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Natural Resources Committee
February 17, 2010

[LB755 LB964]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 17, 2010, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB964 and LB755. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: none. []

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. I am Chris Langemeier, the Chairman of the committee. I'd like to welcome everybody that's in the crowd here today; also those that are in the overflow room and those that are watching us on closed-captioned TV as well those that are watching the live Internet feed. Let me introduce our group here we have today, the committee. We have to my far left, your far right we have Senator Beau McCoy from Elkhorn and represents Omaha. Then we have Senator Ken Haar from Malcolm, Nebraska. Then we have Senator Ken Schilz from Ogallala. Then we have the Vice Chairman of the committee, Senator Annette Dubas, from Fullerton. We have Laurie Lage who is the committee counsel and then out to my far right or your far left, we have Barb Koehlmoos who is the committee clerk. And then we have Senator Tanya Cook from Omaha, Nebraska. Then we have Senator Tom Carlson from Holdrege. Then we have Senator Deb Fischer from Valentine. We have two pages that will be assisting us with handouts. If you have handouts, oops, they changed one on me (laughter); Kiana Mathew is to the left there, is from Omaha, Nebraska, and is a sophomore at UNL. And then we have Tony Pastrana is...is not here,... [LB964]

SENATOR FISCHER: Jamie Myers. []

SENATOR LANGEMEIER: ...but we're going to have Jamie Myers from Stuart. []

SENATOR FISCHER: Yes. []

SENATOR LANGEMEIER: Is that right? []

SENATOR FISCHER: Yeah. []

SENATOR LANGEMEIER: She helps in your committee too, doesn't she? []

SENATOR FISCHER: Yeah. []

SENATOR LANGEMEIER: She's going to fill in for Tony. As you come up to testify; those that are wishing to testify on the bill, you have two options today. The first one is this green sheet; if you're going to come up and actually sit where Senator Christensen is and testify, we ask that you fill out this green sheet in its entirety. And when you bring

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it up, we ask you to give it to the committee clerk; it helps us keep a transcript and a proper record of today's events. We also have...we'll have people in the audience that are not going to testify, but want to be on the record as being here and having an opinion in support or opposition to a particular bill number. There's another form that looks like this in the back corners of the room and you can go ahead and sign in on that. We'll make you a part of the official record even though you did not testify, but you'll be in the record as showing up and having an opinion. For those of you who are going to hand things out, we ask that you have ten copies. If you know right now you don't have ten copies, raise your hand, the pages will come help you assist you with that. Anything you hand out to us as the committee that you want us to see, we're going to keep it. So if it's something that you want to take back home with you, don't hand it out, don't let us have it, because we will keep it and make it a part of the official record here today. If it's something that you want us to look, hold it up at the testifying table as you testify and if the senators didn't get a good look at it, they'll track you down afterwards and look at it in more detail. We ask that when you come up to testify, the first thing we want you to do, before anything else, we want you to say and spell your name. No matter how simple it is, we need you to say it and spell it. It helps us with the transcription and to keep a complete record. At this time, we'd ask you to turn your cell phones off and so we don't interrupt those that are testifying. We also don't allow display items, if you had a display item you wanted to use before the committee. And with that, we do use in the Natural Resources Committee, each testifier gets five minutes to testify. You'll see the little light bar in front of Senator Christensen there. You get four minutes on the green light; and then you'll get a yellow light for one minute and then when the red light goes on we ask that you complete...you stop and then allow yourself for questions from the committee. With that, we will open the hearing on LB964 and welcome Senator Christensen and you're recognized to open on LB964. []

SENATOR CHRISTENSEN: (Exhibit 1) Thank you, Mr. Chairman, members of the Natural Resources Committee. I'm Senator Mark Christensen C-h-r-i-s-t-e-n-s-e-n, I represent the 44th Legislative District. I'm here today to introduce LB964. LB964 would prohibit a gover...ooh, having fun here... [LB964]

SENATOR LANGEMEIER: Been a long day already, huh? [LB964]

SENATOR CHRISTENSEN: ...would prohibit a governing board of a county from entering into a lease that allows for the exploration of oil and gas in county road right-of-ways because of concerns of creating safety hazards in the county road right-of-way. A landowner in my area has concerns about the safety and the exploration of natural gas in the county road right-of-way, brought this issue to my attention. He has witnessed gas companies lay down cables used in exploration in the county road right-of-way. They have moved them by helicopter to another section, maneuvering around power lines and other obstacles and he believes there are other safer alternatives. On line 10 and 11 of the bill, there's some language that should not have

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been there that I overlooked. The phrase "and development" should not have been in there and is causing some opposition. An alternative fix was also given to me by Andy Pollock representing Northwestern Energy of which I've handed out to you. Thank you for your consideration of LB964 and I'd urge the advancement to General fire...File. (laugh) I'm glad to answer any questions if I can. [LB964]

SENATOR LANGEMEIER: I'm not sure we want to ask you questions? (laughter) You haven't drafted that amendment, have you? [LB964]

SENATOR CHRISTENSEN: It's handed... [LB964]

SENATOR LANGEMEIER: And you passed that out. Okay. [LB964]

SENATOR CHRISTENSEN: There's some potential there; or strike them two words, does the same thing. [LB964]

SENATOR LANGEMEIER: Okay. Are there any questions for Senator Christensen? Seeing none; they're going to let you off easy. [LB964]

SENATOR CHRISTENSEN: That was easy. [LB964]

SENATOR LANGEMEIER: Thank you. You've heard the opening for LB964. We'll move on to testifying. Those that would like to testify in support. Is anyone here to testify in support of LB964? Seeing none. Those that would like to testify in opposition to LB964? Come on up. I thought you were on a roll there for a minute, Senator Christensen. Welcome. [LB964]

ANDY POLLOCK: Thank you. Senator Langemeier and members of the Natural Resources Committee, my name is Andy Pollock, that's spelled A-n-d-y P-o-l-l-o-c-k. I'm here as a registered lobbyist for NorthWestern Energy, as Senator Christensen mentioned, and also on behalf of the Nebraska Natural Gas Association. And I have just some brief comments and Senator Christensen touched on those. Our concern, the natural gas industry's concern was simply the inclusion of the language "development in", or "development" in the bill and what our concern boiled down to was this. It's common, if not a very common practice for natural gas companies to put their pipelines along county right-of-ways, county road rights-of-way, other roads' rights-of-ways. It's convenient for the company, it's convenient for landowners, it's convenient for the counties, it's really a win-win. It avoids us digging into private land for purposes of laying down pipes when we can avoid...when we can avoid doing that. So it's a common practice. And what our concern was, was whether the word "development" might be construed to include placement of pipelines in county road right-of-ways. I went and talked to Mr. Wiles, who is Senator Christensen's legislative aide, as you know, early when this was introduced and expressed that concern and he, at that point, said it was

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not their intention to prohibit the placement, construction, repair, etcetera, of natural gas pipelines with the development language which was in the bill. We had, as Senator Christensen pointed out, tendered some proposed language which a few of the natural gas companies had reviewed and okayed and I think it has been submitted to you. I also think, however, that his suggestion of removing the words "or development" would accomplish the same and with that we would support those changes. We're opposed to the bill; NorthWestern, the company I principally represent, is really not in the business of exploring for natural gas. They serve four communities in Nebraska, including North Platte, Grand Island, and Kearney and we're more concerned about where we can put pipeline in the ground and how we serve our customers, not so much exploring. So the concern again was the development of natural gas and we just didn't want that to be read or construed at some point in time to mean that you would prohibit pipelines from being placed. So with that I'd be glad to answer any questions, if my voice holds out, and hopefully make clarity of this. The purpose of the amendment was clarification. [LB964]

SENATOR LANGEMEIER: Thank you. Are there questions? Senator Carlson. [LB964]

SENATOR CARLSON: Thank you, Senator Langemeier. So, Mr. Pollock, if on page 2 "and" in line 10 and "development" in line 11 is struck, does that change your negative or opposition position into proponent? [LB964]

ANDY POLLOCK: I think at that point we'd probably be neutral on the bill. It's not something that we were asking or certainly asked Senator Christensen or this body to pass. We understand the concern. I think the concern that he mentioned is very legitimate. I think it would be, you know, obviously, a safety risk for equipment to be plopped down on county roads and we don't oppose what he's doing in that regard. But I think it would probably switch our position to a neutral if that language was removed. [LB964]

SENATOR CARLSON: Okay. Thank you. [LB964]

SENATOR LANGEMEIER: Senator Fischer. [LB964]

SENATOR FISCHER: Thank you, Chairman Langemeier. Mr. Pollock, I know you said that your company doesn't explore for natural gas usually. However, do you see a problem if a lease is granted in a county right-of-way? Would a company have access to private property for this exploration ? [LB964]

ANDY POLLOCK: Would...by having access to the county of right-of-way, would that give them additional access to the private property? I don't see how that would. I think they'd also have to have permission to...I certainly think NorthWestern would seek permission to enter the private land in addition to any permission they might have to the

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county road right-of-way. Permission to use a county road right-of-way is entirely different than having permission to use county...or private land or even step onto private land. [LB964]

SENATOR FISCHER: You brought up safety concerns; do you see that mainly with equipment? [LB964]

ANDY POLLOCK: When I talked to Mr. Wiles that was his concerns, as I understood it, was that some equipment was being left not just in the right-of-way, but on the road. I could have misunderstood that, but that was what I understood to be the case. [LB964]

SENATOR FISCHER: Okay. Thank you. [LB964]

ANDY POLLOCK: And I can tell you that NorthWestern is not in the practice of leaving exploratory equipment in any county roads. [LB964]

SENATOR FISCHER: Thank you. [LB964]

SENATOR POLLOCK: Thank you. [LB964]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB964]

ANDY POLLOCK: Thank you. [LB964]

SENATOR LANGEMEIER: Further testimony in opposition to LB964? Welcome. [LB964]

JON EDWARDS: Good afternoon, Senator Langemeier and members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing Nebraska Association of County Officials in opposition to LB964. And when our board took a look at this bill and had some discussion about it, ultimately they felt like they believed that this is one of those decisions that kind of is better left to the local officials to make that decision about the propriety of actually leasing the property or the safety concerns that may be involved there and whether those outweigh the benefits. In our...it's my understanding that this is not a problem throughout the state. We're not aware of this being an ongoing issue elsewhere. Quite frankly, I'm not real familiar with the one individual situation that has brought this legislation to you today. I think, and when you're talking about safety, I think that the counties have the ability to work with whatever entity it might be that's involved in a situation like this. Work with the highway superintendents in making decisions about what they may do in terms of adjusting traffic on county roads, given a particular situation involving one of these circumstances if necessary based on safety concerns. I really think that when you look at a situation like

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this, you really have to evaluate these cases, these situations on a case-by-case basis and make evaluations about the benefits and the concerns and weighing those options and allowing those local officials to make that decision. There may be a real benefit in certain circumstances to allowing this. And certainly Mr. Pollock has raised an issue that is very prevalent. I think that county road right-of-ways are, obviously, very important to counties and when you're talking about...anytime you're dealing with a county road right-of-way and a project or anything that involves a county road right-of-way, the counties are going to take that very seriously. They're going to look at it very carefully because it is an important part of the county road system and part of their duties and...so I think in a situation like this, they're going to be careful to evaluate that because it is an important aspect of what they do. I guess, ultimately, what I would say to you all is that I think that maybe this is really a case of one size in this particular circumstance I don't think would probably fit all across the state. So with that I'll conclude my testimony and we are in opposition to this bill. So thanks. [LB964]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Edwards?
Senator Schilz. [LB964]

SENATOR SCHILZ: Thank you, Senator Langemeier. And Mr. Edwards, thanks for coming in today. [LB964]

JON EDWARDS: Sure. [LB964]

SENATOR SCHILZ: I guess the question that I have, most county road right-of-ways, how big are they? [LB964]

JON EDWARDS: You know, it's funny, when I was walking over here, I was... [LB964]

SENATOR SCHILZ: You were thinking about that. [LB964]

JON EDWARDS: I was thinking about that and I don't want to tell you, but I can get that...I'll get that for you and I don't want to tell you wrong and... [LB964]

SENATOR SCHILZ: Right, I understand. But as I understand it, it's not a huge amount of space. [LB964]

JON EDWARDS: It's not a significant amount of area. [LB964]

SENATOR SCHILZ: So I guess my question is, what are these companies doing having exploring for "natural gas" in the right-of-ways? [LB964]

JON EDWARDS: Yeah. [LB964]

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SENATOR SCHILZ: They're not going to be able to place a well there, are they?
[LB964]

JON EDWARDS: Right. And that's an interesting question and I don't...when you look at the language, the exploring language, I'm not quite sure how that would relate. I think Mr. Pollock did a nice job of explaining how they use that right-of-way to run pipeline and so forth. And certainly that makes sense anytime you can make use of that in a convenient sense. But in terms of the exploring language, I'm just...I'm not sure, I'm not aware of what that...that may mean. And also, like I stated before, I'm not quite certain on the facts... [LB964]

SENATOR SCHILZ: Right. [LB964]

JON EDWARDS: ...of the given situation and what happened there and what actually...
[LB964]

SENATOR SCHILZ: Sure. [LB964]

JON EDWARDS: ...brought this forward. [LB964]

SENATOR SCHILZ: Sure, and I guess, and Senator Fischer's comment about...I think it was Senator Fischer, about private property. I mean, my question is, are these...are these groups exploring using the county right-of-way and then looking underneath private property... [LB964]

JON EDWARDS: Sure. Yeah. [LB964]

SENATOR SCHILZ: ...to find out...that's my question. [LB964]

JON EDWARDS: Sure. And on that...I...I...couldn't answer for you technically how they would do that. [LB964]

SENATOR SCHILZ: Okay. [LB964]

JON EDWARDS: What is exploring and then how do they do that, you know, and whether that invades other property and so on and so forth. I just...we could certainly look at it a little bit closer and try to get some information for you on that, but I just don't know for sure. [LB964]

SENATOR SCHILZ: I would appreciate that. [LB964]

JON EDWARDS: I just don't know for sure. [LB964]

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SENATOR SCHILZ: Okay. Thank you very much. [LB964]

JON EDWARDS: Sure. [LB964]

SENATOR LANGEMEIER: Senator Carlson. [LB964]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Edwards, to followup on Senator Schilz' question, I'd be interested in what that setback is for county roads... [LB964]

JON EDWARDS: Sure. [LB964]

SENATOR CARLSON: ...because it must be significantly different than state highways. In fact, the right-of-way on a state highway is so far back that when you think about putting up a sign and getting it beyond the right-of-way, it seems like it's out of place. [LB964]

JON EDWARDS: Right. It's a long... [LB964]

SENATOR CARLSON: It's so far back. [LB964]

JON EDWARDS: Right. Right. [LB964]

SENATOR CARLSON: So I would be interested in what that is. [LB964]

JON EDWARDS: And I can get that for you. [LB964]

SENATOR CARLSON: Another question is, as companies lease for the right to explore, is there money involved in these leases? [LB964]

JON EDWARDS: I would imagine that...that there can be, sure. I would think that's kind of...there can be a benefit there, that would be my understanding. [LB964]

SENATOR CARLSON: Well, currently are those dollars then...dollars that go to the counties? [LB964]

JON EDWARDS: If it's in the county right-of-way, my understanding is that that money most likely goes into the county general fund. But...I could check to make sure of that...and I don't know how...I'm not certain how often this goes on in terms of actual dollars exchanging hands and..but...that would be my understanding, but I can certainly clarify. [LB964]

SENATOR CARLSON: Well you're doing a little exploring for us. [LB964]

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JON EDWARDS: That's...I know what my exploring is. [LB964]

SENATOR CARLSON: If a...that would be interesting just kind of the volume... [LB964]

JON EDWARDS: Sure. [LB964]

SENATOR CARLSON: ...statewide on an annual basis of these requests and an idea of what kind of dollars might be involved. [LB964]

JON EDWARDS: Sure. [LB964]

SENATOR CARLSON: Thank you. [LB964]

JON EDWARDS: You bet, no problem. [LB964]

SENATOR LANGEMEIER: Are there any other questions for Mr. Edwards? Seeing none, thank you very much for your testimony. [LB964]

JON EDWARDS: Thank you. [LB964]

SENATOR LANGEMEIER: Further testimony in opposition to LB964? Seeing none. Testimony in a neutral capacity to LB964? Seeing none. Senator Christensen, you're recognized to close on LB964. [LB964]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Maybe I can clarify a little bit more on this. The counties own the right to utilize the surface. The land is still owned by the landowner. The landowner doesn't pay taxes on it. But has...owns the land to the center of the road. Counties have the rights to move the dirt off the property, build it up, maintain the roads, but they don't have the rights to the minerals or anything else below that property. I think that's part of what the exploration issue here probably should deal with. Thank you. [LB964]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Christensen? Seeing none, thank you very much for your testimony. [LB964]

SENATOR CHRISTENSEN: Thank you. [LB964]

SENATOR LANGEMEIER: Well done. With that, that concludes the hearing on LB964. Now we'll move on...I don't see Senator Dierks. We'll move on to LB755. And we'll wait a minute for Senator Dierks. Just a show of hands, how many people care to testify today? Perfect. Thank you. And for those of you who aren't going to testify, make sure you sign in on the other sheets so we know you are here and you had an opinion. Okay.

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There he is. Senator Dierks, welcome to Natural Resources. [LB964]

SENATOR DIERKS: Thank you. Looks like a good turnout. [LB755]

SENATOR LANGEMEIER: You can pack a house. [LB755]

SENATOR DIERKS: Let's see, I need to give this to... [LB755]

SENATOR LANGEMEIER: Just set it...page will grab it. [LB755]

SENATOR DIERKS: And some handouts. [LB755]

SENATOR LANGEMEIER: We're ready when you are. [LB755]

SENATOR DIERKS: (Exhibit 2) Okay. Thank you, Chairman Langemeier and members of Natural Resources Committee. My name is Senator Cap Dierks, spelled C-a-p D-i-e-r-k-s, and I represent the 40th Legislative District. It is a pleasure to be here today to introduce LB755 to the committee members. LB755, as written, provides requirements and fees for certain oil or natural gas companies. The original bill was brought to me by some of the landowners affected by a crude oil pipeline going through their property. They have some valid concerns and we tried to address some of them in this bill. I've handed out an amendment to the committee members that was as a result of meetings with landowners and their lawyer. They have asked me to make...to take out all references to natural gas pipelines in this bill and I have agreed to that request. After several meetings of representatives of natural gas industry, I have personally been convinced that natural gas companies are sufficiently regulated by the federal government and should not be included in this bill. Other changes found in the amendment deal with the fee structure found in Sections 2 and 3 of the bill. Landowners have many concerns which are addressed in the bill and the proposed amendment you've received. They want to be held harmless if the pipeline going through their property is accidently damaged. They want to be included in insurance policies that they'll be covered if there is any litigation due to the pipeline going through their property. Landowners would like pipelines to be buried at a depth of five feet rather than the three feet required by federal law. They want to make sure that all soil reclamation is done according to the standards of the Natural Resources Conservation Service of the United States Department of Agriculture. In the amendment, pipeline companies shall pay the state, affected counties and affected school districts an annual crude oil pipeline fee, and affected landowners will receive a minimum annual easement payment. To the...in the amendment, the annual price calculations have been changed. The original bill said the rate shall be calculated per mile or any fraction of a mile determined by percentage of a mile calculated per foot. The amendment reads that the calculation shall be per mile prorated per foot. Someone will follow me to explain this fee schedule. The amendment includes language permitting landowners to have legal rights and

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remedies granted by law if easement payments are not paid or incorrectly paid. Section 3 has been deleted and new language inserted to allow affected landowners to waive their rights under this act. There are many people waiting to testify so I'll end my remarks at this time. Thank you for your attention and I'll try and answer any really unsophisticated questions you might have. [LB755]

SENATOR LANGEMEIER: Thank you, Senator Dierks. Are there any questions for Senator Dierks? Are you going to close? [LB755]

SENATOR DIERKS: I will stick around. [LB755]

SENATOR LANGEMEIER: We'll save our questions, see if they get answered ahead of time. [LB755]

SENATOR DIERKS: Okay. You think I could get by with leaving Revenue Committee for another 15 minutes? [LB755]

SENATOR LANGEMEIER: Well we can send a page to come get you, if you'd like to close. [LB755]

SENATOR DIERKS: I'll stick around. [LB755]

SENATOR LANGEMEIER: Okay. Thank you, Senator Dierks. You have heard the opening on LB755. Now we'll take those in support or proponents to LB755. Come on up. Welcome. [LB755]

STAN DOBROVOLNY: Thank you. I would like to thank you, Senator Langemeier, and the Natural Resources Committee members for hearing us today and I do have a... [LB755]

SENATOR LANGEMEIER: I've got to stop you. Name...name first and spell it please. [LB755]

STAN DOBROVOLNY: (Exhibit 3) Stan, S-t-a-n, Dobrovolny D-o-b-r-o-v-o-l-n-y; that is... [LB755]

SENATOR LANGEMEIER: Thank you. [LB755]

STAN DOBROVOLNY: Okay. In interest of time, I have a tendency to digress, I will read my testimony and get as far as I can here. The opposition here will inaccurately claim here today that the price of energy to consumers will be heavily impacted by LB755. The truth is if LB755 is enacted, the price impact on a 20 gallon tank of gasoline would amount to 1.3 cents and that is if the price of crude oil is at a fixed price of \$80 per

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barrel. The day these computations were made, crude oil traded in a 5.6 percent range; that fact alone would make any impact of LB755 impossible to detect. The opposition will also claim that annual payments would be an administrative nightmare. The truth is, royalty payments are made to dozens upon dozens of royalty owners on a given section of land, some with as little as half an acre of a royalty on a monthly schedule. This exact same formula or program could be used by a pipeline and not on a monthly but an annual basis. I would quite honestly be embarrassed to try to attempt to defend either of those positions here today. We do not have, nor will we ever have a concern about publicly owned power lines. They do not have the ability to contaminate our land and underground water supply as do crude oil pipelines. We have visited with natural gas; they're heavily regulated by FERC and natural gas dissipates into the air with little, if any, pollution consequences. We believe the Keystone XL pipeline to be just the next of many crude oil pipelines owned by various companies to traverse Nebraska in the coming years. I am quite certain our opposition here today will include Keystone XL Pipeline officials. The thing I would stress here today is the landowners along the Keystone XL Pipeline on the Canadian side of the border have already reached an agreement with TransCanada. I'm relatively certain landowners along the same pipeline on the U.S. side of the border would accept the same contractual agreement afforded Canadians along the same pipeline. Unfortunately, Keystone officials do not feel the need to treat citizens...U.S. citizens as well as they do their Canadian counterparts. This is a slap in the face to us in the U.S. This simply implies we are considered an inferior class who doesn't deserve the same respect, consideration, and compensation as Canadians. The idea Nebraska property tax owners should continue being imposed upon with little or no compensation is certainly not wise policy. As ranchers, we now pay from \$65 to \$80 per cow/calf unit each year in real estate taxes alone. The grain farmers, as well as the homeowners are at a very similar situation. For reasons too complicated for discussion here today, Nebraska has a confiscatory property tax policy. Not a policy which was propagated by anyone here today, but one which has taken place over many, many years and it's quickly approaching the property's inability to pay. At what point does the need to return something to the property owner become apparent? LB755 would have a positive impact on every property owner, school district, and county a given crude oil pipeline passes through, not to mention the state. It is obvious there will be an increasing number of pipelines coming through Nebraska because of its strategic location affecting increasing numbers of counties, schools, and taxpayers. To ignore the need for positive action to protect Nebraska citizens and property owners is unwise. The golden goose is slowly and painfully being strangled. Nebraska needs economic stimulation. LB755 is a step in that direction. LB755 would harm no one, least of all the consumers, and by pipeline company's own admission in a news article written by Nathan VanderKlippe and published in the Calgary Globe February 4, 2010. Their statement was that 75 cents per barrel, one percent, if you will, of crude oil transported would have little impact on the profits of an oil company. LB755 would have 8 to 10 cents per barrel impact on a barrel of oil transported by the currently proposed pipeline. It will be said here today that LB755 concept has never been tried

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before; so what. But in fact, similar things have been tried and successfully. Wyoming is one example. If we always do what we have always done we always get where we've already been. It will be said here today that the norm of easement payments has been 70 percent of the value of the land. While this may be true, the norm is draconian on its face. This is a forced sale of property. The value of land determined on a thousand acres is one thing, especially use of land; small allotments is an entirely different thing. It is not uncommon to see small parcels of land bring ten times the price per acre of an entire section. It is time property owners receive protection and compensation for the use of their property on an ongoing basis. State government has the right, and I would submit the obligation, to protect its citizens and property owners from domestic and foreign companies who virtually take the rights and use of land for a one time minuscule payment. This will...while the intruding company projects and achieves astronomical profits as far into the future as the eye can see. This is all taking place, ladies and gentlemen, while property owners are carrying an ever-increasing tax load to support many governmental entities in this state. Nebraska needs LB755 to be enacted into law this year. I have another paragraph but I have a red light and I have in the supporting pamphlet... [LB755]

SENATOR LANGEMEIER: Just go...go ahead and finish it; it's not very long . [LB755]

STAN DOBROVOLNY: Okay. In closing, ladies and gentlemen, I would like to reiterate that one step across the Canadian border the property owners are treated entirely different. I am certain the property owners on the Canadian side would gladly waive any nondisclosure agreement. It is TransCanada that does not want us to know. It has been told to me by two separate U.S. oil producers that by adding \$2 worth of U.S. sweet crude to a barrel of tar sands oil, the value of that crude oil increases \$6 to \$8 per barrel. China owns a large portion of tar sands oil. Once this oil gets to the Gulf, it is likely much of it will be loaded on ships and taken to China. Think of the consequences of that. This should be of great concern to every American citizen. And I do have some supporting material here for you, gentlemen...ladies and gentlemen. [LB755]

SENATOR LANGEMEIER: Thank you. Are there any questions? Senator Fischer. [LB755]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Stan, for being here today. You mentioned, a couple of times in your testimony that the contracts that TransCanada has with Canadians are different than with citizens of this country; could you give me some examples? [LB755]

STAN DOBROVOLNY: The contracts with the Canadians...along this same pipeline on the Canadian side of the border... [LB755]

SENATOR FISCHER: Right. [LB755]

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STAN DOBROVOLNY: ...the one we're...that comes through us is under nondisclosure so we can't find out what it is. We do know that there is one in place. We do know it...that TransCanada does not want to share that with us and we have told TransCanada that we would more than likely welcome the same contract if they were willing to negotiate with us on the same thing. They refused to even let us know what that is. So in doing...because as a result of that, LB755 has been, you know, that's all in a line of defense, quite honestly, is to get something along those lines. And so we are being treated greatly different than the Canadians, we know that. [LB755]

SENATOR FISCHER: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Senator Carlson. [LB755]

SENATOR CARLSON: Thank you, Senator Langemeier. Stan, what would you...why do you think that has occurred, that there's a difference between how Canadians would be treated and how you would be treated? [LB755]

STAN DOBROVOLNY: Quite honestly, the reason that has occurred, Senator, is because Canadian law has some aspects to it that gives the Canadian landowner more leverage, if you will, to negotiate. And so in saying that, they have been able to negotiate a much better position than we have because we have not, you know, in this country, and there are states, we haven't...having little oil activity, especially in Nebraska, we simply have not put the laws in place to protect us. So the Canadians have much more leverage in their law system, that's why. [LB755]

SENATOR CARLSON: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Senator Schilz. [LB755]

SENATOR SCHILZ: Thank you, Senator Langemeier. Stan, thanks for coming in today. Could you explain the process of how that worked in your area, what the pipeline company did when they came in and how that all got to where you are today? [LB755]

STAN DOBROVOLNY: We were given a...originally, we were given a contract that...option for an ag easement; an easement that was going to blanket our entire ranch. I had land six miles from the pipeline that if I...the way that easement was written, if I was to go over there and build a house six miles away from that pipeline, I'd had to get permission from Keystone XL to do it. That instantly raised ire with me and consequently as a result of those...and all our neighbors got the same thing. So as a result of that, we began thinking that we needed to band together for some sort of protection. And what happened was, we ended up with a fairly large group here in Nebraska. We ended up merging with South Dakota and Montana; we are now

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three-state wide. We cover a little over 300 miles of land, 350 probably, and I'm not sure exactly where the membership lies, but it's probably around 200 to 250 in its membership. I don't handle that part of it. But we are simply, as a group, trying to get...we're not "anti-pipeline", so please, ladies and gentlemen, don't assume that. We understand the need for oil pipelines and, you know, we can't be shipping in...70 percent of our oil is shipped in from overseas. We have to stop that. I'd way sooner give Canada the...ship it in out of Canada than the Arab states, if you will. But that's kind of what got us started and that's what got us to where we are. [LB755]

SENATOR SCHILZ: Right. [LB755]

STAN DOBROVOLNY: That has since been negotiated out, the blanket easement; but there's still a lot of things in there, liability issues and things that is very disturbing to us. [LB755]

SENATOR SCHILZ: Can't those...okay, and so those easement are there; do you get the opportunity to enter into that easement or not or is that just...how does that work? [LB755]

STAN DOBROVOLNY: Well, if we...if we were to...if we were to sign that option or that easement at that time, we would have signed away the surface entirely, miles away. I had one neighbor that had a piece of property that was not contingent to his land...to the land, but was ten miles away, that was also listed. And...but if we would have signed it, that's where we would have been. We didn't, however, and I guess we could have negotiated that out. Maybe we could have, maybe we could not have, I don't know. I never even attempted to negotiated that particular thing because it was so far out in left field, I didn't see any use in trying, Sir. [LB755]

SENATOR SCHILZ: So you have not...you have not signed up for any of this yet. [LB755]

STAN DOBROVOLNY: No, absolutely not. No, none of our members have signed the easement, no. [LB755]

SENATOR SCHILZ: Okay. Thank you. [LB755]

STAN DOBROVOLNY: Yes. [LB755]

SENATOR LANGEMEIER: Senator Haar. [LB755]

SENATOR HAAR: My legislative aide is a lawyer and he just said that he can see...and maybe you can answer this, or someone coming up, that there may be some actually federal constitutional issues and one of them is a federal Commerce Clause, but it says

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that the federal government has exclusive right to regulate interstate commerce, anything moving between states. And the second one is federal preemption. When the federal government regulates an industry, state regulation is preempted by federal regulation. Have you dealt with this stuff or do you have any response to that? [LB755]

STAN DOBROVOLNY: Yes, Senator, we have. For instance, we have...our...we have an attorney, Frank Falen out of Cheyenne, Wyoming, who is, in my opinion, one of the best property rights attorneys in the nation. He's here today. We also have another gentleman who is on our board of directors who will testify here today who is an attorney; and those people could answer those questions much better than I, so I would concede to them. [LB755]

SENATOR HAAR: Sure. I appreciate that. Thank you. [LB755]

STAN DOBROVOLNY: Um-hum. Yes. [LB755]

SENATOR LANGEMEIER: Senator Dubas. [LB755]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Dobrovoly. Is there any one or more than one state agency that's been involved with this pipeline since it came into Nebraska? [LB755]

STAN DOBROVOLNY: Nebraska is virtually unregulated where crude oil pipeline is concerned. I have been told by some Keystone officials that that's not true, the EPA. Well the EPA has virtually...we virtually have nothing in Nebraska that has to be gone through; that's the reason we feel it is necessary. Now South Dakota does have some...the SUP or...I don't know, I'll let our attorneys...they have different agencies in Montana, South Dakota that gives them a little more leverage and a little more protection that the pipelines actually have to go through and deal with those on a state level before they can get...before they can get permitted. We have nothing like that here in Nebraska. So virtually there is nothing in Nebraska other than...again, I'll defer to the attorneys on our board. [LB755]

SENATOR DUBAS: So DEQ or the Public Service Commission? [LB755]

STAN DOBROVOLNY: Not to my knowledge. [LB755]

SENATOR DUBAS: Department of Natural Resources. [LB755]

STAN DOBROVOLNY: There again, I'll defer to the attorneys. [LB755]

SENATOR DUBAS: Okay. All right. Thank you. [LB755]

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SENATOR LANGEMEIER: Are there any other questions? Seeing none, very good, thank you very much. [LB755]

STAN DOBROVOLNY: Thank you. [LB755]

SENATOR LANGEMEIER: Further testimony in support of LB755? Don't be shy; come on up. Welcome. [LB755]

FRANK FALEN: Good afternoon. My name is Frank Falen, F-r-a-n-k F-a-l-e-n. I'm an attorney from Cheyenne, Wyoming. I work with a number of landowners virtually from the Canadian border down through Nebraska on the TransCanada Pipeline. We deal with condemnation and pipeline issues virtually all over the western United States. I've been asked to come here today to try to briefly just comment on three issues. I would welcome the questions regarding the Commerce Clause and the preemption issues. The three issues that I specifically would like to mention are the Commerce Clause issue and whether or not there is a burden on the commerce...interstate commerce; whether or not TransCanada or any other country is unfairly singled out and whether or not this is a completely new concept that there is no authority or no precedent for it in any way whatsoever. First on the Commerce Clause issue, one has to keep in mind that what this boils down to is the state of Nebraska's police power, their authority to grant their police power of eminent domain to whoever they want, including private businesses. There is a dearth of case law that not only do you not have to give a gigantic for profit billion dollar company the authority to condemn property, but that if they have that authority to condemn property, you can...that this state can condition it in any way they would like. So if the state would like to modify it, just like any other law that this state has passed, you may do so. There are other states, for example, Connecticut, where a crude oil pipeline does not have the authority to condemn. There are many examples of other states that will...that, for example, a natural gas pipeline will have authority under one act, crude oil will have authority under yet another act. In South Dakota, for example, some types of eminent domain require the proponent to come to the Legislature and get their authority on a case-by-case basis. Nebraska has case law that says that the state has the plenary authority regarding to whom and under what conditions they would like to delegate their authority of eminent domain which traditionally was usually used by the public for public purposes and that consequently they have the right to condition that in any way that we would like to, or any way that the state of Nebraska would like to. So therefore it is on that issue that perhaps I could come back to if I have time where the landowners are seeking a little better bargaining position to make up for some of the lack of regulation and oversight on this project in Nebraska that actually exists in other states or would exist if they were regulated by the Federal Energy Regulatory Commission on the construction of the pipeline. One of the other issues that I understand that could be raised is whether or not this legislation that deals with crude oil pipelines is fair because it doesn't deal with other pipelines. The fact of the matter is, is that, for example, natural gas pipelines are heavily regulated by

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FERC from way before construction. There are regulations under...with the Federal Energy Regulatory Commission where they're required to notify all landowners way ahead of time; the landowners are able to get together and talk about how to, you know, how to address that...all the issues that may come up. They're required to notify them of their rights of participation. When you represent landowners before FERC or when they represent themselves, you have a place that you can go to and you can say, we have these issues in our area. And we are worried, say for example, about abandonment, which FERC will have regulations regarding abandonment, how to not forever have a cloud on your title which do not exist for this crude oil that the list of differences are substantial. It would take a long time to go through them all. The bottom line is that we're dealing with FERC. We have significant opportunity to go in and talk to those regulators and they have the authority to put specific conditions on those permit that address our liability issues, that...things that we're concerned about. They, for example, will require, or can require that when the pipeline is sold someday that the buyer meet certain minimum financial strength standards so that the landowner knows that on the liability issues that goes back on the holder of the easement, that there's actually a pocketbook there capable of doing that. There is no such thing here in Nebraska. In Montana they have the Major Facility Siting Act; in South Dakota, if they're going through the Public Utilities Commission, perhaps not perfect, but at least it's something. The fact of the matter is, is in Nebraska you look and you say where do you go? Where do you go with these concerns? I see my light is red. I was not able to get to what I...the major points I wanted to make. But that's the way it goes. [LB755]

SENATOR LANGEMEIER: It will probably be a question. Usually is. Senator Carlson. [LB755]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Falen, what was your major point? (Laughter) [LB755]

FRANK FALEN: The major point that I didn't make yet is how this is not a new concept. When you take...when a state gives the authority of eminent domain to a private company, it has the affect of substantially altering the bargaining power between the smaller private for-profit entity that's being...that is being condemned and it gives a great deal of authority or bargaining leverage then to the great big company that's condemning it. How I usually refer to it is you're chained to the table. You do not have the ability to say no, and when it comes to your property or a contract regarding your property, the single greatest leverage you have is the ability to say no. So in similar cases, a similar situation is sometimes surface use on, say for example, property where the property owners do not own the minerals. That happens in virtually all the states. It's also...there's a lot of federal land where the surface owner's property is subject to impact and damages, but they do not own the mineral rights. Over for...because the mineral rights were the dominant estate, they were able to come in and sometimes really tear up your private property. Several states have said, okay, we're going to

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change the bargaining power here a little bit. If you want to come in on their property, here's the guaranteed minimum that you're going to have to pay them and here are some of the guaranteed minimums that you're required to address. The guaranteed minimums of issues that you're required to address over and above just compensation is not that dissimilar from what is done for landowners up in Canada which we, you know, as was stated earlier, we'd like to be a little more on even keel with them. So the states of Wyoming, Oklahoma, New Mexico and a few other states have passed statutes where they say we're going to put this limitation on your authority because we want you to sit down and work with the landowners and we're not going to make the authority so one sided. In this particular case, where we have a crude oil pipeline that's subject, I mean, I know they're going to talk about they got to go through NEPA and all of that, but what I want to tell you is that the NEPA process, while it might be a long process, there's not one single thing in there that is enforceable for a landowner in Nebraska. The same way with their construction and mitigation standards. They've got all kinds of documents and they say they're going to do this, this, and this. Well, at least in some states, or at least with FERC, we will be able to make that a condition of the permit and we would possibly have something that we could come back later to try to enforce. It is simply not the case in Nebraska. Since we do not have that statewide permitting or federal permitting agency to go to to say we would like to have all these terms and conditions protected in this easement then what we're asking this Legislature for is a little bit of our bargaining authority back. We're not asking for the authority to say no to eminent domain. But we're asking for a threshold that will say that if you, you know, go talk with the landowners, go make a deal. If you cannot make a deal, then here is the minimum deal that you're going to have to give them. Perfectly legal condition for giving a private entity your sovereign power of eminent domain. A little bargaining power back, we can take care of ourselves. That was the point I hadn't made. [LB755]

SENATOR CARLSON: Okay. Thank you. Now my question would be, do you have some knowledge of the kind of arrangements that are made with Canadian property owners? [LB755]

FRANK FALEN: Yes, I do. It's not as exact as I would like it. What I have is one contract that I know is in place up there that is far better than any landowner down here would really remotely even dream of from getting from TransCanada. The downside of that is that is an Enbridge contract, which is not TransCanada's from a different company; it is not under a nondisclosure clause. We are told, by Canadian landowners who are talking to us and then shut up because they decided they were about to get in a lot trouble, that the contract that they have with TransCanada is actually far superior than the one...than the Enbridge contract that we have. So if those things are true, and we have a lot of reason to believe that they are, then it is our belief that the Canadian landowners are offered a much better deal. If you read the Canadian law, it's almost obvious because many of the issues that I've talked about regarding abandonment regarding liability, they

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are required up there to sit down and negotiated with the landowners in a way not required here and if they fail to meet that agreement, or to...you know, if they fail to reach agreement, then the government serves as an arbitrator and it is different than here when you don't reach agreement the way it is now, you just wind up in court and the only thing for the court to consider is how much they owe you. And if you're planning on being on this land for the next two or three generations, how much they owe you is only one thing that you would like to have considered, that you would like to have a way to enforce which we simply do not have in Nebraska. We have litigation with TransCanada in South Dakota where they actually brought suit against some landowners on this same pipeline to enter their property to survey. As part of our discovery in that, we have requested that contract among other things. Rather than give us that contract, they have filed a protective order and moved to dismiss the case. We've asked for that contract, as well as a number of other things a number of times, and I do not believe that we're going to get them unless either a court or a governing body requires it. [LB755]

SENATOR CARLSON: Thank you. [LB755]

SENATOR LANGEMEIER: Any other questions? Senator Dubas. [LB755]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Falen. So why is it that this pipeline doesn't have to comply with FERC? [LB755]

FRANK FALEN: Because they are not subject to the Natural Gas Act and so we're talking about disparity of industries. There is a significant degree of regulation under FERC that the crude oil pipelines are not subject to. And like I said, there's at least a catchall for that in the other states that I'm working on in this pipeline. First time I came to Nebraska to talk to landowners I said, you know, condemnation is more political than it is legal. We have to figure out who the permitting authority is and we have to figure out what issues are important to us and we have to take them to that permitting authority. I was completely surprised, eventually, after spending a lot of time on it, saying there is no permitting authority. There simply is very little regulation of the types of things that landowners would like to have some security on for protection over the long haul simply does not exist. There are, you know, case law that if, you know, if they spill oil on your property, that they're liable for it. But how much good does that do to you when they could sell it...they could sell the pipeline to somebody that has no assets or who gets in trouble, and then because it's on your property, you're exactly...you know, you're going to be one of the targets. Those are the types of things that are legitimate to worry about; that and abandonment. We have two or three cases in our office now that have to do with old abandoned easements and where we have this cloud on your title. You're trying to get financing; you're trying to do something and you can't even find who the holder of the easement is. We have another case where one of these old easements that they thought was abandoned is being used for...as an argument that

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somebody has to remove their house. So what we would like to have, is if and when this pipeline stops being used, it would be abandoned, and that they would give us a quit claim deed back so that we have a clear title to our property and we don't seem to be able to get that or even, you know, get anywhere close to that because they only have to give us what the law allows and in the end, that's what we're going to get. That's the problem with being condemned. [LB755]

SENATOR DUBAS: I was reading through a report from South Dakota; they have an underground pipeline task force. Are you familiar with that at all? [LB755]

FRANK FALEN: Yes. [LB755]

SENATOR DUBAS: And I mean, I was just looking at all of the different regulations or administrative rules that they have. These deals with more than just gas pipelines, but there are specific references to gas pipelines in here. So through these rules and regs and state statutes, South Dakota apparently has something in place that people can... [LB755]

FRANK FALEN: Yes. It's not as good as we would like, but, you know, like everybody else, we probably will never get as good as we would like; but it is a place to go. We have written letters and we've had communication with the staff of, for example, the PUC in South Dakota and we've said these are issues that we would like to see as conditions of their permit. Because in South Dakota, if they take you to condemnation, you can't bargain for these other non-revenue issues. The only thing in front of the court is how much they owe you. All the things you want to worry about taking care of your property will not be in front of the court, so you have to try to get them taken care of at a permit stage. And at least we have the opportunity to do that. We've sent along detailed letters to the appropriate places in both Montana and South Dakota and there is no place to send it in the state of Nebraska. Your Public Service Commission, I don't know if I have that name exactly right, but the agency has jurisdiction over intrastate pipelines, meaning in-state pipelines; it does not have jurisdiction over interstate pipelines. So if that were different, then perhaps they would be the authority that we would go to; but that is not the case. Crude oil lines, especially ones that go from state to state, are through the cracks somewhere, somehow in this state. [LB755]

SENATOR DUBAS: Thank you. [LB755]

SENATOR LANGEMEIER: Senator Haar. [LB755]

SENATOR HAAR: I'm not a lawyer and usually that's good; but...so some of these questions I may not state them quite properly, but, has this pipeline already been built or is it just being sited right now? [LB755]

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FRANK FALEN: No, this pipeline is in the planning stage. It has yet to see its...it has yet to get, virtually, all of its permits. And there are a number of permits it has to get, starting with the President's permit and because it's crossing from one country into another, it's required to get the Presidential permit. That is given out by the State Department. The State Department has, you know, has instructed the company to do a NEPA analysis, National Environmental Policy Act environmental impact statement, and, you know, we're expecting the first draft of that out. I would like to add that when they say that that shows regulation, NEPA is only procedural; there are no substantive requirements that need come out of NEPA. Because it is the State Department that is going to approve it, the State Department, when I first contacted them, didn't even know that this was going through them because they don't do NEPA analysis. On the previous pipeline that the TransCanada and a couple of other companies have built, the NEPA document itself where...and you have to remember, this is done by a private company hired by the developer and the folks who felt that there were deficiencies in that...in those documents have filed suite. What the courts have ruled is that this is a Presidential permit and the President is not subject to NEPA so even though they're the ones that's doing it, it cannot be challenged in court. So we already know to even to the extent that we thought NEPA might help us at least to say that you didn't consider this well enough for whatever, even if we could afford that litigation, we already know what the answer is; there's not going to be any meaningful review there. There are some other permits, Clean Water Act permits, Endangered Species Act permits, but they're not designed to protect the issues that the landowners, I mean some of them, yes, but the majority of the issues that the landowners need to protect, those other various permitting requirements out there simply do not address, they do not reach. [LB755]

SENATOR HAAR: So, in this case, because we hear quite a bit about eminent domain, did the state give that ability to somebody or is it just taken because it's a pipeline and it's federally regulated or? [LB755]

FRANK FALEN: No, it...it...the problem is, it's not federally regulated. It is...once it's built, it's regulated in some ways under federal law; the construction of it is not. You know, like...qualify that a little bit, they still have to get Clean Water Act permits and, you know, and stuff like that. [LB755]

SENATOR HAAR: Sure. [LB755]

FRANK FALEN: And I'm sorry, can you give me your question again? [LB755]

SENATOR HAAR: Yeah, who gave the pipeline the right of eminent domain? [LB755]

FRANK FALEN: The state of Nebraska. [LB755]

SENATOR HAAR: And how did that work? [LB755]

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FRANK FALEN: There is legislation in the state of Nebraska that while limiting it to private entities where you take from one private entity and get to the other why it is being limited, that limitation does not apply to any pipeline. So if you are a pipeline in the state of Nebraska, you have the authority to condemn. Crude oil lines, unlike the other types of entities that have the authority to condemn, are not regulated, you know, there's not any good place to go look for terms and conditions in that permit. But the state of Nebraska has legislation that gives a number of private entities the authority to condemn under different conditions. Not long ago the state of Nebraska amended that to limit the authority of some private people who are using it for primarily a private self-profit issue. But pipelines are not included in that so, therefore, crude oil pipelines are not included in that. [LB755]

SENATOR HAAR: So a pipeline can just come in and use eminent domain? [LB755]

FRANK FALEN: Yes, because it's been granted by the authority of the state of Nebraska. It is the state's police power and it was originally given to private companies to help build the in-state structure. In this particular case it is being used to make, perhaps, billions of dollars for oil interests up in Canada. That's part of the reason why we feel like, one, we'd like to be protected; and two, with regarding things like the minimum payment, which is such a tiny percent of the overall thing that there is nothing wrong with leaving some of that money in the state of Nebraska. And it is certainly not illegal because you don't have to give them the authority to condemn at all. And if they didn't have the authority to condemn, then they would have to come negotiate with each landowner and make a good enough deal that the landowners would finally sign on. And like I said, that's not what we're asking for. We're not asking for the elimination of that authority; we're asking for the curtailment of that only a little bit so that we have this minimum deal that we're going to get if the parties can't reach agreement. [LB755]

SENATOR HAAR: Well personally, I don't much like how they're getting the oil out of Canada. I mean, I understand it's a moonscape when they get done with oil sands, but I'm trying to understand this legal part of it. Can you supply us with that... [LB755]

FRANK FALEN: The statute that grants them authority? [LB755]

SENATOR HAAR: Yeah. [LB755]

FRANK FALEN: Absolutely. [LB755]

SENATOR HAAR: Because that would be important. And then our Public Service Commission, you were saying, has no role other than interstate regulation of pipelines? [LB755]

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FRANK FALEN: With respect to this pipeline, no role is a strong word, but no role that I'm aware of would be a correct answer to that and I can absolutely say that they don't have to get an overall pipeline permit from your Public Service Commission, which I was initially very surprised to learn. [LB755]

SENATOR HAAR: And then once a pipeline is built, then is it under federal regulation or is it still state... [LB755]

FRANK FALEN: To an extent. There...it is subject, for example, to the National Pipeline Safety Act. The National Pipeline Safety Act going to the preemption in...preempts any state or county regulations regarding pipeline safety. People want to think that pipeline safety automatically means, you know, what to do with spills and that type of thing. That is not, necessarily or even generally, the case. Pipeline safety is...it's a huge issue. It goes to the thickness of steel, you know, how many rivets, you know, the certification of your welders. There are...it's a mind-boggling amount of stuff that is regulated under the Pipeline Safety Act and the state is preempted from that. The Pipeline Safety Act, though, goes nowhere to your property rights; it goes nowhere to...like, for example, abandonment. Under the way this pipeline is coming through, if it's abandoned some day, you will be left with whatever they leave, just like we are with a lot of abandoned oil lines in the state of Nebraska. If they were regulated by FERC, that wouldn't be the case. [LB755]

SENATOR HAAR: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Senator Fischer. [LB755]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Falen. We all realize that states have different laws in dealing with a variety of issues. I believe you said that the laws are different in other states with regards to eminent domain to statewide permitting. You mentioned South Dakota specifically. How are the landowners treated in most states? If their laws are different and they...I gather from your comments they have, I guess, stricter laws, more regulations for this pipeline. Were the landowners in these states treated better or more fairly in your opinion than the landowners here in Nebraska? [LB755]

FRANK FALEN: My answer to that is, as a general rule, they are treated with the bare minimum of what the law requires. [LB755]

SENATOR FISCHER: Does that make them treated...are they being treated better? [LB755]

FRANK FALEN: Yes. Not always where you'd like to be, but part of the reason for that is that we have the ability there, we at least have someone to complain to. What we would

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rather have is bargaining authority, but at least in those places we have somebody to complain to. We have folks that are advocating terms and conditions in the permit. We would rather have those terms and conditions in our right-of-way documents so that we have something that is enforceable, but, you know, by us down the road. And so my...so, yes, they are treated different because there are requirements that we anticipate will be included as attachment to their permit. [LB755]

SENATOR FISCHER: You... [LB755]

FRANK FALEN: For example, they, TransCanada themselves has a document that they call their, you know, construction and I think it's construction and mitigation or something like that, fairly substantial document. Unfortunately, most of the things that boil down there, when you really get down to it, any determination is, you know, is at their discretion. But there are some good things in it. [LB755]

SENATOR FISCHER: Okay, could I... [LB755]

FRANK FALEN: In South Dakota it will be included as part of their permit conditions and there's no way to do that down here. I'm sorry. [LB755]

SENATOR FISCHER: I'm going to interrupt you. We're using a lot of time here. [LB755]

FRANK FALEN: I apologize. [LB755]

SENATOR FISCHER: But I still have a lot of questions. With regards to your assertion that landowners in other states are treated better than those in Nebraska, do you personally know that there's a difference in the contracts that they have with TransCanada compared to citizens here in Nebraska? [LB755]

FRANK FALEN: I am...because it hasn't...because the permits have not been issued yet, I have to say this with a certain amount of reservation. But I am quite confident that if things remain unchanged, that the permitting authorities in South Dakota and Montana are going to add conditions for the protection of landowners in those states that will not exist in Nebraska because there is nobody in Nebraska that can enforce them and TransCanada is not going to give them to us on their own. [LB755]

SENATOR FISCHER: And then I just have a quick question here. You mentioned in Connecticut that crude oil pipelines cannot condemn land; are there any pipelines in Connecticut? [LB755]

FRANK FALEN: I believe there are, but I am not an expert and we were looking for examples of places where they have no authority. It's hard to find a negative; we looked at Connecticut pretty hard because it had been indicated to us there was no authority

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and we certainly couldn't find any. [LB755]

SENATOR FISCHER: Well I...I'm interested in eminent domain laws. I introduced a bill that passed a few years ago in response to the Kelo case. [LB755]

FRANK FALEN: I read your amendment. [LB755]

SENATOR FISCHER: Oh, I hope you approve of that. [LB755]

FRANK FALEN: Absolutely. [LB755]

SENATOR FISCHER: Thank you. Thank you very much. [LB755]

SENATOR LANGEMEIER: Thank you. Senator Cook has a question. [LB755]

SENATOR COOK: Yeah, I had a question, and I just want one answer, (laughter) not the diatribe, but thank you. [LB755]

FRANK FALEN: I'm sorry. [LB755]

SENATOR COOK: You and the previous testifier made reference to the landowners in Canada having better contracts. List one thing that is an example of that contract being a better contract than the ones you have seen for sure, because you had your hands on them here; you haven't seen one from TransCanada, according to your testimony. What one thing, your top thing, makes that contract better? [LB755]

FRANK FALEN: My top thing? It creates a landowner oversight committee paid for by the company that is involved throughout the construction project for landowner complaints and concerns. That is from the Enbridge contract. [LB755]

SENATOR COOK: Right. I know. Also, do you think, and this is maybe rather a rhetorical question, that the laws flowing into the Province of Canada where these Canadian landowners from Enbridge had their contracts, do you think, perhaps, the reason they might include things like a process for abandonment or mediation could have anything to do with the fact that Canada, as a sovereign nation, as a separate constitution and a different philosophy, perhaps, when it comes to property rights and individual rights and...versus how the United States was formed and the philosophies that drive our policies, do you think that perhaps because it is based on Canadian law and custom and philosophy of life, if you will, that that might be the reason or a reason? [LB755]

FRANK FALEN: It could be and I'd actually expect it, because in Canada they have no constitutional right to own property and it can actually be taken for nothing, for nothing,

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you know, that I had actually expected the Canadian landowners to be less protected. But upon reading your statutes, that govern this pipeline, you find out that the opposite is, in fact, true. Regardless of whether or not you know what their contract actually says, you can look at the laws and say, if I had this law, I could get a better deal too. Does that answer your question? [LB755]

SENATOR COOK: No. (laughter) [LB755]

FRANK FALEN: I'm very sorry. [LB755]

SENATOR COOK: No, I mean...I...you're obviously...you're building your own case and that's your perspective. I guess the point I was making is that perhaps it is because they don't have a right to constitutional property rights, or whatever you pointed to, is that they're able to negotiate contracts that are more, in your words, beneficial to individual landowners. And it's not, as you described earlier, consistently appearing only in the form of litigation which is how it generally unfolds in the United States. Just saying. [LB755]

FRANK FALEN: Yes, and you may very well be right. There's clearly a different process and a different way to approach it. [LB755]

SENATOR LANGEMEIER: Are there any other questions? Senator Haar. [LB755]

SENATOR HAAR: I'm hearing, certainly, that landowners are treated better in other states. Is there...do any of the other states have this deal of charging for flow of oil through the pipelines? [LB755]

FRANK FALEN: Not that I'm aware of; the closer examples that I'm aware of is when you're coming in on somebody's property develop minerals and they set a guaranteed minimum that you have to pay the landowner, and then they say go work out any deal you can, but if you can't work out a deal, here's the minimum threshold. [LB755]

SENATOR HAAR: Okay, so that's something brand new about this legislation, is the payment of the oil flowing through the pipeline? [LB755]

FRANK FALEN: Yes, it's very similar to select amendments to the Stock Grazing Homestead Act which is when the federal government in 1993 amended that law to say, instead of just suddenly looking out your kitchen window and seeing somebody with a backhoe digging holes looking for minerals, that they have to give you notice. There's all types of requirements and that they...if they can't make a deal with you, they have to post a bond to fully cover your surface damages. [LB755]

SENATOR HAAR: Gotcha. Thank you. [LB755]

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SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony and welcome to Nebraska. [LB755]

FRANK FALEN: Thank you very much. It's a beautiful building. [LB755]

SENATOR LANGEMEIER: Thank you. Further testimony in support of LB755? Don't be shy, come on up. [LB755]

PETE McClymont: Chairman Langemeier and members of the committee, for the record my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm vice president of legislative affairs for the Nebraska Cattlemen. I'm here today in support of LB755. Our board voted to support this bill. We have a current resolution that does, in fact, go directly to the support of this bill. I will not be redundant to what the two previous testifiers; I'd just like to highlight four things real quickly for the committee. Eminent domain, that is something that's very near and dear to our membership that we will strive here and in the future to support. Two of the liability issues that have been brought up previously are very, very important to us, obviously. It's fair to say that if something happens, it's pretty obvious that the company that constructs the pipeline would be responsible and so we would like that affirmed. Also, one of the things that is important to our membership that voted to support this at our recent convention is that when you have a pipeline coming through a fragile environment like the Sandhills, it's important that that ground be restored to its original state. So something coming through the Sandhills needs to make sure that the constructor of the pipeline does everything possible to get that back to that original state. And finally, as been mentioned previously is state oversight. If people, like the many that are in this room that have legitimate concerns, want to have the ability to go and have their problems heard before some agency within our state government, it only seems right that we would have somewhere for them to direct their concerns. And so with that I would conclude my testimony and be happy to try to answer any questions. [LB755]

SENATOR LANGEMEIER: Are there any questions for Pete? Senator Carlson. [LB755]

SENATOR CARLSON: Thank you, Senator Langemeier. Pete, I'm going to follow up on a question that Senator Cook asked and I don't know if you've got an answer to it or not. But she really asked about whether the circumstances and how ownership and so forth is treated in Canada is different than the United States and maybe that's part of why they appear to support their landowners better in negotiations with a company on pipeline. But if I wanted to start a dairy herd in Nebraska, all I have to do is find a piece of land that's suitable and hopefully with the A-FAN or whoever can help me get okay from my neighbors and get zoning and so forth, that's all I need to do and then I can develop my dairy farm. If I go into Canada and want to do the same thing, I'm out of luck because I need to find somebody that wants to sell out. I can't start a new dairy farm in

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Canada and apparently the royalty per head to buy somebody out is astronomical. So there is a difference in how things are done in the United States and Canada. Do you agree with that? [LB755]

PETE McCLYMONT: To your question... [LB755]

SENATOR CARLSON: That that's the case? [LB755]

PETE McCLYMONT: If that is the case, there, obviously, is a difference and so thus we're here with this bill today, obviously, talking about it, but, yeah, there...obviously, that there would be a significant difference there. [LB755]

SENATOR CARLSON: And...so everything is not the best, necessarily, in Canada, but I'm certainly sitting here sympathetic to what appears to be the plight of landowners in Nebraska and that I think that we want to do everything we can to put them in the best position with companies that come through. [LB755]

PETE McCLYMONT: I would agree; that would be the biggest point I'd like to make to this committee is just the power of eminent domain and people be treated fairly in this whole process and so whether that entails a new process for landowners to have somewhere to go to deal with a state agency if there are concerns, then that would be a benefit to landowners in our belief. [LB755]

SENATOR CARLSON: Thank you. [LB755]

SENATOR LANGEMEIER: Senator Dubas. [LB755]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Pete, and I'm going to kind of pick up where Senator Carlson left off, kind of doing some comparisons here, so I'm a farmer and I'm wanting to expand my livestock operation and so maybe I'm going to have to put in, you know, a basin or something like that. I'm going to have to go through some, probably some public hearings. Whether it's zoning, I'm probably going to have to go to DEQ to expand either get a new permit or expand my existing permit. There's some hoops I'm going to have to jump through, correct, if I'm wanting to make some changes to my livestock operation? [LB755]

PETE McCLYMONT: Yes. [LB755]

SENATOR DUBAS: And then if you have a livestock operation, maybe, that's had some problems and you've got some runoff or something like that, neighbors are upset. Do they have some place where they can call or they could go and say, hey, we've got a problem out here? [LB755]

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PETE McClymont: Exactly, and that's the whole basis of our complaint. Without having any oversight right now is...not that our producers love the fact that when they're getting permitted on that livestock feeding operation that they have to adhere to all the standards with DEQ, but they're there for the proper reasons of protection, not only of the operation, but for those that are surrounding by it and the natural resources. So with that in mind, it would only seem fair that this same process would exist for landowners that may have eminent domain used on their property for an oil pipeline to go through. [LB755]

SENATOR DUBAS: So our own citizens have to meet some certain standards to operation, but we don't, necessarily, have those same things in place for a business that may be coming in from outside of our state. [LB755]

PETE McClymont: It would appear that way, yes. [LB755]

SENATOR DUBAS: Thank you. [LB755]

SENATOR LANGEMEIER: Senator Haar. [LB755]

SENATOR HAAR: Thank you. Now it sounds like there's a...that maybe...maybe the state of Nebraska has a long way to go in terms of siting and protections and so on. Does your organization, have you actually looked through that legislation in detail? Do you think that satisfies that or philosophically you're saying that, you know, landowners need the protections? [LB755]

PETE McClymont: I would say, philosophically, is where, you know,... [LB755]

SENATOR HAAR: Okay. [LB755]

PETE McClymont: ...the basis of this testimony comes from, Senator Haar. [LB755]

SENATOR HAAR: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Are there any other questions for Mr. McClymont? Seeing none, thank you very much for your testimony. [LB755]

PETE McClymont: Thank you, Mr. Chairman. [LB755]

SENATOR LANGEMEIER: Further testimony in support of LB755. Welcome. [LB755]

BILL TIELKE: Good afternoon everyone. I'm Bill Tielke, B-i-l T-i-e-l-k-e. What I'm asking you to do for a few minutes is to think outside the box for other methods of revenue for the state and local tax entities. I'm a Holt County supervisor and I do support LB755. In

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a day or time when Nebraskans are being hit by higher taxes, LB755 seems to be a means or a vehicle to cut down on the percentage of taxes for the schools, landowners, counties, and the state in general. I have followed this pipeline from the start. My main concern has always been the safety and to preserve our water quality. Nebraska being geographically located in the center of the United States along with our gentle rolling hills, yes, I know that there are some areas like the Sandhills that will be challenging, but for the most part, Nebraska provides a great corridor or conduit to pump many types of products across our state. We do not know what the future will hold, but we do know that there is a need for oil, natural gas, and someday water to be piped. It may not be water from the state of Nebraska, but from states piped to areas in need. When a farmer plants a seed, his taxes increase because it enhances his land value. He also pays state, federal taxes on his profits. All he did was use God's soil to help provide a lifestyle that he and his family enjoy. When a pipeline uses the soil, even though they pay for an easement, the dirt is still a landowner's and the state of Nebraska's. If I dig a basement and it's eight foot deep, it is still my ground at the bottom of the basement. Why would the state of Nebraska want to pass up LB755 when it could be so beneficial to all taxpayers in the state and counties? This ball percentage of tax on a barrel or a gallon of product will not be a breaking point to oil companies or to the metropolitan water districts or any other companies of the world that need the conduit that Nebraska's underground soils will provide. I encourage you to keep LB755 moving forward and thank you for your time. [LB755]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Fischer. [LB755]

SENATOR FISCHER: Thank you, Chairman Langemeier. I have to welcome...welcome you, Mr. Tielke, to Lincoln and to the committee. You did a nice job. [LB755]

BILL TIELKE: Thank you. [LB755]

SENATOR FISCHER: How much do you think the school districts in Holt County, specifically, would gain, first of all if it's legal for us to charge to move the product through this pipeline which is a question here; but how much do you think they would gain? [LB755]

BILL TIELKE: I'm not going to be able to answer the exact dollar amount for two reasons. One, I'm not going...I don't know the exact flow per minute or per day. The way LB755 is worded to the best of my knowledge, is 20 percent would go to the state, 20 percent to the counties that are affected by the pipeline, 20 percent to each school district that is...that has land that falls in that area, and 40 percent to the landowner. [LB755]

SENATOR FISCHER: And I guess referring to my previous comment though, do you

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believe it's legal for the state to charge? [LB755]

BILL TIELKE: I guess at this time I don't. I think this is...as I said...or asked you to think outside the box, I don't...I don't know what the future holds. I don't know what has been done in the past, but as a tax entity or a county, we're constantly looking for means to generate revenues rather than going back to the individual landowners. So if it's at all possible, I hope the state of Nebraska will look into a means...or a way to make it possible to tax these entities that want to use our underground soils for transportation of products. [LB755]

SENATOR FISCHER: Do you, do you think you've received enough assurances from TransCanada that the aquifer will be protected? [LB755]

BILL TIELKE: Well anytime there's anything mechanical, there is no guarantee. They...to the best of their knowledge, I don't think they want to leak any worse than we do. It's not beneficial for any party. But anytime, as you're well aware of, the Sandhills and the water levels in the Sandhills, there will be areas where the water level will be completely around that pipe at certain times of the year. It's unavoidable in the Sandhills. So in the event of a leak, you know, where are we going to notice it first? You know, we don't know. It could be a long ways down the stream. [LB755]

SENATOR FISCHER: Thank you. [LB755]

BILL TIELKE: Thank you. [LB755]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, very good, did a great job. [LB755]

BILL TIELKE: All right. Thank you for your time. [LB755]

SENATOR LANGEMEIER: Thank you. Further testimony in support of LB755. I like to see the aggressiveness of wanting to come up to testify. Mr. Wolf. [LB755]

RICHARD ZIMMERMAN: (Exhibit 4) Thank you. I'm Richard Zimmerman, R-i-c-h-a-r-d Z-i-m-m-e-r-m-a-n, and I'm a farmer and I will tell Senator Dubas I'm a tired dairy farmer because my son took over. I live near Fairbury and I've been on school boards for over 31 years. I am also president-elect of the Nebraska Association of School Boards and I am presently a member of the Fairbury School Board. I am testifying as a proponent of LB755. This bill would set standards for liability, safety, and a fee for compensation of crude oil passing through the pipeline. A fee would be based on the units of crude oil per mile, and the fee of 1/2000 times volume times price is not an extravagant amount. But it would be a tremendous help to the financial situation of the state, the counties, and school districts. The 40 percent that would be paid to the landowners would

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increase income tax, sales tax and help with industrial development. Even if state aid would be cut to districts that get the fees, it would provide a larger pot of cash to the state to hand out to the other schools. I have observed reports that the state, counties, and school districts will be short of funds when the loss of ARRA funds happen. It would wise to look for replacement of these funds. Counties are facing problem keeping roads and bridges in good condition for lack of funds. Tax rates are about the maximum that people can afford. Personally, my real estate tax is at \$55 an acre. School districts have to pass an override election to get enough funds to operate sometimes. Fees for using private property are not new in this state. Wind towers pay a monthly or annual fee. Cell phones pay a fee; truckers pay for a permit to cross the state on a pay per mile through the IFTA, or the truckers pay per mile on toll roads to right to travel on privately owned highways which is the toll roads. Our land is a private road. Airlines even pay a fee for the right to fly over the state. They are...transport carrier tax. While it is true, pipelines are needed, it is also true many issues are unavoidable. Landowner liability is why a pipeline should be buried at a depth of at least five foot instead of four foot as farmers and ranchers do set corner posts four foot deep. Pipelines are usually a nuisance for farmers the first few years, as I've known and I had a phone call last night from a neighbor that said his ground where the pipeline went through was two years ago and it yielded less than half of his irrigated corn on each side of it. And then also, pivots get stuck on it. Even two years ago, pivots got stuck on where the pipeline went through; the ground settled. I...pipeline companies use pipelines for profit which the state, counties, and school districts get nothing out of as the product passes through and refineries process the product in other states. I understand Kansas has some sort of a pipeline volume fee, but I'm not familiar with it. The fiscal impact for the Fairbury School District would be \$200,000 to \$350,000 if 500,000 barrels a day went through the...the fee would be around \$200,000 and if a million barrels a day went through, the fee would be \$400,000 or maybe a little more. So you can see this bill would have a fiscal impact on just this district. I would encourage you to sincerely consider LB755 for what it would do for the state, the counties, and the school districts. The safety issue of five foot depth requirement and the hold-harmless provision to the landowner. I thank you, Senators, for listening to my opinion. [LB755]

SENATOR LANGEMEIER: Very good. Are there any questions, Mr. Zimmerman. Senator Fischer. [LB755]

SENATOR FISCHER: Thank you, Chairman Langemeier. Nice to see you again, Mr. Zimmerman and congratulations on your position with the school board association. [LB755]

RICHARD ZIMMERMAN: Thank you. [LB755]

SENATOR FISCHER: Did the school board association take a position on this? Are you speaking for them or for yourself personally. [LB755]

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RICHARD ZIMMERMAN: I think we're taking a position on it. [LB755]

SENATOR FISCHER: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much, great job. [LB755]

RICHARD ZIMMERMAN: Yep. [LB755]

SENATOR LANGEMEIER: Mr. Wolf. Good afternoon and welcome to the Natural Resources. [LB755]

JESS WOLF: Good afternoon. Thank you very much. I haven't been here before, I don't believe, so. [LB755]

SENATOR LANGEMEIER: I don't think I've ever seen you here before. [LB755]

JESS WOLF: (Exhibit 5) Thank you, Chairman Langemeier and members of the committee, my name is Jess Wolf, J-e-s-s W-o-l-f, I'm the president of the Nebraska State Education Association and I'm here in support of LB755. I do represent the 28,000 teachers and faculty members that we have, and education support members we have across the state in all the K-12 schools and many of the colleges and university campuses across the state. I know there's been a lot talked about the bill. I was going to make a couple of comments about that, but I won't. I just want to add to the part...in the note that I handed out to you that we support LB755 because it creates a new revenue stream for public education. Revenue generated from pipelines that run through the school district land and unsold school lands should...would be appropriate distribution for the Teacher Performance Pay Fund, which is LB1014 and we encourage the committee to consider that as a possible distribution source. We do encourage the committee to advance LB755 to the full Legislature for debate and passage. Thank you very much and I'll take any questions if there are any. [LB755]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB755]

SENATOR HAAR: Have your lawyers attacked these two possible issues of federal commerce clause and federal preemption? [LB755]

JESS WOLF: I don't believe that they have actually looked at that closely. In my conversations with some of the proponents that have been here, they indicated they were looking at that and we were sort of relying on them to do that. [LB755]

SENATOR HAAR: Because we'd all like new revenue sources, but it also has to pass

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legal muster. [LB755]

JESS WOLF: Yes, I understand that. [LB755]

SENATOR LANGEMEIER: Senator Fischer. [LB755]

SENATOR FISCHER: Thank you, Chairman Langemeier. Nice to see you, Mr. Wolf. [LB755]

JESS WOLF: Good to see you again, Senator. [LB755]

SENATOR FISCHER: So, basically, the Nebraska State Education Association is in favor of taxing TransCanada Pipeline? [LB755]

JESS WOLF: Well, it wasn't explained to me as a taxation issue, as expenses an ingress and egress fee. [LB755]

SENATOR FISCHER: A fee? Okay. [LB755]

JESS WOLF: So I'll let it go at that. [LB755]

SENATOR FISCHER: Okay. [LB755]

JESS WOLF: But we are in favor of any new revenue sources. As you're aware, we've been talking about new revenue sources since I've been president, which has been five years, in order to raise the ability of school districts to fund all the things they need to do and one of those, of course, is to raise the average teacher salary from its 42nd place in the nation to a higher spot. [LB755]

SENATOR FISCHER: We all...now you're in natural resources now, come on. [LB755]

JESS WOLF: I know, I know. I know, I know. [LB755]

SENATOR FISCHER: Okay. So you want to put a fee on TransCanada. What about putting a fee on all the miles and miles and miles of pipeline that we have in this state, for example, our natural gas pipelines and there are hundreds and hundreds of miles. Some are used and some aren't; should we be putting a fee on them too? [LB755]

JESS WOLF: Well, my understanding that the bill originally had those included and at that particular time I was in favor of that. I was told since then that there had been some problems with that and so they were taken out. I don't know that I, necessarily, think they should or shouldn't be taxed. I know that...I currently live in Cedar County where the pipeline that currently was built passed through and I don't believe we had any

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major benefits from that pipeline. Had this bill been in effect, we would have, of course. [LB755]

SENATOR FISCHER: But don't you think there's a problem if you have legislation geared just at, basically, one company that's coming in now? Isn't this special class legislation? [LB755]

JESS WOLF: I'm not really able to answer that, Senator. I'm sorry. [LB755]

SENATOR FISCHER: Okay. Thank you. [LB755]

JESS WOLF: Yes. [LB755]

SENATOR LANGEMEIER: Very good. Are there any other questions for Mr. Wolf? Seeing none, thank you very much. [LB755]

JESS WOLF: I'll be back again sometime. [LB755]

SENATOR LANGEMEIER: I hope so. [LB755]

JESS WOLF: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: That went well. Further testimony in support of LB755. [LB755]

WILLIAM PANEC: If I can make it. [LB755]

SENATOR LANGEMEIER: You're doing good. [LB755]

WILLIAM PANEC: Well thank you. Your questions have been very interesting and to the point and I... [LB755]

SENATOR LANGEMEIER: I need to stop you. I need you to sit and I need your name first. [LB755]

WILLIAM PANEC: ...oh, I will...all right, I will do that and I apologize. [LB755]

SENATOR LANGEMEIER: It's our only real procedure here. [LB755]

WILLIAM PANEC: (Exhibit 6) My name is William W-i-l-l-i-a-m, middle initial J. My last name is, if you're Czech, it's Ponitz (phonetic). If you're not, Panick (phonetic) will do. P-a-n-e-c. Pappa, Alpha, November, Echo, Charlie, when I used to fly airplanes, but that's been awhile back. Anyway, I have written statement to give to somebody that

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wants it. I don't know whether...there are ten here, I don't have enough for a crowd of people. I'm not going to go through everything I have read. You can do that at your leisure, but I wanted to point out a few things to you, things that you already know and have been familiar with yourself for many years and I point those out in this to statement which will take probably a minute and a half to two minutes. At Gettysburg, Pennsylvania on November 19, 1863, our 16th President, the originator of the Republican Party, Abraham Lincoln, said it well. He defined us as a people when he concluded with the Gettysburg Address and established in the history of the United States who we are. He said that "government of the people, by the people, for the people, shall not perish from the earth." We, of course, are the people. We must not shirk from Abraham Lincoln's statement that we have a government of the people, by the people, for the people and it shall not perish from the earth. All the senators on this committee and, indeed, all the senators in the Nebraska Legislature have attained high office in Nebraska by the fact that they have been elected by we, the people. Now we the people are being attacked by a foreign corporation which seeks to overtake our land, our resources and our water for their benefit and to our detriment and with no reasonable compensation paid by them for their doing so. I am here to ask you to take a stand for we the people and adopt LB755 as amended and not take a stand for corporations foreign or domestic, Canada Keystone XL Pipeline. We the people need your help and we're asking for it and we thank you very much for your attention and we will appreciate your help. Thank you. [LB755]

SENATOR LANGEMEIER: Very good; you did a great job. Are there any questions? Seeing none, thank you. [LB755]

WILLIAM PANEC: I must have answered everything, huh? [LB755]

SENATOR LANGEMEIER: You're doing pretty good, pretty good. [LB755]

WILLIAM PANEC: Thank you. [LB755]

SENATOR LANGEMEIER: I think you'll find the earlier you go, the more questions you get, is the way this seems to work. Further testimony in support of LB755. Welcome. [LB755]

DAN KRAMER: (Exhibit 7) Thank you. Mr. Chairman, committee members, I'm Dan Kramer, D-a-n K-r-a-m-e-r. I apologize for my voice today. To me it sounds like I'm talking in a drum. I'm a lifetime resident of Holt County, Nebraska. I'm a third generation landowner and someday I wish to pass that legacy on to my children. My concern is the protection of the land and water that lies beneath it. Most of the area covered by Keystone XL Pipeline in Nebraska is on top of our most precious resource, other than our land, which is water in the Ogallala Aquifer. I'm a member of Landowners for Fairness who has 116 members starting in Keya Paha County in north central Nebraska

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through Jefferson County in southeast Nebraska. We have cooperation agreements with Protect South Dakota Resources and the Eastern Montana Landowners Group. Our goal from the beginning was to educate ourselves about pipelines and to share that information with landowners affected by the Keystone XL pipeline so we can become part of the process to make this a safer project from construction through the operation of a completed pipeline. From our association with groups from the states of South Dakota and Montana and our attorney from Wyoming, we have found that each state has a different approach to law and the protection of their citizenry. Nebraska has not had much cause to be involved in legislation to this point and currently relies on the U.S. Department of State to make decisions concerning the TransCanada Keystone XL Pipeline. I think it is time for that to change. We are a group of Nebraska landowners who are soon to be subjected to condemnation to put this pipeline across our property so that tar sands oil can flow from Alberta, Canada to refineries in the Gulf Coast of Texas. We do not believe it is fair we should bear the extra risks of oil leaks, ruptures, or spills without some home-state protection. The proposed bill, LB755, covers four areas of concerns we have as a group and are meant to provide minimum protections for all landowners in the state of Nebraska: (1) relief from potential liability does not stem from landowners misdeeds; (2) we want the land to be put back in the original state; (3) bury the pipe a minimum of five feet deep for safety, as they do in Iowa; (4) just compensation for the state, county, school district, and landowners. It is true that personal property taxes will be paid by pipeline companies for a few years, but as soon as the asset base has been depreciated, those statements will go away, but many local services such as fire protection, rescue, and medical will need to continue as long as the pipeline is in operation. I have been told by pipeline representatives that there is break...if there is a break in the pipe they will contain the spill within 12 minutes and they will restore the land to the original state. I believe the pipeline representatives mean what they say. But what if things are different 50 years from now and the pipeline has new...that was new and vigorous in 2012 is now old and feeble? What if the owner has fallen on hard times and no longer has the ability to pay for those promises someone made 50 years ago? What then? In 1990 there were numerous filling stations that had buried storage tanks in our part of the country that held petroleum products. Over the years that they'd been in the ground, leaks developed and contaminated properties adjacent to those underground facilities. I see my lights turned red. [LB755]

SENATOR LANGEMEIER: Go ahead and finish that paragraph. [LB755]

DAN KRAMER: Thank you. I was an officer at the local bank and had taken a lien on real estate that was later found to be contaminated. My board of directors were very concerned about the potential litigation over cleanup, as well...and as a result, we released our collateral on the loan. In light of that experience, I see potential risk for the landowner whether it is a large spill or a slow leak. I respectfully request your help in insuring that landowners from along future pipeline routes in the state of Nebraska are not treated as second class citizens when it comes to our safety, health, and property.

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You can help by giving Nebraskans these minimum protections supporting LB755 and advancing it to full Legislature for consideration. Thank you. [LB755]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Kramer? Seeing none, thank you very much, great job. [LB755]

DAN KRAMER: Thank you. [LB755]

SENATOR LANGEMEIER: (Exhibits 8-15) Further testimony in support of LB755? Seeing none; we have...seeing no other testifiers, we have a number of letters and I'll butcher some of these names, but they will be right in the record: Bill McAllister from West Holt Public Schools; Raymond Capek from Fillmore County Board of Supervisors; Fred Helmink from Fairbury Public Schools; Bill Robinson from Cedar Rapids; Marian Hamling from Lindsay; Mel Taylor from Milligan; and Robert Hanzlik from Stuart Public Schools; and Larry Dix from NACO; have sent letters in support of LB755. Now we'll go to the other spectrum; we'll go to opponents or opposition to LB755. Welcome. Now you're getting mixed signals. Okay. Green, but stop. Welcome. [LB755]

JOE KOHOUT: (Exhibits 16 and 17) Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. For the record my name is Joe Kohout K-o-h-o-u-t, and I am registered lobbyist for TransCanada and its affiliated pipelines here in Nebraska. I appear before you today in opposition to LB755. We understand that the target of LB755 is TransCanada and its Keystone XL pipeline. We recognize that proposing a pipeline, especially where none exists, can cause concern. We have been working with landowners and interested parties and will continue to work with them to resolve their concerns. We further understand that not all of you are completely familiar with our projects here in Nebraska and how it links a reliable and stable source of crude oil to a growing North American demand for energy and the largest refinery market in the world. By way of introduction, I thought I would begin by doing two things. First, familiarize you with the TransCanada and Keystone and Keystone XL projects and second, to provide a preview of the structure of our testimony today. First about TransCanada and Keystone and Keystone XL. TransCanada is a leading North American energy infrastructure company. We have approximately \$40 billion in pipeline, gas storage, and power generation assets. Our network of gas pipelines is one of the single largest systems in North America. We employ over 4,500 people including nearly 1,600 who work here in the United States. TransCanada has a long and proud history of maintaining positive relationships in the communities where we do business. We have owned and operated pipelines safely for over 50 years. Our reputation and standing in the community is vital to our ongoing success. Simply put, we are in this business for the long term. Now about Keystone and Keystone XL. Upon completion, the Keystone Pipeline will be comprised of the 2,148-mile Keystone Pipeline and the proposed 1,980-mile Keystone Gulf Coast Expansion Project, Keystone XL. The 30-inch diameter Keystone pipeline was constructed in Nebraska in 2009. Keystone is near completion

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and runs through Cedar, Wayne, Stanton, Platte, Colfax, Butler, Seward, Saline, Jefferson, and Gage County, approximately 212 miles. The second pipeline, Keystone XL, is 36 inches in diameter and will go through portions of Keya Paha, Rock, Holt, Garfield, Wheeler, Greeley, Boone, Nance, Merrick, Hamilton, York, Fillmore, Saline, and Jefferson Counties, approximately 255 miles. This proposed project is currently under regulatory review and if approved, construction would start in 2011. Our testifiers today will include Jim Krause who serves as United States director of Keystone Operations, based in Keystone's regional office in Omaha who will discuss our safety precautions as well as our emergency response scenarios. Lee Hamann of the McGrath North law firm in Omaha who serves as Keystone's local counsel will discuss the legal issues and concerns with LB755. Butch Wallace, professional engineer of Trow Engineering Consultants, will discuss construction issues associated with NRCS and topsoil and depth of cover. And Robert Jones who serves as vice president, TransCanada Keystone Pipelines, to provide the larger perspective on the Keystone Pipeline and the implications of LB755 on those overall operations. At this time, I would offer into testimony letters of opposition from the following parties: the Nebraska State Chamber of Commerce; the American Petroleum Institute; the Association of Oil Pipelines; Interstate Natural Gas Association of American; the Bridger Belle Fourche and Butte Pipelines and Kinder Morgan. Mr. Chairman, I'd ask that those be made part of the record at this point. What you will be able to discern from the testimony today, Mr. Chairman and members, is first, that LB755 adversely impacts pipeline safety and infringes on the property rights of owners. Second, it is unconstitutional in its present form and should any amendment be adopted that would modify the legislation to limit its scope to oil pipelines, it will only make the legislation even more suspect. Third, the legislation would impose significant increased costs on Nebraskans and on the costs of energy and goods in the United States. And finally, no provision in the bill is necessary to protect the interests of Nebraskans. We understand that there are those who are frustrated by the process. Please let us make ourselves clear; we plan to be a long-term resident of Nebraska and as such we want to be a good neighbor. We believe we have been a good neighbor so far, but are always willing to be a resource to this committee and to those political subdivisions across the state that call on us. We stand at the ready to work with you address concerns. However, LB755 is not the answer. [LB755]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Kohout? Seeing...I have one. I won't let you off the hook that easy. Back to my statement who goes first gets most the questions. On page three of your testimony, third bullet point down, you talked about this Legislature imposed significant increased costs on Nebraskans. [LB755]

JOE KOHOUT: Um-hum. [LB755]

SENATOR LANGEMEIER: Expand on that. [LB755]

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JOE KOHOUT: Well, and, Senator Langemeier, I do believe there are individuals behind me who are well versed and have looked at the specific impact of the fee that is proposed in LB755, so I don't want to give you an incorrect answer. But I believe that because of, and based on information I have seen from those shippers, is the shippers are going to bear a bulk of that cost in terms of those pipelines. So, in other words, as it goes through, it's being shipped, it's going to incur additional costs. So that's the reason for it. [LB755]

SENATOR LANGEMEIER: Additional costs to the product, maybe not additional cost to Nebraska. [LB755]

JOE KOHOUT: To the users. Because that's where...that, I mean, if the price goes up, it's going to cost the user of the product more in the end. [LB755]

SENATOR LANGEMEIER: Okay. Are there any other questions? Seeing none, very good. Thank you. Further testimony in opposition to LB755? (inaudible background statement) Testimony would be brief if you give away your notes. Good afternoon. [LB755]

R.J. BAKER: Thank you, Chairman. I am R.J. Baker, R. J. B-a-k-e-r. I am executive director of York County Development Corporation located in York. I'm here to voice opposition to LB755 and the previous speaker touched on one of the things I'm very concerned about. First of all, the original bill that addressed natural gas pipelines ignored an issue that endangers future growth and economic development in Nebraska. The natural gas supply to Nebraska is limited by the 30- to 40-year old transportation system. There's plenty of natural gas; we just can't get it here. The natural gas has used its increase to ethanol production fueling power plants, and residential consumption. The current infrastructure does not have the capacity to support any big growth in our industrial base. Several communities have already lost projects because pipeline companies cannot provide additional natural gas without costly upgrades. Norfolk, Wayne, Laurel, Nebraska City have all lost projects. Pipeline companies in each case demanded that the community or the project developer pay the cost of the additional upgrade and increase in volume. An ethanol plant in Plainview, Nebraska, paid nearly \$5 million for an upgrade so it could expand. I believe that many of our communities are close to capacity, but don't realize it until they have a project that they can't serve with the proper amount of natural gas. I believe the state should be looking at incentives to encourage natural gas pipeline expansion in Nebraska. Thank you. [LB755]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Baker? Mr. Baker, at the start of this hearing today, we were offered an amendment; I assume you had not seen that as well. [LB755]

R.J. BAKER: I had not seen that amendment, but I think Senator Fischer makes a

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relevant point of equal treatment under the law, and so I think the bill itself has constitutional issues, let alone the taxes. But my purpose in coming here was to just make...to raise the issues that are very apparent in the natural gas situation. [LB755]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much for your testimony. [LB755]

R.J. BAKER: Yep. Thank you very much. [LB755]

SENATOR LANGEMEIER: Further testimony in opposition? Must be Jim. [LB755]

JIM KRAUSE: Yes. [LB755]

SENATOR LANGEMEIER: Welcome. [LB755]

JIM KRAUSE: (Exhibit 18) Thank you. Thank you, Senator, and members of the committee. My name is Jim Krause, J-i-m K-r-a-u-s-e, and I'm the director of U.S. Operations for Keystone Pipelines. I'm testifying today in opposition to LB755. I work out of our new Keystone U.S. Operations headquarters in Omaha, Nebraska. We also have a smaller field office in Fairbury, Nebraska, as well as other small field offices throughout the country. My family and I live in Omaha. My testimony today will focus on programs that are designed to ensure the safe operation of our pipelines. With regard to those, please know that TransCanada's pipeline integrity programs are designed to ensure public safety and to meet or exceed industry best practices and regulatory requirements. The health and safety of the public, our employees and contractors is paramount. From design and construction to operation and maintenance, safety is an integral part of what we do. In fact, people ask me to describe my job and I've put it this way in the past. I spend 20 percent of my time training and preparing for emergencies; I spend the other 80 percent of my time ensuring they never happen. TransCanada's pipeline integrity and maintenance programs are world class. They are designed to ensure safe operation of our assets for their full life. Highlights of this program include regularly scheduled air patrol of our entire pipeline system. We patrol the pipeline on average every two weeks and landowners may have already seen our patrol planes in the air. We regularly use internal tools sometimes called "smart pigs" which inspect the internal and external condition of our pipelines. With the Keystone pipeline, we will inspect that line in the second or third year of operation and every five year intervals after that. We have a very comprehensive integrated public awareness program. This is where we work with and provide information to key stakeholders located near our pipelines. This includes membership in state pipeline associations, meetings with public officials, and meeting with emergency response officials. We go to great lengths to regularly connect with the public located near our pipelines. This is accomplished through local meetings, open houses, and printed communications. In 2009 we distributed over 3,500 brochures to the public who live and work near our already

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completed Keystone pipeline. As part of this effort, Keystone participates in state one-call programs including the one here in Nebraska. Especially for new pipelines, accidental contact has been a leading cause of damage. Throughout the continent, pipeline operators have been working closely with community representatives, regulators and legislatures to reduce the risk of damage through accidental contact. The efforts include one-call legislation to reinforce responsibilities of any party doing work below ground to call before you dig and implement the national "811" telephone call-in system. The system makes it easy for landowners and other parties to carry out their responsibilities safely. one-call efforts significantly reduce accidental contact as a cause of incidents on pipelines in the United States. LB755 causes me concern because it would relieve landowners of responsibility to take appropriate precautions prior to excavation. First, pipeline companies would be required to hold landowners harmless for all but intentional damage to the pipeline. Next, the pipeline companies would be required to procure an insurance policy that lists landowners as insured parties and covers the costs of litigations, as well as the payment of damages or settlement resulting from the litigation. These provisions may diminish incentive for landowners to use caution near pipelines. Laws are already in place requiring Keystone to respond quickly to any leak or spill from our pipeline. We are also required to quickly contain any leaks, repair the pipe, and remediate any damage. We take this responsibility seriously and have done so on our entire network of pipelines for over 50 years. The same integrity programs and emergency preparedness will be set in place for Keystone XL as well. It's my job to see to that; that's what I do. In summary, this bill is unnecessary and I urge you not to pass it. I appreciate your time. Thank you and I'd be happy to answer any questions you may have. [LB755]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Fischer. [LB755]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Krause, for being here. One of the previous testifiers who testified as a proponent for the bill, Mr. Kramer, on his handout that he gave us and also in his testimony that he gave publicly here, he listed four concerns of the group that is opposed to the...certain aspects of the construction of this pipeline and that he believes LB755 will address. One of those was...and I think I'm trying to see what Mr. Kohout said on the people that were following, but I think you're the person to answer this one for me. A concern is that the pipeline needs to be buried a minimum of five feet deep, as they do in Iowa for safety. How do you respond to that? [LB755]

JIM KRAUSE: Thank you for the question, Senator. I'm not aware of the requirement in Iowa for new construction being...pipe being buried five feet. I can say that I am aware of federal regulations that require a pipeline company to bury pipe 30 inches. Keystone has voluntarily taken upon themselves to bury the pipeline four feet in most locations. In other locations, we'll bury the pipe even deeper. Situations like this would be railroad

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crossings, road crossings, and places like that. Also, please understand, I think it's important to understand that when we say four feet deep, that's from the top of the pipeline and when we consider the circumference of pipeline that we're installing, it's requiring a ditch that's seven feet deep. One of our concerns is going the extra foot to bury that pipeline will not significantly reduce the risk of a pipeline being contacted, but can significantly increase the damage and the amount of ground disturbance for construction. [LB755]

SENATOR FISCHER: Can you explain that last statement? [LB755]

JIM KRAUSE: Yeah, I can give an example. Probably perhaps the Sandhills, I think, is an area that people are familiar with and you can imagine digging a ditch that's seven feet deep. To safely allow that ditch to be dug and for people to go in and do work, we have to trench that ditch sideways and back-slope it. In areas like the Sandhills where the ground is unstable, we have to take away an awful lot of land to make sure we can get down to that seven foot or eight foot level safely. [LB755]

SENATOR FISCHER: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Other questions? Senator Carlson. [LB755]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Krause, one of the things that came up from many of the testifiers earlier was the perceived, or apparent or actual difference in compensation in Canada versus the United States; can you comment on that? [LB755]

JIM KRAUSE: I don't think I'm the best person to comment on that. I'll leave it to my colleagues, thank you. [LB755]

SENATOR CARLSON: Okay. [LB755]

SENATOR LANGEMEIER: Senator Dubas. [LB755]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Krause. Something's not soaking in here for me and you just talked about the depth of this pipe and I've been under the impression it's four feet. So I'm just thinking four feet, but you mentioned seven or possibly eight feet, so please help me visualize what this ditch looks like as you put the pipe in. [LB755]

JIM KRAUSE: Yeah, there's actually a great example in my office where we have a piece of big pipe and the Lieutenant Governor was in and we're able to explain to him in relationship to the ceiling of being the floor exactly how deep the pipe is. When we talk about four feet of cover, that is from the top of our pipeline. So if you extend that to the

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circumference of the pipeline, the bottom of the ditch that we have to prepare is actually up to seven feet deep. So the top of the pipe still has four feet of cover over the top of it to the ground surface. [LB755]

SENATOR DUBAS: Okay. So like I'm out in my field with a piece of machinery and we no-till now so we aren't ripping up our ground, but say we decided to rip up some ground and I've got a ripper out there that's going to go, you know, several feet into the ground. How close am I going to be to the pipe? [LB755]

JIM KRAUSE: That would depend on the depth of your instrument, of the implement that you have. We do ensure safety by providing all the communication materials to our landowners. We also mark the pipeline with signage at all visible points and at fence points and where property changes hands and at roadways, so that people understand where the pipeline goes. Understand that in many areas, in most areas of farmland, within a very short time, the crop will return and it's not apparently evident to see where the pipeline is, and that's why we take exhaustive measures to mark and stake out the pipeline. [LB755]

SENATOR DUBAS: Okay, thank you. You talk about...liability issue is a big deal for the landowners. I know it's a big deal for you, but it's a big deal for the landowners too. I mean, this is something pretty major going through their property and I think they have some legitimate concerns as to what if something happens, you know, what do I stand to lose if something happens and it's through no fault of my own? You make a point in here about the landowners being held harmless for all but intentional damage. Okay, so if a landowner really does go in and do damage, yes, I can see why that landowner should be held liable, but, you know, there are things that can happen on your property that maybe you have no knowledge of or just a defect in the pipe or what have you. So where is the assurance for that landowner that something happens on his or her property that's completely out of their control, they have no knowledge of, but they're...they can be assured that they are not going to be held liable for whatever happens? [LB755]

JIM KRAUSE: Thank you for the question, Senator. My colleague will be speaking a little bit to that point later. What I can say is by law, we're required to respond very quickly to repair the damage, to clean up, and fully remediate the property. We don't stand by arguing who's fault is it before we go in and do that. We go in and do that first. Again, if I harken back to previous testimony, we have \$40 billion worth of assets, most of those pipeline throughout North America. We are in this for the long-term and our reputation is always at stake. So the last thing we want to have happen is a leak; and the last thing we want to have happen is for land not to be remediated or for us to leave the ground in anything but pristine condition. [LB755]

SENATOR DUBAS: Thank you. [LB755]

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JIM KRAUSE: You're welcome. [LB755]

SENATOR LANGEMEIER: Senator Haar. [LB755]

SENATOR HAAR: Thank you. How does that work that you can respond in 12 minutes? You were just talking about shutting off the oil, right? [LB755]

JIM KRAUSE: Yeah, I think I can clarify that. Our pipeline system is continuously monitored through automation. We have at all valve sites are automatically monitored so that if our system, through all the transducers and transmitters on it, detects any change in pressure which could be the result of a leak, we can immediately shut the valves on all the pipeline. We scan that whole system every five seconds. So we can instantaneously, almost, shut down the pipeline. I've also ensured that we've deployed people and resources throughout the system of the pipeline. I can have one of my people on-site responding to an emergency within four hours of it being reported anywhere in the U.S. [LB755]

SENATOR HAAR: Thank you. [LB755]

SENATOR LANGEMEIER: Senator Carlson. [LB755]

SENATOR CARLSON: Thank you, Langemeier. If the minimal depth that a pipeline is buried, your company is four feet, what percentage of additional cost is necessary to go to five feet? [LB755]

JIM KRAUSE: Thank you for the question. I'm probably not the best to answer that; I'm an operation and maintenance guy, but we do have people following me that can speak to the design and construction cost. [LB755]

SENATOR CARLSON: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Senator Fischer. [LB755]

SENATOR FISCHER: Mr. Krause, have you been involved with other pipelines that Keystone has? [LB755]

JIM KRAUSE: That Keystone has, I've been involved; currently I'm the operations director for Keystone. I've been with TransCanada for a number of years. Previous to this assignment, I was operations director for Northern Border Pipeline. [LB755]

SENATOR FISCHER: How many miles of pipeline have you been overseeing? [LB755]

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JIM KRAUSE: It's been a long career; I've been responsible for the complete Canadian mainline system which are... [LB755]

SENATOR FISCHER: So we're talking thousands of miles. [LB755]

JIM KRAUSE: Yes. [LB755]

SENATOR FISCHER: Thousands of miles. Any leaks on those? [LB755]

JIM KRAUSE: Yes, we have had leaks. [LB755]

SENATOR FISCHER: How many? [LB755]

JIM KRAUSE: On the ones that I've been a part of? They've been very rare on instances where I've been. I could probably count them...as severe leaks, I could count them on one hand and not use all the fingers. [LB755]

SENATOR FISCHER: What happened? [LB755]

JIM KRAUSE: The one that I can recall is where it was struck by a third party where there was a dugout being built for water collection and the person digging the dugout wasn't aware the pipeline was there. They were not the landowner and nobody had called the one-call system in that particular event. [LB755]

SENATOR FISCHER: It was said earlier by Mr. Falen, the attorney from Wyoming, when he testified, I believe that he said that pipeline construction is not regulated. Is that true? Do you believe that's a fair and true statement? [LB755]

JIM KRAUSE: Well I think it's a general statement. I know that with the construction of this pipeline, as with any pipeline we've built, there are a number, and a long list of standards, regulations, and permits we must abide by. [LB755]

SENATOR FISCHER: And those permits and standards and regulations come from federal government or states? [LB755]

JIM KRAUSE: Both. [LB755]

SENATOR FISCHER: How does Nebraska rate with regulations? [LB755]

JIM KRAUSE: I believe, in my opinion, that the degree of regulations, the degree of oversight that we have to apply here is the same as any other state. I don't believe it's in our best interest to treat the state of Nebraska any different than another state in how we construct, operate, and maintain the pipeline. My responsibility is for the full breadth

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and length of the pipeline so I have to treat all of it the same. [LB755]

SENATOR FISCHER: Okay. Thank you. [LB755]

JIM KRAUSE: You're welcome. [LB755]

SENATOR LANGEMEIER: Are there any other questions? Yes, Senator Cook. [LB755]

SENATOR COOK: Thank you, Mr. Chairman; and thank you for coming today, Mr. Krause. [LB755]

JIM KRAUSE: You're welcome. [LB755]

SENATOR COOK: Is that how it is pronounced? [LB755]

JIM KRAUSE: Yes, yes. [LB755]

SENATOR COOK: Do I detect an accent? Are you a Canadian? (Laughter) [LB755]

JIM KRAUSE: You detect an accent, although not a lot of people in Nebraska do. Yes, I am from Canada. [LB755]

SENATOR COOK: I love language, so I always have my ears perked up. Well, maybe you're the person to ask today about philosophy of law in your home country. Comparing briefly to your host country, I'm assuming you haven't applied for citizenship yet. [LB755]

JIM KRAUSE: I am here on a work visa. [LB755]

SENATOR COOK: All right. Good. [LB755]

JIM KRAUSE: And very happy to be here. [LB755]

SENATOR COOK: You've got all your paperwork in order. Thank you. (Laughter) [LB755]

JIM KRAUSE: Yes, it is. [LB755]

SENATOR COOK: Appreciate that. [LB755]

JIM KRAUSE: And a very large Cornhusker fan, I'll add. (Laughter) [LB755]

SENATOR COOK: Wonderful. That goes a long way in this building. [LB755]

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JIM KRAUSE: I'm aware of that. [LB755]

SENATOR COOK: So would you tend to agree with me; I'm here on the committee asking the questions, that perhaps the constitution in Canada and the laws that flow from it might be somewhat different from the Constitution in the United States and the laws that flow from it in terms of the laws that we develop? [LB755]

JIM KRAUSE: I appreciate the question, but I think, with due respect, I'm probably not best to answer that. It's outside of my realm. [LB755]

SENATOR COOK: All right. I'll pick on somebody else. [LB755]

JIM KRAUSE: Yes, please. [LB755]

SENATOR COOK: Thank you very much. [LB755]

JIM KRAUSE: You're welcome. [LB755]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB755]

JIM KRAUSE: You're welcome. [LB755]

SENATOR LANGEMEIER: Further testimony in opposition? Welcome. [LB755]

LEE HAMANN: (Exhibit 19, Exhibit 20) Thank you. Good afternoon, Senator Langemeier and members of the Natural Resources Committee. My name is Lee Hamann, that's L-e-e H-a-m-a-n-n. I'm an attorney with the McGrath North law firm in Omaha and serve as the Nebraska legal counsel to TransCanada Keystone Pipeline LP. I am here to testify in opposition. Just cutting to the chase because we don't have much time, there are three primary legal impediments to LB755 that some have been talked about a little bit here. The first is the preemption by federal law. The second is that it imposes impermissible tax and undue burdensome...unduly burdensome restrictions on interstate commerce. The third is that it's prohibitive special legislation. The federal preemption is a major concern here. The overwhelming majority of the provisions of this proposed legislation are preempted by the Federal Pipeline Safety Act. And this act was enacted to provide nationwide protection against risks to life and property posed by pipelines. The authority rests with the United States Secretary of Transportation. And to ensure uniformity, Congress preempted the states from passing any regulations which regulate safety or have a substantial effect on decisions of pipeline operators concerning safety and this applies to all laws whether they're contrary, consistent or supplementary. From the plain language of this bill, the

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overriding concern, and you heard it here in testimony today, that these provisions are for the expressed purpose of safety or they will affect the operators' decisions concerning safety. For example, in Section 1, paragraph 1, it eliminates the liability of landowners except in instances of intentional conduct and requires pipeline companies to provide landowners with insurance coverage for incidents involving the pipeline. These limitations could mean that landowners would not be held responsible for damage that is negligently caused. We don't presume that people go out and intentionally damage pipelines. That in itself takes away an incentive for landowners to use caution near pipelines, and thus diminishes the safety that the federal act strives for and I think that the public demands. This result is dangerous and impacts not only the field of safety, but also lessens safety. Jim talked about this a little bit in the context of one-call and I think the bigger concern here again is not just one-call, but it's the impact of making sure that everybody that's around a pipeline is held accountable, including the pipeline company, and observes best practices by calling one-call when they're supposed to. I think the provisions of the legislation that address topsoil reclamation and depth of cover are also preempted. Jim talked about that a little bit. The point here is that the Department of Transportation regulations, and I'm thinking specifically thinking of PHMSA, the Pipeline and Hazardous Materials Safety Act, speak to depth of pipeline abandonment of pipeline, a host of issues. And you've heard in considerable detail the depth that we're burying the pipeline and, you know, always the act encourages the operator to focus on safety and Jim testified that, you know, where conditions warrant it, we go deeper. You should be aware too and Mr. Falen mentioned this in his testimony that this requires a Presidential permit and it gets an exhaustive review. You'll see it in my comments, but, you know, we may not be subject to FERC, but we are subject to the Pipeline Safety Act and we are subject to PHMSA and those are not optional. Those are things that are imposed on our...on us by the federal government in a permit that is at risk if we don't comply. A big concern here also is the impermissible tax and the unduly burdensome restrictions. The law in the United States, I cite a case in there, Ozark Pipeline Corp. v. Monies . They struck down a similar tax in another state and this is called a fee, but in fact, it's a tax and it's not permissible. It also imposes, if you add depths, it imposes undue restriction or hindrances on interstate commerce. So it goes beyond the exercise of proper police power by a state. The final point I wanted to make quickly is that this is special legislation. It goes not only to the taxing, but there's no logical distinction between a pipeline that's 200 miles long or 18 inches in diameter or less and one that's longer and the Nebraska Constitution prohibits that and I think the U.S. Constitution prohibits that. So with that, I urge you not to advance LB755 and I would be happy to entertain any questions. [LB755]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB755]

SENATOR HAAR: Thank you. Now the federal Pipelines Safety Act, talked about federal preemption, but people who testified before talked about siting. That siting is quite different in other states, requiring more exhausting siting up front. Now is that

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covered by the Pipeline Safety at all or... [LB755]

LEE HAMANN: It isn't, per se, a safety issue, but in the federal Presidential permit process, they look very carefully at siting and that's where all the environmental reviews and that kind of thing come into play because they are deeply concerned about the impact on the environment and on the safety aspects of where you put it. I would imagine if you were, for example, putting a pipeline in a geologically active zone like an earthquake zone, the considerations on siting would come into play. In Nebraska, we hope we have very stable geological conditions here so it may not get quite as much focus as it might in California. [LB755]

SENATOR HAAR: But we heard about things like eminent domain and how it was...at least we were told it operated differently in different states and how people have to be dealt with. Can states do that part of it? [LB755]

LEE HAMANN: As long as it doesn't cross over into the part that the federal government has preempted. So safety issues and, you know, regulations that would affect the operators... [LB755]

SENATOR HAAR: Um-hum. [LB755]

LEE HAMANN: ...approach to safety. But each state does have different condemnation laws, but they are all based, pretty much, on the same philosophy and that is that you are compensated for the taking of your land, fair value... [LB755]

SENATOR HAAR: sure. [LB755]

LEE HAMANN: ...and any damages that stem from that. So if personal property improvements, whatever it might be, wells, if those are damaged in the process of the construction of the pipeline, those have to be compensated under Nebraska law. [LB755]

SENATOR HAAR: But we could conclude then that the up-front things that happen before the construction of the pipeline could be quite different in different states... [LB755]

LEE HAMANN: They could be. [LB755]

SENATOR HAAR: ...and not covered...not preempted. Um...why would Iowa be five feet, we heard in... [LB755]

LEE HAMANN: I don't know what their regulation is; I haven't looked at it. We would be glad to look at that and get back to you, if you would like. [LB755]

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SENATOR HAAR: Yeah, yeah. I'd appreciate that. [LB755]

LEE HAMANN: Okay. [LB755]

SENATOR HAAR: Okay. Thank you very much. [LB755]

SENATOR LANGEMEIER: Senator Dubas. [LB755]

SENATOR DUBAS: Thank you, Senator Langemeier. It's become apparent through some of the testimony and some of the research that I've done that there are other states that do have some state requirements that you have to meet in order to move forward with your pipeline and apparently Nebraska doesn't have much, if anything. So if a person has a problem in the state of Nebraska with the pipeline before, during, or after its...where's that person go? What recourse does that person have to either get questions answered or get specific concerns addressed? [LB755]

LEE HAMANN: Well, we'd like to think they'd start with us and we believe we're very responsive to the people on our pipeline; it's a long-term relationship. If they do not get recourse, they could contact the federal government, the Department of State, and if we're not in compliance with our permit, that would be a fair subject to take up with the issuer of the permit, which is the United States government. It is correct the Nebraska Public Service Commission does not specifically regulate oil pipelines so they wouldn't call them. But if there's a leak on the pipeline, they could start with the Nebraska Department of Environmental Quality if they wanted to. You know, there's a host of, you know, everyday state regulations that all businesses comply with and so depending on what the nature of the problem is, but ultimately TransCanada is responsible and accountable. [LB755]

SENATOR DUBAS: In your testimony, you talk about the liability issue and the landowner, you know, if they're negligent...well if they're negligent, there's no question about that, but if they're not, then that pretty much says if they aren't proven to be negligent they have...they suffer no liability. Is there...how is that stated in the contract that people sign with you? Is that very explicitly... [LB755]

LEE HAMANN: In our...in our, what I would call our standard easement, we have a mutual indemnity. We give an indemnity to the landowner for anything we cause and it's a very broad indemnity and we ask the landowner to likewise, give us similar indemnity for things that they cause. Nowhere in that language does it say the landowner is responsible if, for example, let's say somebody was making an excavation out in the public right-of-way, in a ditch to, you know, repair a county road, and I'm not saying a county would do this, but a private contractor and they don't call one-call and they dig across and they puncture the pipeline and there's an oil spill. I mean, there's nothing in

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our contract and there's nothing in common law that says that the landowner is responsible for that. We're responsible for the cleanup, whoever did it. And so if the landowner didn't have anything to do with that, I mean, we have no recourse against the landowner; we really would have to go after the contractor. [LB755]

SENATOR DUBAS: Okay. So you feel the language in the contracts is spelled out clear enough that this... [LB755]

LEE HAMANN: I really believe so, and we've gone through this and not everybody's going to agree. I mean, you know, different...reasonable minds will differ, but we've gone through these contracts with a number of different attorneys in the state of Nebraska and they've been satisfied with the mutual indemnities that are in that. And if you end up in an eminent domain situation where you don't have the written contract between TransCanada and the landowner, you still have the common law and that is just as simple as if I drive my car into your house, you don't need a contract to hold me responsible for that. And I think it's covered either way under existing Nebraska law. [LB755]

SENATOR DUBAS: Thank you. [LB755]

SENATOR LANGEMEIER: Senator Fischer. [LB755]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Sir, for being here. Here in Nebraska when the construction...or I guess the planning process started, where did the company go? Did they go to any agency? Are there any requirements? [LB755]

LEE HAMANN: A lead agency in Nebraska, I don't believe that they were required to go to any lead agency. In the course of the NEPA process and all that, various state agencies have been involved, both environmental and that kind of thing. But I don't know that we were required to go...there was no...state permit has been pointed out that we had to pull down. [LB755]

SENATOR FISCHER: Okay. When you talked about the President's permit and from your testimony it sounded like it was quite a deal to go through. From a previous testimony, it sounded like it was just a form to fill out. Would you like to comment on that? [LB755]

LEE HAMANN: I would. You'll be given a copy, if you haven't already received it, of our...the construction mitigation and reclamation plan and it's a fairly lengthy document. That plan was...if you see it, you'll see the date on it is November, 2008 and I can't tell you the exact date that we filed our application for the Presidential permit. But this process has been going on for months and months now and we're hopeful, you know, if

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everything goes right and we jump through all the hoops that we would have our Presidential permit by the end of this calendar year. But it's... [LB755]

SENATOR FISCHER: So it would be a two-year process. [LB755]

LEE HAMANN: I...don't hold me to that... [LB755]

SENATOR FISCHER: At least. [LB755]

LEE HAMANN: ...because I'm not directly involved with that, but it's more than a year. [LB755]

SENATOR FISCHER: Okay. In your testimony, you also...you said it's an exhaustive process and you listed a number of offices and agencies: the Office of Pipeline Safety, which is with DOT; BLM; the Corps.; U.S. Fish and Wildlife; the EPA; National Park Service; National Resources Conservation Service; numerous other agencies. Did you contact all of these federal agencies in working here in Nebraska? [LB755]

LEE HAMANN: Again, I'm not involved in that federal permit, so I can't personally tell you that I...that TransCanada... [LB755]

SENATOR FISCHER: Do I have somebody else coming up here that I can ask that? [LB755]

LEE HAMANN: There may be somebody, but I will tell you that it is my understanding that all those agencies have had input and review on this permit. [LB755]

SENATOR FISCHER: Okay. [LB755]

LEE HAMANN: And it is not yet completed. [LB755]

SENATOR FISCHER: Would you happen to know the permitting process in other states and how that was compared to Nebraska in the company's view? [LB755]

LEE HAMANN: I have not done a study of other states; I'm a lowly Nebraska attorney. [LB755]

SENATOR FISCHER: No, that means you're kind of good for an attorney... [LB755]

LEE HAMANN: Okay. Thank you. [LB755]

SENATOR FISCHER: ...if you're from Nebraska at least, right? [LB755]

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LEE HAMANN: You're very charitable. [LB755]

SENATOR FISCHER: Yeah. Thanks. [LB755]

SENATOR LANGEMEIER: Senator Carlson. [LB755]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Hamann, when this project is complete and it's ready to go, what would be the approximate value of the project under the ground through the state of Nebraska? [LB755]

LEE HAMANN: Oh boy, I don't hazard a guess on that. [LB755]

SENATOR CARLSON: Big. [LB755]

LEE HAMANN: It's many...yeah. [LB755]

SENATOR CARLSON: Now when it's completed, Keystone will pay property taxes in the various counties under which...in which the pipeline is laid, correct? [LB755]

LEE HAMANN: Correct, and there will be one of our speakers that can give you some, at least preliminary figures on what those taxes might be. [LB755]

SENATOR CARLSON: All right. Now the pipeline is buried and the ground on top, there's also property taxes paid by the landowner on that property and historically those property taxes have gone up every year. How do the property taxes go for Keystone? [LB755]

LEE HAMANN: Well, if it's taxed as personal property, there's a depreciation factor. [LB755]

SENATOR CARLSON: Does the depreciation reach zero? [LB755]

LEE HAMANN: I haven't looked at that, so I can't address that for you. I could certainly provide you an answer at a later time. [LB755]

SENATOR CARLSON: But somebody's coming behind you that may address that. [LB755]

LEE HAMANN: I don't know if they'll have that information, but we can ask. [LB755]

SENATOR CARLSON: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Are there any other questions? Senator Schilz. [LB755]

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SENATOR SCHILZ: Thank you, Senator Langemeier; and Mr. Hamann, thanks for coming in. And maybe this isn't yours either, but if anybody else is listening in the audience, what is the lifetime...depreciable lifetime of a pipeline project such as this? [LB755]

LEE HAMANN: A depreciable lifetime or a useful lifetime; I'm not a tax expert,... [LB755]

SENATOR SCHILZ: Let's go useful. [LB755]

LEE HAMANN: ...so there may be rules on how long you can depreciate something for tax. [LB755]

SENATOR SCHILZ: Sure. [LB755]

LEE HAMANN: But for a useful life I will defer to one of the operational people,.. [LB755]

SENATOR SCHILZ: Okay. [LB755]

LEE HAMANN: ...but I think it's very, very long. [LB755]

SENATOR SCHILZ: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much for your testimony. [LB755]

LEE HAMANN: Thank you very much for your time and attention. [LB755]

SENATOR LANGEMEIER: Further testimony in opposition? You're Mr. Wallace, I take it. Good afternoon. [LB755]

BUTCH WALLACE: (Exhibit 21, Exhibit 22) Good afternoon. Thank you, Senator Langemeier and members of the Natural Resources Committee. My name is Butch Wallace, that's B-u-t-c-h W-a-l-l-a-c-e. I'm a project manager for Trow Engineering Consultants in Tallahassee, Florida. Trow provides engineering, regulatory, and environmental consulting services to TransCanada for the Keystone Pipeline project. My testimony today will focus on two items in the LB755: first being topsoil reclamation and also, second, which has already been touched on somewhat, depth of burial of pipelines. You are receiving a copy of Keystone's construction and mitigation and reclamation plan referred to as the CMRP. The CMRP was developed to document measures that Keystone will utilize to ensure responsible construction, operation and maintenance of the pipeline. And one of the key foundations of the CMRP is that the

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disturbed areas will be restored as near as practical to preconstruction contours and productivity. The CMRP is a part of Keystone's permit application and would therefore be a condition of the permit and enforceable by federal agencies. The first item of concern in the bill was that of topsoil management. This provision is unnecessary in LB755 in that Keystone is already following the recommendations of the Natural Resource Conservation Service. The NRCS is one of the federal agencies reviewing Keystone's permit application to construct facilities under the requirements of the National Environmental Policy Act. Section 4.3 of the document received, the CMRP, includes a detailed plan for the restoration of the disturbed areas. Topsoil will be stripped from an actual depth to a maximum of 12 inches. The plan also states that the landowner will be consulted with with regards to topsoil reclamation. Keystone also consults extensively with NRCS personnel in the field on construction and reclamation activities. The second item of concern is that of the proposed pipeline burial depth. The Pipeline and Hazardous Materials Safety Administration, PHMSA, sets forth minimum pipeline burial depths for liquids pipelines and that's in the Code of Federal Regulation, Title 49, Part 195, Section 248. Under normal rural construction scenarios the required depth under the federal regulations is 30 inches. Keystone, in the CMRP Section 2.9 set that at 48 inches. In industrial, commercial, and residential areas, the federal code says 36 inch minimum; Keystone says 48. Under water bodies, the federal code says 48; Keystone says 60 inches. And under drainage ditches, the code of federal regulations says 36 inches; and Keystone also sets 60 inches. So Keystone is already exceeding the federal standards for depth of cover with a typical minimum depth of 48 inches rather than the 30 inch required by regulation. And has already been stated, the depth is from the ground surface to the top of the pipe or the pipe coating. There will be other locations that warrant greater depth of cover due to site-specific conditions. Keystone has already chosen to exceed the minimum federal regulations in the interest of safety precautions. Also, to ensure uniform safety requirements for interstate pipeline facilities, states are expressly preempted by federal law from adopting their own safety standards. I encourage you to review the construction, mitigation, and reclamation plan and understand that Keystone is making every effort to protect landowners and other stakeholder groups. And I encourage this committee not to pass LB755 because it contains unnecessary provisions related to depth of cover and topsoil management. Thank you; I'll be glad to answer any questions you may have. [LB755]

SENATOR LANGEMEIER: Very good. Senator Fischer. [LB755]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Wallace, for being here. My guess is you're not from Canada. (Laughter) [LB755]

BUTCH WALLACE: I am not from Canada, nor am I from Florida. I'm originally from Birmingham, Alabama. [LB755]

SENATOR FISCHER: Well welcome to Nebraska. [LB755]

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BUTCH WALLACE: Thank you very much. [LB755]

SENATOR FISCHER: I had talked about this earlier when I questioned one of your colleagues. On the testimony from Mr. Dan Kramer when he spoke about the concerns of landowners, one of those is, we want the land to be put back to its original state or as near as possible. Now, I'm from the Sandhills and I know what the Sandhills are all about, as many of the people in this room today do, and we have concerns with that fragile environment that we live in. Have you worked with similar soil types in the past? [LB755]

BUTCH WALLACE: No, ma'am, not in the Sandhills. I will tell you that Keystone has utilized specialists in that area, especially in the areas of Sandhills construction and reclamation and they're closely working with us in the permitting and NEPA process. [LB755]

SENATOR FISCHER: Do you know where specifically those areas were that they had worked that are similar to the Sandhills of Nebraska? [LB755]

BUTCH WALLACE: No, ma'am. I'm almost positive that most of them have experience in the Sandhills of Nebraska. [LB755]

SENATOR FISCHER: And are you fairly confident that...or are you extremely confident that the soils and the land will be put back to its original state or as near as possible? [LB755]

BUTCH WALLACE: Yes, ma'am. I'm very confident that will take place. [LB755]

SENATOR FISCHER: How can you be so confident? [LB755]

BUTCH WALLACE: I think that TransCanada has shown a history of their relationship for their community. I think they will be responsive. There are provisions in the CMRP that TransCanada will monitor the sites for a year to make sure that the lay of the land was reclaimed, has...like regrowth has taken place properly and if it's not, then they will continue to monitor so. As Jim stated, they will monitor the right-of-way approximately every two weeks to be looking, among other things, for problems with the land and the landscape. [LB755]

SENATOR FISCHER: Are the contracts only for monitoring for one year? [LB755]

BUTCH WALLACE: I'm not sure. I know that they expressly state that they will be looking for reclamation issues up to one year and then...so...and I can't speak to it beyond that. [LB755]

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SENATOR FISCHER: What happens if it's kind of a dry year and there's not a lot of growth in the grasses that have been planted by this group, haven't taken hold; what happens then? [LB755]

BUTCH WALLACE: Well again, I appreciate that question and I know that our consultants that were...that are looking at the Sandhills area have...are taking these things into consideration. My guess is they will be addressed in the environmental impact statement. [LB755]

SENATOR FISCHER: So it may be for more than a year that these areas are monitored, depending on...I would say depending on not just the amount of precipitation, but when...it matters a lot in the hills when we get rain. [LB755]

BUTCH WALLACE: Right. You know, I can't speak to exactly what they might do, but I believe that TransCanada would be responsive to situations like that. [LB755]

SENATOR FISCHER: Do you know if there's somebody else coming up that I need to ask that question to? [LB755]

BUTCH WALLACE: The gentleman that's following me... [LB755]

SENATOR FISCHER: So you want me to pass...(laughter) [LB755]

BUTCH WALLACE: I would like...I request to pass the buck. [LB755]

SENATOR FISCHER: Okay. [LB755]

BUTCH WALLACE: All right. [LB755]

SENATOR FISCHER: Okay, whoever it is, get ready then. Thank you. [LB755]

BUTCH WALLACE: Thank you. [LB755]

SENATOR LANGEMEIER: Senator Haar. [LB755]

SENATOR HAAR: You're talking about construction, mitigation and reclamation, but the place we're hearing that there's been some real differences, maybe, with other states is in that initial up-front planning process; is that someone else as well? [LB755]

BUTCH WALLACE: I do know that...you referenced a question a moment ago about siting procedures. [LB755]

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SENATOR HAAR: Um-hum. [LB755]

BUTCH WALLACE: And I have been somewhat involved in a siting procedure that's going on in Montana. It...just my experience in it, it has been more along the lines of the state of Montana wanted to input into the routing; one is to look at various routing alternatives throughout the state. [LB755]

SENATOR HAAR: Um-hum. [LB755]

BUTCH WALLACE: Really nothing dictated on how you construct a pipe or how deep or with what...with what materials and that kind of thing, but it was more of a...almost a mini-NEPA process that, you know, we were asked to make certain comparisons between route alternatives within the state of Montana and give that back to the Department of Environmental Quality there. [LB755]

SENATOR HAAR: So the DEQ worked with you in that state. Did you do anything similar in Nebraska? [LB755]

BUTCH WALLACE: To my knowledge we have not. [LB755]

SENATOR HAAR: Okay. Thank you. [LB755]

BUTCH WALLACE: Um-hum. [LB755]

SENATOR LANGEMEIER: Are there other questions? I do. [LB755]

BUTCH WALLACE: Okay. [LB755]

SENATOR LANGEMEIER: And I really appreciate this book because... [LB755]

BUTCH WALLACE: Okay. [LB755]

SENATOR LANGEMEIER: ...you're always deadly to hand stuff out because we read it and I have personal experience in a piece of ground I manage. I had a mile of the Keystone Pipeline, went through a property I managed this year. [LB755]

BUTCH WALLACE: Um-hum. [LB755]

SENATOR LANGEMEIER: And as I read through this book, it talks some of the mitigation of putting up moisture barriers for silt runoff; we didn't have any of those. It talks about other things. Some of the examples we had, when they came through our property that I manage, we're very sandy; we're along the Platte River and we happen to be Sandhills sand, pure sand. They had to come back and buy an additional expanse

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of footage on both sides because as our water table came up and they had sand they never experienced, this crew had never experienced that before. [LB755]

BUTCH WALLACE: Right. [LB755]

SENATOR LANGEMEIER: They had to come back and buy more ground because it kept caving in on them, as we had advised them ahead of time. So I'm concerned about true knowledge. Another experience we had is we had our para power line out to our center pivot was buried through this area. They called and said, hey, we cut your line, you need to get it fixed. We'll pay for it, don't get me wrong, and I commend them, they were excellent. We went out...as the farm manager, I ran out to look at it and I had a pile of wire cut up in probably a hundred pieces; it wasn't just cut. We had to put it back together. [LB755]

BUTCH WALLACE: Wasn't a simple splice. [LB755]

SENATOR LANGEMEIER: Yeah, it was a super-splice was right. It just wasn't just the best experience in that regard. [LB755]

BUTCH WALLACE: Um-hum. [LB755]

SENATOR LANGEMEIER: Granted, we reburied; we retrenched a cable out to our pivot. TransCanada paid for it, that was...I mean they were excellent to work with in that regard, but it wasn't quite what we anticipated when they called, so. I have some leeringness. [LB755]

BUTCH WALLACE: Okay. Well I do know also that the Keystone, which you...which came across your property and Keystone XL, up until a few months ago were being operated as two distinct projects. And I know that the Keystone project team has been sharing lessons learned with the XL project team, which is not one big project. So I'm sure those things, those experiences have been taken to heart and will be considered. [LB755]

SENATOR LANGEMEIER: Very good. Thank you. [LB755]

BUTCH WALLACE: Thank you. [LB755]

SENATOR LANGEMEIER: Further testimony in opposition? Welcome. [LB755]

ROBERT JONES: (Exhibit 23) The best for last. Senator Langemeier and members of the Natural Resources Committee, my name is Robert Jones, J-o-n-e-s. I'm vice president of the TransCanada Keystone Pipeline LP testifying today in opposition to LB755. My testimony is presented on behalf of Keystone's crude oil pipelines and on

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behalf of TransCanada's interstate natural gas assets in the state of Nebraska. You've heard from us on a number of specific concerns already and I'd like to acknowledge that proposing a pipeline where currently there are none or few can raise questions and even fear amongst those who live along the route. I recognize and understand this fact. We have been working with landowners and other interested stakeholders since the project's inception and will continue to work to the best of our ability to respond to questions and address potential concerns and we are committing to treating all our stakeholders fairly and with respect. And I can assure you that the Keystone XL Pipeline will be designed, constructed, and operated safely and in an environmentally responsible manner. The Keystone Pipeline System connects a growing and secure source of crude oil in Canada and possibly the U.S. Bakken crude oil with demand with the crude oil in the United States. Pipelines, like power lines, roads, rail lines, telephone lines, cable lines, are heavily regulated. Regulatory reviews of Keystone Pipeline did result in a national interest determination from the United States Department of State highlighting that Keystone serves the interests of the United States. Critical utility infrastructure like Keystone must meet the need and necessity test. Keystone XL must also receive a similar determination or will not get built. Though I am proud of the work our pipeline crews have done in Nebraska in 2009, because Keystone constructed 212 miles of pipeline in this state and we built a pipeline system from Hardisty, Alberta to the refineries near Patoka, Illinois. Now, right now these refineries in the Midwest and the Gulf Coast will rely on foreign sources of crude oil. The crude oil the Keystone will transport will displace offshore sources of crude oil from countries like Venezuela or regions like the Middle East. Pipelines are the safest method to transport crude oil or natural gas. And you heard from Jim Krause and you've seen emphasized in letters that this bill will increase the risk of pipeline incidents in Nebraska. The Keystone Pipeline is designed and constructed so that it will not be impact a normal farming or ranching activities. It will be buried a minimum of 4 feet below the surface and deeper where necessary. And to the extent that normal farming activities may include excavation or other below ground work, landowners and contractors are regularly advised that they can use the state one-call process as required by Nebraska state law. Now by exempting those living on the pipelines...sorry, by exempting those living with pipelines on their land from responsibility by damage they cause, this bill would reverse the significant improvements in pipeline safety associated with the one-call legislation and implementation, therefore increasing the risk of pipeline incidents in Nebraska. Now while protecting people and environment is critical, it is also important that pipeline companies are able to protect its assets. We estimate that TransCanada will have more than \$1.5 billion in assets in the state of Nebraska and this legislation would make it illegal to hold certain Nebraskans accountable for the damage they cause to these facilities. Now under current law, pipeline companies must clean up if their pipeline leaks. And Mr. Krause explained that TransCanada Keystone must respond to clean up any oil released from the Keystone Pipeline, no matter what the circumstances. Before operating the pipeline, Keystone must demonstrate that it's prepared to respond to any pipeline emergency. We must clean up any release and we must accomplish this with

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the oversight of the state and federal authorities and we would be required to meet stringent regulator standards. In addition, this bill seeks to establish an unconstitutional tax on interstate pipeline and operations in Nebraska. As explained by Mr. Hamann and by the United States Supreme Court, it has long been settled that a state cannot lay a tax on interstate commerce in any form. The tax LB755 seeks to establish would be equivalent to taxing a truck or rail traffic or couriers or the post office based on the value of the goods being shipped. For Keystone, this tax would add an estimated \$60 million to the annual operating cost of the pipeline in Nebraska alone. In addition, the bill would direct 40 percent of the funds collected directly to landowners. In the case of the Keystone Pipelines, \$24 million per year would go to those who have already been paid market rates for a permanent easement and paid for temporary use of additional land and who also have been paid for damages for loss of their land during construction. And they may collect additional payments for adverse impacts associated with pipeline operations and maintenance. These landowners virtually in every situation continue to use the land for agricultural purposes just as it was used prior to pipeline construction and have no liability for any aspect of the pipeline unless they intentionally damage it or cause damage through negligence. With Keystone and Keystone XL Pipelines, TransCanada will already be the largest property tax...or one of the largest property tax payers in the state of Nebraska. Our initial annual property tax estimate is more than \$20 million a year. If it were legal to implement this tax as described, the additional \$60 million per year in new taxes to Keystone in Nebraska will result in increased cost to consumers for the products derived from the crude oil including gasoline and other transportation fuel, fertilizers and other agricultural products such as plastics and pharmaceuticals. And if legal, these costs would be quickly compounded by similar taxes in other states, including those states responsible for shipping all of the crude oil and refined products in which the Nebraska economy depends. Increasing the cost of oil and natural gas that traverses the United States by a pipeline would increase the competitive energy imports from Venezuela, Middle East, Nigeria, etcetera. This is counter to the U.S. national security interests and the goal for North American energy security. Also increasing the costs of transportation by a pipeline increases the competitiveness of trucks and rail transportation of these products. This is counter to the environmental protection because of the spills and fuel emissions and causes congestion of critical transportation routes which impact all commerce. [LB755]

SENATOR LANGEMEIER: I'm going to stop you there. [LB755]

ROBERT JONES: Certainly. [LB755]

SENATOR LANGEMEIER: We're well beyond. Are there any questions? Senator Dubas. [LB755]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Jones. You did reference that Keystone TransCanada would be one of the largest property tax payers

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in the state looking at more than \$20 million per year; is that real estate taxes, personal property or both? [LB755]

ROBERT JONES: It's property tax. [LB755]

SENATOR DUBAS: It's property tax. Okay. Is there any personal property tax on the pipeline itself? [LB755]

ROBERT JONES: No, not that I'm aware of. [LB755]

SENATOR DUBAS: Okay. [LB755]

ROBERT JONES: And we have fee simple on the pump station so they're taxed differently and depreciated differently than the pipeline, but my understanding is...and I'm, by the way, not an expert at all in Nebraska tax law, but my understanding that it is, you know, based on the value of the pipeline. [LB755]

SENATOR DUBAS: Okay. So this wouldn't be depreciated out with after, you know, a certain set number of years you'd end up paying no taxes? [LB755]

ROBERT JONES: Again, I believe there's always a residual value so, you know, again, I'm not an expert in Nebraska tax law. Those kind of issues would have to be brought up by some expert and I'm not it. [LB755]

SENATOR DUBAS: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Senator Haar. [LB755]

SENATOR HAAR: As you've worked in other states besides Nebraska, again I want to go back to what we heard to begin with, that the up-front part is quite different in different states. I understand the safety part is regulated by the federal government and so on, but have you experienced that and what do you...what are some of the differences as you've worked in various states with eminent domain, how you deal with local residents and so on? [LB755]

ROBERT JONES: I'd like to clear up this. There's a lot of misinformation out there. I can tell you we didn't treat Nebraska any different than any other state. So when you hear about things happening in South Dakota or Montana, they have additional, but the very first thing we did was follow what we needed to for a Presidential permit;... [LB755]

SENATOR HAAR: Right. [LB755]

ROBERT JONES: ...and yet, follow the National Environment Protection Act; we

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needed to get an environmental impact statement. So all the initial meetings and scoping meetings all were done all the same in all the states and they're...because they're federally regulated. [LB755]

SENATOR HAAR: But what about those additional things then? [LB755]

ROBERT JONES: So that's afterwards. And so, and it basically parallels and was redundant... [LB755]

SENATOR HAAR: Okay. [LB755]

ROBERT JONES: ...in virtually every situation was redundant to the federal law. And so it's interesting to hear, well, we want the pipelines to be FERC regulated; I welcome that. Because then it's actually one body so I cross nine states. Instead of dealing with nine DEQs and nine EPAs and nine, you know, corps of engineers, I only have to deal with one. So actually it's far simpler for natural gas pipelines. And I, by the way, have permitted both oil and gas pipelines. So I think it's a waste of taxpayers money and it's redundant. [LB755]

SENATOR HAAR: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Other questions? Senator Carlson. [LB755]

SENATOR CARLSON: Thank you, Senator Langemeier. I'm going to follow up, Mr. Jones, on Senator Dubas' question. I didn't see this at first, but on page 5, you indicate that Keystone and Keystone XL Pipelines will be one of the largest property tax payers in the state of Nebraska with initial property taxes estimated at more than \$20 million per year and we go back to the total value of assets when this is completed, about \$1.5 billion. What types of assets are in that \$1.5 billion? [LB755]

ROBERT JONES: There's basically two types of assets. There's the pipeline itself that's the subsurface rates that you have with the easements, so it's the actual value of the pipe that's in the ground, buried four feet from top. And then there's the actual pipeline...pump station asset. Now we own that land fee simple. We buy that land and so we own it fee simple so we pay normal property tax like everybody else and then the asset of the pump station. So the pump stations are worth, you know, tens of millions of dollars and so they would be taxed differently than the actual pipeline which is under an easement. [LB755]

SENATOR CARLSON: And we're both agreeable that on property, such as land, generally speaking, the value of that land goes up year by year. It doesn't depreciate, it goes up year by year, so property taxes tend to go up. So would you say that the \$20 million per year is a figure that would probably would go up year by year; paid by

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Keystone, Keystone XL? [LB755]

ROBERT JONES: I believe that if you balanced appreciation with the value of the land on the pump stations, it's probably a wash. As for the pipeline itself, I believe it gets depreciated over time and probably goes down. [LB755]

SENATOR CARLSON: And I'll...Senator Schilz asked a question earlier, what would be the practical, usable lifetime expected on the pipeline? [LB755]

ROBERT JONES: The way we build pipelines today with the technology, they're indefinite; but we typically use...we tell people, you know, we bought property in pipelines in this country for over a hundred years. Unlike, I think you heard today, maybe, we use rivets; we don't use rivets any more. So...I would suggest that commercial life is probably anywhere from 40 to 50 years. The actual life of these pipelines is well over 100 years. [LB755]

SENATOR CARLSON: And so approximately how many years would you pay property tax then on the pipeline itself? [LB755]

ROBERT JONES: I think you'd pay virtually forever, because there would always be a residual value there. [LB755]

SENATOR CARLSON: Okay, and I don't have any idea what that residual value is, do you? [LB755]

ROBERT JONES: No I don't, Sir. [LB755]

SENATOR CARLSON: Okay. Thank you. [LB755]

SENATOR LANGEMEIER: Any other questions? I just want to make one statement. [LB755]

ROBERT JONES: You bet. [LB755]

SENATOR LANGEMEIER: As we had some issues with the pipeline, your little regional guy out of Columbus was very good at taking our calls when we called hotter than hell at 10:00 at night and said, what did your guys do? He was very responsive in calling us back and coming out and meeting with us as there were tantrums thrown and beating on pickups and...I mean, there were issues with the local crews. But your little guy out of there was excellent in coming out and helping us with that, so. [LB755]

ROBERT JONES: Senator, the feedback is always great and I think two things I'd like to make sure the committee understand and that is we're always learning and there's

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lessons learned and we've now...we learned a lot from the first time. And everybody will recognize that last year was an extremely challenging year weather-wise and our crews weren't experienced enough in those kind of conditions. Now that's no excuse, and as you indicated, we did, you know, make up for it by coming back and trying to be responsive, but we've learned a lot. And, no, I hope it is a dry year. [LB755]

SENATOR CARLSON: And we hope it's not. [LB755]

ROBERT JONES: I'm probably the only guy, but I can tell you, no, pipelines find...pipelines are magnets for rain. Every time we build pipelines, it rains. So there you go. [LB755]

SENATOR DUBAS: Come on out. [LB755]

SENATOR FISCHER: We want it to rain. [LB755]

SENATOR HAAR: Let's build. [LB755]

SENATOR SCHILZ: Perfect. [LB755]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB755]

ROBERT JONES: Thank you. [LB755]

SENATOR LANGEMEIER: Further testimony in opposition to LB755? How many...my list says I only have one more. Are there others? Can you raise your hand? Is Miss Becker the last one? Welcome. [LB755]

JILL BECKER: Thank you, Chairman Langemeier and members of the Natural Resources Committee. My name is Jill Becker, and I'm here today as a registered lobbyist of Black Hills Energy representing the Nebraska Natural Gas Association which is the association of the three investor-owned utilities for the state of Nebraska. We certainly appreciate Senator Dierk's willingness to remove us from this piece of legislation as you've numerous times today. Natural gas utilities are heavily regulated on the federal level, primarily through FERC and through DOT. So much of the...many of the issues that you have heard today dealing with siting and depth of pipelines, many of those types of things are dealt with on the federal level and we certainly would hope that the committee would remove the natural gas utilities from this piece of legislation. With that, much of the other points that I have have already been mentioned by testifiers and I'd be happy to take any questions. [LB755]

SENATOR LANGEMEIER: Very good. Are there any questions for Miss Becker?

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Senator Dubas. [LB755]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Miss Becker. How many, now deep are your pipelines buried? [LB755]

JILL BECKER: Well, typically we, as the distribution company are at about 30 inches. Really kind of depends on the location as you've heard mentioned by the other...pipelines involved; if there's a need to go deeper, we will. And it also depends a little bit, exactly where we are, but I'd say, generally 30 inches. The variances on that are regulated by DOT. [LB755]

SENATOR DUBAS: Thank you. [LB755]

JILL BECKER: Um-hum. [LB755]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB755]

JILL BECKER: Thank you. [LB755]

SENATOR LANGEMEIER: (Exhibits 24-27) Further testimony in opposition? Seeing none. I have a number of letters here. I have Tad True with Bridger Pipeline, LLC; Peter Forrester with Kinder Morgan Canada, Inc.; Donald Santa, Interstate Natural Gas Association of America; Bill Sydow, director of the Nebraska Oil and Gas Conservation Commission. Those four letters are in opposition to LB755. We'll move on to testimony in a neutral capacity. Does anyone wish to testify in a neutral capacity? Seeing none. Senator Dierks had to go back to committee and so he's going to waive his closing. With that, that concludes our hearing today for LB755. We'd like to thank everybody for coming; you did a great job of being precise and very efficient testimony. Thank you all. Have a safe trip home. (See also Exhibit 28.) [LB755]