

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

Natural Resources Committee
January 18, 2007

[LB140 LB184]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, January 18, 2007, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB184 and LB140. Senators present: LeRoy Loudon, Chairperson; Carol Hudkins, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Deb Fischer; Gail Kopplin; and Norman Wallman. Senators absent: None. [LB184]

SENATOR LOUDEN: I am Senator LeRoy Loudon from Ellsworth, I represent the 49th District and chairman of the Natural Resources Committee. To my right is Senator Wallman from Cortland; next is Senator Dubas from Fullerton; next is Senator Carlson from Holdrege; and then Senator Kopplin from Omaha. My near right is Jody Gittins, she's the legal counsel for the committee. To my left is Senator Fischer from Valentine; and the committee clerk is Barb Koehlmoos. Today our pages are Erin Frank and she's from Bassett and a student at the University of Nebraska, and Steve Scharf, also a student at the University of Nebraska. We have to turn off our cell phones and pagers--this will just take a minute--and turn off cell phones and pagers so there is no interruption during the hearing today. And now those wishing to testify on a bill should come to the front of the room when that bill is to be heard. As someone finishes testifying, the next person should move immediately into the chair at the table. If you do not wish to testify but would like your name entered into the official record as being present at the hearing, please raise your hand and the page will circulate a sheet for you to sign. This list will be part of the official record of the hearing. Now this year we're using a computerized transcription program and it is very important to complete the green sign-in sheets for testifiers prior to testifying. They are on the tables by the doors and need to be completed by all people wishing to testify, including senators and staff introducing bills and people being confirmed. If you are testifying on more than one bill you need to submit a form for each bill. When you come up to testify, please place the form in the box by the committee clerk. Do not turn the form in before you actually testify. Please print and it is important to complete the form in its entirety. If our transcribers have questions about your testimony they use this information to contact you. As you begin your testimony, state your name and spell it for the record even if it is an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people to testify it may be necessary to place time limits on the testimony. If you have handout material, give it to the page and they will circulate it to the committee. If you do not choose to testify, you may submit comments in writing and have them read into the official record. And no displays of support or opposition to a bill, vocal or otherwise, will be tolerated. If you need a drink of water when you're testifying, just please ask the page. And at this time I'd like to note that Senator Mark Christensen from Imperial has joined us as a member of the Natural Resources Committee. With that, we're ready to begin with LB184, and Senator Carlson, you may present your bill. [LB184]

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

Natural Resources Committee
January 18, 2007

SENATOR CARLSON: (Exhibit 1) Good afternoon, Senator Louden and members of the Natural Resources Committee. I'm Tom Carlson. That's T-o-m C-a-r-l-s-o-n, representing District 38. It's my pleasure to introduce my first legislation, LB184. I might add, it gives me pleasure to do so before what I believe is a friendly committee. (Laughter) LB184 would give free permits to hunt and fish to all active Nebraska servicemen, whether national guard members or in the armed forces of the United States. LB184 also amends current law to give the same free permits to all Nebraska military veterans with no restrictions concerning disabilities or age. The free permits would not apply to commercial fishing, trapping of fur-bearing animals, or hunting for deer, antelope, wild turkey or any other special species with limited or restricted permits. Many county veterans service officers have contacted me or my office in favor of this bill. Some of them have made the trip to Lincoln to testify today. I also have a packet of e-mails which have been sent to my office and would like them to be entered into the record. I believe the act of extending these benefits to active military personnel who are residents of Nebraska will have a positive effect on economic development. I understand the federal matching program must be considered in this bill. I'll be happy to answer any questions you may have and urge the committee to send this bill to General File as a small reward for men and women who have served and are serving our country and who have preserved our standard of living and our way of life. Are there questions? [LB184]

SENATOR LOUDEN: Thank you, Tom. Are there questions for Senator Carlson? And do you wish to close, Senator Carlson, afterwards? [LB184]

SENATOR CARLSON: Yes. [LB184]

SENATOR LOUDEN: Okay. Then I guess we're ready for the first testifier, proponents. How many people are here to testify in favor of this...yeah, for this bill? Two, four...oh, we're not too bad. Okay, I guess we're ready for the first proponent. [LB184]

WILLIAM GIESLER: (Exhibit 2) Good afternoon, Senator Louden, and to the committee, also, good afternoon. My name is William L. Giesler, it's W-i-l-l-i-a-m G-i-e-s-l-e-r. I'm the Keith and Arthur County veterans service officer. I'm also a veteran and I belong to six veterans organizations. However today, I speak solely for myself and on behalf of the veterans I proudly serve and for the County Veterans Service Officers Association of Nebraska whose members represent and advocate for all of Nebraska's veterans. We want to address our support for LB184, a bill which returns a major state benefit to our veterans the way it was originally intended. I have shared several documents for your review concerning LB162 that passed in early 2005 that changed the lifetime hunting and fishing license as of January 1, 2006. The first letter is dated August 5 and it appeared in papers across the state showing opposing views to LB162. The second letter I sent to Game and Parks requesting details regarding LB162 that passed in early 2005 with the intentions of revisiting the change that they did. This bill was a tragic

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

Natural Resources Committee
January 18, 2007

disservice to our Nebraskan veterans. The third is a response I received from Game and Parks. The next two letters I sent to newly elected senators asking for their help in changing LB162. The final letter is currently running in papers across the state asking for veteran and public support of LB184. When Game and Parks attempts to defend their position, they will tell you that if these previous lifetime hunting and fishing licenses had not been fee exempt, they would have realized an additional \$2.5 million. They also will tell you that if they would have been charging the regular rate for all of these licenses over the years, they would have an additional \$3.5 million. They will also tell you that if they don't charge the \$5 fee on an annual basis, they will not get \$38 of federal funding each and every year for each license that was sold. For \$43 per veteran, they are willing to take away one of the few state benefits that all veterans qualified for, and instead are willing to inconvenience all of these veterans so they will have to renew their license annually and pay \$5 at each renewal for what used to be a free lifetime hunting and fishing license. As a service officer over the years, I've been the service officer for about nine years. I live out at the lake, McConaughy, and I can assure you probably more than half of those that ask for this free hunting and fishing license have absolutely no intentions of ever using them. They want it because one or two other guys at coffee has one in his pocket, okay? I can also attest to the fact that everybody that showed up in 2006 for their 2006 free lifetime hunting and fishing license did not know that that benefit had gone by the wayside, and now they were going to have to pay \$5 and then renew it annually and pay another \$5. It slid by us; it slid by quite a few people. My question is, where is the honor and tribute that was first bestowed on those served? But wait, 644 licenses last year at \$5 a piece comes to \$3,720. If you add that with the \$38 from the federal government, combine those two together, it's less than \$25,000 a year for funding for Game and Parks. Previous years, the average was about 500 licenses that were veterans' licenses. They also give a free, an exempt license lifetime, they did, for people in Nebraska that were 70 years and older. This bill does not affect those, although I think it should, but I don't want any changes in this, okay? But let's stop again. When your predecessors originally enacted the free lifetime hunting and fishing license for Nebraska's veterans and then continued to protect these statutes, over the years, and we're talking 50, 55 years, it was clearly not meant to be a financial funding for Game and Parks. The intent was to honor and pay tribute to all of Nebraska's veterans for serving their country in time of need and doing a job well done. We have 155,000 veterans in the state of Nebraska. LB184 honors those that served and also pays tribute to those now serving on active duty. We wholeheartedly approve and support LB184 as written and ask that you advance this bill through unchanged so in future years your intent will be irrefutable. We want to thank the sponsors of LB184 and this committee for their time and consideration, and hope that all senators will support and pass this bill so we can again recognize Nebraska's veterans for their service to our country and the freedoms we all enjoy because of them. Thank you. Any questions? [LB184]

SENATOR LOUDEN: Any questions? Yeah, I have a question. [LB184]

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

Natural Resources Committee
January 18, 2007

WILLIAM GIESLER: Yes, sir. [LB184]

SENATOR LOUDEN: When you talk about when they used to get these free hunting and fishing permits, that was just for veterans 65 years and older and those that were disabled and that sort of thing and it wasn't all veterans before. [LB184]

WILLIAM GIESLER: No, no, it was everybody 65 and older and at the same time they gave them to 70 years and older for Nebraska citizens. [LB184]

SENATOR LOUDEN: Right. [LB184]

WILLIAM GIESLER: And 50 percent service-connected disabled. [LB184]

SENATOR LOUDEN: And that was changed a few years ago. Now when you talk about here 2006, I think that's when it was worked out that we set it up for some of these people that went on active duty. If they had a deer license or something like that, they were able to recover that or get part of their...get their money back or get a deer license when they got back from active duty. And that was part of the process, is what we were doing to help veterans at that time for antelope and big game permits. Does this bill address that again? I thought it took it out, didn't it? So, that would...we'd have to redo that or something. What about those people that get activated and can't use their permits, you know, big game permits? How do plan to address that? [LB184]

WILLIAM GIESLER: I can't tell you, sir, if it was in that bill. I don't think I remember seeing it. I would hope that that does get, I guess, looked at because they are calling up more and more of the national guardsmen and a lot of them are hunters. [LB184]

SENATOR LOUDEN: Um-hum. You don't think that we, that veterans should, anybody should have to pay that \$5 just so we can get the federal aid money that goes with hunting permission, I mean, you realize that if we give away free permits, you don't get that either. [LB184]

WILLIAM GIESLER: I well understand that, sir, yes. [LB184]

SENATOR LOUDEN: And you're willing to forego that, though. [LB184]

WILLIAM GIESLER: Well, yes, sir. This initially was started to honor a benefit...and pay tribute to our veterans. If you sat at one of our desks when they come in and all of a sudden everybody they have ever known in the past got a free one, and now I'm going to tell them they have to pay \$5 to get one, as far as they're concerned they lost a state benefit. [LB184]

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

Natural Resources Committee
January 18, 2007

SENATOR LOUDEN: Um-hum. [LB184]

WILLIAM GIESLER: As to the age element, I personally can speak for the fact that if you read the obituaries like we have to do every day to see who's not going to be there, you'll find that the Korean War veterans and the Vietnam veterans and the Gulf War veterans, you're going to see an awful lot of them don't make it to 65 or 64. [LB184]

SENATOR LOUDEN: Um-hum. [LB184]

WILLIAM GIESLER: And so to be able to take care, take advantage of this particular benefit, it reads ageless, and that works, I'm sure, for me. [LB184]

SENATOR LOUDEN: Okay. Well, thank you, and I agree, we have to give benefits to our veterans. I have no problem with that. Senator Kopplin. [LB184]

SENATOR KOPPLIN: Thank you. You gave a figure on number of veterans permits and I missed it. Could you repeat that? [LB184]

WILLIAM GIESLER: It's in one of those letters. There's a Game and Parks letter that I passed out. [LB184]

SENATOR CHRISTENSEN: It says in 2005, 644 veterans. [LB184]

WILLIAM GIESLER: Yes. And in the same year I think there was 2,000 something that were 70-and-over bracket. [LB184]

SENATOR CHRISTENSEN: Right, 2,037. [LB184]

WILLIAM GIESLER: Yeah. [LB184]

SENATOR CHRISTENSEN: And 359 disabled. [LB184]

WILLIAM GIESLER: Yeah. [LB184]

SENATOR LOUDEN: Any more questions? Thank you. [LB184]

WILLIAM GIESLER: Thank you for your time. [LB184]

SENATOR LOUDEN: Thank you. Next proponent? [LB184]

PAUL COOPER: Good afternoon, Senator, and the committee. I'm Paul Cooper, Lincoln County veterans service officer, P-a-u-l C-o-o-p-e-r. I represent about 3,500 veterans in Lincoln County, and 30 plus more in McPherson County. I'd just kind of like to reiterate,

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

Natural Resources Committee
January 18, 2007

I guess, what Bill said about veterans losing what benefit for in the state here. And I have before, I know I have...a lot of good veterans that came in now and they're...you know, they knew that their guy down the street, hey he's got a free one and now I'm going to have to pay \$5. I've seen a lot of veterans that think they basically would like to keep that benefit still. I guess I...about all I have I guess there on that, thanks. [LB184]

SENATOR LOUDEN: Okay. Questions for Mr. Cooper? Seeing none, thank you. [LB184]

PAUL COOPER: Okay, thanks. [LB184]

LINDA BOMBERGER: Good afternoon. [LB184]

SENATOR LOUDEN: Good afternoon. [LB184]

LINDA BOMBERGER: My name is Linda Bomberger, L-i-n-d-a B-o-m-b-e-r-g-e-r. I am the County veterans service officer for Custer County and for Loup County. My job is veteran advocate. My job is to take care of the veterans and I take that very seriously. I am a proponent of this bill because I feel very strongly that it honors our veterans, that it is a benefit that they've had forever and I, too get the veterans in my office that...this is another dwindling benefit, you know? Why are they doing this? And they don't care about Game and Parks. They don't care about the funding issue. All they know is this is another dwindling benefit. So that was my concern. Again, I'm here as a veterans advocate; that's why the service officers are here. Our job is to take care of our veterans. So I guess that's really all I have. [LB184]

SENATOR LOUDEN: Okay. Any questions for Linda? Senator Fischer. [LB184]

SENATOR FISCHER: Thank you, Senator Louden. Hi, Linda. Thank you for coming today. [LB184]

LINDA BOMBERGER: I'm a nervous wreck. [LB184]

SENATOR FISCHER: Linda is nervous. (Laughter) This her first time before a committee, but I'm glad you drove down today from Custer County, I appreciate it. [LB184]

LINDA BOMBERGER: I felt strongly...I felt, you know this is almost a four-hour drive for me, but I felt like I needed to be here. [LB184]

SENATOR FISCHER: Could you tell me how many veterans in the two counties you represent might take advantage of this? [LB184]

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

Natural Resources Committee
January 18, 2007

LINDA BOMBERGER: That will take advantage of this? [LB184]

SENATOR FISCHER: Yes. That you, you're just guessing, but how many do you think will take advantage of this? [LB184]

LINDA BOMBERGER: I would say probably with the two counties I have, about 1,350 veterans. I know I would say at least 200...at least 250, you know. I mean there are a lot of, you know, it's like we said, they want it in their wallet. They may never use it, but it's very important to them. [LB184]

SENATOR FISCHER: And did you have a lot of comments from veterans when they found out the change that we did? [LB184]

LINDA BOMBERGER: I had...there were some pros and cons. The good news was it included peacetime veterans and I think that's a wonderful, wonderful thing. Peacetime veterans have, you never know as a peacetime veteran, and by peacetime, we mean they are not during Vietnam or were not during the Korean War, but between those periods of time. From '55 to '64, that kind of era. It includes those veterans now and I...that's a wonderful thing. So they were very, very pleased with that. The bad news is, how come they are charging us \$5? Well, that's good news we get it, but how come they are charging us? Why are they, you know,...so they are very pleased that they've included peacetime veterans, and again I think that's a wonderful thing. But yeah, there is the issue of why now? Why? Aren't there other ways to make money than to charge the veterans. [LB184]

SENATOR FISCHER: Okay. Thank you. [LB184]

LINDA BOMBERGER: Thank you, very much. [LB184]

SENATOR LOUDEN: Any other questions? Senator Carlson. [LB184]

SENATOR CARLSON: Yes. In listening to the three testimonies so far, it sounds like some of this is the harsh feeling of losing a benefit and maybe losing some respect more so than the amount of the \$5. [LB184]

LINDA BOMBERGER: Absolutely, absolutely. It's like, it's been this way for, I think it's been 47 years, is I think, the way it has always been. And why now? It's not a fund...why is this now a fund raiser for Game and Parks? Well, it's not really a fund raiser for Game and Parks but that's...I mean, that's kind of their perception. Isn't there other ways to get funding for Game and Parks without having to tap the veterans? [LB184]

SENATOR LOUDEN: Any more questions? I have one, Linda. Did you realize that the bill took out this provisions for these activated service members to not be able to

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

Natural Resources Committee
January 18, 2007

recover their hunting licenses, like a deer license or something like that? [LB184]

LINDA BOMBERGER: No, sir, I did not. I'll be honest with you, when LB162 passed...I'm also a member of the County Veterans Service Officers organization for Nebraska, and we are very proactive in the Legislature involving veterans and kind of like to know what's going on, and we flat missed it. We just didn't...we didn't see that one at all. We are much more diligent now and much more active in what's going on. No, I didn't see that; I didn't realize that that was an issue. [LB184]

SENATOR LOUDEN: I think this bill, that, or the legislation that's in there now in statute now, I think that was over two years' work in progress to get where we were on this, and at the time, this was more or less the trade-off, to get this for the veterans who had been activated, so that they could get recovery on some of their big game permits. Because some of them put out...if they happened to buy an elk permit or something like that, I think that's in here, that there's some big bucks once in a while put out for some of those big game permits. [LB184]

LINDA BOMBERGER: Anytime that you...anytime you're activated, anytime you are active duty, you lose something. My...our son, my son, was pulled out of college and sent to Iraq in 2005, so, I mean, every time you are activated, you lose something. But in answer to your question, no, I was not aware that that was...I guess I didn't balance them probably as well as I should have. [LB184]

SENATOR LOUDEN: Okay. [LB184]

LINDA BOMBERGER: I just looked at this as it was right now and thought what a wonderful thing to be able to really take care of all of the veterans in the state of Nebraska. [LB184]

SENATOR LOUDEN: Um-hum. Okay, thank you. Any other questions? If not, I guess... [LB184]

LINDA BOMBERGER: Thank you. [LB184]

SENATOR LOUDEN: ...we'll go to the next proponent. [LB184]

DON SANDMAN: Thank you very much. My first time too. I'm Don Sandman, it's D-o-n S-a-n-d-m-a-n. I'm York County's veteran service officer, have been for four years, love it. We have about 1,380-some veterans in York County. Now that's active veterans that were activated and now we do claims for guys who are in the guards and the reserves as well. But there are a couple of points I'd like to make that haven't been mentioned yet. This has been around for a long time, as everybody knows. World War II veterans got these when they turned 65. Korean veterans got these when they turned 65.

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

Natural Resources Committee
January 18, 2007

Vietnam veterans lose these. You know, you see the respect a Vietnam veteran got since that war ended and while it was going on and now it's another slap in the face. Now it's our turn and they take it away. It's so disturbing to me. It kind of tells us what people think of the Vietnam veteran. I'm a Vietnam veteran. I have a lifetime permit. I've had this since 2003. I've got it because I've got a broken back that I got in the service...affected me the rest of my life. Now I'm a Nebraska resident, always have been, and they...fortunately I can keep this, but they want to take it away from guys that get hurt in the service. They don't honor them that well. They say, yeah, thanks for your time, we do have a lot of respect for veterans, but not that much. We're going to take this away. That's a real slap in the face for us. What I'm getting at here is, you talk about...it's always about money, I mean, that's what this is always about. And they talk about fund raisers or bringing in more money. You know, I've had this thing for a few years, I've used it once, but it draws me to the Nebraska parks. I pay park permits. I camp; I love camping. But I've only used it once. I love fishing, but at least I know I can. But what kind of money do they bring in by issuing these that a person wouldn't normally go to Game and Parks unless they had a permit that would allow them to it. They say yeah, let's go do that, let's go camping, maybe we'll do a little fishing. And how many people do we take with us? When I went fishing I took friends of mine who were not veterans that bought permits, that paid entrance fees, that camped. That's extra money, a lot of extra money I believe, because of these permits. But I don't think they looked at all that because I don't know if you can really put a statistic on that, you see what I mean? So it just disturbs me that something is taken away like that. You know, these guys...you can't understand what a veteran goes through their whole life until you have been a veteran yourself; it does affect your life--in a good way for most people. I think they are more productive citizens, I think they do care more about money that Nebraska needs to function. But I really would like to see them re-look at this and look at other issues besides just the \$5 and we get \$38 back. I think it's a lot, lot deeper than that. So that's all I've got. Thank you very much. Any questions for me? [LB184]

SENATOR LOUDEN: Any questions for Don? I have one, Don. When you talk about those that are disabled and that sort of thing, that didn't change in the last statutes at that, that was still in there wasn't it? [LB184]

DON SANDMAN: The 50 percent, I believe, stayed in there, yeah. [LB184]

SENATOR LOUDEN: Yeah, 50 percent or more or if they are receiving a pension from the department of ...for some disability, permanent disability and that sort of thing, so some of that didn't change with that last law, is that correct? [LB184]

DON SANDMAN: That's the way I understood it. That's correct. [LB184]

SENATOR LOUDEN: Yeah. Okay. Any more questions for Don? [LB184]

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

Natural Resources Committee
January 18, 2007

DON SANDMAN: I do have one more comment if I may to Senator Fischer there. You asked how many veterans would take advantage of this? When a veteran comes to my office and I've seen a thousand of them now, statistically proven, a thousand of them, and I ask them--I always look and see what they have so I can make sure they get everything they've got coming. And I always look at the hunt and fish permits and those who are eligible, I ask them, when it was available, if they would like one? And I would say, honestly speaking, about 20 percent say no. So I think a lot of people...they're waiting for their time and a lot of them have been waiting. But now it's just to the time when the Vietnam veteran is able to get it and they pull it away. I want to stick up for the Vietnam veteran too, especially. Thank you. [LB184]

SENATOR LOUDEN: Any questions? Thank you, Don. [LB184]

JEFFREY BAKER: Good afternoon, Senator Louden, Natural Resources Committee. My name is Jeffrey M. Baker, J-e-f-f-r-e-y, Baker, B-a-k-e-r. I am the veterans service officer for Seward County. I know looking to my right, that might be a little strange. I am the youngest service officer in the country, and I'm here to talk to you about--I'm a veteran of the Iraq War--and given that the change in the law and waiting for 65, I am 25 years, 20 years, excuse me, I'm nervous too obviously (laughter). Hope the camera is not on there, (laughter) but I would have to wait 35 years for a, I'm sorry, 40 years to get a permit to fish and hunt unless I was 50 percent disabled or more. I am 50 percent disabled or more so I do have a lifetime permit to use at my bases. I've had it for about a year and I've never used it; a little busy, I guess I would say. One of the things is the benefits for our veterans here in the state. Here in the state of Nebraska our veterans are allowed to get waivers of tuition for their children if they are 100 percent disabled. Also, in other states they provide income, they give them a bonus when they're discharged from the service when they serve honorably. We do not have that. We, instead of that, we have the Nebraska Veterans Aid which allows for payment of bills for low income families if there is a job interruption or anything of that nature. I would like to see more things for our veterans. The federal government, if you have a Nebraska, or, excuse me, Department of Veterans Affairs, federal Department of Veterans Affairs card, you can get into a federal park, for example, the park in Scotts Bluff. You can get in for free and you don't pay anything to get in. We don't have anything like that here in Nebraska. That is something that we may push for later on, but this is the bill before us now. And we would really like to see our veterans being taken care of and honored. This is a volunteer army now, or military, compared to when Don was in the service where it was a draft, World War II and Korea, like my grandfather. They did not choose to go. These gentlemen...and these men and women are serving now by their choice and we deserve to respect them for their choice. So any questions? I'll entertain any. [LB184]

SENATOR LOUDEN: Any questions for Jeffrey? Senator Kopplin. [LB184]

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

Natural Resources Committee
January 18, 2007

SENATOR KOPPLIN: How many county veterans service agencies are there? [LB184]

JEFFREY BAKER: Each county is authorized by state statute. Each county has to have a service officer. In the state of Nebraska we combine service officers with some counties with the lower populations. I serve one county; Linda serves two. There are some service officers who serve five or six, especially around Hall County, Phelps County, Harlan County, Franklin County. There are 79 service officers within the state of Nebraska. [LB184]

SENATOR KOPPLIN: And the question arose before of those that you serve, how many would use this? How many would take... [LB184]

JEFFREY BAKER: How many would use it. Okay. Don gave a quote of about 1,380 for veterans. I have 1,381, I always have to be on top of Don, at least by one (laughter). Of those 1,381, I would probably guesstimate about 20 to 30 percent of my population would use that. The reason being is because as I'm relatively close to Lincoln and there are a lot of national guard units here stationed out of...we would see a lot of these kids who are coming back utilizing this opportunity to get a free hunting and fishing permit. These are the kids that are going to use it and it's probably not going to be the 65-year-olds comparatively. I would guesstimate higher, about 30 percent of that total population. [LB184]

SENATOR KOPPLIN: So roughly 200 to 300 for every one of these county organizations. [LB184]

JEFFREY BAKER: More or less. [LB184]

SENATOR KOPPLIN: Okay. Thank you. [LB184]

SENATOR LOUDEN: Questions for...? I guess not. Well, thank you for your testimony. [LB184]

JEFFREY BAKER: Thank you. [LB184]

SENATOR LOUDEN: Any other proponents? Any opponents? [LB184]

KIRK NELSON: Good afternoon, Senator Louden, members of the committee. My name is Kirk Nelson, K-i-r-k N-e-l-s-o-n. I work for the Nebraska Game and Parks Commission as an assistant director. This is a very serious subject for any organization and especially for Game and Parks. A lot of our constituents are veterans. They have traditionally hunted and fished, used our parks. This was not an easy situation. Two years ago when we started this effort, our commissioners were looking at declining revenues, and they charged our staff to come forward with a strategy that involved a

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

Natural Resources Committee
January 18, 2007

number of issues; this is just one of them. Because we were losing the federal share of the participation that we would be getting, we went to all of our veterans organizations and our senior organizations in the state that we could. We started a year ahead of time. We went to the Nebraska Veterans Council, the AMVETS, World War II vets, Vietnam vets, the whole group, all of the organizations that we could identify along with AARP and several other senior groups. The seniors were involved in the same issue, free permits. Prior to this, anyone 65 and over that was a wartime vet, not just any vet, but 65 and over, you had to be a wartime vet during World War II, Korea, Vietnam, whatever it was, was allowed to apply for and receive a free permit. We felt like if we talked to those folks and told them not only what our plight was, but what we had in mind, what we could do with those revenues to better the resource, to better their opportunities. But we had to have some kind of funding to...that's a federal statute. They require an income match, otherwise we could just give them away and claim them, and they weren't going to let us do that. The veterans groups, once we had that discussion with them, said, look, let's charge \$5 for this fee. We'll give you a year earlier eligibility. That's a \$48 trade-off. For \$5 you can now get something that would have cost you \$48. You can take that \$5 and spread that over eight years and you've...that's how long it's going to take you to get back what you are going to gain out of this deal. Then we're going to take that money and we are going to start to offer you as good a product as we can offer you, public access, hunting, fishing, all of the things that we do for our constituents, not just veterans. When this bill was proposed...and then we took all of that, we just didn't keep that to ourselves. We went on television with that, we went on radio stations, we put out public news releases. I made a number of appearances at different places talking about that bill. You can't reach everybody. I mean a lot of the folks that are here today obviously didn't hear it and I don't know what to say. We didn't have enough money to get the word out and I wish we would have, because I think if we would have been able to go their groups, we probably could have got a fair amount of buy-in. I don't know, that's all past history. But I feel that we are...we have a compelling enough argument in this setting that we are going to provide the benefits that those folks think they are being deprived of and we are going to take that money and do some good things with it. It was a simple case of trying to make things work. We made some trade-offs and we thought we had a pretty good situation. Now all vets are eligible where in the past it was just wartime veterans. You can get it a year earlier and we feel like we're going to be able to deliver a better product because of it. [LB184]

SENATOR LOUDEN: Okay. Thank you, Kirk. Questions for Kirk? Senator Kopplin.
[LB184]

SENATOR KOPPLIN: As if you recall, because I don't completely, but when the testimony was given on this bill last time, how many of these veterans groups testified?
[LB184]

KIRK NELSON: I don't recall. I don't have that information, sir. [LB184]

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

Natural Resources Committee
January 18, 2007

SENATOR KOPPLIN: Okay. [LB184]

KIRK NELSON: I just know that we work with the Veterans Affairs Office... [LB184]

SENATOR KOPPLIN: Yes. [LB184]

KIRK NELSON: ...John Hilgert. John was ready to carry the mail for them and he did not receive one negative comment. Now that doesn't mean there weren't any, but what you're hearing is the word didn't get out, but... [LB184]

SENATOR KOPPLIN: Okay. Thank you. [LB184]

SENATOR LOUDEN: Senator Carlson. [LB184]

SENATOR CARLSON: Kirk, you went through this and came up with a plan that was a \$5 fee. Explain a little bit...you started at zero and you had to work your way up to \$5 and how did it get there and why was it \$5 and... [LB184]

KIRK NELSON: Other states have gone through this with their federal aid process. The feds, the way the statutes read, you have to produce income over and above your expenses to administer the program. So it's a numbers game. You look at what it costs you to print the permits, what...staff time, and what it...all of the costs involved. The feds just said, we'll believe \$5. You get any less than that and we're going to really make you go through a big audit. So we decided that \$5 was economical for us at that point without having to go down to maybe \$2 or \$3 or whatever it was. We were going to have to charge something and we arrived at \$5 because the feds said they would live with that number. [LB184]

SENATOR CARLSON: Is there...do you know, because I don't know, is there a restriction on who or where the source of the \$5 is? Does it have to be an individual? Could it be another government entity? Could it be another outside group? Could it be a commercial group? [LB184]

KIRK NELSON: We would...there again, we would have to go back to the Fish and Wildlife Service federal administrators that administer those funds. I would assume that if somebody was buying those permits, as long as it wasn't federal money they were using, I think that's one of the biggest caveats. You can't match federal money with federal money. You might be able to do something Senator, along those lines. [LB184]

SENATOR LOUDEN: Senator Kopplin. [LB184]

SENATOR KOPPLIN: If this bill were to pass and you would have this loss of revenue,

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

Natural Resources Committee
January 18, 2007

where would you turn to replace it? [LB184]

KIRK NELSON: Typically, we're a permit-driven agency. We get very little, at least on the Fish and Game side, we get very little general cash fund dollars. We might ask the Legislature for some kind of assistance. We might have to increase our permit fees. We might have to start to prioritize programs, and some things would go away. [LB184]

SENATOR KOPPLIN: Thank you. [LB184]

SENATOR LOUDEN: Senator Christensen. [LB184]

SENATOR CHRISTENSEN: Thank you. You said that you was going to have to increase revenues is one of your statements you made, is going to the \$5 permit, and then the other one was to use to better the parks. What has been done to better the parks versus or was this really just to increase the funds that were coming up short to administer the programs? [LB184]

KIRK NELSON: That's a legitimate question. These are Fish and Game dollars so this is just strictly on the Fish and Game side. We're really kind of a two-sided agency. The parks are run by the Park Cash Fund that's the sale of park entry permits. So we are just strictly fishing and hunting. I mean, without identifying the specific dollars, Senator, I hope we're doing something in your district with fishing for kids, fishing for lakes. Our biggest effort right now for us is declining participation. It's a national trend, but in Nebraska it's about double what it is on the national level. The drought that's hammered us, urbanization is cutting into our numbers. Kids aren't participating in outdoor sports anymore. So I guess I would point to what we're doing with archery in the schools and youth-mentored hunts, and those kind of things, but in reality that's probably a mix of a lot of funds and these monies are just part of that. But we're...it's not a pretty scene for us right now. The revenue situation is very serious. [LB184]

SENATOR CHRISTENSEN: Thank you. [LB184]

SENATOR LOUDEN: Senator Hudkins. [LB184]

SENATOR HUDKINS: Thank you. Mr. Nelson, looking at the fiscal note it says that for fiscal year 2007-08, there could be a fiscal loss of revenue, \$4,600,000. In fiscal year 2008-09, it's almost \$10 million. Assuming that you don't increase your revenues by increasing permits for everyone else, what would you see having to do? Close parks? Close...I mean, what would you do? [LB184]

KIRK NELSON: Well, we would...our state fish hatchery system, I'm just going to grab one, I mean, we're in the process of doing this right now, Senator, as an agency, and our commissioners are sitting staff down and prioritizing our budget. We are going to be

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

Natural Resources Committee
January 18, 2007

drawing a line at some point and whatever is below that line is either going to be reduced or people are going to get shifted around. I mean, those are the kind of things that would have to happen. We've got a hatchery setting spread across the state that's fairly expensive. If the drought continues, it might be a logical thing to drop some of our hatcheries and reassign personnel to other areas. That's just one that comes to mind. There's a number of programs and it would depend upon what our commissioners and our director decided were a priority and what wasn't. [LB184]

SENATOR HUDKINS: Thank you. [LB184]

SENATOR LOUDEN: Senator Fischer. [LB184]

SENATOR FISCHER: Thank you, Senator Louden. Mr. Nelson, do you have a list of priorities right now for the Game and Parks on both sides, the game and park side and also the wildlife and fisheries side? [LB184]

KIRK NELSON: We have a strategic plan that we developed and the latest version is 2005-10. That's all-encompassing. [LB184]

SENATOR FISCHER: Okay. [LB184]

KIRK NELSON: You know, there's not priorities identified into it. Our annual report would probably be as close to what is a priority. You could take that and look and see where we're spending our money and what we're doing. Obviously that's a priority, but as those funds continue to dwindle, there is going to need to be some serious planning on our part. We are going to have to start to identify more of the things that we're not going to do that we currently are. [LB184]

SENATOR FISCHER: Would you say in the past then that Game and Parks has not seen a need to prioritize because the funds have always been there? [LB184]

KIRK NELSON: Well, we've been in the same building over on east campus for 35 years. We've got about the same number of employees that we've had for the last 40 years. I like to think that we've done some reprioritization, and whether it was formalized or whether it was a division recognizing a need like youth skilled camps or more conservation officers or whatever it was, and shuffling their money around. But it's to a point now that it's going to be an agency thing and we're going to have to cross some divisional lines, and that's going to be harder for those people to do. We're going to have to make an effort to do some more serious planning than we've done. [LB184]

SENATOR FISCHER: I know in this state on the parks side we enjoy an abundance of state parks and recreation areas, wildlife management areas. I think in the past 20-25 years there's been a tremendous growth in that area, would you agree? [LB184]

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

Natural Resources Committee
January 18, 2007

KIRK NELSON: Well the, and part of that growth, yes, I would agree, there's been some growth in that area. I think Roger Kuhn, the assistant director, would tell you that he's had to reprioritize. There's areas that used to have a dedicated person that now that person is maybe kind of taking care of that area, but he's also working more full time in a higher priority area, a higher visitation area. There's been a lot of that kind of thing going on, so yeah, there's been some growth. [LB184]

SENATOR FISCHER: Thank you. [LB184]

SENATOR LOUDEN: Senator Wallman. [LB184]

SENATOR WALLMAN: Thank you, Senator Louden. In regards to fees, like if I want to stock my farm pond and that, has that fees went up for fish? It used to be awful cheap. [LB184]

KIRK NELSON: It's...if it's gone up, it's marginal, and we bring it to the Legislature if we're going to increase fees, and I think you folks granted us the ability to raise fees like 6 percent a year for three years in the last bill that we passed, but it's... [LB184]

SENATOR WALLMAN: A good program. [LB184]

KIRK NELSON: Yeah. [LB184]

SENATOR WALLMAN: And I agree, we have lots of nice parks and things. But if we need more money, you know, the state just bought another quarter section in my district, and I don't know what they're going to do with it, but it makes farmers around there unhappy. And so you know, we could use school land funds or something from parks too, but that goes in the state fund, right Senator Louden? [LB184]

SENATOR LOUDEN: I think so. [LB184]

KIRK NELSON: Yeah, that's a...they're pretty defensive of that program, Senator. We've made a run at them a couple of different times and it's a standoff. [LB184]

SENATOR WALLMAN: Thank you. [LB184]

SENATOR LOUDEN: Any more questions for Kirk? If not, thank you for testifying. [LB184]

KIRK NELSON: Thank you. [LB184]

SENATOR LOUDEN: Next opponent? [LB184]

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

Natural Resources Committee
January 18, 2007

WES SHEETS: Good afternoon, Senator Loudon, members of the Natural Resources Committee. My name is Wes Sheets, spelled S-h-e-e-t-s. I live here in Lincoln. I've been a longtime sportsman, but let me tell you, in all due respect to Senator Carlson and all of the vets we have here today and all the rest of us, I served in the service during the Vietnam War as well. But my concern is coming from the natural resource. The hunting and fishing is supported by fish and wildlife resource that's covered by the whole state. I think that's the real issue that we have here today. And in my aspect, I think that as you just heard from Mr. Nelson, the budgets are getting tighter. I don't believe this issue, and I could be corrected, but I don't believe this issue relates to the state park system or those activities in any way, shape or form. It's my understanding that the Game Cash Fund, which all permits, hunting and fishing permit dollars accrue to, is the fund that supports the management, the conservation officers, the stocking of farm ponds, and I think you can still get free fish, Senator, I believe you could if your pond qualifies, if it's okay. Now I think that Game Cash Fund is a very important, and the only way we are going to see the natural resources in the future survive in abundance. We're struggling now with drought as mentioned before, we're struggling with pheasant populations, we've a great turkey population and I'm not sure if that's a result of work in the department or Mother Nature, but whatever it is, those fish and wildlife resources are supported by the Game Cash Fund and the management there. I, as a sportsman, would wish that we would not cut into the opportunity to take care of that natural resource from now and in the future. I am in total support of recognizing veterans and veterans that have served our country. I would feel very rewarded if I could receive some specific benefit that was given to me as a result of my time in the service. I'm thinking that why couldn't I have a free driver's license every year? I know that I'm going to use it; 99 percent of the people are going to use a driver's license. Why wouldn't that be a much better benefit? And in return, perhaps the state General Fund could provide that benefit as veterans. Give us a real bonus rather than the 20 or 30 or 40 percent of veterans that really may be going to fish. So Senator Carlson, I was...you stole some of my thunder because I was going to suggest that maybe there's an opportunity for the state General Fund to allocate money to the veterans, and I don't know how it all works, I have to admit that, how state dollars are budgeted out to our veterans services, but perhaps you could budget General Fund dollars that we all pay that could then be used by the Veterans Administration to buy those permits as long as the veteran wished to fish. I think that would be a great solution. The state of Nebraska recognizes the veteran that's provided that service and I expect that maybe I could have a free driver's license longer than I will be able to go fishing. I am on the senior citizen and it's great to qualify for senior citizen discounts and all of those things. So that alternative might be something really beneficial to pursue, finding another source of state...and I know that state General Fund budgets are really tough, but it would make more sense to me to give me a free driver's license or homestead exemption for my home or some other thing that's really of benefit. I guess that's all that I wish and I would leave you with the message that I certainly believe that our fish and wildlife natural resource is

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

Natural Resources Committee
January 18, 2007

all-important to the state of Nebraska and I would hate to see us chop into it in any way. And I'd attempt to answer any questions you might have. [LB184]

SENATOR LOUDEN: Thank you, Wes. Does anyone have questions for Mr. Sheets? [LB184]

JOE HERROD: Good afternoon, my name is Joe Herrod, H-e-r-r-o-d. And I'm here representing the Nebraska Council of Sportsmen's Clubs. For you new senators, the Nebraska Council of Sportsmen's Clubs has over a 100 clubs and probably about 100,000 members because we have organizations like Ducks Unlimited, and Pheasants Forever, and the Omaha Sports Club that all have people. I'm a past president of that organization. I've been coming down here for 26 years and the reason I remember that is because in 1981 I had a new car that had a flat tire down here, so I know I was here in 1981. This subject has come up in the 26 years that I've been down here, about 13 times. I can remember testifying in here and after we gave our testimony, what this would do to Game and Parks, I can remember a veteran apologizing for asking for that benefit. I was a part of getting this legislation changed. I went around, I talked to groups just like the Game Commission did, and I never ran into anybody that said, well if it's only going to cost me \$5 and we're going to get \$38, I think it's a deal. Now we have 79 veterans officers, they say, here in the state. We have 49 conservation officers--that's game wardens. We have unfilled positions in the state. We're looking at cutting positions, not adding. This is not a good time to take revenue away from Game and Parks. This...every time that you charge more for permits to try and make up for a shortfall, you're going to keep that young kid that's 16 that can't come up with that money to buy that permit out, so that you can give a free one to somebody else. That's not the direction we want to go in. We want to...every, we're losing, for every two hunters that leave the sport, or people that fish that leave the sport, we're only getting one that's coming in. We have a problem there so we have a lot of things to do, and again, Wes talks about free driver's licenses. Just the other day I was in a committee hearing and met, for the first time, Senator Fischer, and talking about license plates. Well, we've been talking about license plates down here for 26 years too. I think everybody...just about every veteran drives a car and probably everybody would be pretty proud to have a license plate that says veteran. So we'd be taking care of 99 percent of our veterans with a license plate. But when we give them a hunting and fishing license, what, 10, 20 percent hunt and fish at most? So we're only taking care of 10 or 20 percent. That's not really doing anything for veterans except a very certain special class. So I promised Senator Flood I would be brief and I'm already...have rattled on longer than I wanted to, so any questions? [LB184]

SENATOR LOUDEN: Thanks, Joe. Any questions for Joe? If not, thank you. [LB184]

JOE HERROD: Thanks. [LB184]

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

Natural Resources Committee
January 18, 2007

SENATOR LOUDEN: Any more opponents? Anyone in a neutral capacity? Do you wish to close, Senator Carlson? [LB184]

SENATOR CARLSON: Senator Louden and committee, I thank you for hearing these testimonies and visiting the introduction of this bill. I continue to say that I have great respect for those that have served us in the military, and we're talking about a bill that has an expense to it and they have paid a big price so that we can be here today and we can do what we're doing. I would hope that we could continue to look into a possibility of sources to help with this \$5 funding issue, and certainly anyone that's here that would have some ideas about that, I'd be very, very happy to hear about it. I believe that we want to honor or military. I believe we should continue to make an effort to do that. I believe we want to keep our Game and Parks division healthy and so I ask you that we work together and we see if there is a way of taking this bill to the body and serving all of our citizens. Thank you. [LB184]

SENATOR LOUDEN: Thank you, Senator Carlson. Let's see, with that I guess we'll close the hearing on LB184 and now we'll have LB140 and Senator Flood. Go ahead, any time. [LB184]

SENATOR FLOOD: (Exhibit 3) Chairman Louden, members of the Natural Resources Committee, my name is Mike Flood, it's spelled F-I-o-o-d, and I represent the 19th Legislative District which includes all of Madison County, Nebraska. In August of last year I was contacted by the King boys regarding their farm in rural Newman Grove. Both Steve and Keith King are here today and you will be hearing more from both of them in a few minutes. The King family has farmed in Madison County for generations. Both Keith and Steve have continued that tradition. Their boys have continued that tradition. They now own and operate King Farms which includes dairy cows, row crops and a cattle operation. In August, the Kings contacted me to let me know that they had a visit from a DEQ program specialist. This specialist advised the Kings that someone had filed a complaint against them. The specialist would not, however, tell them the name of the complainant. The specialist then proceeded to advise the Kings that they needed to build a new waste lagoon, as they were currently in violation of the law. Such lagoons, as you all well know, require a substantial investment and this investment is threatening the continued success of King Farms. Now setting aside my frustration with the overregulation of our small family farmers, as well as my frustration with the timing of the King investigation, LB140 proposes a change that, in my opinion, goes right to the heart of fundamental fairness. DEQ reported to me that their current policy is to allow the subject of an investigation access to the complaint that initiated the investigation. That's great. The DEQ also reported that they black out the name of the person that filed the complaint upon the complainant's request. That's where I see a problem. Fair play in Nebraska requires that the person against whom the complaint is lodged have access to the name of the complaining party. In my day-to-day practice as a lawyer, when a government agency has a complaint they let the other side know who made the

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

Natural Resources Committee
January 18, 2007

complaint. Citizens who request help from the State Patrol and most every other law enforcement or agency regulatory body in this state have to give their name in any action. And our Unicameral, this body, this institution, and I'm sure this committee, prides itself on the transparency we have built into our system of government. I see no reason why these same rules should not apply in cases like the King's. Let's get everything out in the open and let these people who file complaints come out and join the rest of us to have a discussion about what the rules should be. If you want the DEQ to go investigate something, put your name on the line so we all know who you are. Now all that being said, I am willing to entertain alternatives to my proposal. I have been working with the Nebraska Cattlemen on this issue and I have heard from both the DEQ and the Sierra Club regarding their concerns. What I have not seen is anything specific that would address my interest in fundamental fairness while preserving their interests in ensuring that people continue to report environmental violations. Finally, I do want to pass out an amendment for the committee's consideration. I have copies here if the page would like to...every committee member should see that. The green copy of the bill provides that, "Upon the request of the person against whom the complaint is lodged, the department shall provide such person a copy of such complaint received or initiated by the department." Just so my intent is crystal clear, I want the record to show that I submit the following amendment, a copy of which I hereto incorporate by reference at this time, which adds the sentence and I quote, Such copy shall include the name of the complainant, end quote. And again, given DEQ's current practice of turning the complaint over with the complainant's name blacked out, I want to make sure my intent is clear: the complainant's name should be a matter of public record. With that, Chairman Louden, I appreciate the consideration you have given this bill. I conclude my opening on LB140 and I am more than willing to answer any questions that the committee may have. [LB140]

SENATOR LOUDEN: Any questions for Senator Flood? Senator Kopplin. [LB140]

SENATOR KOPPLIN: Thank you. It would seem to me that one of the aims of this bill would be to decrease the number of complaints that are filed. When there is a spill and a complaint is filed, it's usually filed by someone close to that, and without some privacy you are setting that person up to a lot of ridicule and harassment from the one who was complained about. And it would seem to me that this would certainly lessen the number of complaints and I'm not...is that the intent of this bill? [LB140]

SENATOR FLOOD: No, not necessarily. I understand, you have a, if I may, a whistle-blower kind of protection that you'd like to see remain in the law. I think that too often than not we have people that use the Department of Environmental Quality as their own stick or whip against somebody who they may not like for reasons other than their environmental practices. And as much as I understand the need to report violations of our state's environmental rules or laws or agency regulation, I think that if you look at enforcement actions from any other branch of government or any other agency in state

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

Natural Resources Committee
January 18, 2007

government, the name is usually discoverable right away. In this case, it's not that the complainant's name is kept quiet the entire time. If you go to litigation on a matter, it's discoverable under Rule 26 of our discovery procedures of civil procedure. So you can get it, if you go the distance. I just think that if people are going to use the DEQ to investigate matters they should sign...if they sign the complaint it should be a matter of public record as everything else in my office and your office is right now. So I mean, I see your concern. I just think that people that want the DEQ to investigate questions that they have should put their name on the line, and maybe there's other ways to look at this. Ultimately I want to get away from people using the DEQ as their own stick to come down on somebody else they don't like. I've represented folks in dairy production or, more importantly, hog confinements, that have neighbors come out of the woodwork for 50- or 40- or 30-year-old family feuds between two different families, and they find a way to use the county zoning process as a weapon to beat somebody down with. And I'm afraid that sometimes that happens in the state, as well. So I guess...I'm very aware of your concerns, but at the same time I think that something has to be done to curb the number of complaints filed anonymously, or find some way to put a limitation on folks that file fraudulent claims or nonsubstantive reports. So there's several ways to look at this. I guess I'm interested in doing something here and I'd be open to whatever the committee thought. You have more experience with this than I do. [LB140]

SENATOR LOUDEN: Senator Fischer. [LB140]

SENATOR FISCHER: Thank you, Senator Louden. Thank you, Mr. Speaker, for coming before the committee today. [LB140]

SENATOR FLOOD: Thank you. [LB140]

SENATOR FISCHER: I have some questions and I don't know if you'll be able to answer them or if I need to wait for someone else to come up and testify on the bill. But would you happen to know how many complaints are filed every year with the DEQ on matters like this. [LB140]

SENATOR FLOOD: No, I do not. [LB140]

SENATOR FISCHER: Okay. Do you have any idea what the cost is? I can understand Senator Kopplin's question there or concern that maybe the person who is filing the complaint will face ridicule and harassment, I believe he said. Do you know what the cost can be, you're an attorney, to a person who has a complaint filed against them and then they have to go to court and deal with this and pay legal fees before they ever even know who filed the complaint against them? [LB140]

SENATOR FLOOD: I know that it's fairly substantial, the cost would be, to go the distance to engage in some level of formal discovery. [LB140]

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

Natural Resources Committee
January 18, 2007

SENATOR FISCHER: Also, as an attorney, Senator Flood, if somebody runs down my mailbox that's out on my country road, their name is in the paper, right, if they're caught? That's public record? [LB140]

SENATOR FLOOD: It is a matter of public record. [LB140]

SENATOR FISCHER: If somebody trespasses on my private property when I have no hunting posted, and they are caught, their name is in the paper? [LB140]

SENATOR FLOOD: If they're arrested and convicted, yes. [LB140]

SENATOR FISCHER: Hit and run accidents, DUIs, even MIPs, that's all in the paper? [LB140]

SENATOR FLOOD: In my county it is. [LB140]

SENATOR FISCHER: I guess I'm just amazed that a state agency wouldn't release the name of somebody filing a complaint against you, so you could even enter into some kind of mediation with that person, so I thank you for bringing this bill. [LB140]

SENATOR LOUDEN: Senator Kopplin. [LB140]

SENATOR KOPPLIN: Just a clarification regarding the costs of going to court to answer these. If there was not a violation, would they go to court? [LB140]

SENATOR FLOOD: They may well. It's up to a judge...well, it's an agency issue. They would have a hearing, I believe, an administrative hearing? Your legal counsel would have a better understanding of the direction that they go, but they ultimately can appeal whatever decision the DEQ makes to the district court. And that's when they could engage in formal discovery. [LB140]

SENATOR KOPPLIN: But my point is that DEQ probably would not issue a complaint had there not been some violation, would you agree with that? [LB140]

SENATOR FLOOD: The salvation of the state is in the watchfulness of the citizen. I do not... [LB140]

SENATOR KOPPLIN: Thank you. [LB140]

SENATOR FLOOD: ...government is only a means by which we look, but the other branch of the government has the authority to determine whether someone should be convicted or not. I guess the one thing I may add, if I may, Mr. Chairman, I don't know if

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

Natural Resources Committee
January 18, 2007

it's appropriate... [LB140]

SENATOR LOUDEN: Go ahead. [LB140]

SENATOR FLOOD: Or I'll save it for my closing. [LB140]

SENATOR LOUDEN: Senator Dubas. [LB140]

SENATOR DUBAS: Thank you, Senator Louden. Senator Flood, so basically, what you're asking for is a change in department policy, is that correct? I mean, DEQ right now is following their policy as set out in statute as far as not releasing the name if that person so desires to have their name kept confidential. [LB140]

SENATOR FLOOD: It would be a change in the state statute, yes, Senator. [LB140]

SENATOR DUBAS: So these rules and regs went through proper channels to be established in the past, I'm assuming. [LB140]

SENATOR FLOOD: The Legislature has plenary authority over the rules of any agency as the policy-making branch of government. This would simply clarify our intent as the Legislature, if passed, that such private complaints wouldn't be allowed. So I think the answer is yes. [LB140]

SENATOR DUBAS: Okay, thank you [LB140]

SENATOR LOUDEN: Any more questions for Senator Flood? Thank you, Mr. Speaker, and I presume you wish to close? [LB140]

SENATOR FLOOD: Yes. Thank you. [LB140]

SENATOR LOUDEN: Okay, next proponent for LB140. [LB140]

STEVE KING: Good afternoon, Senator and committee. My name is Steve King from Newman Grove, S-t-e-v-e K-i-n-g. I am part of a family farm that in August we got a complaint against us by the DEQ, or an unknown complaint. We run a background feeding operation, a dairy operation and grain farming. I guess we have already started our DEQ process. Since they've been out, we've had two visits from them. We have an engineer looking into what it's going to cost for us to go ahead and go through with this. It's very substantial. We are probably on the small end of what the DEQ categorizes. And they categorize feedlots from 1,000 head to 100,000 head in the same group and I guess that's one of the things that we do not understand and we're trying to get clarified. What we are coming through today for is with us not knowing who the complainant is, we feel that we are probably unfairly treated, that we have a radius, you know, of

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

Natural Resources Committee
January 18, 2007

whatever. I could come and complain against someone down here by Lincoln or basically anywhere in the state and no one would have to know why I complained or who I am. And I guess we feel that's unfair. As farmers, if it's one of our neighbors that complained we would just as soon have a discussion with them, find out what we could do to help the situation with them. As of right now, we are working with DEQ and have started the DEQ process. And I will, if I may add, it's going to be very expensive for our operation in order for what the cost is going to be, it puts our cattle feeding operation in jeopardy. I know that has basically nothing to do with the complaint bill that we are approaching today, but in the big picture of it all, it does have a major thing to do with the small cattlemen. The ethanol industry in the state is growing leaps and bounds and I think that's great. On the other end of it, we have to get rid of the distiller's grain that's coming out of these alcohol plants one way or another. And the way the DEQ is set up right now, all of this feed is going to have to go through 30,000 and 40,000 head lots and not the small lots as we are because we can't afford to put up the statutes, the standards, and everything that they are telling us that we are going to have to do. I have a boy that's 18 years old; he wants to farm. Land is awful hard to rent. He is going to...he's planning on farming. He wants to get into the cattle business. This could jeopardize his chances. I have two other nephews that's farming with me and they're in the same shape. We've went to our banker and asked him about what we can do with this lagoon system. Well, yeah, he says, we can borrow the money to do it, but how are you going to pay for it? Instead of our feeding operation, we are going to have to double it to try to make the profits to pay for the DEQ. With that, I would be happy to answer any questions that you may have and I want to thank each and every one of you for giving us the time to come in and talk. [LB140]

SENATOR LOUDEN: Thank you, Steve. Questions for Steve? Oh, Senator Fischer, excuse me. [LB140]

SENATOR FISCHER: Thanks you, Senator Louden. Thank you, Mr. King, for coming today. I'm going to ask some questions of you and if you are uncomfortable in any way with these, please don't feel that you have to answer. [LB140]

STEVE KING: Yes, ma'am. [LB140]

SENATOR FISCHER: Have you had any complaints filed against you in the past or was this the first complaint? [LB140]

STEVE KING: This is the first complaint. [LB140]

SENATOR FISCHER: Has your farm been inspected by the DEQ in the past...your lagoon? [LB140]

STEVE KING: No, not before the complaint. [LB140]

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

Natural Resources Committee
January 18, 2007

SENATOR FISCHER: Okay. So this was the first inspection and the first violation?
[LB140]

STEVE KING: Yes. [LB140]

SENATOR FISCHER: Do you know what the DEQ's rules are on inspections? Is it a yearly inspection? Is it a five-year inspection? Do you know what that is for them? I can check with them... [LB140]

STEVE KING: From what I understand, and I could be...DEQ could correct me when they get up here, but once you have a permit, and we are considered in the large category because they categorize from 1,000 head and above up to unlimited number as large. Once you have filed a permit and have a permit, they inspect once a year.
[LB140]

SENATOR FISCHER: Had you filed a permit? [LB140]

STEVE KING: No. We were not informed that we needed one. We thought that the number was like, 1,500 or 2,000 so we weren't really concerned about it. And when they came for our first inspection they said that two years ago it had changed. And we said, well, we've been in the cattle business out here for 40 years, why didn't we know? And the answer was, it was all in the cattle publications, you should have read it. [LB140]

SENATOR FISCHER: Yes. I agree with that, there was a change just a couple of years ago and it caught a lot of people in the livestock industry by surprise. So I would verify your experience on that. Thank you. [LB140]

STEVE KING: We have a number of small...I consider small, cattle feeders in our area. And they are totally shocked knowing that 1,000 is the magic number of going from 1,000 to 100,000. It's 299 to 1,000 for a medium size; 299 and below is considered small. So we have a number of cattle feeders in our area that when they found out the DEQ had been out to our place and that we were in violation, they were shocked that the number was 1,000. [LB140]

SENATOR FISCHER: Do you...again, if you're uncomfortable with any of these questions, please don't respond. Have you taken this case to court to appeal at all, or are you just working this out now with the DEQ? [LB140]

STEVE KING: We've not taken it to court. [LB140]

SENATOR FISCHER: So at this point you still do not know who filed the complaint.
[LB140]

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

Natural Resources Committee
January 18, 2007

STEVE KING: No. [LB140]

SENATOR FISCHER: Okay. Thank you. [LB140]

SENATOR LOUDEN: All right. Senator Hudkins. [LB140]

SENATOR HUDKINS: Mr. King, as Senator Fischer said, if you're uncomfortable, please don't feel you have to answer. Would you care to tell us what the nature of the complaint was? [LB140]

STEVE KING: We got this complaint in the first part of August. We had went through a terrible dry period and we got like a seven-inch rain the first week of August. The crops around us sucked up every ounce of water--no runoff of any field whatsoever. Our feedlot is on approximately 15 acres, and at that time we had less than 700 head of cattle at the feedlot because we had sold some off. And the water off the feedlot went down through a creek bed and that's where the complaint came from. A quarter mile away from our feedlot they took a sample of water and they didn't like it. And they went another mile down and checked a pocket of water and it was slightly discolored and no toxicities. So within a mile and a quarter it had basically cleaned itself up. Had we had enough moisture in the ground, I guess we feel and no one knows the answer for sure, but we feel that had we had enough moisture in the ground and some of that clean water runoff would have went through there, the picture would be totally different. [LB140]

SENATOR HUDKINS: And did you have a lagoon system at the time of the complaint? [LB140]

STEVE KING: No. [LB140]

SENATOR HUDKINS: No. Are you a member of the Nebraska Cattlemen? [LB140]

STEVE KING: Not yet. [LB140]

SENATOR HUDKINS: I think your dues will be real cheap. (Laughter) Thank you. [LB140]

SENATOR LOUDEN: Senator Carlson. [LB140]

SENATOR CARLSON: Thank you, Senator Louden. Mr. King, again, if you don't feel comfortable in answering, don't. But it seems like there's...as I'm listening, there's two issues here. One of them is very frustrating because you have a complaint and you don't know who, and I'd want to know who, as well. The other is that if you are in

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

Natural Resources Committee
January 18, 2007

violation, it's costing you money, and maybe the second issue is DEQ rules versus what LB140 addresses. We got two issues here that are causing you grief, right? [LB140]

STEVE KING: Correct. [LB140]

SENATOR CARLSON: Okay. [LB140]

SENATOR LOUDEN: Senator Wallman. [LB140]

SENATOR WALLMAN: Thank you. And I too want to comment. I have a friend down the road a few miles. He quit feeding cattle on account of this issue. Somebody turned him in. He thought it was one of his cousins, you know? They all feed cattle. So it caused a lot of consternation in my neighborhood. You know, family members are hardly talking. And they can't find out who turned in the complaint. [LB140]

STEVE KING: Correct. [LB140]

SENATOR WALLMAN: And on this issue of...does EQUIP help you any or not? [LB140]

STEVE KING: Pardon me? [LB140]

SENATOR WALLMAN: EQUIP Program, the government program? No? [LB140]

STEVE KING: They're...we're working on it. [LB140]

SENATOR WALLMAN: Okay. But I have tremendous empathy for you. I agree too, if you blow the whistle...I've had two friends...they blew the whistle. One was on chemicals and it was...they literally shut him down for a while. It's pretty scary. [LB140]

STEVE KING: Um-hum. [LB140]

SENATOR WALLMAN: And I have tremendous empathy for you. I'm a farmer myself. [LB140]

STEVE KING: Thank you. [LB140]

SENATOR LOUDEN: Senator Kopplin. [LB140]

SENATOR KOPPLIN: Was there a violation? [LB140]

STEVE KING: Well, in whose eyes, that's the question. [LB140]

SENATOR KOPPLIN: In the law's eyes. [LB140]

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

Natural Resources Committee
January 18, 2007

STEVE KING: According to DEQ, we are in violation because we did not have a permit. Now had we had a permit, would have this complaint came? I guess we don't know the answer to that. But had we known what our...back then that we should have had a permit, I would have to say that we may have done something different. But as of right now, apparently the complaint caused the DEQ to come out and say we are in violation because we do not have a permit. Now after we've started our permit process, we have learned a lot. But the main concern is the categorization of the livestock feeding industry that we feel is very unfair and maybe the DEQ of the state of Nebraska's hands are tied. I don't know the answer to that, but it's not fair to the small operators. [LB140]

SENATOR LOUDEN: Senator Christensen. [LB140]

SENATOR CHRISTENSEN: Thank you. How far is it from your lot to where you could even get to contaminating a stream or anything that way? [LB140]

STEVE KING: Thirty miles. [LB140]

SENATOR CHRISTENSEN: How far before it gets to even to a neighbor? [LB140]

STEVE KING: Well, across the fence if you... [LB140]

SENATOR CHRISTENSEN: Across the fence. [LB140]

STEVE KING: ...if you want to call it that. [LB140]

SENATOR CHRISTENSEN: That's close. [LB140]

STEVE KING: Quarter of a mile. [LB140]

SENATAOR CHRISTENSEN: Okay. [LB140]

STEVE KING: And that's just, it's hard to describe, but we had 80 acres of crop...between our feedlot we had 80 acres of cropland on our side of the fence, and then there was another 80 acres of cropland before it crossed under the road into a bridge, and then down under. That was one of our concerns is that in the appendix of the DEQ they call every creek, crook, and cranny a water of the state. And that is so misled that it's not actually water. Our water could not...our closest water is the Elkhorn River in Norfolk. We're north of Newman Grove. [LB140]

SENATOR CHRISTENSEN: Okay. [LB140]

STEVE KING: So I don't know, it's 30 miles to drive there but the way creeks wind

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

Natural Resources Committee
January 18, 2007

around, it could be 40 miles before our water could actually hit the Elkhorn River.
[LB140]

SENATOR CHRISTENSEN: What's the depth of ground table to water? [LB140]

STEVE KING: Three hundred feet. [LB140]

SENATOR CHRISTENSEN: That's what I assumed. Thank you. [LB140]

SENATOR LOUDEN: Any other questions? I have one. When you mentioned that you have your feedlot, do you have any kind of way to hold runoff water from your feedlot at the present time, or before this... [LB140]

STEVE KING: Not at the present time. [LB140]

SENATOR LOUDEN: Okay. And now that the DEQ has paid you a visit, you have to have a lagoon now to hold that water? [LB140]

STEVE KING: We are working with an engineer right now. In fact, Monday he's coming out and we have to do a survey. It cost us \$5,000 just to get an engineer out to survey it and find out where our runoff water is coming from. Then he'll tell us how deep our hole has got to be, and just an off-the-wall guess is it's going to cost us somewhere in the neighborhood of \$150,000 to \$200,000 for this lagoon. [LB140]

SENATOR LOUDEN: And was that something you were supposed to have anyway when the laws went into effect a few years back? [LB140]

STEVE KING: According to the DEQ, yeah, we didn't... [LB140]

SENATOR LOUDEN: Okay. Yeah, and... [LB140]

STEVE KING: Had we filed a permit two or three years ago, I imagine they would have said that, right. [LB140]

SENATOR LOUDEN: And then the complaint against you, was that because you didn't have a permit, you didn't have a lagoon, or you discharged the water into a running stream? Which was it, do you know? [LB140]

STEVE KING: I couldn't tell you. [LB140]

SENATOR LOUDEN: Okay. It wasn't listed from the DEQ...what the... [LB140]

STEVE KING: I guess...I have never received a written violation from the DEQ. We had

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

Natural Resources Committee
January 18, 2007

a personal visit. [LB140]

SENATOR LOUDEN: Okay. Then you're just doing this because they came and told you to? They didn't send you a notice or anything that you had to do it? [LB140]

STEVE KING: It's kind of how we're sitting right now. We got a...we have a permit that's approximately 400 pages long that we have to get filled out. [LB140]

SENATOR LOUDEN: Okay. [LB140]

STEVE KING: Before we can get a permit. [LB140]

SENATOR LOUDEN: Um-hum. Well... [LB140]

STEVE KING: Once they came out and found out we didn't have a permit, well then I think the tables kind of changed to we have to get a permit. [LB140]

SENATOR LOUDEN: Um-hum. And in the course of getting a permit, you do have to have a lagoon to hold your runoff water. [LB140]

STEVE KING: Yes, sir. [LB140]

SENATOR LOUDEN: Right. Um-hum. Well, I agree and of course where I come from we have a lot of alkali lakes, and I know there's one fellow up there that had a feedlot and he had...he was right next to a great big old alkali lake that you could throw tin cans in and it would eat them up. But he had to have a lagoon next to that alkali lake so he didn't discharge water into that alkali lake, so I understand. Well, thanks. Well, wait, one more question. Senator Fischer. [LB140]

SENATOR FISCHER: Thanks, Senator Louden. Mr. King, do I understand that you've never received a written violation from DEQ? [LB140]

STEVE KING: I don't think...let's see, yes we did too, yes. [LB140]

SENATOR FISCHER: Oh, okay. [LB140]

STEVE KING: Yes, we did, yeah. I didn't bring my DEQ file. [LB140]

SENATOR FISCHER: I can imagine... [LB140]

STEVE KING: Yes, we did and there was a, they had a penalty on it and I can't even recall the numbers now. But they did have a penalty on it that we needed to pay due to we did not have the permit. And now since we got the process enrolling, we haven't

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

Natural Resources Committee
January 18, 2007

heard any more about that penalty, as to when it's due or if it's due. [LB140]

SENATOR FISCHER: Okay. Did you ever see a copy of the written complaint against you? [LB140]

STEVE KING: No. No. [LB140]

SENATOR FISCHER: Thank you. [LB140]

SENATOR LOUDEN: Any more questions for Mr. King? [LB140]

STEVE KING: I guess on my last comment is with this not knowing who's complaining against you, it just leaves the field wide open. I stated it before and I guess I'll state it again to reaffirm it that somebody from Lincoln could drive past and choose any one of any of us. We're all vulnerable. And without them coming forward and putting a reason, or you know...I guess that would be our question to our neighbor is why. Why didn't they come to us instead of go to the DEQ? Thank you. [LB140]

SENATOR LOUDEN: Wait. [LB140]

STEVE KING: Sure. [LB140]

SENATOR LOUDEN: On that note, being as you mentioned that, you want to remember if that run down a road barpit or went under a bridge, anybody that driving through... [LB140]

STEVE KING: Correct. [LB140]

SENATOR LOUDEN: ...could file that complaint. I mean it wouldn't necessarily have to be your neighbor. [LB140]

STEVE KING: Correct. [LB140]

SENATOR LOUDEN: Anyone who saw that water running down the ditch or wherever, could have filed that complaint. So yeah, it's anybody out there in that world. [LB140]

STEVE KING: As I could do if I just took a road trip down Highway 2. [LB140]

SENATOR LOUDEN: Yeah. Good enough. Thank you. [LB140]

STEVE KING: Thank you. [LB140]

SENATOR LOUDEN: Next opponent? Proponent? Proponent. Sorry about that. [LB140]

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

Natural Resources Committee
January 18, 2007

MARK McHARGUE: (Exhibit 4) Chairman Louden and members of the Natural Resources Committee, my name is Mark McHargue, M-a-r-k M-c-H-a-r-g-u-e. I'm a pork producer and a family farmer from Central City, Nebraska. I come before you today representing the Nebraska Pork Producers as well as myself in support of LB140. I thank Senator Flood for introducing this legislation and the committee's interest and attention. The Nebraska pork industry has been challenged from many fronts this past decade. In the pork industry...we in the pork industry respect these challenges, have responded to the challenges, and strived to modify our production to implement all new rules and regulations. A part of the current rules and regulations require our operation permits to be on file and open to public view. Pork producers can be fairly or unfairly accused via a complaint filed with the Nebraska Department of Environmental Quality for failure to adhere to the current rules and regulations. A producer cannot be informed who has filed these complaints. The complaint, if fair or false, may cause a producer additional daily stress, worry and financial setback. In the pork industry it seems like we have enough to deal with without having to deal with some of these types of issues. We, the Nebraska Pork Producers, are not against the complaint process. I think that's very important. Additionally, we also strongly support LB140 which will add accountability for, and to us, NDEQ and persons who may use the complaint process in an unfair manner of harassment. We do realize an employee submitting a complaint may fall under the whistle-blower rules and this legislation may need an amendment to protect their rights. Mr. Chairman and members of the committee, we believe our support for implementation and use of rules and regulations have earned us the courtesy and the respect to be informed who files complaints against us and our family's method of making a living. I urge your positive review of this legislation and its movement forward. I would certainly appreciate your time and kind attention and I'll try to answer any questions you guys might have. [LB140]

SENATOR LOUDEN: Thank you, Mark. Questions for Mark? Senator Fischer. [LB140]

SENATOR FISCHER: Thank you, Senator Louden. Thank you, Mark, for being here today. As part of your testimony, you're saying that under current rules and regulations that any permit that a livestock operator would file is available for public access. [LB140]

MARK McHARGUE: Yeah. You know, we filed our permit a lot of years ago and it's on public file. We do have an inspector come out once a year and we have gotten along very well with the DEQ. [LB140]

SENATOR FISCHER: Do you know if anyone not employed by the DEQ, but just a member of the public, has ever gone in and accessed those files of permits? [LB140]

MARK McHARGUE: I don't know. I would have to assume, I'm sure they probably have. [LB140]

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

Natural Resources Committee
January 18, 2007

SENATOR FISCHER: I'll stop there now. Thank you. [LB140]

SENATOR LOUDEN: Any other questions for Mark? Seeing none, thank you. Next proponent? [LB140]

STACY SNODGRASS: (Exhibit 5) Good afternoon, Senator Louden, members of the Natural Resources Committee. My name is Stacy Snodgrass, S-t-a-c-y S-n-o-d-g-r-a-s-s. I'm a dairy producer from Royal, Nebraska. I'm a member of the Antelope County Farm Bureau and I'm here today on behalf of the Farm Bureau in support of LB140. I appreciate the opportunity to visit with this committee this afternoon and also appreciate Senator Flood's introduction of this bill. This bill tries to fix an issue that I'm familiar with and needs to be addressed. That issue is making people who have permits from the state have the same rights as the people who file complaints against them. I'd like to give you a little background about my experiences and why I think this bill is warranted. My dad, my brother, and I have two sons, own and operate a 800-head dairy. In the late nineties we made the decisions that if my sons were going to have an opportunity to stay in the dairy business, we needed to grow our operation. My dad and I had been milking about 125 cows at that point and it was time to expand or get out. When we went through our expansion it was right about the same time there was a lot of public criticisms of another proposed dairy in our neighborhood. As part of that, we experienced the same harassments that these other dairy producers received. In addition to the general harassment, we had a number of false complaints filed against our operation with the Nebraska Department of Environmental Quality. In all those cases, NDEQ came out and inspected our operation and found there weren't any problems. When I asked who was doing the complaining I was told by the department they couldn't share that information because of internal policy. Angry, frustrated...yeah. Virtually every detail about my dairy is open to the public through my operating permit, yet I don't have the right to know when someone is making false claims against my operation or who they are. False complaints cost the state money and add burden to the producers. I'm not against the complaint process but I am against people abusing the system. Letting producers know who is doing the complaining adds much more accountability to the process and that's why I am in support of LB140. About the complaints, I had six complaints within a year with the DEQ. I had one with EPA. I had NRCS out. It was...I had an idea who one of them was. I just happened to be up to Royal one day and the Game and Parks vehicle drove by and I have had my suspicions with them. I followed them out. This is completely the opposite direction of their facility. They drove out, drove by my place slowly. I stayed back and I got up on them and we proceeded to go around...it was about a 10-, 15-mile round trip. When I called down to Nebraska Game and Parks and asked them about it, called the head, I think it was Rex Amack, I believe, I asked him about it and he told me, he assured me that he would get to the bottom of it. Well, he did. The next day, that's when the NRCS was out saying I had a complaint filed against me, and the following day DEQ was out. I guess with that,

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

Natural Resources Committee
January 18, 2007

I'd be glad to answer any questions. [LB140]

SENATOR LOUDEN: Any questions for Stacy? Senator Fischer. [LB140]

SENATOR FISCHER: Thank you, Senator Louden. Thank you, Stacy, for being here today. Do you know if there was ever any action taken against the person or persons involved in filing the complaints against you that were unfounded? [LB140]

STACY SNODGRASS: No. [LB140]

SENATOR FISCHER: Here again, if you are uncomfortable answering any of these questions, I don't mean to pry into somebody's personal business. Did you ever have to hire an attorney... [LB140]

STACY SNODGRASS: No. [LB140]

SENATOR FISCHER: ...with any of these unfounded complaints? [LB140]

STACY SNODGRASS: No, I went down to DEQ and I did get into my records and looked at the complaints. Like I said, they're blacked out. Basically, they told me they have two books, one with the name is blacked out and the other with their name on it. [LB140]

SENATOR FISCHER: I think you said six unfounded complaints were filed? [LB140]

STACY SNODGRASS: Yes. [LB140]

SENATOR FISCHER: Do you have any estimate on the time involved for you or your father or sons in dealing with these complaints and what it cost your business? [LB140]

STACY SNODGRASS: Usually it was two or three hours going through the paperwork. With EPA, I spent all the day with them. [LB140]

SENATOR FISCHER: Would you happen to know how much time the state employees put in on these unfounded complaints? [LB140]

STACY SNODGRASS: Most of the time when I was getting complaints, he was getting them two for one. It was my operation and the other one down the road. (Laughter) It was the same date and same deal. [LB140]

SENATOR FISCHER: Okay. Thank you. [LB140]

SENATOR LOUDEN: Any other questions for Stacy? Senator Carlson. [LB140]

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

Natural Resources Committee
January 18, 2007

SENATOR CARLSON: Stacy, one of the things that isn't addressed here is the mental anguish that you went through. (Laughter) And this points to, we ought to have some kind of a system where the loser pays. [LB140]

STACY SNODGRASS: That was another thing I guess I forgot to mention--Iowa. I had given some testimony to this committee--Senator Hudkins is really the only one here since then but--this summer, about chronic complainers, Another...something in Iowa that has been introduced, I think a couple of years ago, on a three strikes and you're...then you pay the producer and the DEQ's wages or whatever. [LB140]

SENATOR CARLSON: Don't let us lose track of that for next year. (Laughter) [LB140]

STACY SNODGRASS: If you need something, the Farm Bureau group has that bill. [LB140]

SENATOR LOUDEN: Any more questions? Thank you, Stacy for testifying. [LB140]

STACY SNODGRASS: Thank you. [LB140]

SENATOR LOUDEN: Go ahead, Duane. [LB140]

DUANE GANGWISH: Good afternoon, Senator Louden, members of the committee. My name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h. And I appear before you today as a registered lobbyist for Nebraska Cattlemen and on behalf of ranchers, farmers and feeders all across Nebraska, rising in strong support of LB140. You may be presented testimony on this amendment to the subsection 22 of 81-1504, will materially prevent or inhibit citizens from coming forward with credible information about suspicious or illegal acts pertaining to the Environmental Protection Act, the Integrated Solid Waste Management Act and/or the Livestock Waste Management Act. This testimony may say that this would inhibit...this inhibition rises out of fear of reprisal. However, I would put before you this is predominantly in the case of an employer-employee relationship. I submit to you that it is the duty and obligation of every citizen to do their part, however small, to protect the natural resources of our state. As many like to quote the engraving on the north entrance of the building as Senator Flood did, "The Salvation of the State is in the Watchfulness of the Citizen." There should be no fear or hesitation to do what is right and just. Likewise, it is our justice system, except in very special circumstances, that grants the accused the right to view his accuser. Although the laws of this land were founded upon the premise of innocent until proven guilty, livestock producers across the state are dismayed and frustrated by complaints often based upon emotion that paint them as guilty in the public's eye, and incur significant staff, time or monetary cost to defending one's innocence. Senator Fischer and Senator Kopplin had a discussion about some of the costs and what this might be. I'm familiar with a specific

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

Natural Resources Committee
January 18, 2007

situation that was only held and dealt with internally within DEQ and in conference with the Attorney General's Office. It did not ever go to court and was settled out of court, and the penalty was very modest. It was about \$3,500, however, the legal fees were \$14,000. So there is significant costs involved in proving one's innocence. Nebraska Cattlemen believes that this revision is good public policy. If a citizen has a complaint and it's legitimate, they should engage the process and let their voice and their name be heard by all. Nebraska Revised Statute 84-712 gives citizens full access upon the request to all public records with some exceptions for privileged information such as medical records, trade secrets or attorney-client communications. I appreciate the opportunity and your patience today to present these ideas for your consideration and respectfully request that you advance this bill out of committee. I'd be happy to attempt to answer any questions you may have. [LB140]

SENATOR LOUDEN: Any questions for Duane? Senator Kopplin. [LB140]

SENATOR KOPPLIN: Just a couple. Your organization works extremely hard with your members so that these violations don't happen. Would that be fair to say? [LB140]

DUANE GANGWISH: It's very accurate, Senator. [LB140]

SENATOR KOPPLIN: Yes, thank you for that. The other question--it's come up a couple of times today about the number of cattle, 1,000 to whatever is a large...wasn't your organization involved when these numbers were set by the Legislature? [LB140]

DUANE GANGWISH: Yes, the organization was very involved, Senator, as you might recall... [LB140]

SENATOR KOPPLIN: So it wasn't a surprise to your organization that these figures were there at all. [LB140]

DUANE GANGWISH: No. And it was pointed out when Senator Hudkins questioned earlier, this particular family is not members and there are many out there that...I don't want to categorize in one way or another, but might we say unsophisticated, maybe aren't as well informed. Maybe purview, look at the purview that this doesn't apply, and although ignorance is not excuse of the law, there are many that don't stay abreast of these minute changes. [LB140]

SENATOR KOPPLIN: I do appreciate the work your organization does, by the way. You are easy... [LB140]

DUANE GANGWISH: Thank you. [LB140]

SENATOR KOPPLIN: ...not easy, (laughter) you are easy to work with in solving some

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

Natural Resources Committee
January 18, 2007

of these issues and I appreciate that. [LB140]

DUANE GANGWISH: Well, it is an effort and there was an extraordinary effort. Again, there are two issues that have been discussed today. One is the bill that has to do with complaints and the other is the permitting process. Focusing on the topic of the bill, we feel it's appropriate that this kind of information be out in the clear light of day. [LB140]

SENATOR LOUDEN: Other questions for Duane? Thank you, Duane. [LB140]

DUANE GANGWISH: Thank you. [LB140]

KORBY GILBERTSON: Good afternoon, Chairman Loudon, members of the committee. For the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I am appearing today as a registered lobbyist on behalf of Waste Connections which, as opposed to the previous testifiers, is not a producer of either cattle or pork but rather runs landfills and transfer stations in Nebraska. This proposed change in statute not only impacts cattle producers and pork producers, but also all permittees under NDEQ. And I have to say, so that NDEQ doesn't think I'm up here because we are complaining about the process, when we discussed this bill my clients have said that they have a very good working relationship with DEQ insofar as if there are ever complaints lodged, that they work with them very well to get anything taken care of. However, as you've heard in previous testimony, there are some concerns with people who may launch frivolous complaints against people for reasons other than a true problem with something having to do with the environment. So having the name be made public seems to be a step in the right direction. I'd be happy to try to answer any questions if I can. [LB140]

SENATOR LOUDEN: Questions for Korby? I have one. Okay, you're telling me now that there can be some wastewater drainage off of some of these parking lots or something like that, and somebody can complain to DEQ and it's the same thing like that? [LB140]

KORBY GILBERTSON: Anything off of a landfill or transfer station, um-hum, same permitting process. [LB140]

SENATOR LOUDEN: Okay, and it's the same process whether it was... [LB140]

KORBY GILBERTSON: They are covered by permit--not the same type of permit but permits under NDEQ. [LB140]

SENATOR LOUDEN: But I mean the same kind of complaint then. [LB140]

KORBY GILBERTSON: Um-hum. [LB140]

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

Natural Resources Committee
January 18, 2007

SENATOR LOUDEN: And they don't have to come forward and be identified. [LB140]

KORBY GILBERTSON: Exactly. Yeah, the names are redacted from the complaint. [LB140]

SENATOR LOUDEN: Okay, thank you. Oh, wait, one more question then. Senator Fischer. [LB140]

SENATOR FISCHER: Thank you, Senator Louden. Yeah, you stirred a question here with me. Korby, do you know if there have been complaints filed against either landfills run by private companies or cities and counties that may have landfills or anything? [LB140]

KORBY GILBERTSON: I know that there are complaints filed. I mean, I know that that has happened. And I did not ask them, have you...you know, run me numbers on how many of them are proven to be true or false or...I didn't ask them to do that but I can check into that if you'd like me to. [LB140]

SENATOR FISCHER: No, that's all right. I was just curious on what, I guess if this bill goes to the floor it would be interesting to see those numbers on possibly what it's cost cities, counties in dealing with these complaints, too. [LB140]

KORBY GILBERTSON: Um-hum, yeah. [LB140]

SENATOR FISCHER: Thank you. [LB140]

SENATOR LOUDEN: Senator Wallman. [LB140]

SENATOR WALLMAN: Thank you, Senator. In regards to, you know, permits on lagoons and for schools...cities, we have had complaints, like school lagoon run-over. [LB140]

KORBY GILBERTSON: Um-hum. [LB140]

SENATOR WALLMAN: And the person signed his name on the complaint. So the school board--I didn't hold it against him because I might have been mad too if that was running through my horse lot--you know, he had horses. But we took a water sample of that. It was a huge rain, and it was okay. But some people do have animosity, like Senator Kopplin said, if you do put your name on the line. Well, this man did and I respected him. [LB140]

KORBY GILBERTSON: Right. And I think in other places where you file complaints your name stays on it, I know. If you make complaints about animals in the city of Lincoln

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

Natural Resources Committee
January 18, 2007

against your neighbor, then they know that you did it. [LB140]

SENATOR WALLMAN: I, myself, if I am going to file a complaint, I'll sign it. [LB140]

SENATOR LOUDEN: Any other questions? Thank you, Korby. [LB140]

KORBY GILBERTSON: Thank you for your time. [LB140]

TRENT NOWKA: For the record, my name is Trent Nowka, T-r-e-n-t N-o-w-k-a. I'm here today representing the Nebraska poultry industry. I just want to be on record to say ditto with regards to the comments that were made previously, simply from the standpoint that we would just like to know who our accusers are. It's not from the standpoint that we do not want the complaints filed. If the complaint needs to be filed, we would like to know who it is. It seems to be, though, over the last couple of years there's been an increasing number of complaints that are more of the harassment nature rather than the validity of the complaint. There, for whatever reasons, be it parochialisms of animosity between farmers or the standpoint of encroachment of residences outside city limits, from the standpoint of not being familiar with the livestock industry and some of the associated odors or discharges that may occur from that aspect. The one thing that I want to clarify and it's in reference to you, Senator Kopplin, with regards to the changing numbers. It's not DEQ, it's EPA is the one who changes the numbers on us and I don't want anybody to leave here thinking that it's DEQ. It's our so-called experts in D.C. who dropped the number from 5,000 to 1,000. That has caused some of the issues regarding the livestock waste facilities as to who needs to get a permit, who doesn't need to get a permit. And Senator Dubas has a bill that's been introduced from the standpoint of trying to address the issue of the changing numbers and who needs to get permits and who doesn't need to get permits. But again, the issue is the complaint and the right for us to know who the accuser is as well as the validity. Because the time and expense for ourselves, the time and expense of DEQ staff, as well if it proceeds from the standpoint of all the additional expenses and time that it takes away from our businesses and occupations. With that I will close and answer any questions that you might have. [LB140]

SENATOR LOUDEN: Any questions for Trent? I do. [LB140]

TRENT NOWKA: Yeah. I'm not getting out of here, huh? (Laughter) [LB140]

SENATOR LOUDEN: In the poultry business, where do you...what are you talking about, waste water? Or when you...or dust, or something out on a field? Because in the poultry business you don't have to have a lagoons or anything. [LB140]

TRENT NOWKA: You don't have lagoons, but believe it or not, there have been issues or complaints filed from the standpoint of the manure, the dry manure that is piled up

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

Natural Resources Committee
January 18, 2007

outside at some of the large hen-laying operations, or egg-laying operations, Wakefield area, and otherwise. From the standpoint of heavy rains, I mean, sometimes you get the examples with the King family, seven-inch rain. You just cannot predict some of those situations. Yeah, you need to have protections there. The odor issue. I don't know if you've been around poultry waste, but there is a significant odor there after a while, just from the standpoint of stockpiling and how it's utilized and placed out on fields. So there is an issue from the standpoint of the poultry aspect. I shouldn't use an example, but I will go ahead and do it just from the standpoint of full disclosure, is the Wakefield operation from the standpoint of questionable activities up there with regards to animal abuse. There was a complaint filed, but we know who the complaint...and it was with the federal government, from the standpoint of animal rights. But there was a name to the complaint so we know who our accusers are. And that's all we're asking, from the standpoint of who our accuser is or isn't so we don't have some of the questions going on, if it's our neighbor, if it's our relative, or there's something personal because I didn't support something of yours earlier on, or school consolidation, or whatever it may be. We've had some examples of that even. Senator Raikes had a little bit of the trouble up there in Saunders County from the standpoint of some fallout there with regards to his operations. So there's probably as many different excuses as there are farmers and ranchers in the state, but that's the situation. [LB140]

SENATOR LOUDEN: Okay, thank you. Any more questions of Trent? [LB140]

TRENT NOWKA: Thanks. [LB140]

SENATOR LOUDEN: Thanks, Trent. Any other proponents? Any opponents? [LB140]

LAURA KREBSBACH: Good afternoon. [LB140]

SENATOR LOUDEN: Good afternoon. [LB140]

LAURA KREBSBACH: (Exhibit 6) And I want to be quick because there's been a lot of things covered. My name is Laura Krebsbach, L-a-u-r-a K-r-e-b-s-b-a-c-h, and I'm here today with the Great Plains Environmental Law Center. And I have some testimony in written form to hand out, but some of it's dated. In this day and age things can happen so quickly. Senator Flood clarified some things that I was confused about initially when I read the bill. It did not specify that the written notification that went out would have the complainant's name, so with his "AM" that clears that up. And I have to say that I agree with a number of things that previous testifiers have said. Duane and I agree that it's...ignorance is no excuse of the law and I think sometimes that's the case. The other thing is that we've got a little bit of, and it's been addressed, but we're talking about two different things when we are talking about permitting and what you're supposed to do opposed to having complaints. And I do want to, again, help clarify that the numbers came from the feds, and Nebraska previously had four class sizes. And when the feds

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

Natural Resources Committee
January 18, 2007

changed the regs, we got collapsed down into three and it put a lot of the small guys in a bad situation where if they were 1,000, now they were large. And there was reference to Annette's bill where we're going to hopefully be able pass something that gives them more time to come into compliance because 1,000 is a lot different than 500,000, and we give these guys that were small a better break. So the other thing I want to talk about is process. When there is a violation or a report of a violation and DEQ goes out and they inspect and they determine whether something has or has not happened, it is up to DEQ's discretion on whether there will be a violation. And DEQ on many, many occasions has at least conveyed to me that a lot of what their purpose is, is to help a producer come into compliance, not to punish. So there's a lot of discretion there. If there is a violation, there's a number of things that DEQ can decide to do, anywhere from fines to just giving them a deadline to fix the problem. To end up in court is a very, very, very rare occasion and those occasions, then, it would have to go to the Attorney General's office if it's state, and if it's EPA it goes to the Department of Justice. And I don't think we can count on more than one hand the number of times that we've seen these things in the last two years go to those levels. Wakefield is the one that comes to my mind and Nebraska Pig Partners that had a discharge into a waterway in Nance County. I believe it was Timber Creek and that was over a year ago. So it's a very rare occurrence and I think that alluding to litigation and lots of court processes is a bit misleading. The other thing that I want to just hit quickly is that in Nebraska, and I do have laid out here what DEQ's current policy is as far as confidentiality. We provide for confidentiality in a lot of different areas and it's important. You know, we have that in the case of child neglect or child abuse. Are we going to say we're not going to protect people that report that because, well, there could be retaliation or it could be frivolous, so we're just going to...anybody that calls, they see their neighbor's kids standing outside, ten degrees in a diaper, we're going to have your name on that report. The threat of retaliation is a very real and scary threat. We have crime stopper hotlines. We have, I think also, the State Auditor's office provides for confidentiality. Any time something does go to a litigation type of situation, I think, I can't remember exactly what term I was using, it was one that was too large for me...investigatory..., looks good on paper. But if it goes to that stage where there's an investigation and there's legal ramifications, you will be a witness and your identity is revealed because you have to get up in a court of law. That's where we say you have the right to see who your accuser is. That's in a judiciary type of setting. But as far as being whistleblowers, it's very important that citizens feel that they can be the eyes and ears of the state and also be protected from retaliation. And I think we all do across the state for the majority, the most part of time, take that duty to be diligent and to only do those things that we feel are legitimate. I think that any type of time that you use reporting as a bully pulpit or as a way to take retaliation, it's wrong. But I think it's probably a very, very small portion of the reports. And it's just very important that we protect people that are willing to pick up the phone or write a letter and say, this is happening, I think it's a violation. So, there's some other points in my written comments and I'll just leave it all there. Are there any questions? [LB140]

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

Natural Resources Committee
January 18, 2007

SENATOR LOUDEN: Any questions for Laura? Senator Hudkins. [LB140]

SENATOR HUDKINS: Laura, thank you for being here. I have a question for you. Mr. King said that he had a number, five or six, I believe, false complaints filed against him. Now these might have been harassment-type complaints, they might have been question-type complaints, I don't know. But should the harassment-type complaints, should those people be allowed to remain anonymous when they continually say, well, he's doing something wrong, he's doing something wrong, when in fact, he isn't. [LB140]

LAURA KREBSBACH: I think that that comes down to the discretion of the department because they tell the department who they are. And if DEQ is taking these calls and they know that XYZ person has called on, you know, Dream Pig facility, I hope there isn't really one called that, I'm trying to make it up. They have taken six calls in six weeks or six months and they've all proven to be, for lack of a better word, fruitless, as far as there's a violation, they have the discretion to say, we're not going to act on this and that's going to send the message to the person that's calling in that you're not going to get anywhere with this. So I think that there are places that can be dealt with internally in the agency before we go and take such a drastic step to pass legislation that does not protect whistle blowers. So I'd like to see it be handled internally more so than being handled just by legislation. [LB140]

SENATOR HUDKINS: Thank you. [LB140]

SENATOR LOUDEN: Any more questions? Senator Fischer. [LB140]

SENATOR FISCHER: Thank you, Laura, for being here today. I guess I have a question in my mind. I'm a little confused when you talk about whistleblowers? I've always thought a whistleblower was an employee of a company, and for fear of reprisal by the employer that person is a whistleblower because they're willing to step forward and under those circumstances and those unique circumstances where someone's job, future, is in danger. We already have that in statute to protect those people, don't we? [LB140]

LAURA KREBSBACH: Yes, I think it's kind of a conceptual word in a lot of ways also. I have someone that I've worked with in central Nebraska that has a business in rural Nebraska and it has to do with maintaining vehicles. And they called and made a complaint about a livestock operation, and as soon as that person found out who it was, they put pressure on a number of local businesses to pull all of their business from this individual. So there is the possibility of losing financial stability in your work if you report, so it goes both way. There are people that are going to have false reports in their mind. Do we know if it is or not? No, we don't. And there's going to be people that are worried about being retaliated against, so it's a very important thing to weigh and I just don't

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

Natural Resources Committee
January 18, 2007

think it should be taken lightly. [LB140]

SENATOR FISCHER: I don't think any of us take it lightly here in the position that we are in as representatives... [LB140]

LAURA KREBSBACH: Oh, I didn't infer that, I'm just... [LB140]

SENATOR FISCHER: Well in the position that we're in as representatives for the people in this state, we never please everybody. And there's a number of folks that are in business here and their businesses have suffered. I was on a local school board for over 20 years and Senator Wallman can tell you that decisions that are made on a local school board, those are made in the open. And people in business suffer the consequences for that too. I guess I just have a real problem that you equate a whistleblower, who I feel is already protected under the law, with someone who can make a complaint and not put their name out. And I'm hoping Senator Flood as an attorney, in his closing, will address cases that people who make complaints and are willing to put their names out, such as teachers when they view a bruise on a child they are obligated by law to report that to social services and to law enforcement officials. So I guess I'm just saying I, there are other instances where people step up and they feel that there is a problem. They take that responsibility, they take it personally and they are willing to put their name on it. So thank you, thank you, Senator Louden. [LB140]

LAURA KREBSBACH: I'd like to address that last comment. [LB140]

SENATOR FISCHER: You really don't have to, thank you. [LB140]

SENATOR LOUDEN: Sorry about that. Thanks, Laura. Senator Kopplin. [LB140]

SENATOR KOPPLIN: Would you like to address that last question? [LB140]

LAURA KREBSBACH: Well, I would. I appreciate that. [LB140]

SENATOR KOPPLIN: Thank you. [LB140]

LAURA KREBSBACH: There are people that are in positions where that is legally their requirement, such as teachers. School boards have transparency because they're elected bodies, whereas the average Joe out there that has to pick up a phone or write a letter, and that isn't their usual type of position to be in, it is a different situation for them. I just wanted to make that...determinate that difference. [LB140]

SENATOR LOUDEN: Senator Wallman. [LB140]

SENATOR WALLMAN: Thank you, Senator Louden. Laura, I'd like to address that

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

Natural Resources Committee
January 18, 2007

question about unsigned letters...complaints or whatever. They go to file 13 in my place. Whether I am in a church board or elevator board, you know? I don't even look into the complaints because if that person doesn't have enough courage to put his or her name on the line, it's probably harassment. And I agree with the farmer. And so we're spending a lot of state dollars sending people, or EPA people. Like my good friend, EPA people spent three days on his farms and didn't find a thing. So I consider that harassment. And that was an unsigned complaint or blacked out complaint, whatever you call it. So I agree with Senator Flood. If I'm going to sign a complaint against Senator Flood, I'll put my name on the line. [LB140]

LAURA KREBSBACH: And I appreciate that integrity. I think that, and I'm glad you made the difference between that it's unsigned and that it's blacked out because they do have to give their information to DEQ. They only...if they request it blacked out, then it's blacked out. So there's a number of times that it does have who the person is. For whatever reason that they have fears, currently they can ask to be blacked out and I respect that opinion. [LB140]

SENATOR LOUDEN: Okay. Senator Carlson. [LB140]

SENATOR CARLSON: Thank you, Senator Louden. Laura, one statement that you made, is litigation and issues taken to court are rare. But the money spent on false and frivolous allegations still cause a person to spend a lot of money for legal help, and so I'll go the other direction too, that I am as concerned about protecting people like Stacy that had six complaints and the money that would have been spent and the time that would have been spent, as I am about the person that has the right to make an accusation without identifying themselves. [LB140]

LAURA KREBSBACH: Now, I don't think I got to hear all of that testimony, so I'm not sure I understood or got all of the facts in that particular instance. But I believe that if you are in violation, that you can negotiate with DEQ or EPA. I don't, you know, without asking for an opinion from DEQ or some type of a way at looking how many cases have gone to that point and how many people have had to hire a lawyer. That would be good information to have. Maybe they can do something like that, get that kind of information together. [LB140]

SENATOR LOUDEN: Thank you. [LB140]

LAURA KREBSBACH: Thanks. [LB140]

SENATOR LOUDEN: Okay, other opponents? [LB140]

JOHN HANSEN: Chairman Louden, members of the committee, my name is John K. Hansen. I am the president of the Nebraska Farmers Union. In my view this is not the

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

Natural Resources Committee
January 18, 2007

kumbaya bill. That bill probably should come later dealing with reporting requirements.
[LB140]

SENATOR LOUDEN: Did you spell your name, John? [LB140]

JOHN HANSEN: H-a-n-s-e-n, and I am the president of the Nebraska Farmers Union and also I'm their paid lobbyist. Really on this issue, and we've got folks on both sides of this issue in our organization. We have folks who would say that there are frivolous complaints and we would also have folks who would say they've had the snot beat out of them by virtue of the fact that they finally got a belly full of being run over the top of and filed a complaint. And because of that, they paid a very heavy price for doing that. Just the suspicion that they turned in a complaint caused them to be very clearly financially and penalized in a variety of ways in their home community. So I look at this issue and say, well, you've got two issues here. One is you got the system by which we turn in complaints. Well, we got a complaint system here; that's what this is. Our system is not unlike other livestock waste regulatory systems in other states; it's a complaint-based system for the most part. We have limited employees at the state level. They don't go out and they don't inspect all operations that they probably should, but they do take their lead if somebody is getting a bunch of complaints. They're more than likely to go inspect them. So, you know, we've dealt with this issue historically about adequate funding for DEQ. We have supported efforts to increase funding but they continue to be short on personnel, and so getting projects inspected sometimes before lagoons are filled up has been a problem. We've had a whole series of issues about adequate inspection. So really, if you look at the complaint system, it's a part of how we do business in Nebraska for better or worse, but it is. And so then the issue of, well should we or should we not have those complaints with names on them. Well, there are names on them if it goes to a certain extent of the process where it goes through litigation, then names are going to be out in the open. But either the party in question either is or isn't in violation of the law. If DEQ is doing their job, they should be able to make that determination and if there's not a valid complaint, why then there's a limit to how much harm has been caused. But what I fear in this situation, for the first part of the problem which is the complaint system, is that when you put a name on the line, I got to tell you, most of the time that folks have complaints turned in against them, they are not grateful for the opportunity to be able to share information and have this issue discussed with DEQ. They're mad, they're angry. And so you've upped the tempers, you've upped the personalization, and you have substantially discouraged the total number of complaints. So on the one hand, you've got frivolous complaints and then on the other hand you have underreporting of violations. The bulk of the time in most rural communities, it's underreporting. Folks will put up with an awful lot for a very long time before it finally gets bad enough that they'd rat out a neighbor, even a neighbor they don't like. I mean it's just, it's very seldom that we have that in a lot of communities. And occasionally you're going to have folks that are going to be a lot quicker on the trigger than others. But for the most part, I would say that the status quo actually works pretty

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

Natural Resources Committee
January 18, 2007

darn good, looking at it kind of, you know, as it is. The second issue is the whole business of well, what are the livestock waste regulations and what's the threshold and we've all...for members of the committee that have been on the committee for a while, we have traveled this road together and yeah, we don't like what the feds did and we tried to do the best we could. And yes, we used to have more categories and it's always a struggle to try to make appropriate regulation. We've done the level best we could, I think, at the state level to try to create as much appropriate regulation and regulatory slope as we can, no thanks to the efforts of the feds. As far as reporting requirements, we're going to be in full support of trying to delay the implementation of the deadline...the reporting deadline, to give folks who should have been in compliance, but weren't, a little more slack. That is what we think is the more appropriate approach. And I, you know, this is an issue that if I had my neighbor turn in a complaint on me, why I'd be hot too. But having said that, it does increase the likelihood of personalization and hard feelings as well. And at the end, DEQ ought to do their job. And if there's a complaint that has validity, they ought to deal with it, and if they don't, if it's not, they shouldn't. And DEQ, after about the second or third complaint that doesn't have basis, I think kind of figures that out. So, no, we're not in support of this one. Thank you very much and I'd be glad to answer any questions. [LB140]

SENATOR LOUDEN: Any questions for John? Thank you, John. [LB140]

JOHN HANSEN: Thank you very much, Chairman. [LB140]

SENATOR LOUDEN: Okay, other opponents? Anyone wish to testify in a neutral position? [LB140]

KEN WINSTON: Good afternoon, Chairman Loudon, members of the committee. My name is Ken Winston, the last name is spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in a neutral position relating to LB140. I actually have written testimony, but in view of the fact that there's...of Senator Flood's testimony, I feel like it's been rendered obsolete. So I guess at this point I'd just want to indicate that there's two aspects of the concept of the bill that we're concerned about. One is that we do support openness in government and I was just down in the Government Committee this afternoon testifying in that regard, that we like to see more openness, more accessibility to the public to information. But on the other hand, we are concerned about the chilling effect that the disclosing of names of informants might have in the enforcement of environmental violations. And so if someone is polluting, that information ought to get to the right people and there shouldn't be reprisals against the people who provide that information. So I guess at this point what I would like to do would be to suggest that from our point of view, we'd like to see the bill held for the present time. And we would be glad to work with the introducer and all interested parties to see if we can address all of those issues. We'd be glad to answer your questions. [LB140]

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

Natural Resources Committee
January 18, 2007

SENATOR LOUDEN: Any questions for Ken? Senator Fischer. [LB140]

SENATOR FISCHER: Thank you for coming today, Ken. [LB140]

KEN WINSTON: Sure. [LB140]

SENATOR FISCHER: I really appreciate working with you on all of these issues and look forward to it in the future as a member of this committee now. It's good to see you here. I do have a question for you. You know, you were saying you're neutral and the two positions that you support the openness in government but then you are fearful of reprisals on people. Since the permits are filed and they are open to the public and anyone can go in and view those, this contradicts your statement about openness in government. But if you're willing to keep the name of the person who complains private, how about we keep the people who have to file the permits also quiet? [LB140]

KEN WINSTON: Well, I guess...I don't believe that would be appropriate. I mean if somebody has an application or has a permit with the state of Nebraska, that should be a matter of public record, and as I said, we support openness in government and I work toward that. But the concern as I said, is...and I guess I would like to echo some comments that were made earlier which is that there are a number of complaint processes in the legal process where people do make anonymous complaints. And for example, one of the other hats that I wear is I occasionally defend people in the criminal justice system. When you get the police reports through discovery, you will discover that there is an unnamed CI, or cooperating individual, who has provided information that's caused your client to get into trouble, and you don't know the identity of that person. Now you can go through appropriate discovery and if you need to have that person testify you can subpoena that person or what have you. But in the initial processes, the identity of that person isn't known. And so I guess law enforcement views that as being an important tool in their arsenal of enforcement. And I would hate to say, well DEQ has to reveal the name of everybody that provides information. And I certainly sympathize, I mean if somebody was calling saying I was out of line, I'd want to know who that person is, but there are some situations where I wouldn't have access to that. I wouldn't be able to have that information. [LB140]

SENATOR FISCHER: Do you know in a city, and I don't even know if this falls under DEQ, like open burning and if it takes place in Lincoln, if somebody decides they're going to burn something in their backyard. When I grew up in Lincoln you could still have your outdoor fireplace out there in your backyard and stuff. I don't know if you still can. Can people complain about that? Is that part of this too, with DEQ with air quality and things? And if they file complaints like that are they confidential? [LB140]

KEN WINSTON: That I don't know because I think those kinds of things...that certainly

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

Natural Resources Committee
January 18, 2007

wouldn't be a permitted aspect. [LB140]

SENATOR FISCHER: Right, but it's air quality. [LB140]

KEN WINSTON: Because, you know, I mean if you just have an open burning in your backyard, I mean... [LB140]

SENATOR FISCHER: Probably the fire department would come... [LB140]

KEN WINSTON: Yeah, that's more likely. [LB140]

SENATOR FISCHER: I do have a serious question here. [LB140]

KEN WINSTON: Sure. [LB140]

SENATOR FISCHER: Do you know how many complaints are filed a year? [LB140]

KEN WINSTON: That I don't know. I imagine the folks at DEQ could tell you that. [LB140]

SENATOR FISCHER: You know, we've kind of talked about chronic complainers and Senator Carlson took a note on that; I've taken notes too. Would you be interested in looking at something that could possibly address an individual who's a chronic complainer? I guess I'm thinking maybe DEQ can just assume, and it's up to their judgment, that this person is a chronic complainer, and, well, we'll ignore them this time, but... [LB140]

KEN WINSTON: Sure. [LB140]

SENATOR FISCHER: ...I am definitely not comfortable with that. So how do you view chronic complainers? [LB140]

KEN WINSTON: Well, conceptually I think I agree with the concept as the old saying goes, the devil is always in the details. And so it would matter greatly how it was formatted. So if, and I guess I'm thinking in terms of things, once again, wearing my lawyer hat, there are provisions in the law, for example, where a person, if they file a frivolous lawsuit, you can obtain attorney's fees and you can obtain damages against that person. So there are those provisions. I've pled it from time to time, I've never actually been successful, but... [LB140]

SENATOR FISCHER: Well, but that's a lawsuit, correct? [LB140]

KEN WINSTON: But yes, I guess I'm thinking it... [LB140]

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

Natural Resources Committee
January 18, 2007

SENATOR FISCHER: How would you work with that into this process? [LB140]

KEN WINSTON: ...would be something similar, something similar to that might be conceptually viable. [LB140]

SENATOR FISCHER: Okay. Thank you very much. [LB140]

KEN WINSTON: Thank you. [LB140]

SENATOR LOUDEN: Senator Christensen. [LB140]

SENATOR CHRISTENSEN: Thank you, Senator Louden. You know you suggested that you put a hold on the bill, but I guess and work for solutions. Do you have another suggestion for a solution on this? [LB140]

KEN WINSTON: I like to tell people that I'm a reflective person, that I like to think about things. And this is the kind of thing where I might think of a solution when I'm out jogging, but I don't have one right off the top of my head. [LB140]

SENATOR CHRISTENSEN: Yes, well my first thought there was if you didn't go with this, was...they know...if...it's a non-complaint, if somebody complains and it's found not accurate, then the name is released. [LB140]

KEN WINSTON: I guess because part of that is that there is a certain aspect, say I'm looking at something that's flowing down a creek and the water appears to me to be the wrong color. So I file a complaint and it turns out it wasn't what I thought it was after all. I wouldn't want to have a reprisal taken against me by somebody because of the fact that I complained. I mean, I thought it was a cattle operation or I thought it was my neighbor who did this, and it turned out it wasn't that person. And I guess I tend to think...when I was responding to Senator Fischer's question, I was thinking more in terms of motivation in terms of the way that you'd respond to something like this. I mean, if somebody's motivation appears to be in good faith, then I don't see there would be any...it doesn't appear to me that there would be a benefit in any penalty for someone making a report. And I'd be concerned about just...I guess I'm just...like I said, there's some situations where as John Hansen indicated, and I grew up in a small town and I lived in a small town and I lived in a small town for a long time and I know how people can have grudges against their neighbors and all those kinds of things. And I know there's reprisals that people take against each other for whatever reason and I just would hate to do anything in law that would encourage that. [LB140]

SENATOR CHRISTENSEN: I guess I also look at the other side of it, if there's damages to a person if they're wrongly accused too... [LB140]

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

Natural Resources Committee
January 18, 2007

KEN WINSTON: I certainly agree. [LB140]

SENATOR CHRISTENSEN: ...of the stress and the anguish. I guess that's why I looked at that. I went through a situation before, I've had neighbors call me and tell me my feedlot stunk. Well, there happened to be a rain and then it got hot and windy out of the south and it blew into town, you know. I respected them because they at least called me and told me who it was, but, you know, it's just...I...how do you balance between the damages done to somebody wrongly accused versus keeping the proper notification done. That's the difficult here. [LB140]

KEN WINSTON: And that's what I, as I indicated to you, that...and my response was a little bit lighthearted, but I don't have an answer. I don't have a solution to that issue. I do believe there is a balance that needs to occur. [LB140]

SENATOR CHRISTENSEN: Thank you. [LB140]

SENATOR LOUDEN: Any other questions? Thank you, Ken. [LB140]

KEN WINSTON: Thank you, Senator. [LB140]

SENATOR LOUDEN: Anyone else wish to testify in a neutral position? If not, I guess you're ready to close, Senator Flood? [LB140]

SENATOR FLOOD: Thank you, Mr. Chairman. Rats and snitches. Mr. Hansen used the word ratting someone out. I spent two years on the Judiciary Committee and I know that Senator Chambers feels pretty strongly about the use of rats and snitches in the criminal procedure and in the criminal code and in the criminal world. And I don't necessarily think that the folks that file complaints are evil people. But we have heard a lot of testimony today, and I want to say one thing. I appreciate the opponents coming up here. It's not easy in this room to stand up here and say, I disagree with Senator Flood's bill. I appreciate the fact that they came here and they offered good testimony and good points. But the point was made that this is a nonjudicial process. I don't think that's the case. Anytime you involve government in a complaint or in the lives of people it's a state action. Granted, murder is a lot different than waste runoff, but at least in the case of someone accused of murder, they get to confront their accuser. We have the Witness Protection Program to watch out for them. We're talking about waste runoff. We're talking about violations of our state code and agency regulations with the Department of Environmental Quality. When Trooper Black in this room pulls someone over, his name and badge number are at the bottom of the citation. And in the case of the gentleman from Royal, if a state agency, and I can't say that they are, if they were the ones calling that in, they better have the gumption to put their name on the complaint. That's a state action taken by a state employee to report a suspected

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

Natural Resources Committee
January 18, 2007

violation of our code. With all due respect to Ms. Krebsbach, I'm not comfortable trusting one branch of government to decide in their own discretion what's right and what's not. That's why we have three branches of government and I was elected by the people of Madison County to make sure we don't get trampled on by over zealous executive branch agency or employee or agent of that agency. I'm not necessarily saying that's the case in the King situation, but it's our job to make the policies, and the executive branch follows our rule. And it is within our authority to decide whether or not a name is on a complaint and it goes to the permittee or the person that was accused. And if the executive branch of government did such a great job all the time, we'd all be out of jobs, living in a dictatorship most likely. But let's remind ourselves of the Fifth Amendment in a criminal setting, and I note the difference between the agency situation we have versus a criminal setting, gives the accused the right to confront their accuser, and the Fourteenth Amendment applied the Bill of Rights to all of us. Let's take something from that and find a way that's more fair for the permittee or for the farmer in this situation. Maybe you can be more creative than I. I think some suggestions were given; I want to acknowledge the opponents and I think that the last testifier was coming forth with some ideas. The last thing I'd say, or really two last points and I'll be done. You have to understand, and I'm from the city of Norfolk. I grew up in Norfolk. I didn't live in the country. But my radio tower is next door to the Kings' in western Madison County. And when the power's out or I need a bolt cutter to get in, everybody out there goes on a system of trust. And I can walk over to Elmer Choutka's place when he lived just south of the tower, and I could go get a bolt cutter so I could get into my place when the lock was frozen. When the Wallin farm north of Newman Grove is in trouble because the power is out and they're trying to figure out where the generator is, it's folks like the Kings that come down a couple of miles to bring them a generator. Mr. Hansen is from Newman Grove, he knows how well people work together in that part of the state. These types of anonymous complaints threaten that environment of family farmers working together to make things go. And I think it's in our best interests to find a way to let them know who the complainant is. Maybe it will do one thing the government can't and that is encourage one neighbor to go to the other and say, you know what? I saw something in the stream last night that really concerns our family. Can we talk about it? Because I think you need to look at the rules. I think you need a water runoff system. And that's what I hope comes from this. So I appreciate the committee's time and how gracious you've been with allowing everybody to testify. Thank you, Mr. Chairman.
[LB140]

SENATOR LOUDEN: Thank you, Senator Flood. Senator Hudkins. [LB140]

SENATOR HUDKINS: Thank you, Senator Flood. A number of years ago, mine is really going to be a comment rather than a question. A number of years ago I introduced a bill that concerned false complaints. If they were false, then whoever did the complaining paid for the state employee's time and the costs, and Mr. Winston referred to that bill. Has DEQ, to your knowledge, gone after these false complainers, and if not, why not, if

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

Natural Resources Committee
January 18, 2007

they were of a harassing nature? [LB140]

SENATOR FLOOD: I had a nice conversation with Mr. Linder from DEQ yesterday morning and he said that his concern wasn't so much with my bill in the rural areas, but more so with the whistle blowers like at a plant, like a Nucor or Sherwood Medical. And I can see the difference. But he suggested that he would be interested in talking about ways to cut down on false complaints, and I felt like, and I have felt like the entire time DEQ has worked with us to try and find a solution. So I think there is some interest there and hopefully we can talk to the department a little bit and see if there's a common ground because I understand their need for some of this. I just don't see the need for all of it. [LB140]

SENATOR HUDKINS: Well, it's too easy for an individual to complain to the officials no matter what that complaint is. And it's expensive, because DEQ or whoever the agency is, has to go out and investigate it. And if there's something to it, fine; but if there isn't, then something else needs to be done. But it is expensive to investigate these and then the individuals, maybe not necessarily those but someone else, complain about state spending and here we have just spent money that we really didn't have to. I would rather see, like you said, if you've got a situation in your ditch, you go to your neighbor and you say, are you aware? And if you're not, obviously you're going to at least try to fix it. If you are aware of it and nothing gets done, then that's the time for a complaint to the official authorities. Thank you. [LB140]

SENATOR LOUDEN: Senator Dubas. [LB140]

SENATOR DUBAS: Thank you, Senator Louden. Just out of some personal curiosity, do you know how old this statute is and the history behind why it was set up the way it is? [LB140]

SENATOR FLOOD: I think you could tell with the statute book that's got the annotations in it, but actually I think it's more a DEQ policy... [LB140]

SENATOR DUBAS: Okay. [LB140]

SENATOR FLOOD: ...to protect the complainant than it is in statute. Our only way to make a change in policy is to change the statute so that's what I've elected to do with this bill. But I don't know how long this practice has been there. [LB140]

SENATOR DUBAS: Thank you. [LB140]

SENATOR LOUDEN: Thank you, Senator Flood. [LB140]

SENATOR FLOOD: Thank you, Senator, Mr. Chairman. [LB140]

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

Natural Resources Committee
January 18, 2007

SENATOR LOUDEN: Then this concludes the hearing on LB140. [LB140]

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

Natural Resources Committee
January 18, 2007

Disposition of Bills:

LB184 - Held in committee.

LB140 - Held in committee.

Chairperson

Committee Clerk