

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
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COMMITTEE ON NATURAL RESOURCES
February 11, 2005
LB 153, 154, 680

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 11, 2005, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 153, LB 154, and LB 680. Senators present: Ed Schrock, Chairperson; Elaine Stuhr, Vice Chairperson; Carol Hudkins; Gail Kopplin; Bob Kremer; LeRoy Louden; Vickie McDonald; and Adrian Smith. Senators absent: None.

SENATOR SCHROCK: Good afternoon. For the record, my name is Ed Schrock. I'm from Holdrege, Nebraska, and I chair the Legislature's Natural Resources Committee. I will introduce the committee members that are here. To my far right is Senator LeRoy Louden. Next to him is Senator Gail Kopplin. Senator Louden is from Ellsworth; Senator Kopplin is from Gretna and that's about as far apart as you can get in this state. Senator Hudkins is next; she's from Malcolm, Jody Gittins, committee counsel. To my left is Senator Elaine Stuhr; she's vice chair of the committee from Bradshaw. Senator Vickie McDonald from St. Paul, Senator Smith is not here, but he's probably introducing another bill. He's from Gering, and Senator Bob Kremer from Aurora. And the committee clerk is hiding from us back here behind the scenes and that is Barb Koehlmoos. Our page today is Eric McCormick from Grant, Nebraska. He's a junior at UNL. Political science major?

ERIC McCORMICK: Elementary education.

SENATOR SCHROCK: Elementary education, well good for you. Some instructions, turn your cell phone off, please. If you're going to testify on a bill, please fill out the green sheet and turn it in before you testify. Turn out one, or fill out one for every bill that you're going to testify on. If you are motivated to testify and haven't filled one out, make sure you fill it out after you testify and get it turned in. When you come forward, spell your name for the record and introduce yourself. If you have handout material, the page will help you. With that, we will try and move things along fairly rapidly today because it's the weekend and some of us want to get home. With that, Senator Baker, you will be introducing LB 153.

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SENATOR BAKER: Thank you, Chairman Schrock and members of the Natural Resources Committee. I'm one of those who would like to go home early today, so I am not going to drag this out any more than I have to, other than I have another bill in Revenue today too, so. I'm Tom Baker, represent District 44. I'm here to present LB 153. This is a bill that we had last year that we tried to educate you on a bit and I see we have some new members in the Natural Resources Committee. I will start by saying this statute has not been revisited since 1959 and it's dealing with cost recovery for nonconsent basically working interest owners in oil and gas wells, and I get that perplexed look at me again like, what is this? It changes from 200 percent to 300 percent for wells in depth, so on. Let me explain again what this does. When we have an oil lease out there and we may have eight or ten owners of the working interest lease, and you might go shoot a seismic prospect across this lease and determine that, yes, there should be a well drilled, a seismograph project, 3D-size is what we're using now in Nebraska. We decide, the operator decides that they want to drill a well on this prospect and you may have someone go say, no, I don't want to. I don't want to participate in one out of those, say, ten companies or individuals. And what this is allow the remaining people who want to drill is go ahead and drill the well and recover their costs of drilling, and there's a different set of percentages between the drilling costs and the completion costs. These costs have gone up dramatically in the last, in this case, 35 years, and it's simply increasing the nonconsent penalty, saying, you don't want to go in, instead of recovering 200 percent of our costs, the rest of us assume your cost because Senator Kremer didn't think this was a good prospect and didn't want to drill it, we have to pick up his costs in order for the rest of us to go ahead and drill it. And there's always been a penalty clause on that, a nonconsent penalty saying, we'll drill the well and if his share of it would have cost \$1,000 and we go in there and drill it, we can recover \$2,000 worth of costs because we took all the risk, and at the time we recover his 200 percent costs, then he backs into the lease and is a participating owner again. Have I gotten everyone messed up yet? But that is why we're

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adjusting the percentages of the penalties is what we're doing because the costs have gone up so dramatically in the last 35 years. Want me to run through that again? I don't know how else to explain it, but that's the scenario we're into. We occasionally will have a prospect put together and we're involved with one of those now. We either have to go ahead and drill a well and cover that nonparticipating owner's cost or just throw away the whole thing and not drill it. And we want to drill it, so we'll go ahead and pick up that person's interest. In most cases, it's...and in this case it's a 16th interest, and we'll go ahead and pick up that person...that owner's cost, drill the well, and if we hit a well, we can recover, right now, 200 percent of his cost because we took all the risk. What we propose in this bill on a well less than 5,000 feet deep is recovery of 300 percent of our cost because the cost has simply gone up and the risk involved. So this has been in statutes since 1959 when the Oil and Gas Commission was formed and we need to adjust them, quite frankly. It just doesn't cover the risk involved to picking up some nonconsenting working interest owner who doesn't want to participate in a project. I should reiterate again that typically an operator of an oil and gas prospect represents or has to work with all those various owners underneath them, and there are cases when an operator does not own any part of a prospect. It's not very often that happens, but that operator's responsible for the paperwork and getting everybody signed on it, yes, we do want to go drill this. We'll pay our proportionate share of the costs and so on. And this adjusts that penalty for the person who does not want to participate. I'd be glad to take any questions.

SENATOR SCHROCK: Senator Hudkins.

SENATOR HUDKINS: Senator Baker, can you give me the approximate cost of drilling an oil well?

SENATOR BAKER: For a typical 4,500 foot well in Hitchcock County to drill it, just the drilling, just the casing point, then you drill it, test it, and so on, costs you probably \$80,000 to \$90,000 today, maybe \$100,000 depending on how many drill stem tests and what logs you run on it.

SENATOR HUDKINS: Okay. So if Senator Kremer is one of your

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owners...

SENATOR BAKER: Um-hum.

SENATOR HUDKINS: ...and there could be how many owners, two, six, 20?

SENATOR BAKER: Oh, there could be...

SENATOR HUDKINS: ...every...

SENATOR BAKER: ...20.

SENATOR HUDKINS: Okay. And if he says, no, I don't want to participate in this cost of drilling this well, but then the rest of you pick up his costs and then you hit a good well, then he automatically is able to share the profits?

SENATOR BAKER: No. He's penalized because he didn't go in with us to drill the well, and we can recover, now, 200 percent of what it cost to carry his interest, and we can recover 300 percent of the drilling costs.

SENATOR HUDKINS: But since he is an owner, he's...

SENATOR BAKER: Then he would assign an operating agreement with the operator that says, if I go nonconsent, I abide by the statutes in place for Nebraska, which is what we're modifying. He would come back in to own his proportionate share of it, after we recovered that nonconsent penalty.

SENATOR HUDKINS: But you can't just cut him out of the well altogether and the rest of you share in the...(inaudible)?

SENATOR BAKER: If he would agree to sell his interest to the remaining owners, we could do that.

SENATOR HUDKINS: Okay.

SENATOR BAKER: It's sometimes done, but there's other times they don't want to give up their interest. They'd be a nonparticipating party, and that's when this goes into effect. We would try to buy him out, but he might decide, well, he doesn't want to sell out for a reasonable price, but yet we want to drill a well, and that's...this is used

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to promote drilling of wells in just that scenario. If someone has an interest, doesn't want to pay there...participate and we don't want them to hold up the process, which it has because it's difficult to recover your risk and so on when you do this over a series of wells at 200 percent.

SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: I think you answered my question earlier because I was wondering why you were coming to us with this piece of legislation, but it's a result of 1959...

SENATOR BAKER: '59.

SENATOR STUHR: ...and so there are many statutes that deal with this issue. Is that correct?

SENATOR BAKER: Well, oil and gas law is in 57, all of it, 901 to 9-whatever, I don't know, I can't remember. I served on the Oil and Gas Commission for years and this has been an issue for years and years and years in Nebraska. Other states, and behind me is the executive director of the Oil and Gas Commission, it's Mr. Bill Sydow. He could tell you maybe about some other states, but we are way behind what other states are doing, and it is a detriment to exploration when you have stubborn people like Senator Kremer, who doesn't want to pay his share of the bills. (Laughter)

SENATOR SCHROCK: Senator McDonald.

SENATOR McDONALD: (Coughs) Excuse me. What if Senator Kremer refuses, sorry about that Senator Kremer, and you don't hit oil and you still have this tremendous bill out there?

SENATOR KREMER: That's why you need 300 (inaudible).

SENATOR BAKER: That's why we need some penalty clause that we pay the bill. The rest of us pay.

SENATOR McDONALD: And pay the bill and...

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SENATOR BAKER: He's out.

SENATOR McDONALD: ...and he's out.

SENATOR BAKER: He doesn't have any participation in it until we recover our costs plus, in the bill, 300 percent. That's his penalty for not going in with the rest of us and once we hit that payout, then he...and if it's a well, well then we have to complete it. Once we get our costs recovered at this percentage, then he backs in again as an owner and he gets his percentage of production, after we recover our costs.

SENATOR McDONALD: Is this kind of like gambling?

SENATOR BAKER: Well, if you drill an oil well, it is.
(Laughter)

SENATOR SCHROCK: Bob. Senator Kremer.

SENATOR KREMER: Well, some of my questions were answered, I think, Senator Hudkins, but I was wondering where my well is and when I could expect my first payment? (Laughter)

SENATOR BAKER: I tell you what, we could probably work something out if you want to assume some risk today because there's a rig running down in Ellis County, Kansas today. I could probably get you some part of.

SENATOR KREMER: Yeah.

SENATOR BAKER: Yeah, and it's drilling.

SENATOR KREMER: Then the percentage that I'm going to get, that would depend on whatever part of the ownership...it depends on what the pool is under, whose property is, that kind of what...

SENATOR BAKER: Well, we're not talking about the landowner here, we're talking about working interest owners.

SENATOR KREMER: I see. Okay.

SENATOR BAKER: And it could apply to a royalty owner. In the case, if you were a royalty owner and did not want to

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sign a lease with us, we had seven-eighths of the other royalty owners, then this would apply. That's a rather extreme case.

SENATOR KREMER: And you're not talking about the landowners in with the (inaudible) yeah, okay.

SENATOR BAKER: No, the landowner typically in Nebraska gets an eighth of all oil and gas produced free of any cost except his taxes, you know, ad valorem and severance tax, which we're going to talk about in a little bit. This is oil and gas day here for me, but your participation in the project would simply be determined by how much money you wanted to put at risk and what you thought...

SENATOR KREMER: I see.

SENATOR BAKER: ...the return would be. You could buy the whole thing and do it yourself, if you want to take all the risk, but typically these deals are spread around to a group of individuals and companies, so it's not so much risk. And yes, Senator Schrock, we're still planning on drilling that well in Harlan County this summer.

SENATOR SCHROCK: Well, they're doing tests in Gosper County on our property now and I'd sure like to see a gusher show up. (Laughter)

SENATOR BAKER: The man who could probably answer some questions with that prospect is...

SENATOR SCHROCK: I'm not holding my breath.

SENATOR BAKER: Okay.

SENATOR SCHROCK: Is there oil in Gosper County?

SENATOR BAKER: There's a chance. It's on the other side of the Cambridge Arch and Mr. Sydow here can address that. We drilled a lot of wells on the east side of the arch and mostly in Harlan County, and we're going to go back. The technology has changed since we drilled those wells in the early '80s and we think we missed an oil well northeast of Harlan, northeast of Alma down there, so we're going to twin the well sometime this summer. And we ran into lease

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problems down there because it was an elderly person or minerals we couldn't get some leases signed and what not. I told you a year ago we were going to drill that well, I think, and we have it all cleaned up finally. To answer your question, yes, there could be oil in Gosper County.

SENATOR SCHROCK: Senator Louden.

SENATOR LOUDEN: Yeah. I think your oil down there probably has to be taken up with the Oil Recovery Act, probably, that used oil or whatever it was we had in DEQ. Anyway, Tom, Senator Baker, when I'm looking this over, this is with is for pooling, right? And this is for pooling when people don't want to agree to do any pooling or whether you can't find those people or that sort of thing...

SENATOR BAKER: No.

SENATOR LOUDEN: ...is what this is all about.

SENATOR BAKER: Well, you talk about pooling. We have forced unitization of units and so on. That's a bit of a different issue. When we have a unification, a, say a water flood hearing in the Oil and Gas Commission, we had those lots of them. That means that there's somebody that doesn't want to go in and they have over 50 percent--help me--I think it's 50 percent, and he's going to address that issue, but you have to have a majority of the production and then you can force pool those people in current statutes. This does not apply to that. We can simply force pool them and then with our operating agreement, recover our costs from their production in that case. That's a different issue; force pooling and unitization is a...

SENATOR LOUDEN: And this isn't the same as force pooling? This?

SENATOR BAKER: No.

SENATOR LOUDEN: Well, they don't agree to it, so it would be about the same, I guess. I guess whether or not it is it probably doesn't make that much difference. I guess my question is on this pooling, when you're asking for 200 percent, that's asking for twice as much as the expenses are, right?

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SENATOR BAKER: That's right. That's because we took all the risk and he still can back in if we hit a well. He still back in for nothing, doesn't have to pay anything.

SENATOR LOUDEN: Yeah, but all of the people that are receiving the royalty only receive one-eighth of it...

SENATOR BAKER: Regardless.

SENATOR LOUDEN: ...of the production anyway. All of them together only see an eighth. Whoever does the drilling and the wildcatters, that sort of thing, get the other seven-eighths.

SENATOR BAKER: Right.

SENATOR LOUDEN: Right, yeah. I guess that's what I, you know, 200 percent of \$10,000 and if your expenses went up 200 and went up to \$20,000, you get 200 percent, you still, you're talking about, you know, twice as much as what your costs are no matter what the deal. I still, I remember this last year, and of course, I've been involved in a little bit of oil stuff. We have oil leases and went through oil scares and the poolings and the whole bit. I still really have a problem with what difference does it make if you're going to get twice as much as what it cost you to, you know, if you're going to recover twice your expenses, why are you...

SENATOR BAKER: It's simply taking the risk because if you're drilling a well, you have no guarantees you're going to have oil, and you're just simply putting your money on the line and saying, if we're going to do that, we're going to penalize that nonconsent owner, and you know, because of the risk involved, we need more of a chance of return, I guess. That's just...

SENATOR LOUDEN: Yeah.

SENATOR BAKER: ...weighing the...

SENATOR LOUDEN: In other words, you're cut into that eighth royalty that...

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SENATOR BAKER: No. No, no. This doesn't come out of the eighth royalty at all.

SENATOR LOUDEN: Oh, I know, but they've got to pay for it somewhere or another, so you're going to have to get it some place.

SENATOR BAKER: No. The eighth royalty doesn't...this is working interest owners. The landowner...

SENATOR LOUDEN: Okay. Where are you going to get your money if you get 200 percent of 100, but then who's going to...

SENATOR BAKER: We...

SENATOR LOUDEN: ...come up with the cash?

SENATOR BAKER: The remaining working interest owners pay that.

SENATOR LOUDEN: But you'll...

SENATOR BAKER: If say, Senator Kremer again or whomever, say it costs \$100,000 to drill a well and he has 10 percent of it and he doesn't want to go in, and it costs us \$100,000, so his share would have been \$10,000 and we can, if we hit a well, then there's a completion half of this kicks in too, but if, say, we recover our costs, he was responsible for \$10,000 worth of expenses and we say, no, right now, the law says we can recover \$20,000. What we're like to change it is \$30,000 and it's going to force these nonconsent owners to go ahead and hopefully participate in it or not hold the project up.

SENATOR LOUDEN: Okay. You want to get \$30,000 for his \$10,000 cost, right?

SENATOR BAKER: Right.

SENATOR LOUDEN: Now, when you do that, then, is you, in order to get your money then that, because if he doesn't want to be in it, he isn't going to pony up any bucks any time or another, so you've got to hold that against the production in order to cover your money, won't you?

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SENATOR BAKER: And you'll have a monthly statement that says this was our net return on that particular lease, and at ten percent, this is how much would have been credit of that and when you hit that 200 percent threshold, then he backs in, and receives his share of it.

SENATOR LOUDEN: Okay, now. Now we're getting somewhere. If you're instead of sticking him the \$20,000, you're sticking him the \$30,000 and he's only has an eighth...

SENATOR BAKER: Say at ten percent interest.

SENATOR LOUDEN: ...royalty of it anyway...

SENATOR BAKER: No. Well, he may not even be the royalty owner. He's probably not the royalty owner.

SENATOR LOUDEN: Well, if he owns land in there and you're pooling in there...

SENATOR BAKER: Well, he's the landowner, he's not a working interest owner. He's a royalty owner. He's out of this thing if he's just a royalty owner.

SENATOR LOUDEN: Yeah, but his group only gets an eighth of that royalty.

SENATOR BAKER: Right.

SENATOR LOUDEN: And in order to recover your costs you're going to have to assess it against that group that has the royalty...

SENATOR BAKER: No.

SENATOR LOUDEN: ...if they don't want to pay.

SENATOR BAKER: No, no, no, no.

SENATOR LOUDEN: Who will you charge it against? How will you get the...

SENATOR BAKER: When somebody signs an oil lease with me, that lease says on there, you receive one-eighth of any

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production of oil and gas, whatever, free of cost, excluding severance and taxes, and of course, you have to pay your income tax on it. He's out of the picture. I have the lease now and I go take this lease unless they have a lease or block of leases and I want to go run a seismic prospect, which we just did in Morrill County. So we'd run this seismic prospect up there across Senator Erdman's place and decide there's oil on it, at least I do. I'm the operator of it. I said, I'm the operator, I think there's oil here. I want to drill a well there, and I have you as a group or interest, working interest owners. That's the people who pay the bills. We may have leased it from Senator Schrock, but he doesn't...he just...he gets an eighth and the rest of you are my partners in the drilling operation and if it costs us \$100 amongst the ten of us and we split it equally, we're each subject to \$10,000. But say we run this seismic survey across there and I decide I want to drill a well, and as operator, I have to get each one of you to go agree to go ahead and drill the well after we spent the money on the seismic, and maybe you don't want to go in and that's where this enters in. We, the rest of us in the group say, sure, let's drill the well, but Senator Louden doesn't want in and we got to pick up your cost.

SENATOR LOUDEN: Now, you're talking about the drilling group?

SENATOR BAKER: Yes.

SENATOR LOUDEN: Okay, then, why do you keep him in the group if he doesn't want to be in?

SENATOR BAKER: He signed, he paid for his share of the leases, and he paid for his share of the seismic costs, and after he looked at the seismic evaluation, said, I don't think is good enough for me to spend my money. You guys do what you want, but I'm out. I'm out.

SENATOR LOUDEN: Then doesn't...okay, if he's the lessee in there, doesn't his share come out of the seven-eighths royalty instead of the eighth?

SENATOR BAKER: Well, you're talking about if a lease, a landowner participated also as a working interest owner.

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SENATOR LOUDEN: No. I'm talking about when you talk about the working people then, that's where they get their money is the seven-eighths royalty out of any oil production.

SENATOR BAKER: That's right.

SENATOR LOUDEN: And they're also supposed to...they take the risk out of that seven-eighths because they're the ones putting up the risk, right?

SENATOR BAKER: Right. The landowner's eighth royalty is free and clear from any encumbrance from the working interest owner. That's free and clear; they have no further financial obligations other than to pay their share of the severance and conservation tax.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Other questions for Senator Baker?

SENATOR BAKER: I can see right now, I need to put a prospect together and get this committee to be partners and we'll just go through the process.

SENATOR SCHROCK: Why don't you write this, put this down in black and white for me? Maybe it's here and I'm just don't...I'm just not seeing it, but...

SENATOR BAKER: We can do that.

SENATOR SCHROCK: All right.

SENATOR BAKER: I get and I...we thought about doing that. And maybe Mr. Sydow here can...

SENATOR SCHROCK: All right.

SENATOR BAKER: ...run you through the process again.

SENATOR SCHROCK: How many...Senator Kremer.

SENATOR KREMER: Okay. I'm looking at this explanation here and I'm getting confused at...I mean...

SENATOR BAKER: Which one is that?

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SENATOR KREMER: I don't know who wrote that it talks about the explanation of LB 153. It talks about allowing a person or persons drilling the well to recover 300 percent. The next paragraph says, allow a person or a person drilling well to recover 200 percent, same depth and everything. It looks like there's two different...mine must be...

SENATOR BAKER: There's two sections to the bill, one of them dealing with the drilling, and we're talking about \$100,000 to drill a well. Then if you run casing, then there's the completion portion of it.

SENATOR KREMER: Okay. The first sentence of both says exactly the same thing, allow the person or persons drilling and operating the well to recover, then one says 300 percent, and in the next paragraph it says, 200 percent...

SENATOR BAKER: That...

SENATOR KREMER: ...and it also has the same depth and everything, so...

SENATOR BAKER: I don't have that.

SENATOR KREMER: ...something I'm missing on that. I don't know or something.

SENATOR BAKER: I don't have that piece of paper.

SENATOR KREMER: Do you have...I don't know if you have...

JODY GITTINS: It's the two sections, Senator Baker, that you talked about in the bill.

SENATOR BAKER: The one section is dealing with the working interest drilling, another section is dealing with the working interest completion aspect of it.

SENATOR KREMER: Okay. It doesn't say that in this summary here a little bit because it has the same definition before and then it has two different outcomes from it, so...

SENATOR BAKER: If we go ahead and...

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SENATOR KREMER: ...so it's different and different figures for the completion and different figures...

SENATOR BAKER: Yes.

SENATOR KREMER: ...for the drilling, okay.

SENATOR BAKER: Yes, it is. I'm trying not to muddy the water any more that...that's different percentages.

SENATOR KREMER: Okay, it doesn't have...

SENATOR BAKER: Once we drill the well and find oil, then a lot of the risk...

SENATOR KREMER: ...there's a word left out.

SENATOR BAKER: ...has gone out of it, and hence the smaller percentage of penalty.

SENATOR KREMER: There must have been something left out on that...

SENATOR BAKER: Okay.

SENATOR KREMER: ...the explanation then.

SENATOR BAKER: Thank you.

SENATOR SCHROCK: Okay, first proponent?

BILL SYDOW: Good afternoon, Mr. Chairman and members of the committee. My name is Bill Sydow. I live in Sidney, Nebraska. I'm the director the Nebraska Oil and Gas Conservation Commission.

SENATOR SCHROCK: Spell the name for us.

BILL SYDOW: Yes, sir. S-y-d-(as in David)-o-w, and I am here to testify in support of this bill. We're in support of this bill because a part of our statutory charge is to help develop and promote the state's oil and gas resources and we believe that this amendment will do that. This amendment and what we have right now on the table, the 100,

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200 percent, is, I said it's a one size fits all type penalty provision since 1959. The amendment would have steadily increasing penalties that go hand in glove with ever increasing well depths and well costs. And those are basically in unity and in step. I would tell you that the invocation of the current law is only able to be done upon application to our commission. It requires a public hearing before our commissioners and there would be an order written after that hearing that would set forth the penalties, and there could be oversight. I mean, there is the opportunity for people to audit to see what happened. So it does take a public hearing. It applies to the statutory people who are called owners in the law. Now owners are the people that have the right to drill and produce oil and gas. An owner may be a company or...and this has come up...it could be an individual who's just said, I am not going to lease my ground. And that is only going to come up in this situation: if there are divided minerals. If there's severed minerals or divided minerals from the surface, you can have two sets of royalty owners under one section, separate families. So if that were the case, that would involve someone who is a mineral interest owner, and they could, by definition...by definition, they are an owner. And so that I guess, going forward, Senator Louden probably owns the minerals underneath your ranch there in Sheridan County, and by statute, you are an owner. You could go out and drill an oil and gas well after you got a bond and permitted it with our agency, but you're the owner because you own the minerals and have the right to produce them if they're there. So most of the time, this is going to involve companies. This is not a widespread occurrence to have a forced pooling hearing, and you were correct on that, before our commission. I've been able to work there for ten years, and we've had four forced poolings, so it's not a very common thing. The penalty provisions for nonparticipation, and this is always occurs in a situation where there is no agreement between the parties. They're disparate parties, and I'll tell you the example I have is in Dundy County there were, believe it or not, a couple of 40-acre tracts that had been divided, north half and south half, and the north half had 21 acres and the south half had 19. They were different mineral owners, and they got leased by two separate companies. And one company offered participation to the other company, and they said, we are not participating with you. So they brought an application

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to our commission to force pool 19 of the 40 acres in, and we heard that with our commission. So it does occur, it's rare. What has happened, and as a part of our job, is that when you have companies that have two different leases on the same surface acreage because of the divided minerals, I have had people say, Bill, we are not going to come out there and drill a well like that because your nonconsent penalties are not enough, especially in the deeper part of Nebraska. We do have a substantial amount of unexplored acreage in our state, and as well as underexplored acreage. Out in the Panhandle in the Denver-Julesburg Basin, there have probably been 8,000 wells drilled, and we probably have really, truly drilled about 18,800 wells in our state, but about 8,000 of them are out there. They pretty much penetrated through the rocks that are assigned to Cretaceous age, geologically, but there is a whole section of Permian and Pennsylvanian that have only been penetrated by 300 wells in the Panhandle out of 8,000. So I would say, characterize that as underexplored, and those rocks that are never been penetrated but those 300 times are the ones that produce down in the southwest part of the state in Senator Baker's district and in the Pennsylvanian. So I just feel as a commission we're supportive of this. We need to increase those penalty provisions to get some more money into Nebraska. The deeper the wells are drilled, the more they cost. There's some different things, drilling problems that would apply, and so, while well costs in southwest Nebraska to drill and evaluate a well \$80,000, out in the Panhandle if we wanted to drill a well, some tough wells, we could have just the dry hole cost, and that's the cost to drill it and evaluate it to see if we found anything, \$250,000 to \$300,000; it would not be an uncommon number. And those are the kind of wells that would be applicable to the 500 percent nonconsent penalties. I guess a little bit of explanation, most of the time this is going to apply to a forced pooling situation, where you have disparate interests and they have no reason to agree, but somebody has a lease hold and they want to develop those minerals, or at least to drill a test well. Whatever the penalty provision may be, it would be set before the well is drilled, it would be set by our commission. The well also, if it was a dry hole, and that's a well that found nothing, the penalty is over. There is no penalty because they didn't find anything. The penalty is only going to begin to accrue once the well has, if you've had a discovery and begun to produce oil and gas.

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And that's really when the penalty provision begins. If it's a dry hole, the people who elected to drill the well, they got the money together and drilled it, and they paid for the costs, or carried was the term, they paid for the costs of the nonparticipating companies. I'll just urge the committee to vote it out to general file and...

SENATOR SCHROCK: Thank you, Bill.

BILL SYDOW: ...make myself available to questions.

SENATOR SCHROCK: Questions for Bill? Senator Louden.

SENATOR LOUDEN: Yeah, I guess I'll ask you the question. This penalty you speak of, who is that assessed against?

BILL SYDOW: Okay. That is assessed against the companies or individuals who did not choose and elect to participate in the original expense to drill that well.

SENATOR LOUDEN: That's against...

BILL SYDOW: So...

SENATOR LOUDEN: In other words, it's against their royalties?

BILL SYDOW: It is against their working interest net revenue, should there ever be any. This pooling, and it came up, this will never affect the one-eighth royalty that would go to the mineral owners. And so trying to think about a scenario like that, but here would be the case. Let's say I had, in Sheridan County, I took a 40-acre lease in a section, but there were...or actually, I leased a section, but someone who only owned 40 of the 640 net mineral acres, okay? And you owned the other 600; you owned the surface and you owned the 600, but I was able to take a lease. And I went and said, Senator Louden, you and I need to drill a well, and you said, Bill Sydow, get out of here. I am not going to participate with you. I'd say, fine, we're going to go to the commission and I will show the commission what I think the well costs are going to be and the depths are going to be, and the commission has the ability to force pool you, as a working interest owner.

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SENATOR LOUDEN: Um-hum.

BILL SYDOW: Now, of the total revenue, since you own the minerals, you would receive by a set out one-eighth, that's assumed the base royalty, one-eighth on your 600 net acres. You get that money whether you participate or not if we were successful. If we did not make a well, I pay all of your costs, I never get to recoup them, but if we did make a well, you would receive the one-eighth royalty, but your seven-eighths working interest, which would be seven-eighths x 87.5 percent, what was remaining after we've compensated...

SENATOR LOUDEN: That belongs to the driller.

BILL SYDOW: That's the one that is penalized. That's the penalty portion.

SENATOR LOUDEN: Why would I have any interest in that because I didn't...I was the landowner; I wasn't in on your working...

BILL SYDOW: Okay.

SENATOR LOUDEN: ...on your drilling part, and then I guess to follow up the question, then where would the penalty be assessed? Against my share of that seven-eighths, is that what you're telling me?

BILL SYDOW: Exactly. And the reason that you, even though you wouldn't care to see a well drilled in this particular case, that person who owned 40 undivided mineral acres in there has the right to see their minerals developed. And that's really one of the purposes for the existence of the Oil and Gas Conservation Commission is to...it has ground rules, it sets fairness, and no one is going to be denied their opportunity to see their minerals developed or a well drilled just because they have a minority interest.

SENATOR LOUDEN: Okay. Let's go back then. If I have the 600 acres and somebody else has the 40 acres in there or undivided interest in that...

BILL SYDOW: Um-hum.

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SENATOR LOUDEN: ...mineral rights, whether it's a piece of ground or whether it's an undivided interest, either way, and you want to come and drill on this piece of property and I don't want to be part of your drilling company, I'm just own land, I'm waiting for you guys to hit something and come up with eighth interest. Where does this cost come in then, if I don't want you to do it?

BILL SYDOW: And...

SENATOR LOUDEN: Say the guy that owns the 40 acres didn't want to have anything to do with it.

BILL SYDOW: Oh. Then there wouldn't be an oil and gas lease and there will never be a well drilled there. That's the bottom line. If some mineral owner, and they owned the whole section, if you said, I don't care about your money, I don't care about your lease, and I had come or a company had come to lease you, you don't have to lease that. And since you own all of that, no one is ever going to make you develop your minerals.

SENATOR LOUDEN: But they can...

BILL SYDOW: No.

SENATOR LOUDEN: ...if there's two or three owners in a piece of property, that's where your pooling comes in, can't you, and force them into drilling?

BILL SYDOW: But that would only be in the instance where there are divided minerals.

SENATOR LOUDEN: Okay.

BILL SYDOW: Where someone had the ability to make a decision in the election that I will lease my minerals to Exxon to see if they'll develop, and the other three parties say, we're not leasing. Now we have the conflict. Somebody wants to get a well drilled and some people said, we don't care. Our commission is there to see that that well can be drilled and those minerals would be evaluated, and that everybody in the royalty would be fairly compensated, one-eighth royalty provision, but say, the person who said, I only would have to pay 25 percent of the cost, but since

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the other three guys are not going to, I'm willing to pay 100 percent. I would to have had to only come up with, you know, \$25, but now I got to come up with \$100 because I got to pay everybody else's \$75. And because they didn't participate, if I'm successful, I'm going to be able to penalize them by statute because I took all the risk to get that well drilled. And so that's where this provision in this amendment amends it so that the deeper you go, the more expensive the well is, the increase the penalty because the risks do increase.

SENATOR LOUDEN: Okay. Thank you.

SENATOR SCHROCK: Senator Kremer.

SENATOR KREMER: Is the industry pretty well behind this proposal or what? Maybe we'll find out if there's opponents or not, but then I just was wondering if this was something that has been pretty well agreed upon by everybody in the industry?

BILL SYDOW: Senator Kremer, I would say, since there's probably nobody here in a negative, I guess the state of our industry is we only have right now, probably a half a dozen companies out of 125 that even think about drilling wells. We have mostly production companies in Nebraska, but this would be applied to the people who want to drill wells, and I actually, I have had people say, Bill, and this was the case, there are divided minerals, people are deceased, they're intestate or people have left. They don't even, can't find them to get a lease, and that has come to the point on certain people's decisions that look, we could pool these unknown people. By statute, their money would be escrowed, but we're not going to do it for 100 percent of the tangibles and 200 percent of the intangibles on a well like we want to drill. We want...we would want a bigger penalty, and so, consequently, we're not going to drill the well. That's happened.

SENATOR KREMER: But you'd have pretty much unity amongst those that are drilling now.

BILL SYDOW: Yes. And...

SENATOR KREMER: The...

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BILL SYDOW: And again, this would be a rare occurrence because most of the time if you have an exploration group, they've already signed an agreement amongst themselves that this is the way that we're going to conduct our business. And I've actually, I'll say further, on exploration joint venture agreements that I've been around in the past that are really in wild stuff, it's up or out. Either you participate in the well, or forget it. You're out of the prospect; you'll never get to even participate in the well.

SENATOR KREMER: Thank you.

BILL SYDOW: So.

SENATOR SCHROCK: Other questions? Thank you, Bill.

BILL SYDOW: Thank you.

SENATOR SCHROCK: How many people are going to testify on this bill? Is there more proponent testimony? Opponent testimony? Neutral testimony? Closing testimony?

SENATOR BAKER: I might close very briefly, and I know it's Friday and I've been on that side of the chair and I don't want to be here any longer than you want to be here, so we will work with you if we need to clarify some things. This bill was actually an issue brought to me by an Oklahoma company that's owned by...they're headquartered in Oklahoma, but at Dundy County, and their owner actually is a Nebraska native. So we really need to do something because there's some split minerals in Dundy County, we can't get things done. And it's holding some wells being drilled, to be honest with you if we had it, so I'll be glad to work with you. That would be my closing. Any other questions?

SENATOR SCHROCK: Senator Baker, it would be interesting to know how other states are doing this, especially the ones close to us like Kansas.

SENATOR BAKER: They have a much higher penalty clause. I can't tell you what their percent is.

SENATOR SCHROCK: You can get that information to us, it might be helpful...

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SENATOR BAKER: Okay. I can...

SENATOR SCHROCK: ...not that this is terribly controversial or anything, but I just...

SENATOR BAKER: You ask if there's support for it. I'm one of those people that has an operating company, and drilling; well, we drill too, but it's held up some production. It's held up some wells being drilled in Nebraska, and I can speak for them. I don't know of anyone; we do have an independent oil and gas association in Nebraska and I'm a member and this is favored by the independent oil and gas people. Their lobbyist is Darwin Pierson, who was down here but couldn't be here today, and did not submit anything, so I guess I'm carrying the ball for not only the bill introducer, but the independent oil and gas producers of Nebraska, so.

SENATOR SCHROCK: Thank you, Senator Baker. You're authorized to open on LB 154.

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SENATOR BAKER: (Exhibits 1 and 2) Thank you, Chairman Schrock and members of the Natural Resource Committee. I'm Tom Baker, represent District 44. I want to preface my remarks today with the fact that Wayne Madsen has submitted written testimony. I think most of you on this committee probably know Wayne Madsen. He had a lung, a big part of his lung removed yesterday, cancerous, in Presbyterian Hospital in Denver. I bet you...he's doing fine. I know he's lying on his bed wondering if I'm going to handle this correctly, so I'm going to ask to bear with me and read his testimony. It's not very long, it's to the point. I do have copies of it and then I'm going to have to report to him. I have an e-mail from his wife saying, he's really going to want to know what you're doing down here. And those of you who know Wayne, he may have had surgery on his lung yesterday at 11 o'clock, but I guarantee you, he's concerned with what's going on with water, even though he's out there. I'll open briefly on it. What the section of the bill that is pertinent to, as far as I'm concerned here, is it restricts who can...it limits who can work on well

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construction and water well pump service is what it does. And Wayne has included an amendment with his testimony here, and it's on page 5, subsection 2. That amendment that I'm going to pass around here shortly, replaces that section and it further restricts who can work on these drilling of these wells and who can service them. And this all came about...and well, I have testifiers behind me. I'm not going to bore you with that. They can explain why we have this bill here. But this is Wayne Madsen's testimony. This bill limits all water well construction and some water well pump service to only those individuals who are by training qualified and credentialed to work...to perform this work. It does not prevent ranchers or farmers who own the well from servicing their own nonpotable wells, which pump 50 gallons per minute or less. An example would be a rancher would be allowed to replace the leathers in his or her livestock well. The people in Nebraska need the provisions provided for by this bill. This bill will protect the groundwater from contamination by water well work being done by persons lacking competence to comply with regulations which they are unfamiliar with. Maintaining and protecting groundwater quality is the primary purpose of this bill. As a result of the 1993 floods, the United States Public Health Service Office of Emergency Preparedness funded the 1994 Midwest Well Water Survey. The funds were granted through the Center for Disease Control and Prevention. The study showed 37.3 percent of the private drinking water wells tested in Nebraska tested positive for coliform bacteria. Based on the population in Nebraska on December 1, 2004, 20 percent of Nebraska citizens, or approximately 349,443, receive their drinking water from private water wells. Some of us have spent a great deal of time over the past six years rewriting the rules and regulations which set the standards for water well construction and pump installation of water wells. The purpose of these rules and regulations is to protect groundwater quality. This bill will add another level of protection. Our water well program is now involved in an extensive grout study. Over \$400,000 of program money has gone into this study and it is not finished yet. The surface seal or grout section is in our regulations solely for the protection of water quality. We do not want to turn our backs on this study and continue to allow landowners who are unfamiliar with the proper construction of pump service standards to construct, service, and decommission water

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wells. The potential to contaminate the aquifer exists each time the seal on a well is broken. The passage of this bill will stop unethical water well contractors from leasing his or her well drilling equipment and crew to a landowner in order to shove his or her responsibilities off to the landowner. Responsibilities include following proper construction practices and making sure that the landowner has obtained all necessary permits before well construction begins. Restricting water well construction, decommissioning water wells, and certain pump service work to licensed contractors is not setting precedents. In 2003, LB 94 was passed, which restricts the installation and maintenance of on-site water wastewater systems to licensed individuals. It seems to me that the same consideration and level of protection should be given to our drinking water. I would offer one amendment as follows, and it's the amendment that I will circulate here. It strikes subsection 2 on page 5 and replaces that with this amendment, and, as I said, I'm not going to go any further. The testifiers behind me, I think there's proponents and opponents to what we're doing. I'd be glad to listen to those. The amendment, very brief, "No repairs shall be made to potable water wells and no pumps shall be installed in potable water wells, unless the work is carried out by a licensed pump installation contractor or a certified pump installation supervisor." What we got into in the Middle Republican is we had some people drill their own water wells. They went and got a drilling rig, drilled their own wells, they didn't have the correct permits, I don't believe, and didn't have the correct procedures to complete them and so on, hence the bill that says, if you don't have this certification, you can't be drilling your own wells. So with that I'd be glad to answer your questions, but I do have testifiers behind me that I think probably can answer the technical part of this, so.

SENATOR SCHROCK: Thank you, Senator Baker. Are there questions? Senator Smith.

SENATOR SMITH: If I understand you correctly, you said there were some wells drilled without permits. How, I mean, how would this change something like that?

SENATOR BAKER: I might have to qualify that statement. I don't think they had permits. I could be wrong here and Dan

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Smith behind me, the director or manager of our resource district there could correct me on that. They may have had the permits, but they were drilled by a licensed contractor. They simply went and leased a water well rig, drilled their own wells, and there's no...I guess, there's no require...or at the present time, there's no requirement that these people...well, they don't have the expertise, in our opinion, to go ahead and grout the wells in correctly and so on as far as safety issues. I'll qualify that statement. They may have had the permits, I don't know, but it was a situation that developed in the Middle Republican NRD after they put a well drilling moratorium on out there, I believe.

SENATOR SMITH: Okay. And...okay, that's fine, thank you.

SENATOR SCHROCK: Senator Louden.

SENATOR LOUDEN: Senator Baker, what's the penalty if they don't do this? Is that written into this statute or is it someplace else?

SENATOR BAKER: I think it's a Class IV misdemeanor. I'm not sure. I'd have to research that. There is a penalty.

SENATOR LOUDEN: Okay.

SENATOR BAKER: I think it's a Class IV misdemeanor.

SENATOR LOUDEN: Thank you.

SENATOR SCHROCK: Senator Hudkins.

SENATOR HUDKINS: Senator Baker, let's say that you have a potable water hydrant in your backyard, and it's a stop-and-waste hydrant. For some reason, when you shut it off, it continues to run. You're telling me that we would not longer be able to use a pair of pliers and a vise grip to fix that spring.

SENATOR BAKER: If you're not breaking the well seal, you can go ahead and work on that frost free hydrant or whatever you want to do. This is just if you break the well seal...

SENATOR HUDKINS: Well, that's enough.

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SENATOR BAKER: ...at the head of the top of the well.

SENATOR HUDKINS: Okay. If the hydrant mechanism itself fails and you want to replace that, you can screw that off and put on a new one. Can you still do that?

SENATOR BAKER: That's my interpretation here. If someone wants to...

SENATOR HUDKINS: Because you're not breaking the seal?

SENATOR BAKER: The seal on the well is the critical point.

SENATOR HUDKINS: Okay. The well is over here. The hydrant is over here.

SENATOR BAKER: You should have backflow preventer on that, I would assume.

SENATOR HUDKINS: Okay.

SENATOR BAKER: Should have.

SENATOR HUDKINS: All right. Thank you.

SENATOR SCHROCK: (Exhibit 3) Other questions? Can I see a show of hands of those who are testifying on this bill? I see four people who are testifying. All right. Please come forward in the proponent capacity first. And we have a letter here from the Nebraska Irrigators Association. We'll read it into the record. It's signed by Lee Orton in support of LB 154. Thank you, Mr. Smith, and Dan, would you want to proceed?

DANIEL L. SMITH: (Exhibit 4) Thank you, Senator Schrock, members of the Natural Resources Committee, my name is Daniel L. Smith; it's D-a-n-i-e-l S-m-i-t-h. I'm the manager of the Middle Republican Natural Resources District in Curtis, Nebraska, and I'd like to testify on behalf of the district in support of LB 154. The concept for this proposed legislation was developed after an incident that happened in my district in the summer of 2003. A landowner who had a permit, but had been suspended, but the permit was suspended because of our temporary suspension, and who had contracted licensed well drillers, who had refused to drill

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his wells, leased a drill rig and the crew and drilled four irrigation wells. After filing a cease and desist order and successfully defending our position in court, the landowner was forced to decommission these wells. LB 154 would help prevent this sort of situation in the future, in that it would require that only licensed water well contractors or water well drilling supervisors could drill a well. Landowners would no longer be able to construct their own wells. It would also require that only certified personnel could make repairs to a potable well or a nonpotable well producing at more than 50 gallons per minute. Now, potable means water that is suitable for human consumption, nonpotable means water that is not intended for human consumption. LB 154 will not prevent a landowner from working on his livestock windmill or it will not prevent him from moving a solar-powered pump between livestock wells. Certified technicians could still lower a pump into a well and to monitoring wells and collect water quality samples. It is hoped that persons licensed and certified through the Water Well Standards And Contractors' Licensing Act are more knowledgeable and responsible and would not construct wells that would be illegal. While my district was able to get the above-mentioned wells sealed, legal costs were incurred and much staff time was used in invested in the situation and in preparing our case. The landowner of these illegal wells in our district spent over \$55,000 drilling the wells and subsequently, decommissioning them. Trained and licensed persons are the logical people to make repairs to wells that could have an impact on water quality. While most landowners would be capable of doing many of the repairs that a well or its pumping equipment might need, the potential for contamination is higher when standards are not known or not followed. Changes in standards and regulations are provided to persons in the water well industry. They have access to the procedures that should be followed. A landowner may not be aware of the procedures to be followed or of the changes to those procedures. A procedure that he may have followed last month may no longer be acceptable. He could unintentionally make his well illegal or contaminated to the point that it must be sealed. Now we recognize that some of the opposition to this bill is related to the driven sand point type of well. These shallow wells can be easily installed and removed by landowners with little impact to water quality concerns. We would support amendments, if they are offered to this bill,

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that would allow landowners to continue, install or decommission this type of well. We would ask that the Water Well Standards and Contractors' Licensing Board review the procedures for driven sand point wells to assure that this type of well can continue to be installed and removed by landowners without contamination of the groundwater. LB 154 is a logical progression in the changes that have been made in the water well industry over the past few years. Construction standards, water quality standards, and legal issues are changing every year. By narrowing the ability to drill and repair wells to a group of trained professionals that are required to have continuing education, the possibility for errors or contamination is limited. I would hope that would you consider moving LB 154 to general file.

SENATOR SCHROCK: Thank you, Dan. Other questions?

DANIEL L. SMITH: I...yeah.

SENATOR SCHROCK: Did I cut you off? Did you want to say something else?

DANIEL L. SMITH: No. I was just going to say I'd be glad to answer questions if I could.

SENATOR SCHROCK: Senator Louden.

SENATOR LOUDEN: Say some Sunday afternoon my submersible pump for the house goes kaput. According to this, then, I wouldn't be able to pull that up, run into town and get a new pump, put on the end of it, and stick it back down?

DANIEL L. SMITH: That's correct. Any action that would involve breaking the well seal, very similar to the answers to your question, sir, would be prohibited unless it was done by licensed personnel.

SENATOR LOUDEN: You mentioned sand point wells; how do you put a sand point well down?

DANIEL L. SMITH: They could be driven or pressed, depending on what they do; they're going to be used in shallow aquifer situations, and they can be removed about as easily as they can be installed, so.

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SENATOR LOUDEN: Do you ever wash any of them in?

DANIEL L. SMITH: No, sir.

SENATOR LOUDEN: Okay, because I was going to say, the last ones I've seen put in were washed in just the same as you'd put in a casing well and I, you know, when the landowners are going to be able to put in sand points, I didn't see where there would be much difference between putting in a small casing well or a sand point.

DANIEL L. SMITH: LB 154 as it's written would prevent the landowner from doing sand points. Like I say, if that is the primary issue, we could...at least the district's position is we could support amendments to that if that was the only issue with the legislation.

SENATOR LOUDEN: Okay. Thank you.

SENATOR SCHROCK: Thank you. Senator Louden, any other questions? Thank you, Dan.

DANIEL L. SMITH: Thank you, sir.

SENATOR SCHROCK: (Exhibit 5) Next proponent? Next proponent? Opponent testimony? I have a letter in opposition by the Nebraska Cattlemen Association, signed by Michael Kelsey. All right.

RON WEBER: (Exhibit 6) My name is Ron Weber, R-o-n W-e-b-e-r. Senator Schrock and members of the Natural Resource Committee, my name is Ron Weber. I farm and raise cattle in Antelope County. I'm a member of the Nebraska Farm Bureau board of directors and I'm here today on behalf of the Nebraska Farm Bureau in opposition to LB 154. Under current law, farmers are allowed to construct wells on their own land for their own use, and we would like to see that continued. LB 154, as we understand it, would prevent landowners from doing their own wells and from doing repairs on wells at their own homes. The Nebraska Farm Bureau opposes these changes for several reasons. Our position statement states that farmers and ranchers should be able to construct and decommission wells with a capacity of less than 50 gallons per minute if used for agricultural purposes. We have no problem requiring the use of licensed

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or certified personnel for the construction and decommissioning of wells greater than 50 gallons per minute, but LB 154 would prohibit a landowner constructing any wells, even driven sand point wells used for livestock watering purposes. It is our understanding ranchers still use these wells and we fail to see a valid policy reason for unduly restricting these. The restrictions on repairing potable wells is also problematic. As you know, most farmsteads have wells that are used for household purposes, as well as for watering livestock. Repairs to such wells are oftentimes simple, can easily be performed by a farmer or rancher. When livestock are out of water, repairs can't wait until tomorrow. LB 154 would prohibit farmers and ranchers from performing such repairs and requires them to be performed by licensed or certified personnel. Again, we fail to see a valid policy reason for this change. For these reasons, Nebraska Farm Bureau opposes LB 154. I would be happy to answer any questions.

SENATOR SCHROCK: Thank you, Ron. Are there questions? Ron, do you do your own well repair work on your ranch?

RON WEBER: I put in my own submersible pump when it quits.

SENATOR SCHROCK: Okay. Appreciate you coming down. Next opponent. Got an NRD manager in favor, and an NRD manager opposed, so. Do you have a handout there?

JOHN THORBURN: Ah, yes.

SENATOR SCHROCK: Go ahead, John.

JOHN THORBURN: (Exhibit 7) Good afternoon, Mr. Chairman and senators, my name is John Thorburn, T-h-o-r-b-u-r-n. I'm the manager of Tri-Basin Natural Resources District in Holdrege. I'd like to testify on behalf of the Nebraska Association of Resources Districts in opposition to LB 154. Natural resources districts are responsible for protecting groundwater quality and quantity. We're concerned about what we consider a loophole in state law that allows landowners to drill high capacity irrigation wells on their own property. At least one landowner has used this loophole in an attempt to circumvent NRD well drilling moratoriums by leasing drilling equipment and employees from a water well contractor, as Dan described. We don't believe, however,

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that LB 154 is the correct remedy for this problem. We believe that LB 154 is too restrictive because it prevents landowners from constructing and decommissioning low-capacity sand point windmill wells. Sand point livestock wells can be easily constructed without special equipment in areas with high water tables. Windmills are essential tools for range management. Multiple water sources enable ranchers to divide their range lands into paddocks for rotational grazing. Rotational grazing systems are widely recognized as a preferred conservation practice for range management. NARD is concerned that requiring landowners to have licensed well drillers construct and decommission sand point wells is unnecessarily burdensome and expensive. The proposed change in law would undoubtedly increase the demand for water well decommissioning cost-share funds, which are already inadequate for current needs. It would also likely result in old sand point wells being neglected and abandoned by landowners who don't want to pay a well driller to decommission them. NARD believes that it is appropriate to sanction offending landowners and irresponsible water well contractors who help them dodge NRD rules. NARD is anxious to work with the Natural Resources Committee, and the Water Well Licensing Board to develop legislation that will close this loophole without unnecessarily burdening ranchers. Thank you.

SENATOR SCHROCK: Thank you. Are there questions for John? Senator Stuhr.

SENATOR STUHR: Oh, yes, just your last paragraph when you talked about you thought it was appropriate to sanction them. What would be your ideas in sanctioning some of those landowners that would be irresponsible?

JOHN THORBURN: Well, the concern, ma'am, is of course that we want to have a level playing field for all landowners, and if an NRD does establish a well drilling moratorium, we don't want some to think that because they have access to drilling equipment that they might be able to circumvent those NRD rules. And I think existing penalties are adequate. We don't necessarily think that there are need for additional penalty requirements.

SENATOR STUHR: Okay. Thank you.

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SENATOR SCHROCK: Senator Kremer.

SENATOR KREMER: The instance where they leased the equipment and the...was that against the law now in any way or were they okay, or was there anything you could have done to stop that? I guess that was a different (inaudible)...

JOHN THORBURN: Yeah, Senator, the case was in Middle Republican NRD and the NRD did, I believe, file suit against the landowners in that case...

SENATOR KREMER: So they had authority to do something about that already?

JOHN THORBURN: After the fact, though, and that was part of the problem, of course, that the landowners had gone to considerable time and expense.

SENATOR KREMER: Of course, they may have decommissioned them, so that expense and everything was then for naught then, wasn't it?

JOHN THORBURN: Yeah, that was a penalty in itself, certainly.

SENATOR KREMER: Yeah.

SENATOR SCHROCK: But he was drilling in a moratorium area to start with, was he not?

JOHN THORBURN: It was a temporary suspension at the time,...

SENATOR SCHROCK: All right.

JOHN THORBURN: ...Senator. It was before the final, permanent moratorium.

SENATOR SCHROCK: So he had problems to start with? Thank you, John. Other questions? Appreciate you being here. Other opponent testimony? Sure. Come forward. You don't have to be the last one, you know.

W.V. KUEHNER: That's all right. There might be some more. Senator Schrock,...

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SENATOR SCHROCK: Yeah.

W.V. KUEHNER: ...members of the Resources Committee, my name is William Kuehner and I live...

SENATOR SCHROCK: William, will you spell that for us?

W.V. KUEHNER: K-u-e-h-n-e-r, 203 West 9th Road, Doniphan, Nebraska.

SENATOR SCHROCK: Okay.

W.V. KUEHNER: My family has been in Nebraska about 140 years and they've did their own wells from digging them by hand to repairing our submersibles and our irrigation wells. We've had an incident one time where we had a certified well driller contaminated a well for us. Guess who cleaned it up? It took us two years to get that mess straightened up. About a month ago, I think it was 11 below zero in January, we had a submersible go bad. Now, who do you suppose fixed that when it's that cold? My hired man and myself (cough), excuse me, pulled it out and put a new one in, no big problem. Breaking a well seal, four cap screws, a gasket, you clean it up or else put a new one in, and put Vaseline on it. I've seen the well drillers, they throw it over there in a pile, and put it back in and dirt and whatever. Most of them I've seen, you'd probably want a tank of chlorine to dip their help in before you got them working on your well that's for potable water. And so I guess I would request that you kill this bill, and I could go on and on and on with a lot of other incidents. We've got more than 30 submersibles and irrigation wells on our farm and thank you, we seem to be able to do quite well by doing the work ourselves, with the exception of drilling the holes.

SENATOR SCHROCK: Thank you.

W.V. KUEHNER: Are there any questions?

SENATOR SCHROCK: Thank you, William. The kind way to say it is IPP, not kill. (Laughter) IPP stands for indefinitely postpone. Senator Kremer.

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W.V. KUEHNER: Okay, whatever.

SENATOR SCHROCK: All right. (Laughter)

W.V. KUEHNER: Depends on where you're from.

SENATOR SCHROCK: But we understand what you're saying.

W.V. KUEHNER: Good.

SENATOR KREMER: Yeah, Bill, thanks for coming down. I know I'd heard from you on this issue and I appreciate you coming down to testify personally. This helps a lot, so...

W.V. KUEHNER: Thank you. Anybody else?

SENATOR SCHROCK: We appreciate you being with us. Next opponent? Is there neutral testimony? Senator Baker, you're authorized to close on LB 154 and open on LB 680.

SENATOR BAKER: I'm going to close very briefly on LB 154. The sand point well issue was an interesting one. I know we tried...the Farm Bureau was not at the meeting we had last summer. I believe their representative couldn't make it to the meeting. The Cattlemen were; at that time it was Julie Karavas. You know what, we talked about sand point wells and how we were going to treat them and then we started looking at statutes and we couldn't find a definition of sand point wells in the statutes, so we just struck them out and thought, there may be some civil disobedience here, but we just took them out of the picture because there was no definition in the statutes of sand point wells. And I didn't want to put one in. I understand exactly what the opposition is saying; this came out of my District 44 area and my Middle Republican NRD. It was a problem; there were some expenses involved, even though the cease and desist order was issued and they plugged the wells, there was cost to the NRD and this bill was simply a way to head them off. What always I regret in situations like this we put this blanket restriction on everyone in the state of Nebraska because we had some bad actors out there. Yes, it was addressed, it cost the taxpayers some money and hence, I brought the bill, and I don't want to see it IPP'd particularly, but I understand the opposition, but...

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SENATOR SCHROCK: If I might interject, Senator Baker, we'll work with you and the Cattlemen and the resource districts and some other people and if there's any middle ground, we'll try and find it.

SENATOR BAKER: That would be appreciated. Thank you. I guess, no questions? I'd like...

SENATOR SCHROCK: You can open on...

SENATOR BAKER: I'd like to...

SENATOR SCHROCK: Well, that closes the hearing on LB 154. And we'll open the hearing on LB 680.

LB 680

SENATOR BAKER: Thank you, Chairman Schrock and members of the Natural Resource Committee. I am Tom Baker, represent District 44. If you liked the first oil and gas bill, you're going to love this one. We had the foundation laid now, LB 680, to lead up to the part of it that's dealing with the oil and gas issues, we have...are working currently, the Oil & Gas Commission, the University of Kansas, University of Nebraska Conservation Survey Division, and group of oil producers, NPPD, OPPD dealing with a carbon sequestration project. Can you say, have? There's a story here. It's how do we get to an oil well to talking about this issue here of transferring some funds and establishing...or establishing a different fund. The University of Kansas has been a leader in repressuring old oil fields, and I don't have a pointer long enough to get over there, but they've been repressuring old oil fields, one in particular right south of Russell, Kansas with CO2, that's been produced at the ethanol plant at Russell. And they were having some problems with their formations down there. Those are very old wells down in Kansas drilled in the '20s and '30s and the casing integrity and so on, and multiple formations and perforations are not working very well. So they came to Nebraska and said, you have the primary ingredients to put this project together in Hitchcock County, Nebraska, and they made some national presentations on this around the country, and you'll see that a Martin DuBois, Scott White, and Timothy

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Carr...Timothy Carr was here in the capitol a couple of weeks ago; he's an engineer with the University of Kansas, actually got an award for this chart there. But they're taking the grain, putting it through the ethanol plant and of course, the grain products, the ethanol and the distiller's grain and so on go back to the farm, the CO2 is going into the oil fields. So we have a win-win situation, the problem being that it's very speculative and they are working with the Federal Department of Energy and the USDA on various grants trying to get a pilot project put together in Hitchcock County, Nebraska. Now, the Oil & Gas Commission representative director here will have some figures about the potential upside of this and what the oil that's left in place without going to tertiary recovery and going to tertiary recovery with CO2 if this all works. But to get to the point of seeing whether or not it works, we have the example in Hitchcock County, the one that the University of Kansas wants to use, and we're working with Kansas here, Senator Schrock, not against them on an energy issue. They want to use this up there. We had the CO2...the ethanol plant providing the CO2 at Trenton and that's one of the reasons the plant was built where it was. It's near the oil fields. They want to capture the CO2, pipe it to a pilot project in the Beauvais Canyon Field in Central Hitchcock County and see if this all works. Well, and they need some money. This is speculative. This is research and development; it's not going to qualify for LB 775 funds or anything like that. So as the result of several meetings we had with various people from the University of Kansas and Marv Carlson and the State Conservation Survey Division and the Oil & Gas Commission, we're trying to work some sort of a seed money source from the state of Nebraska, University of Kansas. There's a whole lot of people trying to come together on this highly technical, unproven, research and development project, and it's very exciting, and Mr. Sydow will have some details on it. What the bill proposes to do is take some money that's generated from oil and gas production now that has been directed toward the governor's energy office since the '70s, I believe, that was to be used for school and public building winterization projects. I'll bet former superintendents would know about this. That was the purpose of the fund being transferred to oil and gas severance tax to the governor's Energy Office and then they disbursed grants and low interest loans back to schools and public

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entities for weatherization when we had the energy crisis in the '70s. That's been done and what I propose to do in the bill is to take that severance tax, redirect it from the governor's Energy Office, part of it, not all of it, up to \$200,000 per year, currently there's \$300,000 per year of severance tax going to the governor's energy office. I want to take \$200,000, direct that to the Oil & Gas Commission and establish the Energy Enhancement and Research Fund, and then the Oil & Gas Commission would have jurisdiction over this through the grant process application, review it, their technical staff in Sidney would review these, and thereby be able to help this oil company. And when I say, oil company, there's a whole group of people involved in this project. I'm not one of the people involved in that field at all, but there's a group of people own this oil field, Beauvais Canyon there in Central Hitchcock County that want to try this and the economics...it's economic development for Nebraska, to be honest with you. Millions of dollars in laying a pipeline and all the pumping stations and injection equipment and so on to do this, the University of Kansas is involved. In fact, they're...I'd say they're leading the way with the technology. They have one well they've done this with down south of Russell, and with that I think I'll let Mr. Sydow, director Sydow, explain to you the economics of this and how much severance tax is generated each year from oil and gas, and I'd simply like to...the balance of the severance tax generated in the state of Nebraska goes into the Permanent School Trust Fund, by the way. And if we can't get your committee to understand how important this is, we transfer this money that is currently going to the governor's Energy Office to the Enhanced Energy and Research Fund, then we have a backup plan here, we could possibly redirect \$200,000, \$300,000 per year out of the Severance Tax Fund that's going to the Permanent School Trust Fund, which might not be real popular, but you have to understand, this is going to increase the tax base out there and provide jobs and overall, increase the economic well-being of, at least, western Nebraska where you have this oil production. I'm sorry it's not scattered across the state uniformly, but that's just the way it is, so, that is my introduction.

SENATOR SCHROCK: That's okay. Bob wouldn't want to farm around one of them oil wells anyway, being a pain.

SENATOR KREMER: Center pivot would be (inaudible)...

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SENATOR BAKER: Let me tell you, they're not all just fun and games when you have an oil well out in the middle of a pivot and you don't own the mineral rights. It's a problem to that landowner who's not getting anything out of it other than some damages to the surface. So it's not just all fun and games, having oil wells.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: You talked about working with Kansas. Are they contributing or would they be contributing a similar amount or...

SENATOR BAKER: They are willing to contribute a considerable amount to the project and they simply think Nebraska needs to buy into this. It would be adaptable to what they have in Kansas, but the particular field they're looking at in Hitchcock County is a single zone limestone anywhere from six to eight, ten feet thick, fairly uniform porosity and permeability, and they don't have that in Kansas. In that particular area, they have that one well project at Russell, so they are trying to justify this in Nebraska and then adapt it to what they have in Kansas, but they think our success rate would be much, much higher in Nebraska than what they're doing in Kansas. So that's why they came to us and said, we want to work with you. And Mr. Carr, it's too bad he's not up here, but very well versed on this and he's done a lot of research. It's not been done in a limestone formation anywhere in the world. This is a pilot project, so.

SENATOR STUHR: Okay. Thank you.

SENATOR SCHROCK: Other questions? So this is going to take \$200,000 out of the...

SENATOR BAKER: Governor's Energy Office, which, as I said, was...this is one of those things you come back and visit 30 years plus later and say, it's not being used for what it used to be. I'm sure the governor's Energy Office, I assume they're going to have someone say, we're using this for other issues and things, and I understand that, but it's not being used for weatherization, winterization, weatherization products like it used to be. That's what it was originally

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established for.

SENATOR SCHROCK: You want to put a sunset on this?

SENATOR BAKER: We could. Or like I said, Senator, the alternative would be to leave that fund alone and take the money out of...and you understand the Permanent School Trust Fund gets the rest of this severance tax, and Mr. Sydow has those figures for you. We could take \$300,000 a year out of it for a few years and get this thing rolling. Once it's proven, then I don't expect we're going to have to contribute any more to it, but it's that seed money is what it is, and so on. So that's the alternative would be to take it out of there. The Permanent School Trust Fund, obviously, would like to continue the revenue stream in there, and we're not...we wouldn't propose to take it all or anything, but that's an alternative.

SENATOR SCHROCK: Well, there's \$300 million in there. Senator Stuhr.

SENATOR STUHR: Oh, but what if it doesn't work? Is that money down the tube?

SENATOR BAKER: That's part of the risk. That's why they're saying, we need some help with some seed money; this is new technology, never been used. We could put Nebraska on the cutting edge of this. This is one oil field, they're talking about using the carbon, capturing the carbon dioxide off the power plants in Nebraska. It requires such a tremendous volume of CO2 and it would be sequestered back into the formations and not come back up. We could earn carbon credits for our work as well as enhance oil production. It's a win, if it works, win-win-win situation. We have Gerald Gentleman power plant there north of these oil fields, about 50 miles as the crow flies, emitting all their CO2, and it's not listed. CO2 is not a contaminant pollutant at this time, but some place down the road, I suspect we're going to be...that's going to be an issue, and this would be a means to get rid of it and enhance oil production.

SENATOR SCHROCK: Other questions? Thank you.

SENATOR BAKER: Thank you.

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SENATOR SCHROCK: How many people do we have testifying on this bill? Okay, I see two, is that correct? Proponents, please.

BILL SYDOW: (Exhibit 8) Thank you, Mr. Chairman. My name is Bill Sydow and my last name is spelled S-y-d-(as in David)-o-w. I'm the director of the Oil & Gas Conservation Commission for the state of Nebraska in Sidney, Nebraska, and I'm here today speaking for this bill, LB 680. I think the exciting thing to me about this bill is this Energy Enhancement and Research Fund would be established as something we don't have right now. As I said before in previous testimony today, our agency is charged with promoting the development of the state's oil and gas resources as one of our primary charges, and this bill would do exactly that. It would establish a grant process that is up to the commission, left for us to establish. We don't have anything like that right now, but that's easily obtainable. We can come up with a scenario of things we need to do and we're familiar with grants because we seek a grant from EPA every year, in fact. Our current oil production in the state of Nebraska is about 6,350 barrels a day and it's declining, has been since about 1993. Sixty-five percent of our daily production in Nebraska comes from water floods, where you inject water into the producing oil formation and oil and water are then produced back at the producing well. Those water floods are aging and the oil field infrastructure whether it's people, live people, companies to work on wells, it's gradually disappearing. In our state since discovery, 1939, we've produced about...or we will, pretty shortly, produce 500 million barrels of oil. That's from hundreds of oil fields, but if we assume that most of those fields would have recovered about 20 percent of the oil originally in place, then that represents 2 1/2 billion barrels of oil that we know where it is, we've only got 20 percent of it, though, out of the ground. And that's not a, maybe, an unusual number for a primary with secondary production, but it's already discovered. And so that leads to a number of possibilities. In the future, how can we get some more oil out of the ground. Senator Baker has discussed this almost a joint venture down in the Trenton, Nebraska area. Trenton, the county seat of Hitchcock County, but Hitchcock County has more oil and gas wells than any other county in Nebraska, and right now it

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has the only carbon dioxide source coming from the ethanol plant at Trenton AgriProducts, and so a part of I would see this Energy Enhancement and Research Fund, a grant, could be a small grant; it doesn't have to be a big grant, but to aid them in maybe some of their capital costs. In their economics down there to full cycle implement a pilot area over about two square miles, it's going to be an incremental \$4 million over just a few years if they do it. So the costs are big, the technology, while CO2 injection has been done in other basins, it's never been accomplished in thin pays like ours, so that's something that's to be determined. And this research fund could help to do some things there. There are some other ways though, too, that I am excited about. In the Denver-Julesburg Basin, we'll probably never have carbon dioxide source out there, but there is some technology, never been applied to my knowledge much in the mid-continent of the United States, but it's augmenting water floods with a caustic polymer solution. It's a fairly expensive fluid, but there would be a place where let's pick some oil field infrastructure...or an oil field that we have existing. If an operator wanted to apply for a grant then maybe we could aid them on, say, let's try this. And if it works, great, we can disseminate that technology or this technique and say, it worked here. We're not going to pay any more for it, but we'll pay the first time on a grant. Or how about development horizontal drilling. In our state we've only drilled six horizontal wells. All of them technological successes and economic failures, but we never did try one in an older, established field, and you know, that might be an application for a grant like this. Senator Baker has talked about three-dimensional seismic state-of-the-art, and I could see almost a one-time, because I had to sit here and say, well, what kind of grants would people apply for, but say in Dundy County, southwest Nebraska, people have not conducted 3-D seismic surveys because they said, it just won't work. Well, it works in Kansas, right across the border, so you know, it's like well, maybe if somebody came to us and said, we want a grant for \$15,000 to try one, I'd say, yeah, maybe we could do that and if we can demonstrate it works, it works. But some things have never been tried. Another one is Argonne National Laboratories has worked quite a bit with some down hole oil water separators, so you could have an oil well, which always produces a lot of water. If we could separate those fluids down hole, produce the oil up to the surface

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and inject and it's a safe manner, but inject the water, dispose of it beneath it in deeper reservoir, then you don't have to pay to lift the water to the surface, you don't have to handle the water. So there are some things like that that are out there. Right now, Bush Administration has sent their budget proposal to Congress, and I'll tell you one of the things that's in there, I don't know the numbers, they're talking about cutting the research and development budget at Department of Energy, specifically in oil and gas. And the reason they've done that is that the major companies like Exxon, Exxon-Mobil now, and everybody is together, BP, Amoco, whatever they are, as well as large independents like Anadarko, just off the top of my head, they have actually gone to President Bush and said, we don't need research and development because we'll do it ourself, so cut it. Well, guess what, every one of those companies, they're not in Nebraska, they're never going to come back to Nebraska if they were here, and they're not going to do research and development in our state. So I believe this is a good vehicle that is needed. We can aid and actually partner with our producing companies on some research and development and maybe bootstrap us up into the next generation of oil and gas production. I prepared just that handout there that gives you a ballpark estimate of what the severance taxes in Nebraska might generate in the next two fiscal years, FY, I guess, 2006, 2007, and that's really the...that's our budget cycle. I mean that's what Appropriations Committee is going to be hearing right now. So with our projected production and splitting that out on a basis where about 60 percent of our daily production is from wells that produce less than ten barrels a day, probably a lot less than ten barrels a day; 40 percent, we've got some pretty good wells in a few places, produce more than ten barrels a day, but it generates those cash flow streams on the very right-hand side. It's the \$1.7, \$1.8 million a year, whatever the oil price does. I think that's going to continue to go up. So there is monies continuing to go to the fund, there for the Permanent School Trust Fund. I guess one thing I was looking at, the fiscal note, when I prepared the fiscal note for our agency I said, there's not going to be one effect on us. I think that if this bill became law that it's not going to take a lot of time extra or anything to set a grant process up and to monitor it. As far as the other state agencies, because the way the bill is drafted, of course, another state office would be affected,

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but I don't know if it would be affected in '06 or '07 the way the bill is drafted, and the reason being that this particular bill, LB 680 would not go into effect until FY 2006, which would begin this July, and the appropriations are already going to be set. So whatever is in this budget that the Legislature or the Unicameral Legislature is going to act on right now, it's set for the next two fiscal years, '06, '07, so I don't know...I guess I would disagree a little bit with that. But I guess the bottom line is that I see this as an opportunity for our future in the oil and gas; it's an investment in our future energy resources in the state of Nebraska, and I believe that this bill deserves to be voted out of committee to general file.

SENATOR SCHROCK: Thank you, Bill. Are there questions?
Senator Hudkins.

SENATOR HUDKINS: Just for general knowledge, could you give us the definition of stripper or nonstripper?

BILL SYDOW: Yes, Senator, excellent question. A stripper well was defined in the 1970s as a well that produces ten barrels of oil per day or less, okay? And so in Nebraska, our, should have brought that, but it is the fact that of our daily production, about 6,300 barrels a day, say 3,600 barrels is stripper production and the other 2,400 barrels a day is nonstripper. That's wells that make 10 barrels, actually more than ten barrels a day. Our biggest oil field as far as daily producing rate is in Kimball County. It's producing 1,200 barrels a day and from about 35 wells, so those are 40-barrel-a-day wells. We wish we had lots of those.

SENATOR HUDKINS: Where did that name come from though?

BILL SYDOW: The stripper well?

SENATOR HUDKINS: Yeah.

BILL SYDOW: I think it was kind of an attempt to quantify the poor boy operations. And that's really what it gets down to. We're going to go as low cost and we're going to strip every drop of oil out of there as we can and so that was kind of the number. As far as I was thinking about our wells, every year we prepare a stripper well survey for

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Nebraska, but we forward that to the Interstate Oil and Gas Compact Commission, and I'd say that we have, right now, about 1,300 producing wells. We have injection wells that actually qualify, can be put into the stripper well category in these water floods, so of about 1,500 wells out of 1,700 active wells, they're stripper, so those 200 wells are real good and the rest of the 1,500 are not so good.

SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Other questions? Senator Kremer.

SENATOR KREMER: But then the...who has oversight? Is it the Oil & Gas Conservation Commission has oversight? Are you then have to respond to answer to anyone or who has oversight of how the money was spent and?

BILL SYDOW: Yes, sir, Senator, my oversight...our commission is a noncode agency, quasijudicial. My commissioners are appointed to four-year terms by the governor and so they are my bosses. We...or they elect a chairman once a year on a calendar year basis, so those are the people that I report to and in fact, for an expenditure, the way that I would see this setting up, is while...as a commission staff, of which I'd include myself, we would make a recommendation about a grant proposal to the commissioners. They would be the people to decide if that's a valid grant or not. Then the monitoring process, and you know, by the way, I hate grants. I hate grants because they generate so much paperwork on accountability and trackability, but it needs to be done for this because that, what we find out in those projects needs to be reported back to everybody else in the industry in Nebraska and any other place about success on this. And so I think I would envision, you know, maybe we could have a seminar or whatever in Sydney or maybe some various places and set it up and say, we're going to have the company that did this R and D project, got the grant, they're going to give us a presentation and we want the whole thing.

SENATOR KREMER: And that was, you had two proposals to take the money from the Energy Conservation Fund, is that what it was called or what were the two?

BILL SYDOW: Actually, what Senator Baker, and it's kind

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of...the sort...let me just this, the source of the proposed funding is originally generated from the severance tax, taxes that are paid in every month on oil and gas sold in the state of Nebraska. So ultimately, by whatever vehicle are carved out, we would anticipate in this bill that it would come from that cash flow of the severance tax.

SENATOR KREMER: And nobody knows whether that's still in operation or how it's being used, just talking about for weatherization efficiencies, I think, and yep, that's kind of typical when we fund or something and then we don't know what happens to it, so maybe I think Senator Schrock asked about having a sunset on this because we start something and it never sunsets and then the money lays there and somebody else comes along and wants it and it gets kind of complicated, so I was wondering kind of what your flow chart would be.

BILL SYDOW: You've probably given me enough rope to hang myself, but I...and I have no bone to pick with the Energy Office. I'll say that, and we really don't associate a lot with the Energy Office. But the Energy Office, and I believe this to be true, was originally established to disseminate through grants awards of monies from the...I call it the so-called oil price overcharges of the 1970s. And if you want to see an accounting nightmare, even in the field on a production engineer which I was, it was like every field was engineered in the United States. There was a...anyway, the bottom line is somebody said, you didn't pay me the right taxes on upper tier oil and lower tier oil, that was the classifications. There were lawsuits and there were huge awards where every major, really not maybe production company, but refining companies had to give money back to the federal government in that lawsuit, and that money was then distributed back to the states. I don't know if it was on a per capita basis, but the intent was that probably through the Department of Energy, it was for weatherization projects, whether of public buildings or private homes, and they still offer that.

SENATOR KREMER: I think I was on the school board when we applied for a grant and got money to do weatherization on windows and things like that from that fund and I had not heard much about it recently, so I wondered if that was one of those that got started and kind of got lost in the

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woodwork somewhere, and whether that...we don't want that to happen all the time, so.

BILL SYDOW: And I do not know whether there is a lot of funds still coming from the federal government to be disseminated as low interest loans or grants administered by the Energy Office of Nebraska.

SENATOR KREMER: Thank you.

SENATOR SCHROCK: Other questions for Bill? Bill, I don't know if I'm reading this right, we're getting about \$5 million a year state for severance tax?

BILL SYDOW: No, Senator Schrock, that would be if you pull...okay, at the very far right-hand, and the sum would be about...

SENATOR SCHROCK: Okay, total would be \$1.8...

BILL SYDOW: ...\$1.8 million...

SENATOR SCHROCK: Okay.

BILL SYDOW: It would be accrued to the state.

SENATOR SCHROCK: And you're wanting to get about \$200 million of this...

BILL SYDOW: Two...

SENATOR SCHROCK: Two hundred thousand. Two hundred thousand for this fund.

BILL SYDOW: Yes.

SENATOR SCHROCK: All right.

BILL SYDOW: And I would support the...I support the bill to that.

SENATOR SCHROCK: All right.

BILL SYDOW: And it would be...

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SENATOR SCHROCK: Thank you.

BILL SYDOW: I...well...enough said.

SENATOR SCHROCK: Other questions for Bill? All right, next proponent?

BILL SYDOW: Thank you.

SENATOR SCHROCK: Opponent testimony?

LAUREN HILL: (Exhibit 9) Good afternoon, Senator Schrock and members of the committee. My name is Lauren Hill, that's L-a-u-r-e-n, and the last name is Hill, and I'm appearing today in opposition in my capacity as director of the Governor's Policy Research Office, which under Governor Johanns and Governor Heineman's administration, I also serve as the director of the Nebraska Energy Office. Thanks for the opportunity to appear here today. It's always difficult to appear in opposition to a senator's bill, especially one purporting to have a new, innovative, energy research component. But I do want to share some thoughts with you as to why we're opposed to the bill, particularly because it takes away ongoing annual operating money for the office. As a very brief overview of the Nebraska Energy Office for the newer members of the committee, it was originally created by executive order in 1973, as the Fuels Allocation Office and from its inception through 199, the office was a division of the Nebraska Department of Revenue. From 1977 to '87, the office was made a separate state agency, and then in 1987, the Nebraska Energy Office was made a part of the Governor's Policy Research Office via an executive order of Governor Orr. Our office is statutorily charged with many duties, ongoing duties and I've got to highlight that kind of outlines some of those. To save time, I won't go through all those. The office always serves as host for the governor's Ethanol Coalition and 30-member state organization that's been going on since 1991 and the governor's Public Power Alliance, a six-state organization that has existed since 1998. All of our duties that are set out by law are accomplished with a staff of 19 full-time equivalent, including me. Getting to the heart of the issue, I use the severance tax funds to finance our agency operations. I have provided the committee with a handout and the first section of that does deal with what the

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Nebraska Energy Office receives in severance tax receipts. Essentially, the Legislature has determined that our agency would be a cash-funded agency and has provided for approximately 21 years an appropriation from the severance tax receipts to operate the agency on an ongoing basis. The office uses the funds to finance 19 staff members, which I've outlined for you the general positions and those staff salary allocations of the money that is an ongoing operation. Also, the chart there does demonstrate that approximately \$197,000 of the \$300,000 annual cash fund appropriation of the severance funds is designated for staff salaries. Approximately \$100 of the severance tax funds also serves as a funding source to obtain approximately \$475,000 in federal funds annually, primarily from the U.S. Department of Energy. These federal funds cannot be obtained without state match money requirements and so our office has utilized that appropriation to receive those funds. That is why that is shown in our fiscal note that we proposed a possible reduction of those funds without the match. And finally, the handout provides a draft copy of our upcoming 2004 report that's required to be filed with the Legislature and will be provided to you shortly in a final draft form. That also outlines kind of the ongoing duties that we do, what our duties and responsibilities are, what we expend the staff time on, so essentially I'll be happy to answer any questions, but the \$200,000 severance tax funds that are proposed to be redirected by the bill are a core component of our ongoing operations at the Energy Office. These funds provide substantial salary payments to all of my employees and therefore, I felt compelled to respectfully ask the committee not advance the bill in its current form. Thank you very much for the opportunity to testify, and I'd be happy to answer any of your questions.

SENATOR SCHROCK: Thank you, Lauren.

LAUREN HILL: Thank you.

SENATOR SCHROCK: Questions? Senator Kremer.

SENATOR KREMER: So you still do fund, provide grants for weatherization of homes, schools, and things like that?...

LAUREN HILL: Yes. I'm sorry.

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SENATOR KREMER: ...and, oh, well, I guess, go ahead and answer that first (inaudible).

LAUREN HILL: Yes, Senator, in response to the School Weatherization Program specifically, originally when that money was allocated to the Energy Office to run and manage that program, the Legislature has several times since the onset of the program pretty much wound that down. Those grants are no longer given to schools for energy efficiency improvements, and as repayments come back and are redirected, I think twice the Legislature has redirected that, those receipts, once into a school technology fund and then, which was used to redirect through the Department of Education grants to schools for technology improvements throughout the state, and then in 2002 during our...when budget reduction session started to be coming around, that technology money, the repayments of which are almost have come due, was any extra receipts were redirected to the general fund.

SENATOR KREMER: So the \$200,000 that would come from your office would either not in...it could not...would that replace other grants that you award or would that have to be come out of your operating budget?

LAUREN HILL: It comes out of our ongoing operating costs.

SENATOR KREMER: So that would put you in jeopardy, what with the nothing to operate on?

LAUREN HILL: Yes. I...yes.

SENATOR KREMER: Okay.

SENATOR SCHROCK: Thank you, Senator Kremer. Other questions? Senator Stuhr.

SENATOR STUHR: Okay. I guess I'm just not quite clear. The revenue that we look at was \$1.8 million that total, and are you saying...is this where you also...you get your \$300,000 from, this \$1.8 million?

LAUREN HILL: Yes, Senator Stuhr. The money, the total...I think that chart, I haven't seen it, but I believe that's probably showing you a demonstration of the total annual tax

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receipts received to the state. Out of that money, \$300,000 is directed to the Nebraska Energy Office annually in appropriations. There may be an additional \$30,000 that's directed to the Public Service Commission to administer the Natural Gas Regulation Program that we've put in place recently, and then the remaining balance goes to the Permanent School Fund.

SENATOR STUHR: All right. Thank you. That...

SENATOR SCHROCK: Other questions?

SENATOR STUHR: ...helps me.

SENATOR SCHROCK: So the Permanent School Fund would get about what, one-and-a-half million a year?

LAUREN HILL: One point eight minus \$300,000 minus \$30,000, yes.

SENATOR SCHROCK: Would you object if that portion was...if that \$200,000 they wanted was taken out of the Permanent School Fund?

LAUREN HILL: At this point I don't know that I...I'd have to check with the governor because that does invoke money going to schools, and I'd just want to check that for sure for the committee. I guess I would take the opportunity to say, Senator Schrock, we've been trying to work with Senator Baker to identify sources for the one particular project. I wasn't aware until testimony today that this is intended to be an ongoing grant program for a variety of projects. I came into the hearing believing that we're trying to find one new, innovative, carbon sequestration project. And so we've been trying to find other sources, either from grants from matching any money that we have in the Energy Office with the U.S. Department of Energy, working with the congressional delegation, looking to see if there's any economic development money that qualifies in DED, working through Department of Environmental Quality, trying to see if anything on the Environmental Trust Fund grant process, if this could qualify for any of that, and then I also did have a cash fund analysis run of the Oil & Gas Commission's ongoing balances to see if they could withstand a \$200,000 appropriation. So with that, I've been trying to

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creatively think of ways to finance a funding source for this project.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: There is speculation that there's an extra \$12 million laying around out there, so we'll maybe free up, out of the schools, but that's just a joke.

SENATOR KOPPLIN: Be sure you clarify your joke.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: I...

SENATOR SCHROCK: I was slow, Senator Smith. I'm real slow on that one.

SENATOR STUHR: I have a hard time understanding why this money is used to support the Governor's Policy Research Office.

LAUREN HILL: That...only that component is a cash allocation of my time. My particular salary is paid predominantly through the Policy Research Office, and I split the...I partly cash fund my salary through the Energy Office, since I'm the director of both. That's going to my salary, Senator.

SENATOR STUHR: I see. Okay, thank you.

SENATOR SCHROCK: Don't want to cut that, do we? Any other questions, Senator Stuhr?

SENATOR STUHR: No. Thank you.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: Do you spend 40 percent of your time on Energy Office activities?

LAUREN HILL: I have a hard time quantifying the bulk of the percentage of time that I spend on such a variety of things. But I'd really have a hard time answering that. I try to the best of my ability to allocate what I'm working on it to

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be fair and valid on that split.

SENATOR SMITH: Okay.

SENATOR SCHROCK: Other questions?

SENATOR KREMER: Well, I just have one comment. It looks like you're looking under every rock you can to find money, but we looked under all those rocks the last couple years and there's not much money laying around, it seems like.

LAUREN HILL: I agree, Senator.

SENATOR SCHROCK: Other questions? Thank you, Lauren.

LAUREN HILL: Thank you.

SENATOR SCHROCK: Is there other opposition to the bill? Please, don't be bashful. We...is this the last opponent testimony?

EDWARD GEORGE: I am.

SENATOR SCHROCK: All right.

EDWARD GEORGE: I'll make this very short, sir.

SENATOR SCHROCK: All right.

EDWARD GEORGE: My name is Ed George. I'm a resident of Nebraska from...

SENATOR SCHROCK: Would you spell that for us?

EDWARD GEORGE: ...Senator Elaine Stuhr's...

SENATOR SCHROCK: Spell your name, please.

EDWARD GEORGE: G-e-o-r-g-e, Edward George. I'm from Senator Elaine Stuhr's district. I have a Master's degree from the University of Nebraska in Agronomy and Crop Reduction. I became very interested in energy "enhancement" about two years ago, considering going back to school and work on my Doctorate degree, was thinking about what Nebraska agriculture represents in the global

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economy. Energy "enhancement" became a topic that I was very much interested in considering the resources that Nebraska has, sun, wind, geothermal, ethanol, biodiesel, and methane gas, and all these topics seem very relevant to the resources that we have in Nebraska. I've even become so concerned about it that I wrote an article in the Nebraska Farmer, which was issued in this February issue, thinking about what it could do to economic development for Nebraska, job opportunities, helping young people looking at careers, the things that could happen with these alternative energy sources. I think it's very critical that we start talking about these things. Other states have done a tremendous amount of work on energy enhancement, looking at the wind opportunities, looking at the geothermal opportunities, looking at the solar opportunities, and ethanol, and biodiesel. Also our president has also encouraged the expansion of these kinds of programs so we think about what is important. Because of that, I endorse this proposal that will allow us to think about how we could coordinate agency interaction: university, Department of Energy, ag producer organizations that this is one of the things that when I, in this last year, I started expanding and looking at what all these agencies were doing. All these relate to this renewable energy and energy "enhancement." I think it's very, very important that we give all the opportunities we possibly can for that. I want to thank you for your time, sir.

SENATOR SCHROCK: Do I take it you're an opponent to...

EDWARD GEORGE: I am doing this on my own, sir, I am not...

SENATOR SCHROCK: Are you an opponent or a proponent of the bill?

EDWARD GEORGE: Pardon me?

SENATOR SCHROCK: Are you proponent of the bill or...

EDWARD GEORGE: I'm a proponent of this...

SENATOR SCHROCK: You're a proponent of the bill, okay.

EDWARD GEORGE: Yes. I think it's very important that...

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SENATOR SCHROCK: We had closed that testimony, but we'll accept your testimony as proponent testimony.

EDWARD GEORGE: Thank you, sir.

SENATOR SCHROCK: Any questions for Mr. George? Okay, moving back to opponent testimony now.

JOHN K. HANSEN: Chairman Schrock, members of the committee, for the record my name is John K. Hansen. I am the president of the Nebraska Farmers Union, Hansen, H-a-n-s-e-n. We are in support of the concept of what this project would do and salute Senator Baker for his creativity and innovation in trying to find a revenue source and at this time, but we would also say that we feel in our judgment that the Nebraska Energy Department does a very good job on a very small budget and that this amount of money coming out of their budget leaves them far short of the resources that they need to do their job in all these other different and related areas, and that we just think this is kind of a rob Peter to pay Paul without talking about where we're going to get the money to pay for the shortfall for Peter. And so from that perspective, we think that if anything, I guess, our organization has said in the past that we think that the Nebraska Energy Department budget ought to be bulked up and increased if revenue should at some point become available to look at all of the different kinds of ways and things that we can do with renewable energies and all these other kinds of things. And that this appears to us to be a fairly high risk, a fairly capital intensive project, and I think it's a good project. I just don't agree with the funding source, and with that I'd close my testimony and also admit to Senator Hudkins that I'm glad you didn't ask me about strippers because I don't know anything about strippers.

SENATOR SCHROCK: Thank you, John.

SENATOR SMITH: That's the first sign. (Laughter)

JOHN K. HANSEN: That was my attempt, Senator Smith, at humor this afternoon.

SENATOR SCHROCK: No questions, John.

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JOHN K. HANSEN: Thank you very much.

SENATOR SCHROCK: Next opponent? Neutral testimony?
Senator Baker, you can close.

SENATOR BAKER: Thank you, Senator Schrock. It's not fun running between committees, but I introduced one bill and I need to get back, but it's hard to argue against my good friend, Miss Hill, here, but I didn't hear all her testimony. I think we have a revenue stream out there, obviously, of \$1,500,000, if we want to sunset take some money as John, Mr. Hansen just said, this is highly speculative, but the potential return to the state of Nebraska is enormous in that we can earn carbon sequestration credits, say out of a power plant. We can enhance our oil production, and these wells out in this country are watering out. They will be abandoned in the next few years. It's gone if we don't do something, so if we can get this private project up and running, show that it's viable, it will expand. It's capital intensive, there is their employees, and it increases the revenue stream. If these wells are abandoned, it's gone. If we can produce another umpteen million barrels of oil as the...I can't remember the figure, millions and millions of barrels of oil, there's taxes paid on that, and it all goes back to the state of Nebraska. So we're asking for a little seed money here to get this thing started, and I don't expect to fund a major project. This is a two-square-mile project we want to make as a demonstration. If it works, I'd say our funding is gone, but our funding needs for that project, let the oil companies take care of it. But then as Mr. Sydow pointed out, there are other issues we could use this for too, so I'm willing to work with the committee. We have a funding stream and temporarily take some money out of the severance tax for a few years, get some projects like that going, and then if it's working, let the Legislature, and we're all going to be out of here, some of us sooner than others, let them reevaluate the program, see if they want to continue to put money into an Oil Recovery Enhancement Fund at that time. But I think it's critical we do this now because this project is being worked on today. The initial application to the Federal Department of Energy has to be in the 15th of February and we have letters of support from various power suppliers in the state and the University of Nebraska, University of Kansas, and on and on, so we could

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be on the cutting edge. It's kind of like we have all our school districts merged in southwest Nebraska. Now we want to be a leader in, sorry I brought that up, we want to be a leader in...

SENATOR SMITH: I don't get it.

SENATOR BAKER: ...tertiary oil enhancement, so we'd like to be the center of the, the focus if you will of a all new technology, and then work in conjunction with the University of Kansas, who's actually spearheading this project.

SENATOR SCHROCK: Thank you, Senator Baker. Senator Stuhr.

SENATOR STUHR: Maybe you can refresh my memory, Senator Baker. The Nebraska Permanent School Trust Fund, do you have any idea how much total money is in that and, you know, do we use this?

SENATOR BAKER: We...

SENATOR STUHR: I'm on the Education Committee, but I can't tell you that.

SENATOR BAKER: Senator Schrock has the answer to that.

SENATOR STUHR: Oh.

SENATOR SCHROCK: Three hundred million plus.

SENATOR STUHR: Is...

SENATOR SCHROCK: And we can't spend it.

SENATOR BAKER: We cannot spend it; we could divert some of this severance tax money that's been put into it for years, and it's disbursed. Only the income on an annual basis is disbursed back through, it's called the Permanent School Trust Fund, back income on a per pupil basis statewide. Oil and gas industry is asking please, let us have a little bit of seed money here and enhance long-term production in Nebraska. If this works, this could extend the life of the oil fields 20 or 30 years and maybe by then, there will be a fourth way to get this oil out of the ground because we're leaving two-thirds of it down there. That's a lot. You got

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an editorial along with the answer. There's several hundred million dollars in this fund. We can't get it out, but we can certainly divert some money going into it for a few years.

SENATOR STUHR: Okay. Thank you.

SENATOR SCHROCK: Only reason I know that is because my opponent wanted to give it all back to the citizens of the state.

SENATOR BAKER: Actually, I think there's more than \$300, I think it's \$500 million in there, Senator Schrock. There's a lot of money in it.

SENATOR SCHROCK: And we can't spend it.

SENATOR BAKER: We can't spend it.

SENATOR SCHROCK: Senator Kremer.

SENATOR KREMER: You're talking about the \$200,000 annually? I keep looking through it and I don't see where it says annually, it just says the \$200,000,...

SENATOR BAKER: It says, shall appropriate...

SENATOR KREMER: ...but maybe I'm missing it.

SENATOR BAKER: I believe it says the Nebraska Legislature may appropriate up to \$300,000 now on an annual basis to the Energy Office, that we'd change that to up to \$200,000 to the Energy Enhancement Fund. I think it's...

SENATOR KREMER: Where is that at?

SENATOR BAKER: And I gave my bill file to my LA; it's on the bottom left-hand page, I think, of...

SENATOR STUHR: Two hundred...

SENATOR BAKER: ...page 2.

SENATOR STUHR: It says 200.

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SENATOR BAKER: It's up to \$200,000.

SENATOR STUHR: Up to...

SENATOR BAKER: The wording now is up to \$300,000...

SENATOR STUHR: ...that's right.

SENATOR BAKER: ...goes to the Governor's Energy Office and I had a hard time with this bill, I'd be honest with you. I understand their concern with it, but I have to make an issue out of this and try and work a compromise someplace along the line.

SENATOR KREMER: I guess I don't see where it says annually, but maybe I'm missing it. Did you find it somewhere? At the bottom of page 2, is that what you're talking about?

SENATOR BAKER: Um-hum.

SENATOR KREMER: Let's see, through the appropriated process \$200,000...

SENATOR BAKER: It says...

SENATOR KREMER: ...to the Energy Office. It doesn't say anything here...

SENATOR BAKER: In line 21, it says each year to the state Energy Office. Up to \$100,000, on line 21, the first...

SENATOR KREMER: Oh, okay...

SENATOR BAKER: ...it says, each year.

SENATOR KREMER: ...up at 21.

SENATOR BAKER: It's up above.

SENATOR KREMER: Believe it says \$100,000 there.

SENATOR BAKER: Well, that's \$100...we're changing the \$300,000 we're now appropriating each year to the state Energy Office cash fund and reducing it from \$300,000 to \$100,000 and taking that \$200,000...

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SENATOR KREMER: So, okay, take the other \$200,000 and give it to...

SENATOR BAKER: Putting into the...

SENATOR KREMER: I get it. Okay. I'm sorry.

SENATOR BAKER: ...Energy Enhancement Fund. I think this is a bill that has untold potential to the state of Nebraska, as Mr. Sydow said, seismic technology is changing every day in the oil industry. We could potentially find oil across the rest of the state, hopefully. We could drill through granite down here and maybe find some oil in eastern Nebraska, but this needs to, seriously, we need to put a little seed money into this and get this thing going and then let it grow, hopefully, from there. This could have major impact on the state's economy.

SENATOR SCHROCK: All right...

SENATOR KREMER: One other question, I guess.

SENATOR SCHROCK: Go ahead.

SENATOR KREMER: How long do you think the research would take to come to a conclusion of whether it was going to work or not?

SENATOR BAKER: Tim Carr with the University of Kansas thinks a, what, a minimum of four years.

SENATOR KREMER: Okay. So that's why you need it...you know, if it was on a sunset, you'd at least need three or four years in order to (inaudible)...

SENATOR BAKER: I'd say, at least four. I'd suggest maybe six years, and it would give the director of the Oil & Gas Commission, which...some latitude to maybe do another horizontal drilling project or something like that or some 3-D seis, as Director Sydow said. There's...you say, why can't the oil companies do this at the price it is? They have to answer to their shareholders and so on. This is speculative. This is highly technical, unproven, cutting edge technology if it works and they just simply want some

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partners with at the University of Kansas and the oil companies involved just need some partners and expertise. They came to me with this concept, sold me on it. As one of the testifiers said that the carbon sequestration issue and the pollutants' potential designation of CO2 as an emission problem, it all fits into the picture.

SENATOR SCHROCK: All right if we call you Jed Clampett?
(Laughter)

SENATOR BAKER: I don't care...

SENATOR SCHROCK: All right.

SENATOR BAKER: ...what you call me if you pass...we'll work with you on the funding source on this bill is my final...

SENATOR SCHROCK: All right.

SENATOR BAKER: ...statement. We'll make this work somehow; I feel that strongly about it. We'll make this work.

SENATOR SCHROCK: All right. We'll work with you, Senator Baker.

SENATOR BAKER: Okay. Thank you.

SENATOR SCHROCK: Any...that's it? That will conclude the hearing on LB 680.