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COMMITTEE ON NATURAL RESOURCES
February 1, 2006
LB 1109, 1195, 1214, 1098

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 1, 2006, in Room 1210 of the State Capitol, Lincoln, Nebraska, for the purpose of conduction a public hearing on LB 1109, LB 1195, LB 1214, LB 1098 and a gubernatorial appointment. 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: For the record, my name is Ed Schrock. I serve as chair of the Legislature's Natural Resources Committee. We have some housekeeping to do before we get down to business. First of all, I'd like to introduce the members of the committee. To my far right, I'm from the country I usually say north and south, so to the east of me here is Senator LeRoy Louden from Ellsworth only he lives out west; and next to him is Senator Gail Kopplin from Gretna. We have Senator Carol Hudkins from Malcolm. Committee counsel sits next to me, that's Jody Gittins; to my immediate left is Senator Elaine Stuhr. Senator Stuhr is the vice chair of the committee. Next to her is Senator McDonald, I understand she'll be joining us a little later. Senator McDonald is from St. Paul; and Senator Kremer next is from Aurora; Senator Smith, I assume will be joining us at a later time; and then to the far end is Barb Koehlmoos. Barb is the committee clerk; and here comes Senator McDonald. At some point in the hearings today unless we get done early, I will be appearing in front of the Appropriations Committee. So I will turn the proceedings over to Senator Stuhr at that time. And here comes Senator Smith. So if you would like to testify in front of the committee on an issue, please grab one of the sheets in the back room and fill it out. And as you testify, spell your name for the record. Please print on your sheet that. If you have a cell phone or something, silence it. If you want to be listed as a testifier but don't want to testify, why we can include you in the record. If you're testifying and need a glass of water, let us know. If you have handout material, the page will help you and our page is Marcus Papenhausen...hausor...hausen...Papenhausen. Marcus is from Coleridge and he's a sophomore at UNL and he's majoring in elementary education. What am I missing here. I talked to the gentleman in the front row. His name is John Quinn. He

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said his first father used to be a lobbyist and he just liked to be around senators, so. (Laughter) I told him he's known by who he associates with, so. Welcome to the proceedings John.

JOHN QUINN: Thank you. Thank you.

SENATOR SCHROCK: Our first order of business will be a confirmation hearing, Mark Czaplewski, and if I've said that wrong, Mark, correct me.

MARK CZAPLEWSKI: That's right.

SENATOR SCHROCK: And I'll...if you spell it once, I think the transcribers will get it. And Mark is being appointed to the Environmental Quality Council and we will have to ask you if you're a new appointment or a reappointment and then you need to tell us why you want to serve.

CONFIRMATION HEARING ON
MARK CZAPLEWSKI TO THE
ENVIRONMENTAL QUALITY COUNCIL

MARK CZAPLEWSKI: (Exhibit 1) Okay. My first name is Mark, my last name is spelled C-z-a-p-l-e-w-s-k-i. I do that a lot. I'm residing at 2207 Woodridge Place in Grand Island, Nebraska and I'm a new appointment to the EQC. I...my...the position that I was appointed to was one just formed last year when the Unicameral passed LB 351 which added the biologist position to the EQC and I applied for and was appointed to that spot pending confirmation here. I could tell you a little bit about myself if..

SENATOR SCHROCK: Please do.

MARK CZAPLEWSKI: I'm a native Nebraskan and I was born in Loup City, went to high school, graduated high school in Loup City, went to what's now University of Nebraska at Kearney where I got a bachelor's in science. I have a comprehensive major in biology and have a minor in environmental studies. I graduated in 1976. Thought about teaching but pretty much right out of college was offered a position with Nebraska Public Power District at their headquarters in Columbus where I began working as an

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environmental technician, eventually specialist supervisor and manager. When I resigned from NPPD about eight or nine years ago, I was their Federal Energy Regulatory Commission project manager. I was in charge of the FERC relicensing of their hydroelectric projects on the Platte River. And since then, I've worked as a staff biologist for Central Platte Natural Resources District in Grand Island and that's the position I currently hold. I...my job duties are quite varied. A lot of my work relates to biological issues, obviously, but I do a lot of endangered species work. I'm involved in a lot of water issues near and dear to this committee and to the EQC. Have been involved in natural resource issues and natural resource conservation, basically, all my professional life, so.

SENATOR SCHROCK: All right. Thank you, Mark. Are there questions? Senator Louden.

SENATOR LOUDEN: Yes, Mark. First I want to thank you for coming forward to do a job like this and also for coming here today to appear before us. I was looking in your...some of your personal affiliations or whatever they are professional. And this pallid sturgeon and that sort of thing, are...you have an interest in these fish?

MARK CZAPLEWSKI: Right. Pallid sturgeon are an endangered fish both from a state perspective as well as from a national perspective. And the task force that I am a member on is working cooperatively, Game and Parks, several NRDs, power districts, irrigation interests and whatnot, trying to come together in a nonlitigatory way to resolve pallid sturgeon issues on the lower Platte River. We've...we...with the help of a Nebraska Environmental Trust Fund grant have pitched in our own money and have sponsored studies that are just now coming to a conclusion. We hired some folks out of University Nebraska in Lincoln here to do those studies, and with the bottom line, trying figure out ways to conserve that species in the lower Platte, yet provide for the economic interests that utilize Platte River waters as well, so we can all get along together and conserve this endangered fish.

SENATOR LOUDEN: Now, how come when I go to North Dakota I can buy what caviar from pallid sturgeon up there and they have a season on them or whatever. You can catch so many and

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that sort of thing. Are there...are they plentiful enough on the upper Missouri is that what that is or what?

MARK CZAPLEWSKI: No. The caviar you're buying, unless it's done illegally, is not from pallid sturgeon. There are several kind of sturgeon worldwide and a few in the United States. Far and away the most common sturgeon around here and the sturgeon that occurs in Platte and Missouri rivers as well are shovelnose sturgeon. They're...they...you can catch them with a Nebraska Game and Parks license. They look a lot like a pallid sturgeon but a different species and different caviar.

SENATOR LOUDEN: Okay. Then that's a different species up there that their fishing for because you can buy a license and go down catch them.

MARK CZAPLEWSKI: Right.

SENATOR LOUDEN: Then in order to catch them, you've got to donate the roe.

MARK CZAPLEWSKI: Yeah.

SENATOR LOUDEN: You can keep the fish but you can't keep the roe or something like that.

MARK CZAPLEWSKI: Yeah.

SENATOR LOUDEN: Then the state sells that for their means of revenue, I guess is what it's all about. But that's altogether different species than we have here.

MARK CZAPLEWSKI: Different species, right.

SENATOR LOUDEN: How are we doing with this species here? Is it winning or losing?

MARK CZAPLEWSKI: It's not doing well. I hate to be pessimistic and I'd hate to say it's losing but it's struggling and which is why this task force came together. You know, get a lot of heads and a lot funding sources together to address a problem like this is the way to do it. And we're...hopefully what'll come out of the study are some management ideas that we can do to help foster the fish.

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It's declining to the point where without support from fish hatcheries and whatnot and major efforts locally, state and nationally it's on a dramatic decline I would say.

SENATOR LOUDEN: Is that because of water quality or because not enough water or isn't flowing at the right time of the year or what?

MARK CZAPLEWSKI: I think the experts would tell you it's a variety of problems going on, not the least of which is over fishing in the past. There are habitat issues that are very important going on, declining habitat as well but it's disease, it's historical over fishing that's not going on now, habitat issues and lots of other things, genetic issues and disease issues, a lot of things, it's pretty complicated I think.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Other questions? Senator McDonald.

SENATOR McDONALD: Yes. I see here you're a technical advisor for the Nebraska Environmental Trust. Are you familiar with the Cedar River stabilization thing.

MARK CZAPLEWSKI: Very generally. I should have put on there that I'm...I no longer do that. I'd like to get back into that but I'm not currently doing that. I have in the past. I have canoed the Cedar River. My family does it almost every year and I'm somewhat familiar with those stabilization projects and the work on other water projects up there. Lake Ericson, I can't even think of the lake by Spalding there. The name of the lake escaped me.

SENATOR McDONALD: Is it Pibel? No, that's further north.

MARK CZAPLEWSKI: I can't remember. But, yes, but only very generally.

SENATOR McDONALD: So you're not working with the Environmental Trust at all.

MARK CZAPLEWSKI: No.

SENATOR McDONALD: Even advising them?

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MARK CZAPLEWSKI: Not now.

SENATOR McDONALD: Okay.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: Yes. I just wanted to add my thanks for your willingness to serve on the council. I also serve on the Education Committee and we talk a lot about trying to encourage our students to become in science and is there any one particular thing that piqued your interest that led you to your career?

MARK CZAPLEWSKI: It was a lot of things. Frankly, I think the biggest influence on picking a natural resource career was my father. And like a lot of folks...like a lot of biologists that I know, my interest in nature and wildlife grew out of hunting and fishing and stuff. A kind of...a very consumptive thing in a way but it really gave me an appreciation for the out of doors and conservation of wildlife. And I hope I can instill that in my son as well, so, and my daughters...

SENATOR STUHR: Thank you. (Laughter)

MARK CZAPLEWSKI: ...who are out hunting my son right now. (Laughter)

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: Welcome. When we look at livestock waste issues, we are facing various strategies to try to save the environment and be good stewards of our natural resources. Do you support risk based livestock waste management instead of size based?

MARK CZAPLEWSKI: That's a tough one and frankly I don't know that I can discern between the two enough to give you a decent answer. I'm not trying to be evasive here but I think as I understand them, they both have a place and I am pretty early on the learning curve. I think I am more up to speed in some areas that EQC is involved in than others and I would put livestock waste probably on the low end of that. I'm short on the learning curve and I need to come up to

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speed there.

SENATOR SMITH: Okay. It may be the potential...oftentimes we look at the potential to contaminate rather than the actual risk or the actual discharge perhaps and what could happen. And so that's kind of what I'm getting at if that adds any clarity.

SENATOR SCHROCK: Other questions? Just remember, livestock waste doesn't run uphill very well, so.

MARK CZAPLEWSKI: Yes. Only towards money, right?

SENATOR SCHROCK: Mark, we appreciate your being here and you seem more than qualified and I look forward to your service on that and the state of Nebraska appreciates what you do.

MARK CZAPLEWSKI: Thanks. I take this appointment very seriously and I guarantee you I'll do my best, so. Thank you.

SENATOR SCHROCK: And I would have assumed your employer is very interested in you doing a good job of serving on the committee.

MARK CZAPLEWSKI: I think so. Ron Bishop is my boss.

SENATOR SCHROCK: Yeah. We know him well. Thank you, Mark.

MARK CZAPLEWSKI: Thank you.

SENATOR SCHROCK: Let's see. The next order of business is legislation. Oh, is there people who would testify in favor of Mark? Is there people who would testify in opposition to Mark's appointment? Is there neutral testimony? Then that will close the hearing on Mark Czaplewski's confirmation to the Environmental Quality Council. Then we will open the hearing on LB 1109. I didn't know last night when I left the Capitol if Jody would be with us this morning. She had a reaction to some new medication and left us yesterday afternoon but she's back. Jody, do you want to proceed on LB 1109?

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JODY GITTINS: Good afternoon, Senator Schrock, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee and introducing LB 1109 on behalf of Senator Schrock. LB 1109 was a bill that came to Senator Schrock during the interim when he was combining, as a matter of fact, thinking about our situation with livestock and what we need to do to promote livestock in the state and yet protect the environment. LB 1109 deals with the bad actor provisions of the Livestock Waste Management Act. Livestock production is the only industry in the state of Nebraska under the Clean Water Act that has been singled out for this type of treatment. Even our hazardous waste industries that generate hazardous waste are not governed so strictly by a bad actor provision as is our livestock industry. LB 1109 states that an applicant is unsuited to be a permit holder if within the past three years the applicant has allowed five discharges to the waters of the state at any facility in Nebraska unless those discharges were in compliance with the Environmental Protection Act, the Livestock Waste Management Act and the rules and regulations of the Environmental Quality Council and the department has been notified. It allows a revocation of...or of suspension of a permit if the permittee has within the past five years had allowed three discharges into the waters of the state at a permitted facility unless the discharges were again in compliance with the law. In the...there are no amendments that I'm aware of to the bill. Previously, we've had bad actor provisions that said the applicant should be determined to be unable to perform the duties if he is allowed three discharges into the waters of the state at any facility in the state of Nebraska. If you would compare this to say a filling station owner who perhaps has 60 facilities throughout the state of Nebraska and at three out of those 60 facilities there's been a spill, under...if he was controlled under the bad actor provision as it exists now, he would lose his license or be unable to open another facility in the state of Nebraska. So what we're trying to do here is gear it to the specific facility. If a specific facility in the state has had three discharges within the last five years and that person comes in for a modification of his permit, he would not be able to get it because that person would be considered a bad actor

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and the state of Nebraska Department of Environmental Quality would have no choice but to not grant that modification. So we're still being more stringent for our livestock industry than we are any other industry under the Clean Water Act in regard to the bad actor provision. But we're not...we're doing it in a way that it affects Nebraska instead of a broad-based across the nation kind of thing. That's the purpose of the bill. I'd be happy to answer any questions. I know there will be several people following after me that have more information on it. In drafting the bill, I did not consult with the producers but I did consult with DEQ and Senator Schrock. And so, this should not be characterized as a bill that was brought to Senator Schrock by producers. It was a bill brought to Senator Schrock by Senator Schrock.

SENATOR SCHROCK: With the help of counsel. Questions for Jody? Go ahead, Senator Kopplin.

SENATOR KOPPLIN: Just so I'm understanding this. Right now it's three discharges in three years and we're changing that to five on multiple sites.

JODY GITTINS: Right.

SENATOR KOPPLIN: Or three within the last five years on one site.

JODY GITTINS: Yes.

SENATOR KOPPLIN: Okay. Thank you.

SENATOR SCHROCK: Other questions? Senator Smith.

SENATOR SMITH: And when you said it's the actual facility...

JODY GITTINS: Yes.

SENATOR SMITH: ...does that...could that be construed to mean that a new operator of an existing facility would be held responsible for the bad actions of...

JODY GITTINS: It's the facility that has the permit.

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SENATOR SMITH: Okay.

JODY GITTINS: So you have a permitted facility so if you have an operator who says quits and the owner hires a new operator, that operator doesn't go and obtain another permit.

SENATOR SMITH: Okay. If...so would a new operator have to get a new permit, would a new owner/operator have to get a new permit?

JODY GITTINS: Permits are transferable.

SENATOR SMITH: Okay.

JODY GITTINS: Only...the only time you get a new permit is if you are going to do a new facility. So you could be the owner/operator of three facilities in the state of Nebraska but have a new location that would require a new permit..

SENATOR SMITH: Right. So let's just say that there was a rogue operator...

JODY GITTINS: Okay.

SENATOR SMITH: ...and had three violations and sold the property...facility. What happens from there?

JODY GITTINS: Do...what happens in regard to that facility?

SENATOR SMITH: Right. Is the new operator considered a bad actor because there might have been a rogue operator or owner prior?

JODY GITTINS: No. That new operator would then be...have to be forced to be in compliance with whatever DEQ comes up with for the permit and that's assuming that that permit is still a valid permit.

SENATOR SMITH: Okay. Is there any way that the actions of the prior owner could impede the ownership...could impede the new owner?

JODY GITTINS: Only from the extent that the existing owner would have to, I would imagine under the terms of the

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contract of sale, certify that that is a legitimate valid permit that he is transferring to the new owner. If in fact DEQ had revoked that permit unbeknownst to the new owner, that new owner would have an action, of course, a tort action in court to sue for fraudulent representation in a contract and have the contract declared void and whatever other penalties are available under the civil law for that.

SENATOR SMITH: Okay. Thank you.

SENATOR STUHR: Are there any more questions? Senator McDonald.

SENATOR McDONALD: Jody, do you know how many bad actors have had their permits revoked?

JODY GITTINS: To my knowledge there have been no findings by the Department of Environmental Quality for a bad actor under the livestock provisions.

SENATOR McDONALD: Under this law?

JODY GITTINS: Under this law.

SENATOR McDONALD: So if we haven't found any, then why are we trying to change it?

JODY GITTINS: I think to make it clearer, to make it easier for DEQ to administer, to make it a little fairer for our industry as opposed to...I mean I think the...perhaps the industry...I don't know. I don't want to speak for the industry. There was some suggestions that we simply do away with the bad actor provision since it's not part of any other licensure process or permit process that we have under the Clean Water Act. And I think this...in Senator Schrock's mind this was a compromise to insure that we did have some protections. Looking at people who flagrantly disobeyed our environmental laws on a consistent basis at a facility should not be rewarded for that happening. We've been very fortunate and who's to say that because the law is in place now that perhaps we have stopped some people from being bad actors. That's why we don't have any. I mean, that would be the wonderful thing about it. I personally think that we don't have any bad actors in the state because our producers are very conscientious about what they do and

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don't want to harm the environment. But that's my personal opinion.

SENATOR STUHR: Are there other questions?

SENATOR KREMER: Senator McDonald asked my question.
(Laughter)

SENATOR STUHR: Gee! All right. Other questions by the committee? If not, thank you very much. Those wishing to testify as proponents of the bill, please come forward. Welcome.

DUANE GANGWISH: Good afternoon, Chairperson Stuhr. My name is Duane Gangwish, it's D-u-a-n-e G-a-n-g-w-i-s-h. I'm here representing Nebraska Cattlemen as their registered lobbyist and here promoting...offering to promote LB 1109 on. Three points I'd like to make. First of all, just to reiterate what Ms. Gittins referred to is the livestock industry is the only industry regulated under such a provision in the state. I'm not here to say poor us. I'm here to promote...to reiterate and promote the statement, equality before the law. We feel that it's important for us to do our part of protecting the environment but to be treated fairly with other industries as well. Good policy today is going to be good policy in the future. And where I want to go with this and explain is that we have...it will be the norm more so than not in the future, ten years from now, 20 years from now, 40 years from now that there will be...could be...will be more than one owner...owners with more than one facility. It is the case today in the state of Nebraska. Agriculture is progressing in that direction. I'm not promoting that but that is a fact of business in the state. By no means are we promoting or hope to want it be construed that by supporting this bill, that we're promoting any illegal activities. My work in the past has been environmental quality and to insure in the permitting process that these are done properly and we feel the producers in the state of Nebraska are doing what they need to be. But there is a jeopardy here of those owners that have more than one facility and especially cattle facilities subject to storm water that this could be an opportunity where things are just happened. Not the illegal activities, but there could be activities such that this could put them in jeopardy of their business. Be happy to attempt to

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answer any questions.

SENATOR STUHR: Okay. Are there questions for Mr. Gangwish? If not, oh, Senator Kopplin.

SENATOR KOPPLIN: Okay. You mentioned storm water so I'm trying to picture this in my mind. It's not a pretty picture. Doesn't the department have some leeway to say, it's not a bad actor if a storm did it?

DUANE GANGWISH: I'm sorry, I didn't hear your question Senator.

SENATOR KOPPLIN: Well, you said a storm could cause somebody to have three discharges. Okay. Is this so rigid that the department has no leeway that they can review those facts and consider that?

DUANE GANGWISH: The department has the duty to determine whether or not any discharge was within compliance with a permit. So to that end, the answer to your question is yes. There are activities outside of the control of operators that...beyond their control that it could be outside of the parameters of a permit and therefore DEQ not have discretion.

SENATOR STUHR: Okay. Are there other questions? If not, thank you very much for coming. Other proponents? Welcome.

ROD JOHNSON: (Exhibit 2) Senator Stuhr and committee members, my name is Rod Johnson, J-o-h-n-s-o-n. I am the executive director of the Nebraska Pork Producers Association. I would like to start out by saying that our industry supports a good neighbor policy. We are encouraging producers to do anything and everything they can to make sure that we do not have violations, we do not have spills and have situations that would apply to this so-called bad actor provision. We also are very supportive and work very closely with the DEQ and with the EPA and making sure that we have good sound practices, science-based practices implemented within the regulations and within our industry. Beyond that, it has been very well explained how the three strike rule applies in our industry and not the others and we just feel this is very unfair to the livestock industry to have that standard. The question was asked why

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if we haven't had any...haven't had to apply this any place, you know, maybe there's nothing wrong with it. In our industry specifically, we are getting producers with more and more multiple sites. This is just a good management practice from a biosecurity standpoint, from a concentration standpoint. As industry has to maintain a certain amount of production in order to remain economical viable, it's much better from our opinion that they go to more smaller sites than to have larger and more concentrated production. So this is just going to hopefully, if our industry is successful into the future, this is going to add sites around the state and so the potential, the exposure naturally becomes more as each individual producer has more sites. So I think this is a good reason to take a look at it at this point and make sure that it is a viable program into the future. Naturally, we hope this rule never gets used. That's the best situation that we can have out there. But by the same token, the way that it is set up right now it is basically under the three strike rule. The program is looking for ways to put producers out of business is actually what it amounts to. It's not working to protect the environment and to lessen the risks. So I think that needs to be the focus at the DEQ and of the Environmental Quality Council is to manage the risk, protect against the risk and don't set it up so we're out there looking for producers to put out of business. That's not good for the state's economy. That's not good for anyone. The producers out there today live and work, raise their families in that same environment that they're operating their business in. And so, this is very critical to the future that they're able to operate in such a manner. Like I said, we definitely promote a good management practices and we certainly hope that there's never a situation where this has to be invoked. But we feel that while we probably don't like the fact that this three strike rule is in there to begin with, where were at or what's been presented today is an improvement over what the situation has been in the past and we certainly thank Senator Schrock for identifying this problem and taking it on and introducing LB 1109. And I'd be glad to answer any questions.

SENATOR STUHR: Are there any questions for Mr. Johnson?
Senator Kopplin.

SENATOR KOPPLIN: The way...just explain to me how the

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permit works. You as a person get a permit and that allows you multiple sites or do you have a permit for each site.

ROD JOHNSON: Each site has to be permitted.

SENATOR KOPPLIN: Okay. Thanks

SENATOR STUHR: Are there other questions? If not, thank you very much for coming today.

ROD JOHNSON: Thank you.

SENATOR STUHR: Other proponents? Those wishing to testify in opposition come forward.

LORAN SCHMIT: Senator Stuhr and members of the committee, my name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t, testifying here today on behalf of myself. Doing so reluctantly because it appears that when you look at this bill, that we are allowing certain strategy that would be in place to counteract bad practices and as has been indicated by the counsel and others that to best of our knowledge we know of no time, there's been a situation that could adequately be described as an individual or an enterprise being a bad actor. Coming back to some of the things we talked about frequently and things that come up on the floor during debate. There seems to be a tendency in legislative areas today to be super critical of the agricultural sector and we're held to a higher standard than any other industry. It was always of interest to me, Senator Kopplin, that for my recreation I would usually once or twice a year check the DEQ to find out how many inadvertent discharges and how many intentional discharges were made by the city of Omaha because of their inadequate treatment of their waste water. It's considerable and it is viewed with no concern by the Environmental Protection Agency and it is looked upon with fear by other environmental groups. But if you get one ag operator in Nebraska who inadvertently through no fault of their own by virtue of a storm or a natural disaster or earthquake or anything in that nature, we would be chastised and condemned as bad actors. I just think it's bad, it's bad policy and I again thank Senator Schrock for trying to reduce the exposure. But, the entire philosophy of bad actor was misappropriated when it was applied to agriculture. And so, I hope that the bill becomes law and

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that in the future we are able to resist such legislation which very unfairly categorizes agriculture as being not defenders of the environment. Thank you and would be glad to answer any questions.

SENATOR STUHR: Okay, thank you. Senator Schmit, you were in opposition, right?

SENATOR SCHMIT: No, I support the bill.

SENATOR STUHR: Oh, you do support the bill. Okay.

SENATOR SCHMIT: Yes, I support the bill. Yes. I support it like I say with some reluctance because it appears that the bill has become...has outlying stringent factors. Facts are it reduces the exposure of the livestock industry.

SENATOR STUHR: Okay.

LORAN SCHMIT: I don't like it. I'd rather there was nothing there...

SENATOR STUHR: Right.

LORAN SCHMIT: ...but I have to take what I can get. Thank you very much.

SENATOR STUHR: All right. Thank you for that clarification. Senator McDonald.

SENATOR McDONALD: You said it, unfair to the ag producers to have the bad actor. Why not add others to the bad actor? I mean, if we're going to play fair, we need to play fair across the board and not just have it directed towards the ag industry as you mentioned. Our municipalities, you know, should be part of the process also. So rather than making the bill broader on sense of three to five, why don't we leave it at three and just add municipalities?

LORAN SCHMIT: Well, it's a valid suggestion, Senator, but I would suggest if you want to create terror (laughter) among the cities, you bring that up and you'll be about as popular in Omaha as Senator Pam Brown is in Ashland. (Laughter) But you're right.

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SENATOR McDONALD: You know, sometimes we need to...you know, we in the ag sector need to broaden those bad actors because it's not just ag people.

LORAN SCHMIT: You see for many years, Senator, the city of Omaha used the same sanitary system and storm sewer system in the eastern portion of their city so they have to overflow their sanitary sewage treatment plant down there when they have an inch of rain or more and that's accepted. It's acknowledged. No one talks about it. It's just like, sort of like the illegitimate son in the family picture. He's there, you have to feed it and take care of it but it doesn't get discussed. But anytime that any wind blows a little dust or odor or if there happened to be a discharge from a feedlot, we're immediately categorized as being a bad actor. I just think it's very unfair. And we as agricultural people I think need to be continually vigilant as you are here today to reduce that kind of image because it is not fair to agriculture. And at the very least, as you say, the rules ought to apply to everyone and I think it's a good suggestion. I'm not going to run for office in Omaha, anyway. Thank you.

SENATOR STUHR: Are there any other questions? If not, thank you. Are there any other...Okay. (Exhibit 3) We need to offer a letter of support from the Nebraska Farm Bureau signed by Craig Head. So that will be entered in the record. Any other proponents? We will go to opposition. Those wishing to testify in opposition.

LAURA KREBSBACH: (Exhibit 4) Good afternoon, my name is Laura Krebsbach, K-r-e-b-s-b-a-c-h, with the Sierra Club and I'm here representing that organization. I'd like to first address Senator McDonald's comment that possibly this means we need to take this language to other industries and that was my opening comment besides the fact that we oppose the undermining of the bad actor provision in Title 130. I think that this does give us an opportunity to take a look at fairness and say let's go above and beyond to other industries as well as what we have in Title 130 currently. My grandpa was a farmer and he had a saying and it was, if it works, don't fix it. I would say that our bad actor language evidently must be working. We haven't had any. So if this provision is doing what we purport it to do and to encourage producers to stay in compliance and not have any

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spills to characterize them as bad actors then maybe we should just leave it alone. And, you know, I have some handouts that talk about, you know, different problems that we can have with facilities. That's not why I'm here. I think that again that this gives us an opportunity to look at other areas that we could do better job at policing those that are not protecting our environment. So, that's all I have.

SENATOR STUHR: Okay. Are there questions? Senator Kremer.

SENATOR KREMER: Laura, are you representing the Nebraska Sierra Club?

LAURA KREBSBACH: Yes.

SENATOR KREMER: Okay.

LAURA KREBSBACH: My counterpart, Ken Winston, has been busy with other committees, so.

SENATOR KREMER: Okay.

LAURA KREBSBACH: I'm a stand-in.

SENATOR STUHR: Okay. Senator Smith.

SENATOR SMITH: You said if we go above and beyond within one industry we should go above and beyond in other industries as well. Did...I mean, could that mean that if we're unfairly regulating one industry that we should unfairly regulate other industries?

LAURA KREBSBACH: No. I don't think that we're unfairly regulating livestock currently. If we haven't had a single bad actor in the state, then that language, I would say, evidently...I can't say with 100 percent certainty, but I would say that would indicate to us that that language is working, and that it would be possibly applicable or in similar type of language applicable to other industries.

SENATOR SMITH: So you see this as a relaxation of the law?

LAURA KREBSBACH: The bill as introduced, yes. Absolutely. It would undermine and weaken what we currently have.

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SENATOR SMITH: Thank you.

SENATOR STUHR: Are there other questions? If not, thank you very much for coming.

LAURA KREBSBACH: Thank you.

SENATOR STUHR: Other opponents? Welcome.

CINDY TOGSTAD: Good afternoon, my name is Cindy Togstad, T-o-g-s-t-a-d, 4089 SW 128 Road, Wilber, Nebraska and I'm here representing Ma and Pa Kettles for Family Farms. We started our group about four or five years ago when we had stopped Bell Farms from coming in and building amongst our family farmers. And I'm not very prepared for this bill. I kind of just found out about it when I got up here because I actually came up to testify on LB 1195. But as I see it, it would weaken what you have already. And we do have an acreage but we do live amongst our family farmers. We've got 50 or so in our group and they've okayed me for, you know, to come up here to represent them. And I feel that we only...that this change would if it took place, that some of the producers could get careless. I feel the environment is the only environment that we have. It was given to us by God and I think or an upper power as you see it, but we need to take care of our land and our water and our air because they are not replaceable. And the farmers around us do do this. Our neighboring farmers have said they have had no problems with the way things are now and so I would just say...like to say that I am against this and so is our group and please protect what we have. Don't make it worse, because it is getting worse. I have very high nitrate levels in our water. It is not drinkable anymore. And we had to go dig another well a quarter of a mile away and it's so deep that we do not have the nitrates down there. But, you know, we had to spend about \$10,000 to have drinking water. So, please keep this in mind and that's all I have to say. Thank you.

SENATOR STUHR: Senator Kremer has questions.

SENATOR KREMER: Yes, Cindy, you said that if we weakened this in your perspective that people would get careless. Do you feel like the people are...care about the environment,

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the livestock people, only because there's laws?

CINDY TOGSTAD: I say that some could get careless. They wouldn't all get careless but there's always...

SENATOR KREMER: But do you feel like they only had to try to preserve our clean water because we have laws that way or?

CINDY TOGSTAD: Do we feel that...pardon me?

SENATOR KREMER: That they'll only care...they only try to be good actors and keep our water and air clean because we have laws that way, or?

CINDY TOGSTAD: Well, there...right now everything seems to be working the way it should be working. The farmers in our area are...they really do care about the air, land, and the water and but there are those that don't. And I think if things are working well now let's keep them that way. Why let things go on a loose thread...I'm sorry. I'm nervous. I haven't done this in a few years. So that's, you know, why open up a door that we don't need to. If there's no problems now, why do that. Why change it?

SENATOR STUHR: Senator Smith.

SENATOR SMITH: What was the name of your group again?

CINDY TOGSTAD: Ma and Pa Kettles for Family Farming.

SENATOR SMITH: And you're located in Saline County?

CINDY TOGSTAD: Actually, Saline and Gage County, we're right on the line. We're in Gage County but our group is Gage and Saline County, farmers around that area, Wilber, Clatonia.

SENATOR SMITH: And what all do you raise on the farms?

CINDY TOGSTAD: They have pork, they have beef, they have some still grow chickens, you know, there isn't a whole lot around there but some people have sheep.

SENATOR SMITH: Any row crops?

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CINDY TOGSTAD: Well, yeah. Lots of row crops.

SENATOR SMITH: And corn?

CINDY TOGSTAD: Yes, corn, a little bit of milo, soybeans, a lot of soybeans and.

SENATOR SMITH: Are you satisfied with the current market availability?

CINDY TOGSTAD: I guess I'm not...

SENATOR SMITH: I mean the places to market your corn. Are you satisfied with the number of places to market your corn?

CINDY TOGSTAD: We have...I said earlier that we have an acreage so.

SENATOR SMITH: Oh, you're not a farmer?

CINDY TOGSTAD: I'm not into that, no. No. But because we live amongst our farmers, we're all friends and...

SENATOR SMITH: But you speak for the farmer and neighbors?

CINDY TOGSTAD: For our group, yes.

SENATOR SMITH: Okay. How many families in that group?

CINDY TOGSTAD: About 50.

SENATOR SMITH: Fifty, and some are acreages some aren't?

CINDY TOGSTAD: Most of them are farmers.

SENATOR SMITH: Okay. Are you paid staff for that group?

CINDY TOGSTAD: No. I am not. No. I just take an interest in our environment.

SENATOR SMITH: Uh-huh.

CINDY TOGSTAD: And also I take an interest as to where our meat comes from. We buy chickens from our farmers. I have

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a friend I buy beef from. We butcher a cow every year. We have a neighbor I buy our hog from. So basically, I don't go to the grocery store a whole lot anymore to buy beef, meat, you know, any meat except if I need sandwich meat or something like that then I stop.

SENATOR SMITH: Do you have a problem with that meat or you just find it cheaper to do otherwise?

CINDY TOGSTAD: I do worry about the antibiotics and things of that sort that are put into the food to grow the animals fast. Yes, I do have a concern for that.

SENATOR SMITH: Would you consider yourself...

CINDY TOGSTAD: And I want to support our family farmers locally.

SENATOR SMITH: Would you consider yourself an organic shopper?

CINDY TOGSTAD: No.

SENATOR SMITH: No. Okay. Thank you.

CINDY TOGSTAD: Um-hum.

SENATOR STUHR: Are there other questions? Thank you. Are there others wishing to testify in opposition? Come forward. Welcome.

TED THIEMAN: I'm Ted Thieman I'm from a...my address is 405 East Leona Avenue in Petersburg, Nebraska, up in Boone County. I'm here to testify in opposition to this bill.

SENATOR STUHR: Could you spell your name, sir?

TED THIEMAN: My last name is...first name T-e-d T-h-i-e-m-a-n. Well first of all probably not directly related to this bill but...recently retired and having some time decided to pay attention to the process. It's frustrating and disconcerting to see so much preemptive legislating that seems to be going on in the last year or two. We seem to have people out there who somehow know or believe that their business is going to be causing trouble

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in the future and then no matter what field it's in and then figure out a way to come to Legislature and preemptively legislate to keep the locality or the town or county from putting any controls on it. And this looks like to me is one more example where we just...Senator McDonald hit it right on the head. Has there been any problem with this in the past? Zero. Well somebody must be seeing something coming because they want to go from three to five. What, you know, what do we see...what does somebody else see coming that they're worried...we at the local level are going to pass an ordinance against? I mean it's just very, you know, it's nerve racking to think what might be going on and this isn't the only area. LB 1195 is even probably more obvious in that regard. As far as the words bad actor which seem to be causing some people some heartburn here, we have...bad actor may not be the term used. But if you want to compare livestock to other fields or other disciplines, they might wish they could get a bad actor clause, because if you go to the liquor control, you know, where they control bars or the way we control insurance agents or people in the health field, it's one strike and you're out. There isn't such a thing as a bad actor, you know, you mess up you're gone. Your permit is pulled. So, you know, bad actors is almost a lenient way of looking at it. You know, you have to kind of build up a record to become a bad actor and then after that you end up losing your permit or being denied a new one. So I just don't think that that holds water. I don't see where livestock is being singled out with tougher treatment. Now maybe, and I haven't studied this, under the Clean Water Act there might be some singling out going on. You'd have to kind of define it. But I really don't think that the bad actor provisions, whether you like the words or not, are in any way, you know, too strict. None so far the environment, you know,...this...I wish...I just thought of it listening to the testimony, but I could paraphrase someone but I'm not even sure who it was but anyway kind of compared this to peeing in your cistern. Now if somebody peed in your cistern once, you'd probably try to figure out a way to do something about it. I mean three times, five times, you have somebody come up and do that a number of times before we're going to do something about stopping the practice. The environment we're talking about, and I know there are good farm...I grew up on a farm. I understand farming. I've lived with farmers all my life. Worked on farms and

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have lived off of farmers and ranchers all my life. I fully appreciate livestock and farming and ranching and I don't want to do anything to jeopardize it. But you got to kind of walk the walk if you're going to talk the talk when it comes to, you know, running manure down the creek. So we have got to be extremely cautious when it comes to our environment. So many of these things are so irreversible, at least in our lifetime or probably the next three or four generations to come's lifetime, that we just cannot afford to take a chance on, you know, three strikes you're out, five strikes you're out. You got ten facilities, you got one facility, you know, you're supposed to have all this leeway and in the meantime our rivers that we want to promote for ecco tourism or for recreation are being contaminated. The school kids take tests on our little Beaver Creek west of Petersburg and they'll find fecal matter to the extent that they don't want to swim in it. They used to play volleyball in the creek. People are more concerned...you can actually see the...you know, I grew up going out there sitting set line and the river looks brown if not green, I mean, even without rain. So we have...we do have contamination. It is verifiable. It's even scientifically provable. I think science-based is good but it ought to be science-based to prove that you are not contaminating, not science-based where the citizen has to prove that are contaminating. I mean, there is plenty of evidence going on to make us pretty nervous about this. So I strongly oppose LB 1109 and that concludes my testimony.

SENATOR STUHR: Okay. Thank you, Mr. Thieman. Are there questions? Senator Smith.

SENATOR SMITH: When I was in junior high, I hiked the mountains of Colorado and learned that all streams...natural streams in Colorado had parasites that could spell doom to one's intestine and I asked why and later learned that it was actually the deer population that had contaminated the streams which I would say would be a natural contamination. Should anyone be held responsible for that or should there be some government interaction in that case?

TED THIEMAN: Well, I'm not sure. I suppose...

SENATOR SMITH: That would be running manure down the stream.

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TED THIEMAN: I suppose the government ought to be concerned. But I find it interesting to find another bad example to justify our bad practice going on parallel. A bad practice that we have...do have that is man made and is man controlled. So, the deer...

SENATOR SMITH: So, what is the bad practice in Nebraska? I mean, is there a particular policy that you have an issue with?

TED THIEMAN: It's as you mentioned earlier. It's the risk of having livestock along streams and these three to five spills that are going to be allowed before they're considered a so called bad actor. That's the practice I'm talking about.

SENATOR SMITH: Okay. If someone wanted to build a livestock feeding operation next to a stream...

TED THIEMAN: Uh-huh.

SENATOR SMITH: ...and they could prove to you that it would not contaminate the stream, should they be able to build the operation?

TED THIEMAN: Sure.

SENATOR SMITH: Okay.

TED THIEMAN: Sure, if they can prove it.

SENATOR SMITH: If they could prove that they would not contaminate the stream?

TED THIEMAN: Oh, yeah. I am not opposed to livestock. Fact is, we could use more livestock. We can't use the livestock concentration and in some cases we can't use the livestock in the location they happen to be in, especially the way the yards are constructed.

SENATOR SMITH: But if they could prove to you, and I don't care how high they stacked them, if they could prove to you that they would not be contaminating the natural resources, be it water or land, whatever...

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TED THIEMAN: Yeah. Yeah.

SENATOR SMITH: ...should they be prevented from building?

TED THIEMAN: No. They should not be prevented and that's moves toward the ownership, the concentration of ownership, that seems to be the American way. I may have an opinion about that but I'm not here to say that we should control who owns how much and where they own it at as long as they don't affect their neighbors, the environment, and the quality of life, and the public health, safety and welfare, I see no reason to control it.

SENATOR SMITH: Thank you.

SENATOR STUHR: Are there other questions? Senator Hudkins.

SENATOR HUDKINS: What about, then, the city of Omaha, discharging sewage into the river?

TED THIEMAN: That's another example of a bad example trying to justify a parallel bad example. I'm not going to defend Omaha discharging into the stream. I mean, I think we have to clean up after ourselves whether we're a half million people or if I'm me and my wife with a septic tank. We have to keep ourselves...we are responsible.

SENATOR HUDKINS: Thank you.

SENATOR STUHR: Are there other questions? Senator Kremer.

SENATOR KREMER: I think I heard you say that if there's never been a problem, what are we so concerned about, you're suspicious...I guess I'd like to flip that around. If there's never been a bad actor so far, what are you afraid of?

TED THIEMAN: Well, the suspicion has been created by today and it's not the only the place. But we have...

SENATOR KREMER: But, we still have some...it's still going to be some requirements that you can't be a bad actor but it changes it so you feel like there is going to be more bad actors in the future or if you think the other side is

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afraid...

TED THIEMAN: I think it's going to be more lenient, more lax, more room before you're considered a bad actor.

SENATOR KREMER: Okay. Thank you.

SENATOR STUHR: Okay. Are there other questions? I'm just interested in, are you...did you say you were retired?

TED THIEMAN: That's correct?

SENATOR STUHR: And what did you do in your past life.

TED THIEMAN: Well, I grew up on a farm and we milked cows and after the military...after the service, went to work for the telephone company. I worked for the telephone company. I lived in Petersburg for my entire career except for a few years where I went on loan.

SENATOR STUHR: Okay. I guess just from some of the comments I am getting the impression that you don't believe in change or that change isn't possible because I think that's really what the bill is trying to address. That things don't stay the same and that operations continue to have more sites and I think we've seen that in the past not only in agriculture, but in all businesses that nothing stays the same.

TED THIEMAN: Well, Senator, I'm sorry if you got the impression that I'm opposed to change. That's the furthest thing from the truth. I support change but change for change sake or change that jeopardizes our way of life or not our way of life, our quality of life and the public health and safety welfare I'm definitely opposed to. So change is one thing and potentially harmful change is quite another. So I would vehemently...would like to say that I am not opposed to change. That is not true. I think I'm a forward looking individual, so.

SENATOR STUHR: Okay. Thank you. All right are there...Senator Hudkins.

SENATOR HUDKINS: Mr. Thieman, let's say that there's a farmer Brown and he raises cattle and he has four, let's

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make it five or six, I don't care, facilities and they're spread around the county or maybe even in two counties. But since he is one individual, he gets one permit. Is that right, Jody? Each facility gets a permit. Okay. And so what we're proposing to do is to say, okay, if each facility is separately permitted...well is there...excuse me. Is there anything that ties all these together?

JODY GITTINS: If it's a new application, DEQ can look at what he's done with all the rest of his facilities.

SENATOR HUDKINS: Okay.

TED THIEMAN: I think the actor provision applies to the owner, not to the facility.

SENATOR HUDKINS: Okay. So if he has these five facilities and there has been a spill at this one and there has been a spill at this one is DEQ then going to say that this is a bad actor, even though the other four have a spotless record? Should they be able to?

TED THIEMAN: I have no idea what DEQ would do. A violation isn't even defined in here. I guess DEQ has a process of their own to define violation. But my understanding from listening to the proponents is that the fear is that if you own 500 facilities and you only get three strikes, you're kind of...you're in pretty skinny territory because you got so many sites that could spill or whatever it could violate. I understand that but I would counter that with zero so far. Let's wait for the trouble to show up.

SENATOR HUDKINS: Thank you.

SENATOR STUHR: Okay, thank you. Are there any other questions? Are there...thank you for coming today.

TED THIEMAN: Thank you.

SENATOR STUHR: Are there others that wish to testify in opposition? Those wishing to testify in the neutral capacity? Okay. That closes the hearing on LB 1109. We will now open the hearing on LB 1195. Okay, Jody.

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JODY GITTINS: Good afternoon, Senator Stuhr, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee and introducing LB 1195 on behalf of Senator Schrock. The purpose of this bill is to require a county's zoning commission or county board to allow a conditional use permit or special exception to any existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose of that is to comply with federal or state regulations pertaining to a livestock waste management facility. An example of this would be a facility that has been in existence say for ten years and due to recent developments, DEQ...they've requested the inspection, DEQ comes out and says, oh yes, you're going to need to do the permit and you're going to need to build this facility for this capacity. So, the person goes ahead, does the engineering, gets ready to do this and then...and it's mandated. They have to do it or they face fines or they're out of business. So then, they have to go before their county board or county zoning and request a variance to go ahead and expand the facility already in existence, that's already been in operation. And depending on how that county board rules as to the variance is whether or not that person will get to stay in business or have to leave or face fines from either our Department of Environmental Quality or from the EPA itself. So it puts our producer in a very tenuous situation at best. I obey the law, but I can't obey the law. I want to follow the law but I can't because my county won't let me, therefore, I'm out of business. The second part of the bill creates an allowance. I apologize. The allowance would allow the facility to increase its capacity by whichever is greater, ten percent or it has a whole listing of the number of animals that would be allowed. If your cattle, swine weighing a certain weight, turkey, sheep, hens, broilers, chickens, laying hens, ducks. We had a wonderful conversation on ducks and chickens this morning. And I will admit there is a flaw. I forgot one of my favorite animals and that's dairy cattle and they aren't in there, so we would need to amend to allow a dairy operation to do the same as we do all the other livestock operations. This allowance would not be available if the operation is located in an area that is not zoned exclusively for

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agricultural use or if the operation has not complied with the inspection requirements under the Livestock Waste Management Act. In other words, this has to be in a totally agriculturally zoned area to begin with, and it has to have been in compliance up until this point with everything under the Livestock Waste Management Act. So that's the purpose of the bill. It doesn't say that county shouldn't be notified. It doesn't say that the county can't hold a hearing and get some input as to what's going on. But it does say that they have to grant that variance for those folks to come into compliance under these certain conditions. I'd be happy to answer any questions if I can. I'm sure there will be others following me or I hope there's others following me that can explain even more fully the precarious situation that this places our livestock producers in.

SENATOR STUHR: Okay. Are there questions? Senator Kremer.

SENATOR KREMER: Jody, that would most likely be a pretty small operation then if they never...if they did not have to all the waste management things in place.

JODY GITTINS: I think it can happen for a small or for what used to be considered a medium operation.

SENATOR KREMER: Okay, because a large surely would've had to comply with all that anyway to start with so they weren't going to have to do anything different. But it's one that's going from maybe from the designation from a small not able to comply, keep it the same number there but then have to spend the money on the new waste management facilities and...

JODY GITTINS: Certainly.

SENATOR KREMER: ...then that the county would have to grant them that. So you're really about...

JODY GITTINS: That's certainly one scenario.

SENATOR KREMER: ...it's most likely to be a smaller numbers then.

JODY GITTINS: That's certainly one scenario that it could

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be. And if you looked at the NPDES requirements, which we're hoping they change but we don't know, under the National Pollutant and Discharge Elimination System, the livestock number is a 1,000 cattle. And that encompasses all of our small and mediums that we had under our previous system. So looking again...forward looking as to whether or not we can get that changed is up in arms, you know. I've heard some that say no, that's a number that's written in stone. The EPA isn't willing to look at that. Congress isn't willing to look at it. I've heard others say, we have our congressional delegation, at least, going forward and pushing a revisit, if you will of the CAFO rules so that one size doesn't fit all. And certainly in the state of Nebraska, the majority of our operations are the small and medium which are now bumped up to being called large if they are over 1,000 head. So...

SENATOR KREMER: It would be unlikely that there was a 20,000 head lot out there that had to have any kind of facility before would have to now.

JODY GITTINS: I would think that that's true, Senator. I can't say that definitely.

SENATOR KREMER: Yeah. Okay.

JODY GITTINS: But, I would guess that that's true.

SENATOR KREMER: Yeah, that's what I'm wondering. I thought maybe you'd knew for sure.

JODY GITTINS: I don't know for sure.

SENATOR STUHR: Are there other questions? Jody, I just have a...I believe you used the term variance and actually would that be that of conditional use permit or special exception?

JODY GITTINS: Yes, that's correct, Senator.

SENATOR STUHR: All right. For clarification?

JODY GITTINS: Yes.

SENATOR STUHR: Thank you. Senator Hudkins or Senator

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McDonald

SENATOR McDONALD: Yes. You have an explanation of LB 1195, Section 3 Repealer. So you're repealing Section 3, the repealer?

JODY GITTINS: No. The Section 3 in almost all of our legislative bills, the last section of a bill repeals the way that the bill was written...that the law was written prior to the introduction of this. So repeals the old language so that this can be put in it.

SENATOR McDONALD: Oh. Okay.

JODY GITTINS: It's just a technical term.

SENATOR McDONALD: Okay. All right, thank you.

SENATOR STUHR: Okay. Are there any other questions? If not, thank you. All right. Those wishing to testify in support and please come forward. Just trying to move along and if we have other people wishing to testify in support, maybe you could come towards the front of the room. That would help speed things up. Welcome.

ROD JOHNSON: (Exhibit 5) Senator Stuhr and members of the committee, once again my name is Rod Johnson, executive director of the Nebraska Pork Producers Association. I didn't come up forward quickly because I expected someone else to get here first. The one-liner description on this bill says that it would require zoning exemptions for certain existing livestock waste control facilities and our support for LB 1195 is not to be construed that as some people have characterized us as being an attack on anything to do with local planning and local control. This is not where we're headed by supporting this bill. What...on the contrary, we feel that a fair and equal system of zoning is good for not only our industry, but for the other people that live within the county. The main focus of LB 1195 as was explained earlier is to allow existing operations to meet federal and state regulations so that they can remain in business. And this is something that we feel is very important. It is not fair to have the rules change of what is required of a facility and then have the risk of putting them out of business because of it when they go to face the

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local zoning and planning regulations. So this is something that we feel very strongly about that the operation should be able to remain in business by complying with the regulations to protect the environment. What LB 1195 is seeking to do really is the same thing that all producers are looking at when they go before the local zoning and planning or the county commissioners in applying for a permit. A good system of planning and zoning is the ultimate example of local control. When planning and zoning is put together, public input is taken. It is put together in what I would call a democratic way where everyone has their input. And when the final i's are dotted and the t's are crossed and the local zoning is put into place, this should be the rule book by which any producer who wishes to open a business, downtown business, as I've put into my written testimony, a cottage industry, they should know what the rules are. They can put together their business plan based on those local zoning and planning regulations and then they can move forward without fear of having to defend themselves when it comes time to getting their permit. That's what local zoning and local control is about. We're not saying that every...that there's 93 different...I guess what I should say is we are seeing there's the potential of 93 different sets of zoning and planning regulations across the state of Nebraska and we recognize that. But if I live in a particular county...if a producer lives in a particular county and they want to proceed with some kind of a livestock operation in this situation if the rules are set out, if the plan is out in front of them and they can meet or exceed those regulations, the process we have now is certainly very unfair to them in the fact that they still face the public scrutiny and the...more of the public humiliation that they go to at a lot...in a lot of different cases. I'm sure producers like Mark Olmer who I believe will be following me today to tell his story of what has happened in his local zoning situation. Other producers like Terry Hauder and Eric Martin out here at Milford, Double Diamond farms down in Thayer County, they have put together a business plan which meets or exceeds the local planning and zoning regulations. When those regulations were put into place if it allowed for livestock production in their county under a certain set of guidelines, then to change those guidelines and refuse them after they've met those guidelines is just a wrong approach to local zoning. And so, it is our opinion that if the producer can meet or

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exceed the local published guidelines they must be able to gain their permit. Now when they go through the permitting process, they may come back and have some additional restrictions put on them and that's what the public opinion or public hearings are about to make sure that the process is put together correctly. But once again like I say, if they are able to meet or exceed the published regulations, they should be able to get their permit. With that I would be happy to answer any questions.

SENATOR STUHR: Okay. Are there any questions for Mr. Johnson. Senator McDonald.

SENATOR McDONALD: The way I understand this is for something that's already an existing animal feeding operation. It's already existing and they have the state guidelines or the federal guidelines have changed and so this would allow them to meet those guidelines but not increase more than ten percent and it has to be totally zoned agriculture and they have to have met the inspection requirements. And so this is just an existing one that just allows them to meet state and federal guidelines.

ROD JOHNSON: The way LB 1195 is written up that is exactly correct. I guess I'm pushing the envelope a little bit to say I feel like any producer, even a new facility, should be able to meet that same standard and get their permit.

SENATOR McDONALD: But that's not in this bill?

ROD JOHNSON: That's correct.

SENATOR STUHR: Okay. Other questions? If not, thank you, very well...very much. Other opponents? Please come forward. Proponents, did I say opponents? Proponents.

MARK OLMER: (Exhibit 6) Good afternoon, Senator Stuhr, members of the Natural Resource Committee. My name is Mark Olmer, O-l-m-e-r. I am a farmer from Humphrey. I appreciate the opportunity to testify behalf the committee today. I am here on behalf of myself and the Nebraska Farm Bureau to offer support for LB 1195. I have a strong personal interest in this bill. Last year my wife and I went through a process to obtain a county conditional use permit for a new 2,500 head swine confinement facility in

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Madison County. I'll spare you the details, but the long and the short of it what happened is that despite meeting all the local county zoning requirements, a commitment to meet DEQ's specifications, and approval of our application by the county zoning board, ultimately our application for a conditional use permit was denied by the county commissioners. I'm not alone. I know of other situations where farmers in the livestock business and farmers like me who want to get into the livestock business have been prevented from doing so despite playing by the rules established by local county officials with input from the public. When you go get a driver's license you take a test. If you pass it you get a permit. Unfortunately, that's not what is happening in the country when it comes to livestock farming. Many times farmers are put in a position of having to counter misinformation and emotion generated by a vocal minority in opposition. We recognize this bill doesn't address my situation, but it certainly is tied to it. This bill is good from the perspective that it at least recognizes the fact that we have people out there who are not just trying to stop growth in the livestock industry, but also stop existing operations from doing business even if your purpose is simply to comply with the environmental regulations. I think that says a lot about the direction livestock farming is headed in Nebraska. I'm not opposed to county zoning and I take great pride in being a good neighbor. I think county zoning plays a valuable role in making sure facilities get put in areas where they should be. I don't mind playing the rules. What concerns me is when I spend thousands of dollars to comply with requirements set by local officials and sometimes that's not good enough for a local few who don't support the industry. This bill is important. It's a good first step. I'll help protect...It'll help protect some existing producers from unnecessary heartache at the county level when they have to comply with new environmental regulations. Having said that, there's another issue out there in terms of people complying with local requirements and still being denied that I hope the committee and Legislature will give some serious consideration to. Our livestock industry is important. I'm one of the people who want to be a part of it. If we don't start addressing this issue, we're going to lose this industry and I don't think anybody wants...anybody wins if that happens. That's all I've got.

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SENATOR STUHR: Okay. Are there questions for Mark?
Senator Kremer.

SENATOR KREMER: Mark, are you a second generation or
you...does your father farm too?

MARK OLMER: I'm actually a third generation.

SENATOR KREMER: Third generation, and do you have some sons
or daughters that are considering?

MARK OLMER: I've got one son. He's three. Who knows.

SENATOR KREMER: Well he hasn't thought. (Laughter) Well
probably wants to now. He probably wants to do everything
with farming.

MARK OLMER: Yes.

SENATOR KREMER: Yeah. Okay. Well, how important do you
think livestock is of bringing back the next generation
of...it seems to me that many times when the livestock...the
farm that has a livestock component to that we see more the
younger generation coming back and expanding that way rather
than trying to find more land or something.

MARK OLMER: In my area, the way...the land prices are
there's really no chance for the next generation unless they
inherit it. And I guess if you go out and rent some more
ground you're taking away from somebody else, or if you
produce livestock, that's totally new.

SENATOR KREMER: Only so much land as farms gets bigger, it
means less people, less operators. Thank you, for coming.

SENATOR STUHR: Are there other questions? Mark, I just
have a question. What do you foresee as the future? Do you
think you will ever be able to expand your operation or?

MARK OLMER: Well right now, I don't have an operation. I
just farm row crop. This is...I've always worked part time.
I guess actually full time some jobs. Spend a lot time away
from the home anymore and the kids are growing up and this
is one way to keep me home, you know, around the kids and
hopefully, they want to do it some day, too.

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SENATOR KREMER: All right. Is there an opportunity that it will be reconsidered or?

MARK OLMER: We're going to court. So I guess it will be up to the district court.

SENATOR STUHR: Okay. All right. Thank you. Thank you for coming today.

MARK OLMER: Thank you.

SENATOR STUHR: Next proponent? Welcome.

RONALD LORENZ: Welcome. Thank you, Senator. I'm Ron Lorenz from Crete, Nebraska. My name is R-o-n-a-l-d L-o-r-e-n-z. I'm here on behalf of myself and things I've been doing over the years. I've always been involved in livestock. I helped start zoning in the Saline County 30 years ago and got put back on the board here about ten years ago. I've been chairman now for five years and I don't think I'm going to get let go unless I die or leave the country. (Laughter) But anyhow, I'm here in support of this. It's...we handle...I was really...he had some good points over there. I'm here in support of this bill. We handled it differently and I know there's different counties doing different things and I don't think they're right. But in our old regulations and we're in the process of updating ours right now and they'll be we think even a lot more friendly. But in our old regulations, once we gave them a feedlot they followed the DEQ and we had nothing to do with it. So there was no chance for what happened to this fellow. And anyhow...and like he said, the opportunities for young farmers today...I know I have a brother and his two sons farming. The standard rule, and I think this is what most people will agree with, is it's about a 1,000 acres per family. And so, if you have a situation where you have a young fellow that's working with his dad and you do have a limited income, livestock is very important and it's dramatic. In fact I'm working on a chart right now that we can present to groups to show the importance of and it was a comparison to ethanol and hog operations, which I am also a hog producer. I've finished about 4,000 head of hogs a year. I've done cattle in the past and I grew up in a dairy and when I was big enough to

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carry a bucket we had hogs and sheep and then we went to cattle...a dairy. So, I've been around it all my life and I'm 64 and, you know, getting to hurt a little bit when you get up in the morning. But and I still do it and I enjoy it. But anyhow, it's something that like you said a bit ago, if you have someone growing up in the family that has livestock around and they take an interest in it, you've got something for the future. Again I'm probably philosophizing a little bit but this is so important for the agriculture and in keeping the communities...particularly livestock is so important for the towns as opposed to just one shot industry. I'm all for the ethanol plants but say a 100 million gallon ethanol plant will employ 50 people. But the same 37 million bushels of corn going through a hog operation, for an example, they've got 143 people and these are all spread out through counties and the impact is four and five times as great. And believe it or not, there's not incentive. They didn't get any incentives from the Corn Board, they didn't get any tax benefits, and they did this all on their own. So, it's very important that these zoning, planning commissions in the different counties they get pretty narrow and not very livestock friendly but we feel we will. We feel we are and we feel we will be with the new plans. So, that's my view. Any thoughts on it? Any questions?

SENATOR STUHR: Okay. Thank you, very much. Are there questions?

RONALD LORENZ: Thank you.

SENATOR STUHR: Next proponent? Welcome.

DUANE GANGWISH: Good afternoon again, Senator Stuhr. My name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h, here to speak in favor of LB 1195. To kind of start with, I wanted to answer a question that Senator Kremer had. There could be facilities that this applies to that are under the federal rule and state rules as newly defined. Those facilities could be under..come in three categories. Those that because of the size changed they're now a 1,000 head or greater. They are now required to become in compliance or they could have previously had from the Department of Environmental Quality a no controls required letter or conditional exemptions. Those facilities could be of sizes

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larger than a 1,000 head and spread across the state. Some parts of the western...some parts of western Nebraska may have facilities that could be 2 or 3,000 head and be now just being required to come into compliance. So it is not just small or medium, it could be facilities of larger sizes. So, thought that was important to bring up. In agreement with Mr. Olmer, although this bill is for producers who are endeavoring to come into compliance with federal and state laws, it's also important for new facilities. We are biased to think that livestock is one of the fuels that drives the economic engine of rural Nebraska and it's important that we have that flexibility. And we should by no means have hindrances to specifically come into compliance with these rules and regulations. The second issue is sometimes this discussion comes into small versus large. Here in Nebraska, small is a lot different than small say in Kansas or large in Kansas or Texas or New Jersey or where some other parts of the nation. One of the things that was brought up before is the cost. Before we get to the county zoning or the county approval level, oftentimes producers have to have entire DEQ application ready to go. That application can take somewhere between six and nine months to develop. It...I didn't bring my prop today, but it is about an inch to an inch and a quarter thick, regardless of the size of the facility, and can have a cost by the time it's laid on DEQ's desk for evaluation to be somewhere between \$10,000 and \$15,000. So at that point, producers have incurred an extraordinary cost before they get to the point of having...before they get to the point of getting a county approval. I think that should be something that is taken into consideration by the committee as we're looking at this. Livestock...the third and last issue I'd like to point out is livestock producers are moving...some livestock producers are moving their operations out of Nebraska because of the complexity of the zoning issues. Nebraska Cattlemen by no...by all means is a proponent of local control but we need stability in these regulations...local regulations and rules regarding livestock producers. Be happy to answer any questions.

SENATOR STUHR: Okay. Are there any questions for Duane. Senator Kremer.

SENATOR KREMER: Duane, a couple years ago we passed legislation that said...well, it's for a new operation, that

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you, the county, had to give their final, I know that final word was a little problematic, but give their approval before you went and had to spend all the rest of the money and they could not say we approve this now and then spend all the money and come back and change their mind. This is more talking about an existing lot, same size, not doing anything different, but just having to comply with the rules. So it's a little bit different than a new operation coming in here saying...because if somebody is applying for a new facility they should go to the county first.

DUANE GANGWISH: Exactly.

SENATOR KREMER: And then the county should give them a determination and they have to stick with that determination unless there is something that changes from their application which is...if it changes considerably from what they ask for then it should be looked at again. So it's a little bit different than what that is, because it's existing number just really trying to "adheed" to the new regulations. That's all.

DUANE GANGWISH: That's correct, Senator. And if I'm...if I took that as a questions, I'll propose an answer. Oftentimes counties want to see what is being proposed and they want to see what is truly being proposed to DEQ and therefore, have a full disclosure, if you will, of what is being presented and then you have to have that document.

SENATOR KREMER: But I can see that on a new operation but with somebody that really is trying to go further than they were before in compliance and in doing things to make sure that we don't pollute the water, the air, whatever it might be, I look at that differently than a new operation or when they want to expand to 10,000 head or something like that. Thank you.

SENATOR STUHR: Are there any other questions? If not, thank you...

DUANE GANGWISH: Thank you.

SENATOR STUHR: ...very much. Are there other proponents? Are there opponents? Please come forward. Welcome.

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CINDY TOGSTAD: (Exhibit 7) Good afternoon, I'm Cindy Togstad, T-o-g-s-t-a-d, 4089 S.W. 128 Road, Wilber, Nebraska, and I am here again representing Ma and Pa Kettles for Family Farms. I forgot I've got 12 copies of what I'm going to say here. I want to thank you for the opportunity to address you on my concerns about LB 1195. The bill states: A county planning commission, county board shall allow a conditional use permit or special exception to any existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose of seeking such permit or exception is to comply with federal or state regulations pertaining to livestock waste management. The bill goes on to spell out that the amounts of animals the expansion or modification that this applies to. What concerns me is that the use of the word shall. Shall means must, and this makes it mandatory for the county to allow the expansion or a modification. We out in the parts of greater Nebraska take out local control very seriously. If a county wants to have mandatory guidelines to allow this type of requirements on zoning, then they can choose to be livestock friendly. We the citizens count on you to look out for us and our ability to make our own decisions at the local level. No one knows better what is best for their community than those that live there. This bill is not good for local control. Let us make our own determinations on what is best for us. If this bill passes, I worry about what will come next. Will the Unicameral come back next year to require all counties to be livestock friendly? Will you tell us we have to merge with other counties because we are not cost effective? I am asking this committee to not vote to move this bill forward. And on a personal note, I just want to mention that I have had first-hand experience with the federal government in a different concept because we were in the disaster as you so call it, the Hallam tornado, back in May 22, 2004. And so, we had FEMA come to us which I feel and our neighbors which there were many that were affected, we did not receive any help whatsoever from FEMA. Nothing. And the help that we received was on a local level. We got help from our local Salvation Army. We got help from our local Saline Eldercare which is in Wilber. We got help from our local fire department, Wilber and Clatonia. We got help from local volunteers, our local churches and we wouldn't be where we are today if it wouldn't have been for local. And so to me, local is the only way to go. And that's all I have to say.

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Thank you.

SENATOR STUHR: Okay. Thank you, Cindy. Are there questions? Senator Louden.

SENATOR LOUDEN: Yeah. Thank you, Cindy. What...when you say Ma and Pa Kettles and family farmers, could you give a description of what this is?

CINDY TOGSTAD: Yes, I can. I think it's been about five years now. Bell farms came to our community, Wilber-Clatonia, and tried to put in...eventually it was going to be four different facilities around Clatonia and they were going to be starting out with 5,000 head of hogs. And eventually, we were told they were going to be expanding to 25,000 head at each site. And the communities, the farmers, everybody did not want them there. Our farmers are having a hard enough time making things...end meet without having them come in and they all feel like they are taking over what they're trying to do in our community. And so we...John DeCamp called us the Ma and Pa Kettles because the farmers around there didn't want to let them come in. So, that's how we got our name. We decided to call us Ma and Pa Kettles for Family Farming because they want to do what they do best. Grow animals the best way that they can and not so many at one site. Bigger is not better. And it causes for pollution and the animals aren't happy. Nobody seems to ever think about the animals. And they do have feelings. But on a different note, they just, you know,...I'll get back to what you asked. They did not want them there. So we formed Ma and Pa Kettles and we had meetings. And so whenever they're concerned about things, they ask me, I come up here and testify on their behalf. And so that is how Ma and Pa Kettle got their name.

SENATOR LOUDEN: Okay. Then and you say are you a farmer?

CINDY TOGSTAD: I am not. I am an acreage owner, but they know I can talk. Some of them don't have time to get away.

SENATOR LOUDEN: Then when you tell me then you're representing this Ma and Pa Kettles for Family Farmers then you're not really representing family farmers, you represent a different agenda that's against probably livestock facilities or something like that?

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CINDY TOGSTAD: No because, I have called some of our committees. There's three of us, and they...the other two do farm. One has a 1,000-head hog facility and they raise cattle besides. And the other one is retired but he still gets out and helps his neighbors with the cattle, with the hogs, with row...with farm...what do you call it with row cropping.

SENATOR LOUDEN: Then this person with the 1,000-hog operation, then, they were against this other huge operation coming in?

CINDY TOGSTAD: They want local control but yes, they were against them coming in. They did not want them there.

SENATOR LOUDEN: Then the people with this 1,000 head, they have to comply with these rules?

CINDY TOGSTAD: Well, they have to comply with all the rules that is mandatory in the counties, yes.

SENATOR LOUDEN: Would this...would some of this help those people that have this 1,000-head hog lot if this was implemented would this be a benefit to those people that have that 1,000-head hog operation?

CINDY TOGSTAD: Well, I'll tell...I'll give you an example in Gage County. I met a man and I'm trying for the life me to think of his name because it's been four or five years. He lives in south of Beatrice and has a 3,000-head facility and I met him during the hearings when we were doing zoning and talking about Bell Farms. I got to know him and he was talking about that he did want to expand. Well, one of the commissioners told me after all this was over a few years back, it was probably been maybe three years ago now, he did expand and he had no rivalry whatsoever from his neighbors. I talked to some of his neighbors and his neighbors said they didn't have any problem with him whatsoever. He did a good job. It didn't smell and they were also farmers but they said that he did do a good job. And the neighbors that have the 1,000-head of mine, they also are at the age of, you know, retiring but their son is starting to take over. And we have some other neighbors, they have a 1,000-head where they still have on dirt and they do have a couple

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small confinements. So but, people in our neighborhood it's not that we're not for farming. It's just that big is not better. You know, it's like the big guys coming in and they're putting the small guy out of business. And I was told by them when they put that in, it's probably been 18 years ago, that that was big then. And they're trying to keep up and they're trying to keep up. But and it's been tough because of the prices and, you know, things of that sort. But...

SENATOR LOUDEN: But now this bill here doesn't say anything about allowing larger producers or anything. This bill is mostly if somebody has to modify their lot and they can still go ahead and get the permit because they can't increase the size for over ten percent. That's the reason I'm asking would this be a benefit to one of the persons that you're representing with the 1,000-head hog lot or the other one you said that has a few hundred, your neighbors or something like that. Wouldn't this be a benefit to them if they had something in there they could go ahead expand or they could go ahead and modify their lot in order to be in compliance.

CINDY TOGSTAD: They feel that they want local control. That is what they want, not on a federal or state level. And we've talked about that and they want local control.

SENATOR LOUDEN: Okay. Thank you.

CINDY TOGSTAD: Um-hum.

SENATOR STUHR: Are there other questions? Senator Smith.

SENATOR SMITH: So do you feel this is an animal rights issue?

CINDY TOGSTAD: No. I don't.

SENATOR SMITH: Okay. So but the size issue, you take issue with size based on animal rights?

CINDY TOGSTAD: I guess I've never done anything with animal rights but I guess I love animals. So.

SENATOR SMITH: Okay. Okay. If you...do you believe that

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the placement of any kind of construction or improvement to land should be based on scientific evidence or political will?

CINDY TOGSTAD: Well, I guess, you know, you could go both ways on that. I would say if somebody is doing a good job, such as that man I talked about south of Beatrice, that there shouldn't be a problem with him. But if you have somebody out and they are not complying, then no, they shouldn't be able to expand.

SENATOR SMITH: If someone is complying, should they be able to continue their operation?

CINDY TOGSTAD: If it's not a problem with anybody else around there...

SENATOR SMITH: So the neighbors should have to approve?

CINDY TOGSTAD: I think that if...most of the people in our area are family farmers and we've all talked and if a neighbor wanted to expand we wouldn't have a problem with it as long as they were complying.

SENATOR SMITH: But it should go before a political body...

CINDY TOGSTAD: ...it should still have...be

SENATOR SMITH: ...it should be...

CINDY TOGSTAD: ...be on local control...

SENATOR SMITH: ...subject to political will.

CINDY TOGSTAD: ...not federal or state. Local. Like you wouldn't want the federal government coming in and running Lincoln.

SENATOR SMITH: Okay. Well, the local control would be the zone. I mean the county would have zoned a certain area...

CINDY TOGSTAD: Right.

SENATOR SMITH: ...already. So that...

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CINDY TOGSTAD: And, you know what, I'll tell you that the people that are county commissioners in Gage County, most of them are farmers and they want local control. We've talked about this five years ago. So.

SENATOR SMITH: So it should be a political decision and not subject to science?

CINDY TOGSTAD: Well, it just depends on where you're...I mean that can be a broad thing. But people want local control. That's what they want. They don't want federal control. They don't want state control in the areas where we live because we know what goes on there...

SENATOR SMITH: We're not talking about statewide zoning. We're talking about a county zoned portion of land where the decision is how it's zoned and then who should be in what zone and then to carry forth from there.

CINDY TOGSTAD: You're talking about like A-1, or 2A-1, or

SENATOR SMITH: Various, I mean it could be a house in a certain place, whether it should be in the property owners right or not, but that's sufficient. Thank you.

CINDY TOGSTAD: Um-hum. Okay. Thank you.

SENATOR STUHR: All right. Senator Kremer.

SENATOR KREMER: Just one thing. Your organization, do they pay dues for the organization or how do you...

CINDY TOGSTAD: No. We just get together.

SENATOR KREMER: ...how do you determine membership if there's fifty.

CINDY TOGSTAD: We determined by the 50 when we were going through the hearings.

SENATOR KREMER: Five years ago?

CINDY TOGSTAD: Yeah.

SENATOR KREMER: Okay. Thank you.

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CINDY TOGSTAD: Um-hum.

SENATOR STUHR: Senator McDonald.

SENATOR McDONALD: You say you represent 50 entities so to speak and when you come here do they all have to agree one way or another or a certain percentage? You say if 75 percent felt this way and 25 percent you'd come and testify for 50/50 or majority. What...how do you know if it's not a 100 percent feeling one way or another? How do you know which way to go on that.

CINDY TOGSTAD: Basically, what we've done is like I'm a head, you know, we don't have like a president and vice president or any of that. There's like three of us that headed the Ma and Pa Kettles and most of them are family farmers. So I called the other two and see what they think and then they just pretty much know how everybody else feels and they tell me yeah or no, go ahead.

SENATOR McDONALD: So you don't really contact all 50.

CINDY TOGSTAD: Not every...it'd be...it'd take too long.

SENATOR McDONALD: Okay.

SENATOR STUHR: Senator Smith.

SENATOR SMITH: Sorry. How would you define a family farm?

CINDY TOGSTAD: Okay. Now because I live on an acreage, I'm not stupid. I would say how would you confine it...or define it? Because I would define it, a person that does it for a living...

SENATOR SMITH: Okay. How many...

CINDY TOGSTAD: ...and their family...

SENATOR SMITH: ...how many acres?

CINDY TOGSTAD: ...and they live on there and they work the land. They're there. They do the work. That's a family farmer.

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SENATOR SMITH: How many acres roughly?

CINDY TOGSTAD: I don't care how many acres as long they're running it. I have a cousin in North Dakota that has 4,600 acres and they said that's not big anymore. Six to ten thousand is what's big up there now.

SENATOR SMITH: But that's a family farm?

CINDY TOGSTAD: And they work it. Yes they do. And they do have a hired man.

SENATOR SMITH: Okay. Thank you.

CINDY TOGSTAD: Um-hum.

SENATOR STUHR: Senator Hudkins.

SENATOR HUDKINS: Okay. This bill says that there is a livestock producer out there and he has up to or she has up to this point has been compliant with all the rules and regulations of DEQ. Now the rules and regulations have changed. This livestock producer must put in this new facility in order to still be compliant and if he or she does not, they're out of business. So they must put this facility in and you're saying that you still want the yea or nay on whether they can put this facility in?

CINDY TOGSTAD: All I can see is things are going to government levels and it's not good. They're not where the people are and the people want to have a say in their county.

SENATOR HUDKINS: How do you rationalize, then, that feeling with--and I know you don't like the state being involved, but unfortunately they are--and if the state says you must do this or you are out of business, and so then if the farmer does it, and then you say no; he's out of business.

CINDY TOGSTAD: Well, you know, we own our business as well and we have to comply with paying taxes and things of that sort. And if I can't comply with it and they're going to give fines and put me in jail, that's what's going to happen. And if I...and if we can expand our business and we

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have to go to the bank...and my husband belongs to the National Environmental Balancing Bureau where they go in and balance heating and cooling systems...

SENATOR HUDKINS: That's not what I'm saying. I said this farmer had to put in that facility or the DEQ would not allow him to continue operating. And then you want your zoning people after he has spent this money to say no, we don't want you to do this. That's what I hear you saying. If I'm wrong, please tell me.

CINDY TOGSTAD: Well, I'm not saying that, I guess. What I am saying is that we do want local control. In talking to our neighbors, if anybody wanted to expand we would not have a problem with it. If it's, you know, it depends on what's going on out there. And if there's not a problem with that person expanding, they'll be able to expand. Just as the example I gave of the guy south of Beatrice.

SENATOR HUDKINS: Okay. We're just not together. Thank you.

SENATOR STUHR: Senator Kremer.

SENATOR KREMER: I'd like to make a comment that I don't think that you realize how many times bills are introduced down here because somebody out there says there's a problem. You're suppose to fix it on the state level. I would guess that the biggest share of the bills that we have introduced are down here because somebody said you got to fix it for us. And so, I'm all for local control also, but there is a place that the state...we have to do some things here, too. I think you mentioned, too, that you have one of your members that's 3,000 head. I would think that...

CINDY TOGSTAD: No, that wasn't one of our neighbors. That was the guy south of Beatrice.

SENATOR KREMER: Okay. Okay.

CINDY TOGSTAD: Yeah.

SENATOR KREMER: But that wasn't large, or...I mean what is large or small, I guess is what you...

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CINDY TOGSTAD: He expanded another 3,000 head is what I was told and there wasn't a problem.

SENATOR KREMER: But you don't know for sure.

CINDY TOGSTAD: But we don't...what's that?

SENATOR KREMER: You said you were told but...

CINDY TOGSTAD: By one of the commissioners, I was told and he said nobody basically even came to the hearing.

SENATOR KREMER: But I think a lot of the laws passed here are because people say there is a problem out here that we're suppose to fix. So.

CINDY TOGSTAD: But then there's...wasn't there the friendly livestock issue where this would also help, so the county could adopt the friendly livestock?

SENATOR KREMER: It was that they set some standards. They have their own standards and then they can't vary from that because whatever reason, so. Okay.

CINDY TOGSTAD: You know, I haven't really been up to this in the last two years because of the tornado. And so, anyway, I was just concerned and so we're, our other head committee people about the local control, because there's always concern that once you lose local control, you don't have any say in anything, so.

SENATOR KREMER: Thank you.

CINDY TOGSTAD: Um-hum.

SENATOR STUHR: Thank you. Are there any other questions? If not, thank you for coming.

CINDY TOGSTAD: Sure. Thank you.

SENATOR STUHR: Next opponent? Welcome.

LAURA KREBSBACH: (Exhibit 8) Hello again. Laura Krebsbach, K-r-e-b-s-b-a-c-h for the Nebraska Chapter of the Sierra Club. And I do have, you know, a couple paragraphs

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of prepared testimony that I don't...you can look at at your leisure. I want to address two things. First of all, I know you had a concern, Senator Smith. I think it was you that was asking Cindy if she was for animal rights and there's a lot of misconceptions, I think, about when we talk about animals and how they're treated. My organization does not believe in animal rights. Okay. Animals don't have rights. But there is such a thing as good animal husbandry practices and that's something that my organization believes is very important. So, I just wanted to get that clarification out front. The other thing is before I make comments there has been a lot of...and Senator Hudkins left. I was wondering after reading this again and again, these are requirements that these facilities have to meet, and I can't imagine that a county would have the ability to not allow the facility to comply with federal regulations. I mean, that's kind of...that's creating some confusion and, Jody, if you can clarify that, because I think we're seeing a lot of that here.

SENATOR STUHR: I...

JODY GITTINS: I can't answer.

SENATOR STUHR: Right. That conversation will have to go...

LAURA KREBSBACH: Okay.

SENATOR STUHR: ...beyond this hearing.

LAURA KREBSBACH: Because I guess...

SENATOR STUHR: We don't allow...

LAURA KREBSBACH: ...if that's the case...

SENATOR STUHR: ...testifiers to ask questions, so.

LAURA KREBSBACH: ...excuse me, then, for asking inappropriately. If this is the case, either this isn't necessary or there needs to be revisions, because a state...no entity lower than federal can deny a federal law. In other words, you can't say as a county, you're complying with the federal or state regulations but we're not going to let you do what's required by law. That's what I'm having a

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problem wrapping my mind around and I would ask that there be some more clarification or some better type of language. And again, I know that for Cindy and a lot of the folks I work with out in rural Nebraska that they do take their local control very seriously and there is a lot a concern that one whack means further whacks down the road at something they don't want to see eroded. So, that's the end of my testimony.

SENATOR STUHR: All right. Thank you. Are there questions? I think if I might just make one comment. I think what we're dealing with right now is that we're in sort of a flexible situation. We are wanting more state flexibility until the decision is finalized on the federal level. So that is why it is necessary for some of the operations to come in and ask for a variance, more or less an exception. So and if that's not correct, we'll get that corrected.

LAURA KREBSBACH: Yeah.

SENATOR STUHR: But I think that's the situation we are dealing with now and that is to assist in this situation.

LAURA KREBSBACH: And this might possibly be a situation where we're putting the cart before the horse, that we're creating a problem or making a mountain out of a molehill until we know what shakes out from federal. And I think it's important to know that, too.

SENATOR STUHR: Okay. Thank you. Are there...Senator Smith.

SENATOR SMITH: Just very briefly, do you think a decision such as granting a permit should be based on science or political will?

LAURA KREBSBACH: I think it should be a combination of both and I think there's plenty of scientific information that allows the political process to make a good decision.

SENATOR SMITH: But, ultimately political?

LAURA KREBSBACH: I think ultimately political but with consideration for scientific information.

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SENATOR SMITH: Thank you.

SENATOR STUHR: Were there other questions? If not, thank you. Others wishing to testify in opposition? Come forward. Welcome.

ELAINE MENZEL: Senator Stuhr and members of the Natural Resources Committee, for the record my name is Elaine Menzel, that's M-e-n-z-e-l. I'm appearing on behalf of NACO in opposition to LB 1195 and we are opposed to this bill because it mandates with some exceptions the county planning commission or county board to approve a conditional use permit or special exception to any existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose of seeking such permit or exception is to comply with federal or state regulations pertaining to livestock waste management. One of the reasons for this opposition is that it's seeking out a special interest or a...and we hate to go down that line of carving out niches in the legislation for the permits and that type of thing because it's kind of putting into statute what county zoning should look like. Another area is that if the Legislature opens up this door and I kind of touched on that on telling counties what type of conditional use permits or special exceptions they must authorize, then it's foreseeable that planning commissions or county boards will be required in the future to approve other types of conditional use permits or special exceptions. And John Johnson from the Madison-Pierce County Zoning...he's the planning...he's the zoning administrator from those counties, he's available for specific questions, so. But if you have any questions that I can possibly answer, I will try to.

SENATOR STUHR: Okay. Are there questions for Elaine? Senator Louden.

SENATOR LOUDEN: Who did you say you were representing?

ELAINE MENZEL: NACO.

SENATOR LOUDEN: That's that Nebraska...

ELAINE MENZEL: Nebraska Association of County Officials.

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SENATOR LOUDEN: Okay. Now either I'm reading this thing wrong or something's not working right here, because this is to clarify language that if it's an existing facility going and they need to do some modifications that they can still get a permit to do the modifications. And if somebody gets crosswise of the county commissioners or something like that, they could...be a chance that wouldn't be allowed to do that and they'd out of business. Am I reading this wrong?

ELAINE MENZEL: Well, I still think that we need the approval at the county level and John Johnson, who I indicated is available, can talk to you a little bit more about the process at the county level.

SENATOR LOUDEN: Now, if they're already in operation going there, then some time or another they must have got some approval at the county level or they wouldn't be there to start with. Is that correct?

ELAINE MENZEL: As I indicated, I'll have to defer to him on the process.

SENATOR LOUDEN: Okay. Well I just wondered, I listened to three people testify here and I...the way I read the bill they're not testifying the way they're talking about local control and I sure enough promote local control and for that type of thing from where I come from and so forth. But I'm questioning whether we're all going down the same track here on what we're doing with this bill. To me, it's a way to help people that are already in the business that want to modify or have to modify and they can still go head and get that done irregardless of where a county commissioner feels like he should be or whether there's a bunch of local people that don't want him to do it. Thank you.

ELAINE MENZEL: Well, yeah, I think I'd better wait for John on that question.

SENATOR STUHR: Okay. Are there any other questions? If not, thank you. Next testifier in opposition? Welcome.

JOHN JOHNSON: (Exhibit 9) Thank you, Senator Stuhr. My name is John Johnson, J-o-h-n J-o-h-n-s-o-n, and I guess I get to play techie now. I have some prepared testimony here

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I'd like to go over with you and then be happy to answer any questions you have at the end. I'm the president of the NACO planning and zoning affiliate and also Planning and Zoning director for Madison and Pierce counties and I'm here today to express my opposition to LB 1195. Recently, we had a case in Madison County where many people spoke in favor of the request. Many spoke in opposition. The proponents stated the proposal is good for the community's economy, will bring jobs and the supplies bought locally and provide revenue to local vendors. The proponents also said the proposal is good for the community as a whole. The opposition stated this project will blight the neighborhood, drive down property values and cause a safety concern. A petition opposing the project containing several signatures by neighbors were presented. The proponents want to challenge the credibility of the operators...or the opponents rather. And at the time the testimony got ugly with people supporting both sides trading jabs, insults and untruth. This was not Mark Olmer's hearing. This was not a livestock siting. This was a proposal for a person that donated his personal home to a nonprofit organization to own and operate a group home for mentally retarded, handicapped adults. Unfortunately, this scenario plays out several times each year in front of many planning commissions and county boards. It can be for group homes, livestock, warehousing, a Wal-Mart, subdivisions can also contribute to long hearings and meetings. This type of scenario also plays out at times in the unicameral. Wouldn't it be nice to exclude certain types of bills from public hearings, debate on the floor and just let them go straight to the governor? Once a bill was on the governor's desk, it couldn't be vetoed and a new law would be created. Imagine what a furor bills like the concealed carries...concealed weapons carry bill would cause when subjected to the process I just described. The...currently in, this is in addition to what's written, currently in Madison and Pierce County, the waste facilities at existing livestock facilities, unless addressed specifically in a conditional use permit, we don't require a new permit for...because of DEQ requests or EPA regulations or anything. It'd only be required if expansion occurred beyond the current head limits. And for instance since Mark Olmer was up here before, I'll use Mark as an example. We had a very crowded board of commissioners room as well as planning commission when Mark was going through the process. At the same time, we had a cattle

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feeder going through the process. He had to put in some additional holding ponds because of changes. He was feeding 7,500 head at the time, had an existing conditional use permit. At the same time, he was going through this as Mark. This cattle feeder got up and was the lone ranger other than his wife. He didn't have anybody in support. He didn't have anybody in opposition. He was going up 1,500 from 7,500 to 9,000. He sailed through the planning commission. He sailed through the board of commissioners and the reason he was expanding is because he could no longer graze a lot of his animals on stocks. He had to move them all into permanent pens. No problem there. That just sailed right through. So I guess, the point I'm trying to make is sometimes it happens, sometimes it doesn't. We wouldn't address it unless there was something in the original conditional use permit that specifically addressed any type of waste storage facility. And in a lot of cases if it does, at least the ones I've written and we have in our counties, those would be...those facilities have to be up to DEQ and EPA standards so that would give them an out. But my other point here is making an exception for a particular land use as part of a state statute will still open a door for others to lobby for their own exemption. Currently, 81 counties in Nebraska have planning and zoning. Most regulate more land uses than confined livestock. We've heard a little bit about 83 potential...93 potential zoning regulations and that's a lot for livestock. I'm originally from the state of Michigan and just rough calculations when I was sitting in the back with the 83 counties there with an average of 16 townships give or take a few, the townships there have home rule so there could be 1,411 different sets of regulations regarding livestock. Think it's tough here. I realize this bill targets only livestock facilities currently operating that must make operations...alterations due to recent changes in Title 130 Livestock Management Act and EPA Regulations. However, it is still targeting a specific land use. Section 1, subsection (1) of the bill would allow existing livestock operations to expand up to 10 percent of their current number or up to 500 feeder cattle or the equivalent, which would be 250 horses, et cetera. Problems can arise from this as well. In Madison County, we have two agricultural districts that allow more than 300 feeder cattle or their equivalent. The only difference is the maximum number of animals. The Ag-2 district tops out at 5,000 feeder cattle or their

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equivalent. If an existing 5,000 head feedlot in the AG-2 district was given automatic approval to add an additional 500 feeder cattle, this operation would then be classified as a nonconforming use. Under state statute and our local zoning regulations, a nonconforming use may not be expanded and the conditional use permit could not be renewed when it expired. This would prohibit the facility from adding any new buildings or anything else that could be construed as an expansion of a nonconforming use. This could place an additional burden on the livestock facility operator and could make it difficult to secure financing or investors in his project. Section 1, subsection (2) would not apply if the operation is located in an area that is not zoned exclusively for agricultural use. This is a list of permitted uses from the Pierce County Zoning Regulations allowed in the A-1 Primary Agricultural District which any type of feeding operation that we're talking about here would be considered a conditional use. These are the ones you don't have to go to the boards for: agricultural operations, single family dwellings provided they meet the requirements of the district, utility substation, pumping station, water reservoir, telephone exchange, fire station, private kennels and facilities, roadside stands offering ag products for sale on the premises, public and private riding academies, cemeteries, farm product warehousing and storage excluding stockyards, feed preparation for animal and fowls, fish farms, fishing and hunting clubs, lodging camp...logging camp and logging contractors, and public parks; those are just the permitted uses. Conditional uses of this district would allow animal feeding operations and other potential uses to the district such as window cleaning services, wineries, water well drilling services, wind energy installations, welfare and charitable service, and those are just the W's. As you can see many of these are not agricultural uses. So an argument could be made that this bill would not apply in Pierce County and Madison County regulations are very similar. We need to work together to improve the system, but this bill is simply not the answer. In other words, passage of this bill would not change anything in most counties, but would provide a precedent to other special uses to get their zoning made easier, well at least on paper. So I'd be...I know that Senator Loudon had some questions that Elaine couldn't answer and I'd be happy to answer any other questions.

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SENATOR STUHR: Okay. Thank you, Mr. Johnson. Are there questions? Senator Schrock.

SENATOR SCHROCK: We have seen increasingly over the...through the state that it's more difficult and more difficult to expand, keep your current livestock operation in operation. One of the hearings that we had this year up at West Point, one of the things we heard that, yeah, I'm going to have to build a livestock waste facility. I haven't had to in the past but I've got to expand to justify spending the money. And we have seen, maybe not in your counties but other counties, where they have made it very difficult for existing producers. And all of us up here and I hope you are concerned about where we're headed in this state with animal livestock facilities. And certainly, this is an attempt to streamline things, take a little burden off our counties, take a little heat off you. If you don't like this, I mean, what do you like?

JOHN JOHNSON: Well, to just answer your question, yes I am concerned about livestock in the state. I mean, it's one of the...

SENATOR SCHROCK: Well, that isn't the message we've been getting.

JOHN JOHNSON: Right and there's problems with the system and we need to look and try to fix those. I mean, this...

SENATOR SCHROCK: Too many times when there's a livestock facility in the country it's because the neighbor doesn't like the odor or something and all of a sudden.

JOHN JOHNSON: Yeah. I...

SENATOR SCHROCK: Where are we going to feed our ethanol by-products? Where we going to feed our corn?

JOHN JOHNSON: I agree with you wholeheartedly. We sat down. Senator Kremer was at a meeting we had in December with zoning interests and livestock interest and a lot of folks sat down to try to start coming up with ideas, some ways to get these things to work. And there's got to be some solutions out there. I guess my main point is I'm more than willing as a representative of my counties and I know

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that as a representative of zoning administrators at NACO, we'd love to work something out and offer our services. We got to fix it, that's right. But I don't think this bill is exactly the way to do it.

SENATOR SCHROCK: What do you suggest we do with those livestock facilities that have to have a livestock waste facility and they've got to go in front of a county board for a permit?

JOHN JOHNSON: I think one of the things that we can do...

SENATOR SCHROCK: You know, you can shut them down.

JOHN JOHNSON: Yeah. And I know there is a recent real big brou-ha-ha over in Saunders County about this and it was related to this. And it...we have to first of all look at the way the counties have it written in their zoning regs, make sure that it's being done properly the way the existing conditional use permit, if there is one, is being followed. We have several facilities in my counties that are grandfathered in and we grandfather in the numbers not the facilities. So if they have to because of the recent changes put in a holding pond or something, as long as their numbers aren't changing we don't require them to do anything different. But we do have to look at that. I can't give you...I wish, Senator, that I could give you a list of things that would fix it. I can't do that right now, but there are ways that we can try to get these things together. And I fully understand the frustration of the livestock producers and it's also causing frustration like you said it's going to lift the burden off the county. I mean, when a producer goes through a hearing and you see people going back and forth as a zoning administrator, it's not much fun either, so.

SENATOR SCHROCK: Where did you come up with the 5,000 head or...

JOHN JOHNSON: That's the maximum in our AG-2 districts in Madison and Pierce County.

SENATOR SCHROCK: And your A-2 district is the...is all the ag line in your district, basically?

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JOHN JOHNSON: No. The A-2 district in Madison County just to give you a geographic reference is basically, from the Elkhorn River north to the Pierce County line. In Pierce we have very little Ag-2, it's mostly around areas where existing feedlots were when the regs were adopted. Most of the...two thirds of Madison County is Ag-1 which we have no livestock maximum.

SENATOR SCHROCK: There's no limitation on them.

JOHN JOHNSON: Yeah.

SENATOR SCHROCK: Okay. I appreciate that. And the Ag-2 is basically some land that's close to residents to municipalities, or?

JOHN JOHNSON: It's in an area in our county like I said it's just south of the Elkhorn River north and that area is not real...not just for livestock, for humans, too. It doesn't have good soils to handle septic systems or lagoons or anything and that's...and so that's a limited growth area because of the soils.

SENATOR SCHROCK: Fair enough.

SENATOR STUHR: Okay. Senator Kremer.

SENATOR KREMER: From what I'm hearing and I've heard what Senator Loudon asked is we're still talking about an operation that is not expanding. I mean, it did allow in the bill to go ten percent but not expanding. And I heard some comments before here that one of them was that they had some people in their group that was a 1,000 head and their hogs didn't smell. Another statement was that those hogs were unhappy in a bigger lot. I can't imagine a hog in a pen knows how big...how many other pens there are. But see these are the kind of emotions that get in their when somebody has a lot and they just have to abide by some more regulations. They don't want to increase it or anything else and somebody has these feelings that these pigs are unhappy or something that these emotions play into that whole thing and said okay, we're not going to let you do this if enough people feel that way. That's the problem I have and I think what Senator Schrock is trying to do saying that we're not talking about anybody getting any bigger just

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that he's got to do things actually to become...to make it a better operation. It's not to degrade it, it's to make it better so it's more apt to not pollute the air, the water, whatever, that emotions come and start playing a factor in that.

JOHN JOHNSON: With most of the zoning administrators I talked to it's more the expansion clause. If...because like Laura Krebsbach addressed it a little bit, it's not our role to say well jeez, you've been...you've had a DEQ exemption letter, now you need a holding pond to stay in operation. You can't have a holding pond, sorry. It...you need to look at grandfathered or existing units like you say and be able to at least for those folks, they're just trying to comply. And I think we'd had the same feelings if a grocery store was forced to expand to bring in a certain box crusher or something in order to comply with regulations as well. So, the expansion clause is one particular concern. I also...I think from my organization's perspective we can in our training and zoning administrators and working with them encourage not to write in conditions that would require going back and getting a new permit if the rules change.

SENATOR KREMER: Well, but that's kind of what we're talking about here. And even though you say they probably wouldn't do anything and most of them wouldn't, the reality is it's happening.

JOHN JOHNSON: Yeah.

SENATOR KREMER: And that's why this is coming here that we've got to address it. We'd just as soon not because we think it never would happen but that's not what's happening.

SENATOR STUHR: Senator Hudkins.

SENATOR HUDKINS: Mr. Johnson, do you have a copy...the green copy in front of you?

JOHN JOHNSON: The bill, yes.

SENATOR HUDKINS: Yes, okay. Could you turn to page 2?

JOHN JOHNSON: Okay.

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SENATOR HUDKINS: Would you be supportive of this bill if lines 8 through the rest of the page and on the next page lines 1, 2, and 3 were removed? That's the part about the expansion and then adding the language in line 6, let's see, state requirements...regulations pertaining to livestock waste management so long as the operation has complied with inspection requirements pursuant to the Livestock Waste Management Act. So if there were no expansions and if they had been compliant with the requirements before that, would you have a problem with the bill?

JOHN JOHNSON: Personally, no. And that question I can't answer for the group. But, personally, no. I think one of the things that we could do through those like first seven lines or so is if we put in there, either they're operating under a grandfather clause or they're operating under a current conditional use permit. And possibly put in the language, unless the conditional use permit specifically addresses a certain type of waste handling facility. It would be my guess that very few of them do but that way the county can look at it if for some reason they've written in...well I guess we had one small 900 unit that was approved in Madison County. One of the guarantees and that the producer made to a couple of the concerned neighbors and the main questions they got asked, is there going to be a holding pond? Well at that time, no, he had an exemption letter and so on. We didn't address that in the conditions but if we had and now he has been asked to put in a holding pond, then that can cause some problems locally amongst the neighbors. Hey, the county lied to us, the producer lied to us, said you weren't going to do that. So bringing it out at a public hearing can explain why it's being done.

SENATOR HUDKINS: Yeah. And I would not say that anyone was lied to. It's just that the regulations have changed.

JOHN JOHNSON: Right. And no, I'm just saying that could be the perception of some of the people in the public. Hey, we haven't heard anything. This guy promised and the county said it wasn't going to happen and now he's digging his pond. And if he had some type of public notification or public hearing or something to bring that to the attention saying, well the reason he's digging this pond now is because the rules have changed and so nobody tried to pull the wool over your eyes before. It's just that we're

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playing under different rules now.

SENATOR HUDKINS: Okay. Thank you.

SENATOR STUHR: Are there any more questions? I just have a personal one. What do you see in Madison County? Are your livestock operations increasing or?

JOHN JOHNSON: Cattle are increasing. Hogs are holding steady, they're not growing. And I've got a guy in the back of the room that's going you're right, John. But we try to be as livestock friendly as we can. In this particular concern, the county board just felt because of the health and safety of a neighbor with asthma, it didn't fit. But in most cases, we have them go straight through. We had a case where we got one of the first times...I don't know if anybody else has used part of LB 754 where a producer can ask for a determination. And we had someone trying to trade...change hands on it and the seller wasn't...didn't read their conditional use permit where it would expire if they tried to sell it and it was one of those things. We get these calls on a lot of things, particularly houses. Hi, we need to just see if there's any problems. We want to close a week from Friday. They said well your...the new guy that buys this is going to have a conditional use permit. Well, how long does that take? In our county about three months and then oh, my, we want to close. And so, we...the producer, and this happened to be hogs, I suggested to them to ask a determination. We took that to the county board where we issued basically the same three conditions and a couple of new ones because our rules have changed. And when he...he's still going to go through the approval process, but when he comes back to the county board under the statute that's now written he has to be...unless there is a substantial change, he has to receive his conditional use permit. That is good enough for him to secure the financing, get it going on buying that hog barn, but also they can buy the house that's part of it. The guy...the son can move into it and know that they'll be able to operate the hog farm in a few a months. So at least, and I know many other zoning administrators, we try to work with our folks as best we can.

SENATOR STUHR: All right. Any other questions?

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SENATOR KREMER: One more...

SENATOR STUHR: Okay. Senator Kremer.

SENATOR KREMER: You mentioned an operator being able to go and ask for a approval. Do you feel that was a good way to do that, that they could ask that and get a determination before you spent all the money or were you supportive?

JOHN JOHNSON: In...actually it was my suggestion. In this case where we already had an existing facility, no problems, no complaints, the people were going to run it exactly the same way.

SENATOR KREMER: But I...was it appropriate for them to get to...get an approval then before they spent all the money and everything?

JOHN JOHNSON: Yeah. I think so.

SENATOR KREMER: Because the same people that were against this were against that also.

JOHN JOHNSON: And I don't think the determination works in every case but this was a perfect one for it.

SENATOR STUHR: Are there any other questions? If not, thank you, Mr. Johnson.

JOHN JOHNSON: Thank you.

SENATOR STUHR: Are there other opponents.

TED THIEMAN: Thank you. Ted Thieman 405 East Leona Avenue.

SENATOR STUHR: Spell your name please.

TED THIEMAN: Thieman, T-h-i-e-m-a-n, Ted, T-e-d. I'm here in opposition to LB 1195 and I pretty much agree with all the rest of the opposing testimony and I won't be repetitive. I should also say that I'm not...I'm here representing myself, but I am the chairman of the Boone County Planning and Zoning Commission, so just for that background is there. When it comes to whether or not this is...has an effect on local control zoning, it's hard for me

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to see where this is not really pretty much an attack on local control zoning. One of the things I think that people don't understand about zoning and John Johnson I know could get you really up to date on how this all this works. But, our zoning process was put in place through about a two year exercise of identifying the present land uses and identifying proposed new uses, future uses, and it had a multitude of public hearings and a lot of public input. The way I read the manual there are two main parts. One is kind of the mechanical part which, you know, is what you have to comply with, setbacks and things that are easy identify and easier...kind of up and down and then there's the comprehensive plan. The comprehensive plan is almost entirely subjective and it causes in most counties, in our county I think in most counties the county commissioners make the final determination. Planning and Zoning Commission just recommends. But it requires on our part to make some judgement calls. And for what's at hand today, many of our existing units of livestock feeding facilities who will probably be affected by the new EPA rules are grandfathered. They don't have a permit and they're going to have to because by virtue of change they're going to have to get one. And if they change their size, they have to come to us to get a zoning permit. Well, we want the option of looking that situation over. Sometimes DEQ approval is all we need and it really fits in well. And some other times because of the situation, a particular case by case situation in the county, it's just not a logical thing to be in favor of, mostly based on our comprehensive plan. So that option needs to be there or it really does hold local control of zoning back and it defeats the purpose of what the state has set out for local control zoning to do. I don't see as a big...as putting very many operators in jeopardy. I think this is pretty much a problem, or a solution looking for a problem. But, you know, I think it's again like I said earlier it's some preemptive legislation where someone has looked down the road and guessed at what we might have as a problem and then create legislation to get ahead of the perception. So, you know, based on that, I just think that we should be very careful about what we do to get into zoning and this whole concept, you know, could spread through the whole zoning manual into other conditional uses. That's pretty much it.

SENATOR STUHR: Okay. Thank you. Thank you. Are there

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questions? If not, thank you very much for coming. Are there others wishing to testify as opponents? Anyone wishing to testify in neutral capacity? If not, that closes the hearing on LB 1195. And we still have two bills to hear yet this afternoon and I will turn the proceedings back over to our Chair, Senator Schrock.

SENATOR SCHROCK: Senator Smith, you can proceed.

LB 1214

SENATOR SMITH: (Exhibit 10) Thank you. For the record, my name is Adrian Smith, representing the 48th District. I am here to introduce LB 1214. Being circulated is an article about the issue and...excuse me...relevant to the proceeding of the genesis of the issue. You might recall certain testimony I believe in 1999 and you'll see some relevant information relating to that testimony in the article from the Scottsbluff Star-Herald newspaper on December 10, 2005. It is my attempt to bring a common sense approach to an unnecessarily strict policy regarding the development and expansion of animal feeding operations. Also, to provide a fair case-by-case system that is sensitive to special conditions that aren't addressed in the, I believe, arbitrary approach. This approach...my approach is more in line with the economic development goals of the state for rural Nebraska and encouraging the development of our ag economy instead of discouraging it. I would encourage you to look at page 2, lines 9 thru 11, thank you, and I see this bill as based mostly upon on those three lines and the operative part of that. And I won't belabor the point more than I have to, so I would take any questions you might have.

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

SENATOR SMITH: I would add and while you're reading that perhaps that there are situations in Scottsbluff County relevant to the cold water streams where there is expansion prohibited in areas that water would have to flow uphill to contaminate the nearby, supposed nearby, cold water class A trout stream. I would also add that the trout streams that exist in that area are due largely to the surface irrigation

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activities in the general vicinity. So, I think it's fair to say those are man-made trout streams and certainly I do not want to impede the development of common sense, highly regulated activity...ag activity because it's...I think it's overly restrictive.

SENATOR SCHROCK: Any questions? Proponents of LB 1214?

DUANE GANGWISH: Good afternoon, Senator Schrock. My name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h, representing the Nebraska Cattlemen here in support of LB 1214. We see this as a good move from the standpoint of it being risk based. It's something that we have proposed, not proposed but continue to endorse. In this bill, DEQ would have the prerogative to deny or restrict a permit of any kind to any animal feeding operation based upon their evaluation of risk to the stream in question. We believe this is good policy. I would suggest maybe adding to the bill if it would be friendly to the committee that a request that a copy of such evaluation be provided to the applicant regardless of the outcome or the permit activity. So if it was denied, they would be informed and have a copy of why the denial was. The bill is friendly to small producers in Nebraska in the fact that it puts the burden of proof upon the department to determine whether any degradation will happen. Small producers do not have the resources to hire consultants to answer unending lists of questions to satisfy the, all the possible what-if's. We feel that, excuse me, the proposal is friendly to small producers across the state. I spoke before you about what small and large are in Nebraska. There are not going to be any large Nebraska operations built in close proximity but there are many cases where close to obviously within distances that are nominal that small facilities could be environmentally friendly to the geographic area. With that, I'd be happy to answer any questions.

SENATOR SCHROCK: Thank you, Duane. Questions? Appreciate your being with us. Next proponent testifier? Opponent testifier? Neutral testifier? Here's a guy that talks fast. I'm sorry, Mark, before you do that, we do have opposition from Izaak League...Izaak Walton League signed by Wes Sheets. (Exhibit 11)

MARK BROHMAN: Mr. Chairman and members, my name is Mark

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Brohman, that's B-r-o-h-m-a-n, and I'm here today representing the Nebraska Game and Parks Commission. And as all of you know, this morning on the floor there was some debate about this issue and we thought there was some fair debate and some give and take has been offered in the past on this. I know Senator Louden has LB 120 out there. There's this bill. But we think the approach that this committee should look at is the compromise that's contained in Amendment 2002 to LB 975 that was mentioned on floor this morning. That compromise allows for some development. It prohibits anything within the one-mile buffer, but between the one and two-mile buffer, it allows for some expansion but there's some qualifications. One of the problems with LB 1214 that the language that's used there talks about that such animal feeding operations is more likely than not to degrade. What is more likely than not? To me, that's 51 percent of the time that it would not and we just think that that's, you know, unacceptable. We've got to have more of a guarantee that there's not going to be pollution to these type of trout streams. The language that's contained in 2002 talks about the proposed expansion does not pose a potential threat and we think that is a much more safer standard, but we do think the one-mile buffer is necessary. And we believe a two-mile buffer for the one- to two-mile buffer can be looked at using scientific information. It's been brought up today and has been in the past that, you know, water doesn't run uphill but the problem is when you get within a certain distance of some of these bodies of water, these streams, you will get water running uphill through wicking action. And so just because the train is away from the stream, you can still have underground movement towards that. And to look at those situations, the hydrology a lot of times is very expensive. And as the previous testifier mentioned that the small producers can't afford to get into these studies. So we're thinking by telling them that there's one-mile buffer that you don't have to try to come in and try to get an expansion or a new facility located there because it's just prohibited. That way they don't go to the expense of trying to find a hydrologist or someone to say, yep, it's not going to likely pollute the stream. If they're not there, you're not going to have to look at the issue. So we think that's a better approach to have that one-mile buffer, a flat-out stream distance and then the two-mile buffer with the scientific information. There was a seminar this afternoon on East

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Campus that I would have been at but for this hearing. Alan Kolok from the Department of Biology from the University of Omaha is talking about fish on steroids. He's got some research showing that there has been some contamination of the Elkhorn by feedlots and that there are steroids getting into that water and that has caused some of the fish species to become sterile. And trout are very sensitive and so we think that these cold water class A streams are something special, that trout can reproduce there. And I agree with Senator Smith that some of those do go dry at times and some of them are man-influenced. But before man started irrigating in the west, they had flows at certain times of the year that the trout would go up. They would reproduce, come back out when they dried out. So, I don't dispute that there is a lot of man-made influence on those streams in the west. But with that, I guess we're here to say that we think the compromise contained in Amendment 2002 to LB 975 discussed on the floor is a better way to adjust the situation. And with that I would be happy to answer any questions.

SENATOR SCHROCK: Mark, you are testifying in neutral but I detect a little bit of a negative sentiment there on the part of it, but that's okay.

MARK BROHMAN: Well, the only reason I came in in neutral was because we had an alternative which is the existing. I probably should have come up in negative testimony or in opposition testimony, but in all fairness, I think that Senator Smith has a good point when it comes to scientific information that should be brought into the process. But we think that there should be that one-mile prohibition and then the one- to two-mile, the scientific data, because I don't think anyone can say with a 100 percent certainty using scientific data that there's not going to be a problem. And the language contained in LB 1214 is even looser than probably not when it's saying more likely than not because that 51 to 49 percent in my book. And so, that's where our concern lies.

SENATOR SCHROCK: Questions? Senator Smith.

SENATOR SMITH: Has the trout population been enhanced since the advent of this regulation...the subject regulation...in the subject areas?

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MARK BROHMAN: We have stocked trout in some of these segments. I can't tell you exactly which ones but I could get you data.

SENATOR SMITH: But you've stocked them that's...

MARK BROHMAN: Game and Parks has. Yes there has been some natural reproduction but we found that in most cases they can't keep up the natural reproductions long enough to sustain the population and so we've actually stocked trout.

SENATOR SMITH: Is there the potential that you can make a trout stream...make a stream a trout, therefore subjecting an area of land that wouldn't have been subjected otherwise to the subject regulation?

MARK BROHMAN: DEQ would have to determine through their regulations that a segment of stream is now considered a class A. They're the ones through their regulations that determine which segments are class-A cold water. So if they looked at, reviewed the information and determined that there was reason to classify it as such they could change the regulations. But I can tell you if just because we put trout there and the trout began to reproduce if that would be enough, they look at water quality, reproduction, things like that.

SENATOR SMITH: But I hear you saying that soil types and other geological and geographical characteristics can and should be considered rather than just distance from the stream?

MARK BROHMAN: Yes. In the one to two-mile buffer, I believe that scientific information should be brought forth. I am saying the one-mile buffer because it's so close to the stream that if we can't say with a 100 percent certainty that there's not going to be a failure that's just to close to the stream. So in essence, yes, I'm saying that scientific data should not be relied on solely in that one-mile buffer, that it should just be a blanket one-mile buffer and that you don't consider the scientific information to allow someone to build in that facility just because we don't have 100 percent certainty. But we are willing in the one- to two-mile range to say that it may not

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be 100 percent but if scientific data says there's not going to be a leak, we could rely on that.

SENATOR SMITH: How much concern should there be for say a 50 or 100-year flood in a regulation such as this?

MARK BROHMAN: If there's a way to put those clarifications in there, I'd think there could be allowances but I think that is part of the one-mile buffer. You don't have to worry about the 100, the 500-year flood because there's no facilities within a mile. But I think when you look at the one to two-mile range, those things should be looked at as part of the scientific information that's examined to determine if there could be a failure, how often that failure could occur because of climatic conditions.

SENATOR SMITH: What would be the typical outcome of the trout population in the stream without any livestock within 50 miles? What would be the likelihood of survival for trout in a stream after a 50- or 100-year flood?

MARK BROHMAN: Probably in the 100-year flood, there's a good chance the majority of that population would be washed down stream but they could return after the water receded. There would definitely be damage to the habitat, stream banks would be severely eroded. The 50-year I couldn't tell you. I would guess that there would be disruption to the population but I would surmise they would be able to return fairly quickly after the event.

SENATOR SMITH: Thank you.

SENATOR SCHROCK: Other questions for Mark? Senator Louden.

SENATOR LOUDEN: Yeah, Mark. Always enjoy your testimony. Are you familiar with Nine Mile Creek out there east of Minitare?

MARK BROHMAN: A little bit. I know that Nine Mile Creek does have reproducing trout and they have had some what they're calling bacterial problems out there which they assume might be from livestock but they can't, you know, not conclusively determine.

SENATOR LOUDEN: Now and that's one of the better trout

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fishing streams out there, right?

MARK BROHMAN: Yes.

SENATOR LOUDEN: Have you ever been out there lately in the last...?

MARK BROHMAN: I have not been out there for probably the last two years.

SENATOR LOUDEN: ...Thirty years but you been out there cause you were out there.

MARK BROHMAN: Yes. During the tour.

SENATOR LOUDEN: Okay. What...right...just a stone's throw up from that creek, how big is that feedlot that's right above that creek? You know, 25,000 head or what?

MARK BROHMAN: It's large. I couldn't tell you.

SENATOR LOUDEN: Okay. So this is why I'm wondering if cattle next to a stream were going to ruin a trout stream, why are there...why is that some of the better fishing in western Nebraska for trout now? And that's at Nine Mile Creek there and that feedlot's been there for 40 years probably.

MARK BROHMAN: Yeah.

SENATOR LOUDEN: And that creek was there before that and the fish have been there too. So I'm wondering, you know, we're trying to give these trout this one- or two-mile bumper zone. Why should the trout get a mile or two buffer zone when the bullheads in one of the Sandhills lakes or the pike or something like that, they don't get any buffer zone. I mean you can run cattle right up next to the lake and let them walk in the lake and there's no problem with that. Why should we give the trout the buffer zone?

MARK BROHMAN: Well, it is one of those cases where trout are the most sensitive. They're kind of like the canaries of the fish world, you know. They're the most sensitive and so when the trout are affected we know the other species are.

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SENATOR LOUDEN: Yeah, but we've got this stream right below this feedlot.

MARK BROHMAN: Yes. There hasn't been a major catastrophe there. But if there would be, you know, a problem from that large feedlot, it could wipe out, you know, that entire population fairly quickly and would be fairly costly to replace that population that's there to be done.

SENATOR LOUDEN: But there's evidently no wicking action from the groundwater or something like that going into there.

MARK BROHMAN: Well, we've had contaminations there. We just don't know the source and I don't know whether we haven't done enough research to pinpoint, you know, where that came from. But there have been bacterial instances there reported in the stream, you know, from the water samples. But I can't tell you...

SENATOR LOUDEN: But the trout survived through the thing?

MARK BROHMAN: Right and we have trout or we have stocked trout in that segment. I'd have to look at records and I could tell you exactly how many we've put there in the type of what we call reproductive success.

SENATOR LOUDEN: Yeah, but until...as long...whenever there's water flowing in the river, they usually went down to Lake McConaughy and then swam back up and spawned in that creek. Is that correct?

MARK BROHMAN: Correct. Yeah, Lake McConaughy's provided a reservoir for a lot of those populations to, you know, go down stream and come back up. If McConaughy wasn't in place, we don't know if those trout would be staying around the area and coming back or whether they'd move on down the Platte and never return into those small feeder streams. But historically, we think that they probably did, at least a portion of them. And typically, trout like to return back to where they were spawned from. And so, of course, if you have naturally reproducing trout, you're going to have some of those returning to where they were spawned from versus if you artificially, you know, placed fish there, they may or

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may not ever spawn or go back to where you released them.

SENATOR LOUDEN: But now like on the Loup rivers and some of those as you get farther east, Thedford and farther east like that, you have cattle feeding facilities very near the river nearly in the same valley. And this is what I guess I have a problem with, is why out west there where we don't have that much rural economic development going. We got to take care of the trout but as we get farther east and you get next to the rivers it doesn't matter. You can feed cattle right up to the edge of river as long as it don't spill in the river. I guess that's my thought on that.

MARK BROHMAN: Yeah. And we do have concerns on the other streams and rivers in the state of Nebraska with contaminations. And we're well aware there are areas that the people put livestock right in on the banks of the rivers and creeks in large numbers and that can be a problem. We've had fish kills. But, we've always looked at the class A cold water trout streams as being something a little different than most of these, you know, bodies of water because they do contain trout and some people like you had mentioned why you call, you know, why do you make trout a special fish and put them on sort of a platter or above everyone else on a platform. But it's probably just because of their susceptible nature that they are the warning signal. You know, when there's problem with the trout, then you know there's some environmental conditions that are going effect the other game fish but they're not as tough as, like you say, catfish and things like that, bass and bluegill, pike.

SENATOR LOUDEN: Okay. Thank you.

SENATOR SCHROCK: Other questions? Senator Louden, I just might tell you. Catfish are kind of like lobbyist, they're bottom dwellers and they just don't get any respect. (Laughter)

SENATOR KOPPLIN: I like them.

SENATOR SCHROCK: What'd you say. Oh, and I offended somebody here. Senator Kopplin, I'm sorry.

SENATOR SMITH: Lobbyists or catfish?

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SENATOR KOPPLIN: Catfish.

SENATOR SCHROCK: I'm sorry. Well, big faux pas. That's a mistake in French, so thank you. Thank you, Mark. Is there other neutral testimony? Senator Smith, would like to close.

SENATOR SMITH: I think I'll waive.

SENATOR SCHROCK: Thank you. Now we will open the bill on LB 1098.

LB 1098

JODY GITTINS: Good afternoon, Senator Schrock, members of the committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s,. I am committee counsel for the Natural Resources Committee, introducing LB 1098 on behalf of Senator Schrock. This bill was brought to Senator Schrock by the Natural Resources...by the Nebraska Natural Resources Association. The purpose of the bill is to redefine chemical for the purposes of chemigation. Chemical as applied in this act would mean any substance other than water that is intentionally injected into an irrigation distribution system that's directly connected to waters of the state. Livestock waste water and other products applied to a field directly and not connected to a groundwater source would not need a chemigation permit and the related equipment. There are others after me who can really explain this bill a whole lot better than I can but that's the gist of the bill.

SENATOR SCHROCK: I think what you're saying is you don't...don't ask any questions but wait to the next person. But is there questions for Jody?

SENATOR LOUDEN: Well, yeah. This is the first time I understood any bill you've brought here today. (Laughter) Thank you.

JODY GITTINS: You're welcome, Senator Louden.

SENATOR SCHROCK: Proponent testimony please. Here's a guy

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that's laid a foot on our ground a time or...our property a time or two.

RICHARD HOLLOWAY: (Exhibit 12) And never offensive. Good afternoon, Mr. Chairman and committee members. My name is Richard Holloway, R-i-c-h-a-r-d H-o-l-l-o-w-a-y. I am the assistant manager of the Tri-Basin Natural Resources District in Holdrege. And I'm here to testify in behalf of the Nebraska Association of Resources Districts in support of LB 1098. The 23 natural resources districts of the state of Nebraska are responsible for protecting groundwater quality and quantity. We're concerned about what we consider a loophole in state law that allows people to inject certain substances into irrigation systems without being required to install chemigation safety equipment. State law defines the term "chemical" for purposes of chemigation as any fertilizer, herbicide, or pesticide that is mixed with the water supply. We believe that this definition is insufficient because it does not include toxic waste, animal waste, cleaning chemicals, or soil conditioners among other things. We believe that it is important to prevent any substance that is intentionally injected into irrigation distribution systems from contaminating our groundwater supplies. Chemigation safety equipment is designed to provide that protection. Regular inspections of that safety equipment will insure that these protections will remain effective. We propose, therefore, that the term "chemical" should be defined more inclusively as proposed in LB 1098. We believe that this proposed definition will still exclude users of irrigation pump drip oil from being subjected to requirements of the Chemigation Act because drip oil is injected into the pump itself which is not considered part of the irrigation distribution system. NARD is anxious to work the Natural Resources Committee and the Nebraska Department of Natural Resources to develop legislation that will close this legal loophole without unnecessarily burdening landowners. Thank you.

SENATOR SCHROCK: Thank you, Rich. Questions. Senator McDonald.

RICHARD HOLLOWAY: Yes, ma'am.

SENATOR McDONALD: In order to get a chemigation permit, you have to take a test. Is that correct?

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RICHARD HOLLOWAY: That is part of the requirement. You have to be a certified applicator, yes.

SENATOR McDONALD: And so, by just changing the definition of chemical to include that, it doesn't disregard permit for injecting anything into an irrigation system. This is just basically putting it on land?

RICHARD HOLLOWAY: This is just changing the definition of chemical. I noted yesterday that Title 195, which is the Nebraska Chemigation Act. There is a disparity in the definition of a chemical. There's only three products listed in the statute 46-1105, fertilizer, herbicide and pesticide. Title 195 also includes fungicide. So and that's been out since 1987, so.

SENATOR SCHROCK: Other questions? Rich, right now if you inject animal waste into the system, you have to have a chemigation permit?

RICHARD HOLLOWAY: Nope.

SENATOR SCHROCK: You don't have to. And you're saying under this bill you have to?

RICHARD HOLLOWAY: Yes.

SENATOR SCHROCK: Okay. I was reading it just the opposite.

RICHARD HOLLOWAY: Pardon.

SENATOR SCHROCK: I was reading it just the opposite, so.

RICHARD HOLLOWAY: No. The Title 130 addresses that but there is no enforcement, or no inspection of the equipment, you know, or permitting for animal waste.

SENATOR SCHROCK: So you're taking away the requirements and just saying anything that's not water has to have a chemigation permit?

RICHARD HOLLOWAY: Yes.

SENATOR SCHROCK: Okay.

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RICHARD HOLLOWAY: The thing that we're seeing in the future, and even though the Chemigation Act was a beautiful bill and I really admired the work the Legislature did on it, we're going into the 20th season. Twenty years ago I don't think we realized that maybe DEQ or some of the people are using center pivots to clean up superfund sites, you know, to remediate the contaminates out of the water. After 20 years of successful...of a successful program, I think this is an issue that probably needs to have a little more broadening to it.

SENATOR SCHROCK: All right. So right now you could inject animal waste without a chemigation permit.

RICHARD HOLLOWAY: Yes sir.

SENATOR SCHROCK: Without a check valve on your well?

RICHARD HOLLOWAY: Title 130 addresses that you should have that equipment, however, the NRDs are not responsible.

SENATOR SCHROCK: I assume you don't want animal waste going down your well...

RICHARD HOLLOWAY: No.

SENATOR SCHROCK: ...if the system fails.

RICHARD HOLLOWAY: No. We don't

SENATOR SCHROCK: All right.

RICHARD HOLLOWAY: And that is why we would like to expand the definition of chemical.

SENATOR SCHROCK: All right. All right, it took me a while to get tracking with this but I'm with you know. Senator Louden.

RICHARD HOLLOWAY: Yes sir.

SENATOR LOUDEN: When they say connected to waters of the state, now they mean that groundwater. What I'm wondering is we have some municipalities out west that dump their

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sewer lines out into large lakes and lagoons and then they irrigate 160 acres or something like that out of those lakes. Do they need this...do they need that permit then to...

RICHARD HOLLOWAY: That would not be considered waters of the state I don't believe. The Chemigation Act also has a exclusion for somebody that injects chemicals out of a...if they have a pivot that's pumping out of a reuse pit and the siphon is broken either from the groundwater source or out of a canal system on a surface irrigation system.

SENATOR LOUDEN: Well, these lakes that are, that the state own, always own the water on these lakes when they're about so big anyway? I mean, what I'm wondering is should that say a little a bit something more or less where they have waters of the state should that be more clarified?

RICHARD HOLLOWAY: That language is in the original Nebraska Chemigation Act and I don't know what the intent was, you know, 20 years ago when that was written. But in the past experiences I've had, it would be a surface water that's being delivered by, you know, a public power district to a customer. We have to protect that water. If somebody was pulling water out of a river out of a surface water use permit, that they would have to have the protection equipment so that you couldn't have a back flow.

SENATOR LOUDEN: You had to go on down the river.

RICHARD HOLLOWAY: That would come back in.

SENATOR LOUDEN: Yeah. Well these are lagoons like Chadron I think does that...

RICHARD HOLLOWAY: Right.

SENATOR LOUDEN: ...and so does Alliance both pump out of there. I'm wondering if this is going to cause them to get some type of permitting or not.

RICHARD HOLLOWAY: Well, they're not injecting any product into the water that they're pumping.

SENATOR LOUDEN: Yeah, but it isn't exactly straight water.

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RICHARD HOLLOWAY: And well see and that would be the same thing that I was referring to about remedial cleanup. Why would you want to put a check valve, if you're pumping contaminated water out like at over in Hastings at the munitions depot...plant, to expose the contaminates to the air through a pivot system. I don't...I really don't see an advantage of having a check valve on that. If you wanted to blend the water with pure water to try to dilute the contaminates before you expose it to the air, then I would think that at that point you would want to have a, you know, a permitted system.

SENATOR LOUDEN: Your expertise, then, would assure me that Chadron or Alliance can go right ahead and pump their lagoons and have no extra permittings.

RICHARD HOLLOWAY: We have never had any...the Nebraska Chemigation Act was always directed at agriculture industry. It was never directed at municipalities or, you know, for back flow preventive devices for somebody that wanted to spray their weeds in their yard out of a garden hose. This...it's defined as a irrigation distribution system. I guess if you're pumping wastewater it wouldn't be any different than if you're pumping reuse water out of the tail end of a field.

SENATOR LOUDEN: Okay. Thank you.

SENATOR SCHROCK: Thank you, Rich. Other questions? Thank you, so much.

RICHARD HOLLOWAY: You're welcome.

SENATOR SCHROCK: Next proponent, please? Opponent testimony? Neutral testimony? See Senator Stuhr, when I run a...when I do a bill it doesn't take long. (Laughter) Neutral testimony?

DUANE GANGWISH: In light of earlier this...my name's Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h, representing Nebraska Cattlemen. In earlier testimony this week it was referred to the silver might crack on the top if someone testified neutral. It might happen with me. I have questions merely to support or to propose to the committee. I'm not well

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informed of the Chemigation Act but I have questions in regards to the use of waters of the state and how that may refer to holding ponds for livestock facilities. This may be a question that needs to be addressed. The waters of the state says and all other accumulations of water above and below the surface. I would just ask the committee to look into that. Richard testified in regards to drip oil. I am an irrigator from eastern Buffalo County and it was quite often that we would have a film of oil on the open ditch and when the pump shut off, you know, what was in the well column went down, so. I don't know that that is applicable here, but I'm concerned about the unintended consequences of when you change the definition of chemical to mean any other substance that we may unintentionally flow in...float into undesired waters, so. With that, any questions?

SENATOR SCHROCK: Questions for Duane? I see none. More neutral testimony? If not, that'll close the hearing on LB 1098.