to develop it but they don't follow through with that. Did I answer your question? [LB923]

SENATOR FISCHER: Yes. I have a follow up. [LB923]

KEN WINSTON: Okay [LB923]

SENATOR FISCHER: It sounds like were trying to protect a segment of the population, landowners, from being snookered. Isn't that a personal responsibility? When we go to buy a new car and the car dealer says this is the last one I have on the lot. You know, I've had a number of other people come and look at it. This is the best price I can give you and I suggest you sign this right now, this contract right now. Do we need a law to protect consumers in dealing with, heaven forbid, those unscrupulous car dealers too? [LB923]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

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KEN WINSTON: Well, just to draw that analogy. There are some provisions like that... [LB923]

SENATOR FISCHER: I'm Transportation Committee so that's why I did the car dealing. (Laugh) [LB923]

KEN WINSTON: There are some provisions like that for buying new cars. I believe there's a three-day recision period that you can go back and say, I've changed my mind, so I don't know if there's anything like that in a land deal. But... [LB923]

SENATOR FISCHER: If there was, wouldn't that protect the consumer already then? The landowner already. [LB923]

KEN WINSTON: I would certainly be interested in that. But the other thing is the thing I talked about which is, the person locks up this land and then doesn't do anything with it and because of the fact that if the lease is for 50 years or whatever, then nothing happens with it because I'm not the one whose developing it. Somebody else is developing it. And so that entity holds those rights and I'm stuck with that. And I guess that's probably my bigger concern. Yes, I don't want to see people be mistreated financially or, and I agree with part of what you're saying, yeah, people out to be able to protect themselves. But I would hate to see situations where prime areas of real estate, prime development areas that might be developed are taken off the map as it were because somebody owns the wind rights, and meantime they're not doing anything with them for one reason or other. And I don't know...and once again, I may be walking into an area where I need more information but as I understand it, there are some private development companies that have purchased wind rights and that might prohibit...that would require the public power districts to go to them and negotiate with them and in the meantime, they're not doing anything with it and maybe the public power would like to develop that area. I'd hate to see that happen where somebody's come in and taken something off the table that could be a resource that could be appropriately used. [LB923]

SENATOR FISCHER: By putting a 50 year limit on this easement... [LB923]

KEN WINSTON: It's hard for me to think that far in the future, Senator. [LB923]

SENATOR FISCHER: Do you support putting that 50 year or some kind of year limit on the easement? [LB923]

KEN WINSTON: Yes, Senator, I would support that as well. I started to respond. [LB923]

SENATOR FISCHER: Do you believe...if the Legislature is moving in now and putting

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

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limits on easements should we expand our horizons and look at other type of easements and possibly put limits on those? [LB923]

KEN WINSTON: I think I know where you're going with that, Senator. [LB923]

SENATOR FISCHER: That's just a simple question. (Laughter) [LB923]

KEN WINSTON: And I would be willing to have a conversation with you about that. Thank you. [LB923]

SENATOR FISCHER: Thank you. [LB923]

SENATOR CARLSON: Senator Louden, this is another short question. Ken, you play the saxophone, right? (Laughter) [LB923]

KEN WINSTON: I, actually I've played a guitar in public, but yes, I've played the saxophone. (Laughter) [LB923]

SENATOR CARLSON: Okay. I thought I remembered hearing you and you did well and... [LB923]

KEN WINSTON: Well, thank you. [LB923]

SENATOR CARLSON: ...I appreciate know more your interest in wind because it takes a lot of wind for both. (Laughter) [LB923]

KEN WINSTON: Well, I generally don't sing in public but yes, I am interested in wind development in whatever form. [LB923]

SENATOR CARLSON: Thank you. [LB923]

SENATOR LOUDEN: Senator Wallman. [LB923]

SENATOR WALLMAN: Thank you, Chairman Louden. I agree with this bill but like Missouri, you know, if you build a transmission line and you're one of the first ones to sell your wind rights, the later people get more money. So do you think this would protect us from that? [LB923]

KEN WINSTON: Well, hopefully, hopefully it would protect. It would help people make better decisions and admittedly that doesn't, this bill doesn't directly address that, as Senator Fischer pointed out. But it would prevent, it would deal with the situation of having something locked up for beyond somebody's foreseeable lifetime for a minimal amount of money. I mean, you know, we can look at how much costs have increased in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

lots of things in a few years. I, you know, I wouldn't want to see something that's locked up for minimal payment at 2007 prices and suddenly...and it's locked up forever or for an extremely long period of time for a minimal amount of money. [LB923]

SENATOR WALLMAN: Thank you. [LB923]

KEN WINSTON: You're welcome. [LB923]

SENATOR LOUDEN: Yeah, Ken, I'll have a go at you here. (Laughter) [LB923]

KEN WINSTON: Okay. All right. I'll wait and testify at the end now in the future. (Laughter) [LB923]

SENATOR LOUDEN: Who owns the wind that's blowing over my ranch? (Laughter) [LB923]

KEN WINSTON: Well, I believe that's a matter that I think you would have to address in prayer. (Laughter) [LB923]

SENATOR LOUDEN: Okay, now. Are you trying to set that up as the same way that who owns the water under my ranch? [LB923]

KEN WINSTON: No, well because as I understand it the people...water is held in trust for the people of the state. [LB923]

SENATOR LOUDEN: Then is the wind, if you're going to say who I can lease this to or who I can't lease it to, then you're evidently deciding that the state or someone else owns that wind that's blowing over my ranch. [LB923]

KEN WINSTON: I, well I draw this distinction, Senator. The wind, the water and all the water does flow, the water under your ranch has probably been there for a while and will be there for a while until you bring it to the surface. Whereas, the wind, as you know, the wind that's coming over... [LB923]

SENATOR LOUDEN: Yeah, but there will be some more tomorrow with the wind. [LB923]

KEN WINSTON: The wind that's coming over your ranch was probably over Canada last night. [LB923]

SENATOR LOUDEN: And there will be some tomorrow and the next day. [LB923]

KEN WINSTON: There will be some tomorrow, but knowing...I don't think...I mean I start

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

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my original comment was slightly flippant, but I think, you know, it really is, I don't think anyone says they're owning the wind. I think what you're talking about is owning the rights to develop the resource that's created by the movement of the wind. [LB923]

SENATOR LOUDEN: Okay. Now that's a resource up there you're talking about. That wind blowing through is a resource, correct? [LB923]

KEN WINSTON: Um-hum. [LB923]

SENATOR LOUDEN: Okay. Then when you, you're too young to remember but when oil first came in to Kimball area, some of the oil companies came in there and they bought the mineral rights. You can sell your mineral rights. And after a while, when they found out that they were starting to drill and get oil. After that you didn't sell your mineral rights, you leased your mineral rights and you took royalties then on the production. And the same way, why don't you set up something there that you're leasing...I mean if people want to sell their wind rights that's one thing, but on the other hand they can lease those rights and when you say for 50 years or whatever, I don't see why you should put anything on it. If somebody wants to come to my ranch and lease those wind rights off of there, (laugh) why bring them on by the carload because I would...we made way more money leasing our land to oil companies by leasing than we ever did by any finding any oil. And this is the reason I'm wondering if with a bill something like this, are you interfering with that or are you curtailing some type of way that people could probably actually make more money, because you're not going to put a solar or a wind powered generator on every piece of ground. They got to be always apart. [LB923]

KEN WINSTON: Well, I guess, and I'm not, I guess I would certainly defer to Senator Dubas as to her intent. But I would think that a period of 50 years would be long enough for somebody to develop the wind rights and make good use of them. [LB923]

SENATOR LOUDEN: Why should there even be...why should you even be talking about it I guess? Why should you even be mentioning anything about a length of time that a lease could run on them, a piece of ground? [LB923]

KEN WINSTON: Well... [LB923]

SENATOR LOUDEN: If you lease it to the telephone company they lease it for 99 years. [LB923]

KEN WINSTON: Sure. Part of the...well, as I understand it, part of the issue is the idea that someone is, you know, I mean, just to talk about, you're talking about going back in time a little bit. I think we all remember, or a lot of us around here remember, when you could buy a gallon of gas for 30 cents and now it's almost all \$3.00 a gallon. And so why should you allow somebody to be locked into a situation based upon a pricing structure

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

of 100 years ago on into perpetuity? [LB923]

SENATOR LOUDEN: Well, it depends on what they wanted to pay for the lease. I mean, you know, that lease could be, the instrument could say that you would increase the lease so much a year or something like that. I mean, there's all kinds of ways to do a lease because I've been around oil leases the same way. And to me, this is something that would be similar to leasing for oil. This is a resource that you have that isn't available to the average person to get but you have some corporation or some developer has to come in and do that. Now, why don't, if you're concerned about that, then why isn't there a pooling clause in here? You're worried about they'll go down the road and buy it from the neighbor. I mean, with your oil deal like that, you have a pooling clause in there. They can drill all around you, but if they don't drill on your place and a pooling clause there, you still get some of the benefits from those oil wells around you. Why wouldn't it be better to have something like that in this bill? [LB923]

KEN WINSTON: Well, let me just make a couple of comments. I mean, obviously it's Senator Dubas's bill and I'm not here to offer amendments to it but I think you've got some excellent ideas. And, I mean, I particularly like the idea of allowing somebody to obtain some sort of royalties based upon the amount of production. I think that's an excellent idea. I think that's something we ought to explore in legislation. As to the pooling, that also sounds like a good idea. But I guess I'm just trying to address the concepts within this bill and I think they're sound. [LB923]

SENATOR LOUDEN: Thank you, Ken. [LB923]

KEN WINSTON: Okay. [LB923]

SENATOR LOUDEN: Other questions for Ken? Seeing none, thank you for testifying. I always enjoy it. (Laughter) [LB923]

KEN WINSTON: Okay. Thank you, Senator. [LB923]

JOHN K. HANSEN: Chairman Louden, members of the committee, good afternoon. My name is John K. H-a-n-s-e-n. I'm the president of Nebraska Farmers Union and appear before you today as my organization's president and also our lobbyist. I would like to thank Senator Dubas for bringing this bill forward and if I might, create a little bit of a background of kind of what has been going on in this arena, and why we strongly support the need for some sort of guidelines or provisions relative to the buying up of, leasing, easements, wind rights, however you want to describe it, is that a very short number of years ago this was really kind of a nonissue. It was we, whoever thought about, you know, what the value of your wind blowing over your property would be and the ability to use that wind that blows over your property and the ownership of your property are linked. And so who get's to use your wind? You do, unless of course, you

Natural Resources Committee  
January 24, 2008

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make it available to somebody else. So what then are the terms or the guidelines for being able to use other people's wind over their properties? And this is a huge potential source of economic opportunity, new, renewable based, economic opportunity in the state of Nebraska. We're talking about Nebraska being in a position to play a role nationally in national guidelines relative to renewable energy, electrical transmission that would be in the neighborhood of estimates that we've seen from national renewable energy lab and others of many thousands of megawatts. So we're talking about a lot of wind development in Nebraska based on our capacity to help the nation meet its 20 percent renewable energy goal by the year 2030. So this is not a matter of minor consequence. So what has spurred this issue is that all of a sudden we've seen private sector folks coming to Nebraska and talking to landowners and asking for the opportunity to sit down and visit with them and offer them contracts to buy up their wind rights through easements and leases. And so some of these folks have been using tactics, quite frankly, that are kind of right out of the shopping list of tactics that the Attorney General and other folks warn you about, high pressure, have to take it now, limited time only, if you don't, yeah, there will be dire consequences, your neighbors will miss out because your ground is the key ground here that has to go about in this project and if you don't sign up your neighbors are going to be mad at you, and so you better sign up. Folks do; come to find out they were the first one to sign up. And so we have some experience with how this works because my office does a fair amount of service work on this from landowners. I average probably two phone calls a week and sometimes it's more, sometimes less, but I'm sure it averages about two a week of folks wanting to know whether or not they did in fact get snookered. Did I get a fair price? Well, how would you know? What is the market price right now and how would you know? I have copies of contracts. I'm kind of struggling with how I could share those. I think I'm under some obligation from the folks who made them available to me not to share them, but I have read them. I have read, I think, four different sets of private sector developers' contracts. They vary. Some of the terms I think are fair and reasonable. Some of the terms are absolutely not fair and reasonable. The one thing that happens is that it's kind of a closed little loop of folks who are made available for these. They have no idea whether that's what the company is offering somewhere else or not or what they have offered in other states. There's no transparency. There's...how would you know what the market place value is? When you are given a document that says confidential, and if you show this to anybody, you're going to suffer the consequences. So we have folks who have attended meetings and public meetings and they have been told that they don't need to get legal counsel to evaluate these contracts because a Nebraska lawyer has in fact been hired by this company so that you don't need a lawyer. Well, if that doesn't, if that isn't a red flag, I don't know what a red flag is. And so it goes and so some of the things that have been going on, if you make a mistake in this area, the thing to remember is that before you sign the contract, every single thing is negotiable. And the thing to remember is that after you sign the contract, nothing is negotiable. It's over. So if folks do in fact make mistakes, it'd be nice to have some, at least limited amount of time, that at least it wasn't forever. And so is 50 years

Natural Resources Committee  
January 24, 2008

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the right amount? I don't know, it seems like a long time. It seems plenty long to me. Is five years the right amount if they haven't moved forward with development? Oh, you could debate that. That's what South Dakota did in response to the same problem that they were having in South Dakota. This bill is similar to the South Dakota law. I think five is a fairly reasonable number. But what you don't want is you don't want folks coming in with the gold mine mentality and deep pockets just buying up wind rights in Nebraska, stockpiling them, and then playing, you know, king of the mountain with them. And then public power and C-BED projects, which my organization supports both, we believe that public power, if it works for them to develop wind, ought to have the opportunity to do it. We think the C-BED, if you're going to have private sector developments do it, is the way to maximize the economic development benefits of wind development. Both of those players are disadvantaged by deep pocket, big time players coming in and basically stockpiling the best wind spots in Nebraska. So if that happens and our wind is not available to us as a state to develop, then we're developing less than the best wind sites. And so that is not to our advantage as a state or as rate payers. So having fair and reasonable access to this wind is important to the future of our state. The longer it goes, the more valuable it will become, but I am far from an expert on the value of contracts. I've just read enough of them and I've talked to enough folks in enough different states to know that the trading range from one end of the spectrum to the other is absolutely enormous. And I know that some of the players and some of the contracts that I've seen are absolutely, positively, not reputable. And when I look at the company, I look at their claims on their Web site. All you have to do is have a rudimentary understanding of what's going on in Nebraska and you read the claims on their Web sites and you go, my word, these guys are operating in Nebraska. There's no minimum standards at all. And so I field questions from lawyers, I field questions from folks who have signed contracts and then wonder whether or not, you know, how did they come out? And I keep saying, how would I know, oh, you know, in relative terms. But I think that this is a good faith effort to address what I think is a growing problem. Ounce of prevention is worth a pound of cure. We set all kinds of standards for how it is that we conduct business in our state all the time. I don't think this is an onerous imposition. I think it's reasonable, and in fact, it's well within the guidelines of what some of the private sector developers are doing now. So with that, I'd be glad to answer any questions, if I may. [LB923]

SENATOR LOUDEN: Questions for John? Senator Kopplin. [LB923]

SENATOR KOPPLIN: I guess I'm getting a little bit...not concerned, but a little bit nervous because, you know, I've made some really good investments in my life and some really rotten ones that I'd like to come back two years later and say, I didn't get a good deal, let's have a do over. If someone were to sell the wind rights, at that moment they thought they had a good deal. Is it our business to correct their second thoughts later, in your opinion? [LB923]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

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JOHN K. HANSEN: I think that it's a reasonable thing to set fair standards for doing business. And I think that if you leave the market place in all cases to market standard to be buyer beware, that the potential for things that are done in less than a fair and straight up and reputable way, I think that there's public harm in that. And so I think that it's a reasonable thing for folks to do to say, what's a reasonable standard for conducting business. And so what worries me, Senator, is that when I see some of the tactics that are used, and used effectively, I'm concerned about that. And I wish, I wish that every farmer and rancher in the state of Nebraska was as skeptical as Senator Louden, or me. But a lot of them are not and they are...they, you know, instead of asking more of the questions that ought to be asked and being skeptical, folks get taken in. And so some of the things that are going on out there, based on what I know, based on conversations with folks, leads me to believe that unfortunately that's the case and so if a mistake has been made, then what's a reasonable period of time to recover? Fifty years seems like a fairly strong penalty on the case of a lease. In five years you ought to be able to be making some tracks toward wind development in five years and I think most of the companies that are, they're reputable companies, if they have good intentions, should be able to have some reasonable expectation of having some kind of development started in a five year period. [LB923]

SENATOR KOPPLIN: Okay. Thank you. [LB923]

SENATOR LOUDEN: Other questions for John? Senator Fischer. [LB923]

SENATOR FISCHER: Thank you, Chairman Louden. Nice to see you, Mr. Hansen. I think you just answered my first question here. You said there needs to be a fair standards for doing business and I share Senator Kopplin's concern on...is this, do we need to get into this? But when you said your answer to him was, there should be fair standards for doing business. How does this bill set those fair standards for doing business? [LB923]

JOHN K. HANSEN: It, to me, it, two things. The fifty year and the five year are at least for this kind of natural resource, this kind of asset, seems like a reasonable period of time before you would have the opportunity to renegotiate the value. In the case of wind right now, I think it's virtually impossible to know what your wind rights are actually worth in fair market value today because there's absolutely no transparency in this contract arena or in this market as to what it is the folks are getting, either in other states or in our own state. So there is no DTN screen to go to, to look at and say this is a reasonable number. So how would you possibly know what it's worth in five years or ten years or fifty years? [LB923]

SENATOR FISCHER: But Mr. Hansen, I'm a skeptic too. I'm one of those rancher skeptics and like Senator Kopplin, I've made maybe one good deal but a number of bad ones so now I don't like deals at all. But that was my decision and it sounded like a good

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

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deal at the time. I'll let that drop for a minute. [LB923]

JOHN K. HANSEN: If we're going to just talk about contracts, we could talk about the Republican River Compact, if that was a good deal. [LB923]

SENATOR FISCHER: Yeah. We'll let that drop. Don't start Senator Carlson. Beside South Dakota, do you know other states that have laws similar to this one? [LB923]

JOHN K. HANSEN: I don't know. I just know that South Dakota is the most recent state. I know that in the wind development community and at conferences, this is kind of a growing issue and it's been an issue and it's kind of continuing to be more and more because it's impacting wind development. [LB923]

SENATOR FISCHER: Okay. I come from the windiest area in the state. [LB923]

JOHN K. HANSEN: Congratulations. [LB923]

SENATOR FISCHER: Well, I thought you were going to say, I'd never guess. [LB923]

JOHN K. HANSEN: I would never say that. [LB923]

SENATOR FISCHER: You brought up that you'd like to see our public power in this state be able to further develop and have that resource available and you also brought up C-BED. I have a few, very small number of people in my district, interested in C-BED. They're discouraged with the legislation we passed last year, in that it really doesn't do anything. I guess I'm leery of passing legislation again that really doesn't do anything, but sounds good. But your comment was that you support public power, you support C-BED and you're worried about...and you support private sector development, but yet you're worried about the big companies developing. I have citizens who live in my district who you probably would classify as big companies that are going in and developing and I support all three. And I'm wondering why you don't support those big companies because I see the big companies coming in and being able to have a large, positive economic development impact in many of my areas and so do the majority of my constituents. [LB923]

JOHN K. HANSEN: What I would say is that when...if private companies want to come in, then they want to develop the wind in our public power state and then they have to deal with realities of our public power state and I support our public power system. And one of the reasons that we supported C-BED was because it was able to utilize the private sector advantages that other states have that Nebraska's public power players have not been able to use because of their public power status relative to production tax credits and depreciation and yet was operating in a fashion that more clearly complemented the traditional role of public power. But there are private sector

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

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developers coming in that are offering good contracts, that are fair contracts, and reasonable contracts, and are well within these guidelines. And there are others that are absolutely not within these guidelines at all. And so, because I've had the opportunity to actually read those contracts and talk to those folks who feel like they did get snookered, then I come to the conclusion that if public power and C-BED and reputable companies can play within these standards, it's not an unfair imposition or unfair competitive advantage to set a very minimal and reasonable standard for contracts and easements that some of the folks who are not reputable ought to at least abide by so that our citizens are not taken advantage of. [LB923]

SENATOR FISCHER: Just a yes or no answer. You mentioned a number of people that had discussed this with you, are any of those individuals, do you believe they'd be willing to come forward and speak privately with members of this committee with their concerns? I would be interesting in visiting with a number of those individuals. [LB923]

JOHN K. HANSEN: Several might. We are able to acquire copies of contracts. [LB923]

SENATOR FISCHER: I don't want to see any contracts or anything. I was just wondering if somebody... [LB923]

JOHN K. HANSEN: Just because of saying that we're going to keep them confidentially, but some of those might... [LB923]

SENATOR FISCHER: If somebody be willing to...and I'd like to speak to a number of them that those who have shared their experiences with you if...and I certainly would keep it confidential too. So if you know of any, that would be very helpful for me, so thank you. [LB923]

JOHN K. HANSEN: Okay. You bet. [LB923]

SENATOR LOUDEN: Seeing no more questions, thank you, John, for testifying. [LB923]

JOHN K. HANSEN: Thank you, Mr. Chairman, and members of the committee. [LB923]

SENATOR LOUDEN: Next testifier in favor of LB923. [LB923]

TIM TEXEL: Senator Louden and members of the committee. My name is Tim Texel, T-i-m, last name is T-e-x-e-l. I'm the executive director and general counsel for the Nebraska Power Review Board and as you all know, that's the state agency with primary authority over Nebraska's electric power suppliers. And my board authorized me to testify today in support of LB923 and in particular, I'm testifying in support of the provision requiring development pursuant to a lease of wind or solar energy rights that

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Natural Resources Committee  
January 24, 2008

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must be acted on within five years or the lease is void. We're not really addressing the 50 year issue or the annual payment issue specifically. I was authorized to testify on the five year provision, pretty much for two main reasons. One is a consumer protection perspective. This type of lease is fairly specialized, fairly new at least in Nebraska and maybe places like California, where it's fairly well understood what the lease would be. In a state like that with wind, I don't think that's probably true in Nebraska given the emergence of wind here recently. We believe this would help make sure the landowners are not taken advantage of. And I did want to say, we agree with Senator Dubas, I'm not basing this, my board is not basing on any unscrupulous conduct we know of. It's simply as a policy, a consumer protection matter. We know the Attorney General's office, I think last year, issued a statement about this issue and this would be along the same lines that we're taking a position just as a consumer protection policy statement, not because of specific examples of conduct that shouldn't have occurred on any developer or anything like that. The second part is that the five year development period also, we believe, would help avoid the possibility that privately funded speculators, as previously been testified to, would acquire all or most of the best wind and solar locations in the state potentially in perpetuity, leaving none of the best sites for our public power suppliers. Another possibility would be for the public power entities enter into sort of bidding race to try to acquire those rights. I don't feel that's probably the best interest of Nebraska given our public power state where we have public power then potentially up against investor owned utilities developing wind and solar rights. The different types of systems probably don't work that well together that way. It would be expensive and it would help alleviate the necessity of our public power entities having to condemn property that a speculator had acquired and might have the best potential but they're never going to develop it so that they can use the best site and leave the other sites unused and nobody else can use them. This five year ability, or this five year limitation might help alleviate that. I have a couple of more technical points to bring up. One thing I wanted to mention is that the term development is used. I'm not sure that it wouldn't help to have a definition of that term. When you talk about development, my experience has been you can argue over, does development mean commencement of construction, does it mean application to the regulatory authority, does it mean in the fully operational facility. It'd probably help in the bill to say exactly what development term means. The second, the committee might want to consider tolling the five year period during any period when a regulatory approval is being sought. If there's application in, like before the Power Review Board, before a zoning jurisdiction, and that takes a year or something, our process doesn't take anywhere near that. But that could eat up a lot of the time that a development can't occur, trying to get some approvals. So it might be fair to toll that period if an application is before a regulator and let them extend that period or if they file four and a half years, and then the five years expire, it may not be fair to let that expire and they don't have the opportunity to build because the regulators were sitting on that. So with that, that concludes my testimony. I would be glad to try to address any questions. [LB923]

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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SENATOR LOUDEN: Okay, Tim. Let me see if I understand this right. You and your board have the idea that if I want to lease my wind rights on my place, I can't lease them for anybody more than five years unless they develop it. That's what you're telling me? [LB923]

TIM TEXEL: Right. Under this bill, yes. [LB923]

SENATOR LOUDEN: Why? Why are you doing that? Why don't you tell me that I can't lease for oil for more than five years unless it's developed or why don't you tell me I can't do something else and it's got to be something done in the next five years? Why don't you tell me I can't irrigate unless I develop a well in five years? Why is it with wind all of a sudden that we've got to have a time frame and you want to start regulating that? I'm wondering where the board's coming from on this. [LB923]

TIM TEXEL: Well, first of all, my board isn't behind this. I mean, we saw the bill and we thought we...it was worthy of being supported on that provision. But one distinction with like the mineral rights is, I think the mineral rights and others like that have been around for decades and decades, if not longer... [LB923]

SENATOR LOUDEN: Well, so has the wind. [LB923]

TIM TEXEL: ...but there hasn't been the use of the wind like there has recently, especially in Nebraska. So I don't think there's the level of education or sophistication in knowing what those leases might be worth and there's the opportunity for someone who would be unscrupulous to take advantage of you or the people simply don't know what they're worth and the business...the speculator is simply doing business. I mean, they're getting a good deal for themselves which isn't necessarily good for the citizen or the landowner. Is it a little bit paternalistic? Yes. I agree with what was testified to before, I guess. I think it was Mr. Winston talking about the three day recision rights like on mortgages, and such. [LB923]

SENATOR LOUDEN: If I had some neighbors and some...whoever with beaucoup bucks came out you know, and they said well, I'll give you \$2,000 a section for your wind rights on your land here and the guy has ten sections or something like that, and then in five years time you guys come out and say, this is all off. You can't do this anymore. You're going to have one mad, mad man out there all of a sudden. [LB923]

TIM TEXEL: If he got a good deal instead of a bad deal? Sure, that would be a possibility. [LB923]

SENATOR LOUDEN: Now was that a bad deal? If he rented it out...he gave his easement for a couple thousand dollars a year on a section of land, is that a bad deal? Who knows. But on the other hand, he got some pretty good bucks in the meantime.

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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Because, I mean, I lived through this with oil scares every since I was about 18 years old as some of the first oil I leased for. And we made more money with oil scares and bonus bids, you know, for oil than we ever did by any drilling. But nobody told us that those leases were only be good for a certain number of years. We hope they run forever and this is where I'm having a concern about this. And I was surprised that the Power Review Board came out in favor of something like this. [LB923]

TIM TEXEL: Well, in particular on the five year provision. I guess I stated the reasons. I mean, I think you're making good points too. [LB923]

SENATOR LOUDEN: Okay. Other questions for Tim? [LB923]

TIM TEXEL: Thank you. [LB923]

SENATOR LOUDEN: Okay. Thanks for testifying. [LB923]

TIM TEXEL: Thank you. [LB923]

KEITH DITTRICH: (Exhibits 6 and 7) Chairman Louden and Senator Dubas and distinguished members of the committee, I'm Keith J. Dittrich, I'm chairman of the board of the American Corn Growers Association, spelled D-i-t-t-r-i-c-h. I'm from Tilden, Nebraska, and I certainly again thank you for allowing me the time to testify today on LB923 which we stand in support of as a national organization, as it pertains to protecting the best interest of family farmers and landowners in the state. A quick overview of the potential for energy development in the state, a person I know at MIT, a photovoltaic professor, told me that on an area of land mass smaller than Nebraska, about 2 percent of the United States, has a potential to produce all of the energy needs of the country, including industry, home heating, transportation, the works, theoretically. I say that just to give you an overview of what the potential is here and what we're really discussing is an important issue and a very, very exciting issue and a very positive issue for our state, our farmers, our landowners and our country. Our organization has a long history of protecting the interests of the people we represent, that being family farmers and corn growers. Therefore, when we see this race to capture prime wind energy sites in the state here, that began kind of last year, we became concerned that the landowners were not adequately informed of the value of the newfound resource going over their farms. In response to this, last week at our convention in Milwaukee, Wisconsin, we passed a resolution stating that, in effect, stating that there should be limits on the amount of time that landowners are tied to such leases, and that there should be...the land should be tied to those...those leases should be tied to the land. And that there should be some sort of out-clause giving the time, if someone ties up a lease or signs a lease on their farm and no development takes place, that there should be some type of period of out if that company does not perform and there may be another company wanting to perform in that period of time or soon after. We know that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

as Mr. Hansen said, many people have been approached by these companies, some before the C-BED legislation that was passed last year was even known about and some after. Many with very little understanding of what the potential is and what the potential is for C-BED on their farms as well or a different form of wind energy development on their farm that may be better for them in the long run or better for our state taxpayers in the long run. We know that some have signed their wind rights away for 50 years. We also understand that some weren't even told that they needed a lawyer, that that was being taken care of in-house by a Nebraska attorney or something. We also...given a little bit of historic examples of something that Chairman Loudon was talking about, mineral rights under the land, I'd offer an example of the abstract on my farm goes back to 1883. The land grant that was given...this farm was given to someone and it's quite a historical document in itself on what happened to the farm and what happened to agriculture through the '30s. But it was lost in the '30s. Quite quickly the land company owned it and in the early '40s, 1943, you'll see in the document I provided you, it was sold to a gentleman. But 50 percent of the oil rights and mineral rights on the land were withheld by the land company or the mortgage company and then later, a few years later, it looks to me that those rights were handed over or probably sold to a private individual while the land was still being held in the same person's hands. And then it goes...a notation of that, was that exclusion goes on in the document for several years and then it's lost. So I think I would have to get a legal opinion for my land to determine whether I actually own 50 percent or more than 50 percent of the mineral rights on my land. The good news is, I don't have any oil on my land so it's not a big concern to me (laugh) and I don't expect to find oil on my land. But I do have wind blowing over my land. And the difference is, is that what we're talking about today is a known resource across Nebraska. And, of course, the companies that are offering leases to individuals across the state are offering monetary compensation which in this document there doesn't look like there was. But since, you know, that wind resource is known, it behooves us to make sure that those people are treated as fairly as possible and that some certain guidelines or limits are put on contracts. And there's some transparency, as Mr. Hansen suggested, to those contracts so people understand what they're getting into and they understand what they have in a portfolio of options regarding wind as this all develops since we're in the very early stage. As far as Nebraska goes, and taxpayers and economic development, there may be better options than leasing land that provide a turnover of revenue in the state that increases economic activity and tax dollars coming in. For other people, a lease may be very, just the right thing. They may be happy with the lease. There may be good leases out that are fair and good for landowners. But we believe that some sort of, you know, limits or protections that allows some outs or some guidelines are in order here as we move forward in this development. So that's where our organization stands. That's a synopsis of my comments that I have provided you with a copy today. We believe that C...the whole thing is in its infancy. C-Bed is very possibly a good option and we want to make sure that people understand their options. In closing, before I close, I would like to mention on the national level, we understand that in the stimulus package that

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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Congress is suggesting, there is a provision for an extension of the production tax credit on wind which would be very good and very helpful in our state for development of this resource and we'd encourage those interested to talk to our legislatures and encourage the passage of that. With that, I'd like to close and answer any questions that I may be able to. [LB923]

SENATOR LOUDEN: Questions for Mr. Dittrich? Did I pronounce that right? [LB923]

KEITH DITTRICH: Yes, you did, sir. [LB923]

SENATOR LOUDEN: Okay. Thank you. I have questions. I quite interested in abstracts. I've done a lot of that, oil leases and I notice they were reserved forever. It's been customarily over the last several years you reserve your mineral rights for about 20 years and then they revert back to the owner. Although some are, they keep them forever. I noticed, are you familiar with the Board of Educational Lands and Funds and the school lands in the state of Nebraska? [LB923]

KEITH DITTRICH: Somewhat, but not well versed. [LB923]

SENATOR LOUDEN: Do you know that when...you know, they're selling a bunch of their land and they're by statute they were supposed to sell a certain percentage of it, a value of it. And they're selling that. And did you know that they reserve all of gas, mineral, oil, gravel, they reserve everything except the water... [LB923]

KEITH DITTRICH: Really. [LB923]

SENATOR LOUDEN: ...on that land, on the school lands that they sell. Now, should we pass some legislation because anybody that goes out that buys the school land is taking a real rriming because they're not getting that. And you know, is that a good deal? Should there be legislation to protect the people that are buying school lands? [LB923]

KEITH DITTRICH: Well, I believe, Chairman Louden, that with this legislation and Senator Dubas may be able to shed some light on this better than I, but this is just an option that limits, limits or gives you an option to opt out if that...if the limit, you know, if there's no action after five years and so forth, that doesn't mean that the contract can't continue but there's some, some... [LB923]

SENATOR LOUDEN: Well, some of the testimony has been we're trying to make sure people don't, I think Mr. Hansen or somebody and some of them mentioned that we don't want people to get, you know, get into bad deals. That's the reason I'm wondering. There's a lot of bad deals going out there and the state of Nebraska is a party to part of them. The next thing is, is if I had a chance to lease for wind and they didn't develop on

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

it, why should it be terminated in five years because that would be quite an asset to be able to get that money coming in all the time. [LB923]

KEITH DITTRICH: No sir, I don't think so. I think that the real value in those wind leases is when the development takes places because then, for instance, you may, from what I understand of the contracts, you may be receiving \$1,000 a year for a quarter section of land if it's not developed. But when it's developed, it ratchets up to \$8,000 or \$9,000 a year, so... [LB923]

SENATOR LOUDEN: Yeah, but on the other hand, I don't have to put up with that piece of junk that's up there that I might have to do away with. The next thing is when you do that, then we should go back to this oil deal then. If the neighbors have to do away with their leases in five years, should we be passing legislation that you have to pool your revenue off of those wind energy farms? [LB923]

KEITH DITTRICH: Speaking of the previous comment, the leasing company or the wind company would own the equipment. So I would not be under authority to dispose, I assume would dispose of that equipment if it was wore out or something. I may have to keep continue looking at it though, of course, and some people may not like that, but many people do. As far as pooling it, that's a question we have to analyze before I can answer that. [LB923]

SENATOR LOUDEN: Okay. Thank you. Other questions for Mr. Dittrich? Seeing none, thank you for testifying. [LB923]

KEITH DITTRICH: Thank you. [LB923]

GALE LUSH: My name is Gale Lush, G-a-l-e L-u-s-h. I'm a farmer from Wilcox, Nebraska, and as I was sitting there listening to the testimony I was trying to think of a good analogy that would satisfy everybody's questioning of why do we need a five year limit and why should we have people who make bad deals or who don't want to complete some action, let them out of that deal. And I was thinking about this and I came up with the sacrament of marriage. Everyone probably understands that and I looked up the laws of marriage one time and after the priest has said the vows and you've exchanged vows and after the justice of the peace has pronounced you man and wife, or the minister or the judge, there's only one real requirement after you've signed the license to make that marriage legal and that's to consummate it. Now the question I guess is, and I don't know if it was in the statutes, is I think time is probably of the essence, is five minutes too fast or is five years too long. Now the same thing is true about these wind rights. We don't want people to come in here and lock up all the good wind sites in the state of Nebraska and then just do nothing. Just as in a marriage, if you don't have some action, well, some consummation (laughter) or in wind rights action... [LB923]

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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SENATOR LOUDEN: I hope this is going some place with LB923? [LB923]

GALE LUSH: It is. [LB923]

SENATOR LOUDEN: If it is, why you.. [LB923]

GALE LUSH: If you don't have some action in a marriage (laughter) if you do not consummate, the marriage is annulled. In this bill... []

SENATOR LOUDEN: Who is to know? [LB923]

GALE LUSH: Annulled. It's null and void. [LB923]

SENATOR LOUDEN: But who is to know? [LB923]

GALE LUSH: Well, usually the person, usually someone knows and they bring an action. (Laughter) And of course the wounded party can go out and find a better deal and the same thing is true in wind rights. Now, this analogy is probably a little too...but I think everybody understands marriage. So what...we don't want people to lock up wind rights in the state of Nebraska and then not take action in developing those wind rights. We protect landowners who may have been induced in, through some type of inducement that they were going to have a wind turbine put on their land. Then they find out, no, we're just going to wait around and see who buys our wind rights up sometime down the road. Or they may erect turbines all around them and find out their land is just the land that's going to have the wind blow over it and they receive very little for it. They don't get the lease payments on the turbine or anything else. Now, I've been working on these wind issues for quite a few years, for about six or seven, and if you have a big turbine, like a three meg that's 100 meters in the air, you have to have the distance north and south about a half mile, give or take, and east and west about 800 feet because of the wind. They distort the wind. They're just like irrigation wells. We have rules with irrigation wells that require that you cannot put an irrigation well within 600 feet. Now, this would be similar. So the fellow who thought he was going to get a turbine is left out in the cold. I think the pooling issue that you brought up, Mr. Louden as chairman, is a good point but this bill doesn't address that at this point. But I think we need to look into that. Also if there is no action, the landowner is allowed to renegotiate just as the wounded spouse in an annulment is able to go out and find another spouse. The landowner is able to go out and renegotiate for a better deal, one someone who will actually go out and develop the wind rights. And I think that's important. It's not only important for the landowner, but its important for the state of Nebraska. The state of Nebraska doesn't get very much revenue from a wind right that is not developed. Just as if irrigation water had never been developed, where would we be today with ethanol and all the productivity that we have in our farmland? So maybe the state of Nebraska is

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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not the top of my list, but it's one of the entities that's going to receive quite a bit of income eventually because these wind rights are developed. I think even if you go back to leases I very seldom see leases that are over 99 years. There's a public policy against tying up land for longer periods of time than that. So I would guess in closing, I would say that just as in a marriage, if there is no action then there has to be an annulment, and then get someone in there who is going to do the development so that the community and the landowner can use it and profit from it. I'll take questions. [LB923]

SENATOR LOUDEN: Okay, questions for Gale about the comparison of wind and marriage? (laughter) Senator Fischer. [LB923]

SENATOR FISCHER: Thank you, Mr. Lush, for being here. I won't address your comments, even though Senator Louden said that has to be the question. (laughter) You said you were a farmer by Wilcox? Is that correct? [LB923]

GALE LUSH: Yes. [LB923]

SENATOR FISCHER: Do you have plans for turbines on your land? [LB923]

GALE LUSH: I would like to put some on my land. I don't know if there is anything in the immediate future. It depends on what the customer, which is the public power company, wants to do. [LB923]

SENATOR FISCHER: Have you looked at wind maps, wind charts that show if your land would be suitable for a turbine? Have you looked at those? [LB923]

GALE LUSH: Yes, I have. [LB923]

SENATOR FISCHER: Has anybody approached you about a lease or an easement? [LB923]

GALE LUSH: I've heard of even people from my home area, attorneys, who have leased lands in other parts of the state. [LB923]

SENATOR FISCHER: But has anybody approached you for a lease? [LB923]

GALE LUSH: No, but I have noticed that some of the lines have been tied up by developers or whoever, I don't know. [LB923]

SENATOR FISCHER: How do you know that? [LB923]

GALE LUSH: I have a map that shows that. [LB923]

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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SENATOR FISCHER: Do they, but do they have to file that in the county court? [LB923]

GALE LUSH: Yes, they do. [LB923]

SENATOR FISCHER: And then you plotted it on a map, is that how you got that information? [LB923]

GALE LUSH: Yes. [LB923]

SENATOR FISCHER: Have any of those people come to you and regretted signing any leases, your neighbors, or those easements? [LB923]

GALE LUSH: No, there's no wind development in my area. One of the reasons there's no development in my area is not because we don't have good wind resources, it's because the public power districts don't need electricity in that area and they also, the developers who would do it really don't want to string...get their operations too far away from their home base. [LB923]

SENATOR FISCHER: Maybe I misunderstood you. You said you had it plotted on a map where people had signed... [LB923]

GALE LUSH: Tied up lines. Transmission lines. [LB923]

SENATOR FISCHER: Has anyone signed an easement or a lease giving their rights to a developer, their wind rights to a developer? [LB923]

GALE LUSH: I don't know. Most of these leases have confidentiality written all over them and so unless I actually went down to the courthouse... [LB923]

SENATOR FISCHER: So those are not filed any...are those filed in a courthouse? [LB923]

GALE LUSH: I would guess they would be, but I haven't looked in the courthouse. [LB923]

SENATOR FISCHER: But you don't know of any? [LB923]

GALE LUSH: No. [LB923]

SENATOR FISCHER: So I guess then, then you don't know of anyone who may be upset with having entered into an easement or a lease. Do you know anybody who personally has said to you they're upset by it? [LB923]

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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GALE LUSH: I've had anecdotal stories through Mr. Hansen. He's related some issues of folks who have called and talked about these things. [LB923]

SENATOR FISCHER: Okay. But you have no personal knowledge of anyone coming to you with that information. [LB923]

GALE LUSH: No. I usually warn people ahead of time and none of my friends have signed any leases. [LB923]

SENATOR FISCHER: Okay. Thank you very much. [LB923]

SENATOR LOUDEN: Other questions? Senator Carlson. [LB923]

SENATOR CARLSON: Senator Louden. Gale, this probably is something that I should discuss with Senator Dubas, but I'm listening to this idea of the lease is void after five years with no action. But shouldn't there be an option that maybe the property owner has the option to, every five years, to opt out of this lease if no development has taken place rather than an automatic, an automatic voidance of the lease? [LB923]

GALE LUSH: I think there is a provision in the legislation. I don't know the exact spot that allows people if they mutually agree to do it, to continue the lease. [LB923]

SENATOR CARLSON: Okay. Thank you. [LB923]

SENATOR LOUDEN: Other questions? Seeing none, thank you for testifying, Gale. Next testifier for LB923. Okay. Do we have someone testifying, opponent of LB923? [LB923]

JAY REMPE: Good afternoon, Senator Louden, members of the Natural Resources Committee. My name is Jay Rempe, that's J-a-y R-e-m-p-e. I'm state director of governmental relations for Nebraska Farm Bureau. I'm here today on behalf of Farm Bureau in opposition to LB923. I want to start by saying that even though we oppose this bill, we share many of the concerns that I think, Senator Dubas, raised in her opening and some of the others have said. In fact, if you look at our policy on this issue, it...the policy statement says that landowners should be made fully aware of the risks and opportunities that accompany a wind development right, lease or that kind of an easement. And I've spoken with Senator Dubas about this earlier and we've sure offered our help in trying to make landowners aware of the risks that are out there when looking at these kind of things. But I guess our bottom line is, when it comes to some of the questions that were asked earlier, that the decision whether to enter into one of these easements or wind development right leases is ultimately the decision of the landowner, and the rights that that person has as a landowner. And it's something that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

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is a contractual arrangement that they work through with the person or the company that's trying to lease those rights. And whatever conditions or any kind of stipulations that they want to put in that agreement and contract is perfectly within their legitimate rights as a landowner. And ultimately we think that decision, whatever those conditions should be, should resolve, or should stay with the landowner. And so that's, I guess that's kind of our bottom line why we oppose this bill is, is it does put some restrictions in there. I guess another concern that we have...I was glad to hear that Senator Dubas got the language from South Dakota. We had checked with our counterparts in Iowa because I know there's been a lot of development in Iowa to see if they had similar restrictions in place and they do not. And so we're a little concerned about if we do something like this, what kind of competitive position did that put us versus other states that have wind potential. Does that in fact put us at a disadvantage with other states? And finally, I guess I want to put a little twist on the five year revocation clause in the bill. One landowner that I spoke with out near your area, Senator Louden, in Scotts Bluff County, had been approached by some people wanting to lease his wind development rights and he said a lot of landowners there...he said no, because he didn't like the conditions that they were putting on him so he turned them down and said, no, I don't want it. But he said a lot of the landowners there view the wind leasing or the rights similarly to mineral rights in that, the fact that it's not developed isn't a bad thing in their mind. They like the fact that they've got the lease payment, they like the fact that it's not being developed so they don't have to look at the wind tower, and as long as it's not developed, they don't really care if it gets developed eventually or not. And so that was kind of some of the feedback we got on that issue. So for those reasons we oppose this bill and I'd be happy to answer any questions you might have. [LB923]

SENATOR LOUDEN: Questions for Jay? Well, thank you for testifying, Jay. I've, myself feel that this should be treated more as a resource, like a mineral resource rather than as a water resource and that's what I feel that this...that we may be going that direction, treating it more like water, that it belongs to people of the state of Nebraska rather than the individual landowner. And so thanks for testifying, Jay. [LB923]

JAY REMPE: Yep. You bet. [LB923]

DAN ALBERTS: (Exhibit 8) Chairman Louden, members of the committee. My name is Dan Alberts, D-a-n A-l-b-e-r-t-s, and I represent one of these private wind companies. I'm a Nebraska resident. I'm a practicing attorney here in Nebraska but I represent today Third Planet Wind, LLC. It's out of Bad Axe, Michigan. It's one of these large companies that's being talked about. There are about ten folks out of Bad Axe, Michigan, not that that's...and so I don't know if they're that large but they've been in Nebraska for about ten years, or about a year, excuse me, and they've got an office up in Petersburg, Nebraska, and they're interested in developing a wind farm in Nebraska. And they've reached agreement with about 50 Nebraska landowners. It's one of those agreements that if this law was passed, if this bill was passed, would be revoked if it

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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could be retroactive, because it has an agreement in it that the development period could be up to seven years, not five. Now the reason for that seven years, on behalf of that company, is because they're not sure how they're going to sell the power. I mean, if they could... (laugh) they've got 50 landowners signed up and I want to talk to you a little bit about the signature process that people have been talking about. Over the last six months I worked for NPPD doing easement development with farmers. I worked for NPPD, so I was out at the table with these people with NPPD's agreement because they're rolling up land also for potential wind farms. Now, their agreement was written by lawyers so I guess their plan of wind, (laugh) so you can imagine they're both sort of long, a little bit complicated. But one of the things I've noticed as I've been at those tables, is that this process is becoming very sophisticated very quickly. I have not noticed it at least with NPPD's agreements when I was working with them or with Third Planet Winds that these people aren't being well represented by legal counsel. In fact, and generally, they are being represented by legal counsel. Many of them are going together. They all hear about it. When I was up in Verdigre area, west of Verdigre for NPPD, people quickly understood that NPPD was in town, was interested in rolling up land and was...they quickly got together and talked about it and became sophisticated in how they reached those agreements very rapidly. So my experience says that that wouldn't be working with NPPD for six months and doing this and working with the farmers at their table, I did not...or other landowners, I didn't see that as an issue. Third Planet Winds, though, has an agreement that has the following terms and I'll be glad to share you with that agreement if you'd like to see it because I think Third Planet Wind is probably a company that has been in the state as long as anyone. It's probably one of the most mature companies in the state. As I gave you in that handout, they've got a land wind farm developed that's got meteorological towers on it measuring exactly how much wind there is blowing on that property. They've been in the state for a year. They've got an office downtown Petersburg sitting dead center in Petersburg. They've got meteorological towers operating for about a period of, just about eight months right now, and if they could get ready to sell this electricity and put in a wind farm, they're going to do it as quick as they possibly can. Now they've got an evaluation period of seven years in their contract but part of it is, Nebraska isn't mature yet in how this electricity is even going to get sold. Right now if Third Plant Wind wanted to put in a wind farm and sell the electricity, there's not a process for that to occur. NPPD is one of the major buyers, probably the only buyer you can sell it to and it's not clear how you can even sell it to them. They're in that process right now and it's going to take time. I assure you that as soon as Third Planet Wind and the 50 landowners and partners that they have in Petersburg can figure out how to get a wind farm developed, they're going to do it. (laugh) They're going to get those babies spinning because that's probably where the money is. I know the...I was talking to the superintendent of Boone County school district just the other day and he's really anxious for it because this wind farm that would go into Petersburg and Boone County would pay more property tax per year than that school district uses. So and I know I talked to the banker, the Petersburg banker just yesterday, Ross, I think his first name is, and they're chomping at the bit. So

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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the idea that these...I don't know which all the companies are out there and I don't know that they're not some that are unscrupulous. I know from my experience, Third Planet Wind is a company that's attempting to get a wind farm in and I've handed you out sort of what the economic rural effect would be if that wind farm gets developed. So this bill, in my behalf, if it becomes law, just causes increased confusion because I'm not sure that...we're out making agreements in Madison County now and now at some point if this bill became law, we'd have to change that agreement because we have a seven year evaluation period. So it's possible that this thing wouldn't...you know, that we might not get it operating within five years and apparently this would make it void. So I, but I'm pretty certain, thinking about all the other private companies that are out there, that they're anxious to get these things spinning if they can. So I don't know that having this five year evaluation period or the thing is void certainly wouldn't effect Third Planet Wind other than we have this contract, and the contract is only because that we don't know how we're going to get the electricity sold as of now because there's not a clear method. So with that, I'll stop and answer questions. [LB923]

SENATOR LOUDEN: Thank you, Mr. Alberts. I was going to ask a question first. Can you explain very lightly on how you're agreements are? I mean, do you pay a lease for, for it and for seven years' time? Is that what your leases run? [LB923]

DAN ALBERTS: Be glad to. Here's what the agreement says. Now, because it's written by attorneys and I am an attorney so (inaudible) It's thirty pages that says the following things. You sign up, we write you a check. You agree to do this, we write you a check for \$2,000. Okay. Per parcel. What's the \$2,000 for? It's good faith money that says that over the next seven years, up to that seven years, we have a right to evaluate your land and what that means is, we're going to put meteorological towers out there... [LB923]

SENATOR LOUDEN: Now is that \$2,000 for the whole seven years or... [LB923]

DAN ALBERTS: For any, yeah. Up through seven years. [LB923]

SENATOR LOUDEN: It isn't \$2,000 a year? [LB923]

DAN ALBERTS: No, no \$2,000 a year. Okay. But what hopefully, what Third Planet Wind's trying to do, they evaluate it for one year and either decide to stay in town or get out of town, because they need to have that. If they knew that they could get it in in one year after they put the meteorological towers out there and they need one year's of data, that's what they would do. Now the agreement also says if we leave town, the deal is void. You get to keep your \$2,000, the deal's void. Now, at any point during that seven years, Third Planet Wind can pull out of the deal...now it is true the landowner can't pull out of the deal. He's been paid. But Third Planet Wind can but when they do the deal is over. So you can go out and make a deal with anyone else. Now, after, at some point during that time if Third Planet Wind decides they're going to put in a wind farm, now

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

they have to come out and work with you to put in these wind turbines, and they're planning on putting in 56 wind turbines in Boone County as soon as they can possibly can. They got in 2009, they've got 160 of them purchased, \$2 million apiece for 1.5 megawatts. Okay. [LB923]

SENATOR LOUDEN: Now, a question now I have because we're in the question side now. How big is the parcel that you're talking about that you're paying \$2,000 for? [LB923]

DAN ALBERTS: It's whatever the parcel is that the landowner has. It could be...if it's 100 acres, they pay them \$2,000. If it's more than 100, if it's more than 500 acres they pay him \$3 an acre, so that it's the larger of the two. So if it's \$3 an acre. So if I have 2,000 acres I'm going to get \$6,000, yeah. [LB923]

SENATOR LOUDEN: Okay. A one-time check. [LB923]

DAN ALBERTS: Yes, one-time check. [LB923]

SENATOR LOUDEN: Well, Okay. Thank you. Questions for Dan? Senator Fischer. [LB923]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you for being here today. Appreciate it. Mr. Alberts, after you determined that Boone County was a good place to build a wind farm, do you sign an easement or a lease then with the landowner where you're going to put up the turbine? [LB923]

DAN ALBERTS: The first easement that they signed, the offer says if Third Planet Wind decides to put in turbines, that's part of this agreement. But now it goes to the operational period, that a farmer has to work with Third Planet Wind on the location. Okay. [LB923]

SENATOR FISCHER: So the farmer, if they have less than \$2,000 they don't get any more money if you put a turbine on their land? [LB923]

DAN ALBERTS: No. The \$2,000 was paid just for the evaluation period. Once the operation period says, now the agreement says we'll pay you one of two things per year. If you get no turbines on your land, because we know you're in the land area, we'll pay you \$3,000 a year for the next 50 years, turbine or not. Because we understand, we tied up your land so the minimum of farmers, landowner's going to get is \$150,000 over 50 years because the entire agreement's for potentially 57 years. Seven years of evaluation, 50 years of operation. Or if you get a turbine, you're going to get paid somewhere's between \$4,000 and \$8,000 a year per turbine per year. That's during that operation period and that's dependant upon whether you want to take a flat payment or

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
January 24, 2008

---

you want to take a portion of the gross income from the sale of the electricity which you're able to join them as a partner in taking part of the payment. And that goes, that's estimated right now between \$4,000 and \$8,000 per year per turbine. [LB923]

SENATOR FISCHER: So, those contracts, it's a legal contract. You wouldn't call that an easement? [LB923]

DAN ALBERTS: Yes. [LB923]

SENATOR FISCHER: Would you call it an easement? [LB923]

DAN ALBERTS: Yes. It is a contract and an easement. It is an easement which is... [LB923]

SENATOR FISCHER: It is an easement, okay. Do you have to file that easement anywhere? [LB923]

DAN ALBERTS: Yes. It is filed with the county assessor, yes. [LB923]

SENATOR FISCHER: Does it have to be approved by the county board? [LB923]

DAN ALBERTS: No, no. It's a contract between two private players. [LB923]

SENATOR FISCHER: Okay. Thank you. [LB923]

SENATOR LOUDEN: Other questions. Senator Carlson. [LB923]

SENATOR CARLSON: Senator Louden. Dan, on the sheet that you handed out to us, down there it says during construction, estimate time, one year, more than 30 additional employees will be hired locally creating more than \$500,000 of income. Are those figures correct? [LB923]

DAN ALBERTS: Um-hum. [LB923]

SENATOR CARLSON: Well, that's only \$16,000 and some dollars apiece for 30 employees. [LB923]

DAN ALBERTS: (Laugh) Well, I certainly under estimated the pay because I didn't want to overestimate it. I mean, I'm not...we have no idea how much they're going to get paid. I just put in a figure that I knew it would at least be that or more. Because we were talking about additional income to the community. Okay. [LB923]

SENATOR CARLSON: Okay. Thank you. [LB923]

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Natural Resources Committee  
January 24, 2008

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SENATOR LOUDEN: Then where you're set up with your contract you pay, if they don't have a turbine, they get \$3,000, then you do have a type of pooling on your...with your wind farm then. Those who don't have the wind farm still receive some benefits. [LB923]

DAN ALBERTS: Yes. And the fact of it is, with these wind farms if I have a bunch of turbines around and you don't happen to have one, you're not going to be able to put in another one because they're going to effect each other as it was originally, was earlier pointed out. We understand that. So that's why we say, if we're not putting one on your property we're going to pay you an amount anyway. Because we understand it's tying up an area. That's certainly true. [LB923]

SENATOR LOUDEN: Other questions? Seeing none, thank you for testifying. [LB923]

DAN ALBERTS: Thank you. [LB923]

SENATOR LOUDEN: Other opponents on LB923? Seeing none, those in neutral for LB923? Do you wish to close, Senator Dubas? [LB923]

SENATOR DUBAS: I would like to, please. Thank you again, Chairman Louden, and members of the committee for taking the time to listen this afternoon. I think if I haven't learned anything else in my short of amount of time down here, it's that every bill is a work in progress and what we introduce rarely stays in that fashion and this was very informative for me this afternoon and I appreciate the information that was brought forward. Some of the questions that were brought up indicates to me that maybe we do need to clarify some language. While nothing in the bill denies the right to renegotiate at the end of those five years, nothing in there really says that they can either. So I take all of the testimony to heart this afternoon. Again as I stated in my opening, I consider this a consumer confidence bill. And confidence comes from the fact of knowing that there are certain rules of engagement and parameters that need to be followed. We know we have lemon laws for cars. There are different outs if you get into a contract and you know you have a certain amount of time to review that contract. If you buy an insurance policy, you're usually given a 30 day period or what have you. So that gives the consumer a little bit of confidence in knowing, okay, if I get into this and I realize it's not quite what I thought it was going to be, you know, I do have something available as a recourse. The agreements that people enter into as far as wind and solar rights do have a long-term impact on the value of the land, on the landowners and on future generations. Because the wind and solar industry is just in it's beginning stages, the long-term financial impacts are really unknown at this time and we know with the rate and the pace of technology development today, that what might be brand new today is obsolete tomorrow. This could be, I mean, we could liken the wind and solar energy development much to like the land rush or the gold rush or the oil or water. After the value of a natural resource reaches mainstream, the person who profits is usually the

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Transcriber's Office

Natural Resources Committee  
January 24, 2008

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one who understands it the most. Nebraska ranks sixth in the nation for wind energy potential. I think there's a lot of undeveloped potential still compared to surrounding states. Nebraska should be very excited about the potential that exists for our state and I think we need to be vigilant and really help our consumers understand what's out there. So I thank you again for your time and look forward to working with the committee. Thank you. [LB923]

SENATOR LOUDEN: So this ends the hearing on LB923. []

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Natural Resources Committee  
January 24, 2008

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Disposition of Bills:

LB923 - Indefinitely postponed.

LB939 - Advanced to General File.

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Chairperson

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Committee Clerk