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Natural Resources Committee  
February 18, 2009

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[LB437 LB561 LB568]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 18, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB561, LB437, and LB568. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: None. []

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. I'd like to welcome everybody that's here in the crowd as well as those watching on the closed caption, and those that are also watching on our new Internet feed. We continue to strive to allow the public to see what is going on within our committees. I am Chris Langemeier, I'm the Chairman of the Natural Resources Committee. I'd like to introduce those people that you see around me up here today. Starting to my far right or your far left we have: Barb Koehlmoos who is the committee clerk; we move on, we have Senator Tanya Cook; Senator Tom Carlson; and Senator Deb Fischer; and then off to my far left or your far right we have Senator Beau McCoy; and we have Senator Ken Haar; and we have Senator Ken Schilz; and then we have the Vice Chairman of the committee, Senator Annette Dubas; Laurie Lage is our legal counsel to my immediate left. We have two individuals that will be assisting if you have things to hand out today. We have Melinda Frevert, from Omaha, and then we also have Justin Escamilla, from Scottsbluff, Nebraska, that will be happy to help you with that. If you do have things to hand out, we ask that you have ten copies. If you know at this time that you're short a few, raise your hand and the pages will come help you get to ten copies. At this time we would ask that you turn your cell phones off so we have respect to those wishing to testify either in support or opposition here today. As you come up to testify we ask that you get one of these green sheets. They're located in the back corners of the room and please fill those out in their entirety. It helps us keep a good record of the hearing here before us today. If you're here just to witness but you want to be on the record of having your name in support or opposition to a bill, there's also these forms in the corners that you can sign in and give us your name and address and the bill you're here to support or oppose and then mark whether you want to oppose it and we'll add that to the record. We ask that when you come up front, you tell us your name as well as spell first and last name no matter how simple it may be. We try and keep a good record; we'd like to you spell it for the record so the transcribers...we make sure we have it right. We will be using, after the introduction we will take supporters or proponents then after they're completed we'll go to opponents and then we'll go back to neutral testimony, for those that are new to the committee. We will have the light system. We will be allowing your testimony to five minutes. You will see the green lights will come on for four minutes, the yellow light will come on at one minute warning and then try and wrap up your comments, and then the red light we'd ask you to finish your introduction of your testimony and then allow yourself available for questions at that point. With that, I think I've done all the housekeeping I want to do today. Senator

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Lathrop is here, we have three bills we're going to do LB561, then LB437, and then LB568. And Senator Lathrop, welcome to the Natural Resources Committee and you're recognized to open. []

SENATOR LATHROP: Thank you, Chairman Langemeier. Members of the committee, my name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and I'm here today to introduce LB561. LB561 would amend state statute 70-670 in order to allow public power districts to agree to limit their power of eminent domain over privately developed wind energy generation facilities. Currently, public power districts have the power to acquire any and all property owned, used, or operated or useful for the operation in generation of transmission or distribution of electrical energy including an existing electric utility system or any part thereof. As one of the states with the greatest potential for wind energy development, Nebraska needs to continue to move forward to provide opportunities for this resource to be more fully utilized. Currently there are many businesses that are considering significant investments in Nebraska to develop wind farms. However, they are hesitant to do so because of the real possibility that their projects will be taken by eminent domain. While it's very unlikely that a power district would utilize its power of eminent domain to take a privately developed wind farm, there should be a method available to the power districts and the private developers to make sure this does not take place. Two years ago, Nebraska opened the door to this possibility to passing a provision in state law that allowed for an agreement to be reached between public power districts and developers of C-BED projects. LB561 would go and take the next step by allowing public power districts to make an agreement with private developers in which the district would agree to limit its exercise of the power of eminent domain to acquire wind energy generation facilities and any related facilities. LB561 not only would allow for continued development of Nebraska's wind energy potential, it would also create additional investment in Nebraska's rural areas and create additional jobs in these areas. To get off the script for a minute, if I can add some additional remarks, I think that, and I don't have to tell the Natural Resources Committee what the potential for wind energy is in the state of Nebraska. If you are a developer of wind energy and you are about to invest millions or billions of dollars in the state of Nebraska, what you want to know is that the power districts aren't going to take it away from you as soon as you get done with the project. Without some assurance, no one is going to invest in Nebraska in wind energy other than in a C-BED style project. All this does is say they can agree. It doesn't say if a developer develops wind energy that the power district can't take them, it simply says that the developer and the power district can enter into an agreement and part of that agreement can include an agreement by the power district not to exercise its power of eminent domain and that will be an enforceable agreement. So it is permissive, not mandatory and it will...as it turns out, it is a significant piece that stands in the way of...or stands between us and significant investment in this state and wind energy. With that, I'll answer any questions Senator Fischer might have. [LB561]

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SENATOR LANGEMEIER: Very good. Are there any questions? Senator Fischer.  
[LB561]

SENATOR FISCHER: Thank you, Senator Langemeier. Was I frowning at you is that why you figured I had? [LB561]

SENATOR LATHROP: You looked poised, I've seen it. I've seen it. (Laughter) [LB561]

SENATOR FISCHER: I'll take that as a compliment, thank you, Senator Lathrop.  
[LB561]

SENATOR LATHROP: I'm sure you will. [LB561]

SENATOR FISCHER: Explain to me how this is going to work because you said it's...to me, it's permissive too. [LB561]

SENATOR LATHROP: It is. [LB561]

SENATOR FISCHER: What is this going to change? Can't these agreements be entered into right now and if they can or even if they can't, how do you see this working with the mechanics? [LB561]

SENATOR LATHROP: Here's the problem. It addresses a...what I think would end up being a legal ambiguity. And that is that the statutes that we've amended if you look at it, it basically says if you are a...you know, one of our energy generators in this state, you have the power by eminent domain to take A, B, C, D, E, and F, whatever you need to generate electricity or anything that's helpful in generating electricity and that authority to exercise eminent domain for those purposes is broad enough to permit OPPD, NPPD, a rural electric to come in and eminent domain a project. Let's say that I am MidAmerican Energy and I build a huge wind farm out in Cherry County and I've invested billions of dollars. Without something that says you can enter into an agreement, the statute...the law...the indication in the statute and the law in Nebraska is they can take that by eminent domain. If the power district doesn't want to do it, they don't have to. It doesn't mandate that they or prohibit the use of eminent domain, it just says to give a reassurance to the developers you can agree not to exercise that power over these wind farms. [LB561]

SENATOR FISCHER: Right. Can the power districts do that now? Can they enter into an agreement with a... [LB561]

SENATOR LATHROP: Well they can put anything they want on paper. The question is whether or not they can go ignore what they've agreed to and still exercise the power of eminent domain because... [LB561]

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SENATOR FISCHER: Even if they sign an agreement, a contract, do you think that they could go back on that currently? [LB561]

SENATOR LATHROP: Well, there's nothing in the law that limits that exercise of eminent domain. [LB561]

SENATOR FISCHER: Even if they sign a contract or agreement now? [LB561]

SENATOR LATHROP: If they sign a contract then...if you entered into an agreement without this statutory provision and it says you can...I promise not to exercise the power of eminent domain over your wind farm and you get done with it and I do it, okay, they can't enjoin me from doing that, all they can do is get damages because I have. Because the statute lets them do it. And so the question is, what are my damages? Well, it's going to be the value of the wind farm and if you are...if you have just spent, and instead of spending your money in Minnesota or Illinois on a wind farm you've just spent it in Nebraska or you're looking on where to do it, this is, for someone who wants to make an investment; this is a big piece. It's a little change to the bill, it's a logical change to our law, but it's a big piece and it's the one that makes people say, I'm not going into Nebraska until I'm confident that I can at least enter into an agreement that no one is going to take my investment from me when I get done building the wind farm. [LB561]

SENATOR FISCHER: Well, we've heard that from different developers in my legislative district who are concerned about it but you think that this bill would help solve that concern? [LB561]

SENATOR LATHROP: I think so, and I think after--I'm not sure exactly who is going to testify after me--but I think you'll hear from industry people that say I am not going to spend a dime in Nebraska until I can be assured that my investment won't be taken away. And the worst part is, I could spend...let's say that my investment's \$500 million and you eminent domain it and now somebody could say, well it's only worth \$450 million so now you have to eat \$50 million. You might not even get what you spent on it. So it is...as small as it seems, as logical as the bill is, it's a big piece that needs to be set to the side in order to allow for full scale development of wind energy. [LB561]

SENATOR FISCHER: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Senator Carlson. [LB561]

SENATOR CARLSON: Senator Langemeier. Senator Lathrop, in your initial statement you said something I need you to clarify. That if a company comes in and makes this big investment, because I understand it could be a big investment. [LB561]

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SENATOR LATHROP: It's huge. [LB561]

SENATOR CARLSON: Didn't want eminent domain to take it over as soon as they got it done. Now I think you meant a whole lot more than that, because if you can come to an agreement you wouldn't just agree stay away from me at least until I get it built, it'd have to be for a pretty good period of time. [LB561]

SENATOR LATHROP: I suspect, and the people who come behind me maybe can answer that better than me. But if I were developing it and I'm thinking there's a period of time where you want to recover your investment and you want to make some money on it and they can agree that the utility or the OPPD, NPPD, the rural electric will never eminent domain it, I mean, that would be authorized and they could agree to that now and that would be...that would limit the ability of the power district to eminent domain after that. [LB561]

SENATOR CARLSON: I'm going to ask you another question that really doesn't have anything to do with this bill. But it has to do with how you foresee things operating once somebody comes in and spends a lot of money and establishes a plant, generates electricity, wind electricity, you don't see anything in the future that would require the public power companies to buy that electricity other than a voluntary decision? [LB561]

SENATOR LATHROP: There's nothing about my bill. Now, my understanding is there's probably five bills dealing with wind energy, okay. I can tell you that there's nothing about this amendment to state law that requires that they do it, that anticipates that they'll do it, in fact, this is all about whether you enter into an agreement with that person in the first place. So if MidAmerican Energy or one of the players in wind energy come in, they can't even develop it until they have an agreement with whatever authority might be able to eminent domain it when they've completed it. So I think everything, at least from the point of view of this bill, all anticipates that there will be an agreement between the utility and the wind generating developer. Did I answer your question? [LB561]

SENATOR CARLSON: Well, not really but I know it's not part of this bill. But just in terms of looking at the whole process. [LB561]

SENATOR LATHROP: If I were to give you what I understand to be the whole process, it's not we're going to come into Holdrege, build some wind turbines outside and then force your utility to buy our wind. Those are people that are better able to testify about that after me. But I think the idea is that we have a resource and it's as simple as the wind blowing across the Plains and if we take advantage of it and if we develop the potential, we can actually export it like Wyoming exports coal. And does that take some cooperation with the utilities? I expect it will, but all this does is say you may agree to it,

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doesn't say you have to. And so from the piece that I bring today on LB561, it's just about you may agree and not you must. [LB561]

SENATOR CARLSON: Okay, thank you. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: Thank you. Would this also extend to things like transmission towers and things like that or is it very specifically the wind generation? [LB561]

SENATOR LATHROP: The...It's a good question, and as I read it is says the district may agree to limit its exercise of the power of eminent domain to acquire a project which is renewable energy generation facility producing electricity. I suppose the question is whether the scope of what is covered by this provision is the word project or the word renewable energy generating facility. I think if the project...if you...if the project includes the transmission lines, I would expect that you could agree that they will not eminent domain those and that would be covered by the language. [LB561]

SENATOR HAAR: Certainly when wind farms usually have to build at least a short amount of transmission to the, you know, existing transmission lines but I'm thinking of the big, you know, across the state kinds of projects but that's another question we're going to have to address, probably. [LB561]

SENATOR LATHROP: Well, who's responsible for the transmission lines or who builds them, that's going to be a matter of agreement but if it's part of the project, you can agree as a utility after this not to eminent domain the transmission lines if they're part of the project. [LB561]

SENATOR HAAR: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB561]

SENATOR LATHROP: I think I'll stick around and, perhaps, close if necessary. [LB561]

SENATOR LANGEMEIER: Okay. Sounds good. At this time, I have one more introduction, but I kind of wanted to see if Senator Carlson was going to stay on his best behavior, but it seems like he is. We have Andrew Brittenham who is with us today, he is a sophomore from Superior, Nebraska, and he is shadowing Senator Carlson so he is staying on his very best behavior for his shadow today, so welcome to the committee. You've heard the opening today on LB561. Now we'll move on to those that would like to testify in support, or proponents of LB561. Come on up, don't be shy. [LB561]

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TOM RICHARDS: I was planning on going later, but okay, I'll go. [LB561]

SENATOR LANGEMEIER: Welcome. [LB561]

TOM RICHARDS: Thank you. Tom Richards, T-o-m R-i-c-h-a-r-d-s, manager of governmental and community relations for the Omaha Public Power District. I'm here on behalf of OPPD and the Nebraska Power Association to lend our support to the draft that Senator Lathrop has done. And it's part of a series of conversations that we've had over the interim with wind developers. There are a number of us who see this as an appropriate first step as far as how we're going to deal with the eminent domain authority. You have to remember that the eminent domain, the condemnation...actually what you do is you condemn facilities through the power of eminent domain, is one of the cornerstones of public power. And are moving slowly, we are moving cautiously because if you look back into the history of why these laws were created, that's basically how public power was created in the state of Nebraska. There were investor utilities and to move the investor utilities out of the state of Nebraska, that was ultimately the authority that the districts had to create and move to an all public power state. So part of your question as to there's 167 different public power districts, municipalities, rural cooperatives, Rural Electric Associations all around the state of Nebraska, and that might not be an exact number but it's a bunch. And most of them have lawyers who work for them who have different interpretations of what you can and can't contract away. And basically what you do is put in the statute that the public power districts, rural cooperatives, whatever it is have the authority to contract that authority away. So we are in support of it. We are cautious, we are not supporting bills or laws that change the cornerstones of public power until we understand a little bit more of how they fit in and how they work as we move forward with the idea of building renewable generation projects. I think the next bill up that you're going to hear talks about a study, it talks about some concepts as we go forward about how we integrate, export wind energy in Nebraska. And the first question probably that will come up is, is it an agreement that we are going to export renewable energy from the state of Nebraska? An electron is an electron whether MidAmerican power generation is building it or private wind developers are building it. It has not been the history of the state of Nebraska for the last 60 years that you had power generation companies in the state of Nebraska building facilities. So you can understand, I hope you understand why we're cautiously moving forward and this is a good first step in our opinion. Anyway, that concludes my testimony. I am not an attorney, and I am not a condemnation expert but if you have questions I will do my best. [LB561]

SENATOR LANGEMEIER: Thank you. Are there any questions? Senator Haar. [LB561]

SENATOR HAAR: Yes. Well, I was a physics major and I always really wondered whether every electron is the same, but I think so. So, Tom, you're talking about representing whom with your testimony then? [LB561]

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TOM RICHARDS: The OPPD, and the Nebraska Power Association represents the majority or all the electric utilities in Nebraska and they've taken a position in support of this bill. [LB561]

SENATOR HAAR: Good. Okay, thank you. [LB561]

SENATOR LANGEMEIER: Senator Dubas. [LB561]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Richards. I guess I had a couple of questions. One will be kind of a follow-up to what Senator Fischer asked Senator Lathrop as far as can you already do this? Do you feel that you need this statutory language to allow you to? [LB561]

TOM RICHARDS: It runs the gamut. There are...if you have 160 or so utilities and each of them are represented by different legal opinions, there are some clearly say that we agree that you can do this, there are some that aren't so sure. So what this basically does is put in statute that it's clear that you can do that. [LB561]

SENATOR DUBAS: Okay. And I appreciate your comments about moving cautiously and carefully into this arena. So you don't see this as a potential threat, or the potential to undermine public power? [LB561]

TOM RICHARDS: We see this as some steps in exploring partnerships with people who are looking to build wind energy projects. We see this as a first step in how we arrange those relationships. [LB561]

SENATOR DUBAS: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Senator Fischer. [LB561]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Richards. Have you had any companies approach you with the eminent domain issue being a concern to them? [LB561]

TOM RICHARDS: Um-hum. Yes. I understand their concern and they're correct, and it's there for a purpose. And it was created... [LB561]

SENATOR FISCHER: And they should be concerned, yes. [LB561]

TOM RICHARDS: ...they should be concerned, it was there for a purpose. And yes, and that's part of what is going on here and like I said a dialogue that's gone on over the interim to say here's an appropriate first step and I'll congratulate the developers and

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they have worked with us and this is the step that, at least I understand, that we're moving forward with. What we're bring to you to move forward with. [LB561]

SENATOR FISCHER: I thank you for your support of the bill. I have a few individuals in my legislative district that have spoken to me specifically about the eminent domain issue and I believe there's been some companies that have approached them as landowners but that is a concern for them, so thank you. [LB561]

TOM RICHARDS: The individual landowners, I mean, it's a different deal that they're negotiating but they should be cautious about how they move forward, like we are as we move forward. [LB561]

SENATOR FISCHER: Right, thank you. [LB561]

TOM RICHARDS: Thank you. [LB561]

SENATOR LANGEMEIER: Mr. Richards. Oh, Senator Haar. [LB561]

SENATOR HAAR: One more question. When wind developers look at Nebraska and public power, how is that different than when they look at developing wind energy with non-public power entities? I know it's a broad question. [LB561]

TOM RICHARDS: Basically what they're doing is in states where the utility do not have condemnation authority, they're looking at it as a business. They're looking at is saying if I'm going to put \$500 million into a wind development project, all I'm relying on at that point is the business that I'm going to make this successful. I'm going to go out and I'm going to make this fly because I put the capital into it. They put investors together, they put, you know, I don't know how they put all the money together but the people that they're dealing with at that point are putting these dollars together that say we can make this go in this state. In Nebraska...I understand their concern, you know, that's one of the reasons we get great marks when we go back and borrow money on Wall Street is because we have the power of eminent domain. So they have the same situation where they're coming into Nebraska and they're having to put big piles of money together to build these facilities but if we have the power to condemn them, that makes the people who are going to put the investments into those projects leery of that because of that authority. What this bill is doing is saying we can work together. If we're in a partnership and we want to move forward, this is a step in moving that forward. [LB561]

SENATOR HAAR: And again, it says you don't have to but at least you can, it gives you another avenue for talking with people, I guess. Yeah. [LB561]

TOM RICHARDS: That's correct. [LB561]

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SENATOR HAAR: Thank you. [LB561]

SENATOR LANGEMEIER: Thank you very much. [LB561]

TOM RICHARDS: Thank you. [LB561]

SENATOR LANGEMEIER: Further testimony in support or proponents? Don't be shy, come on up. Welcome. [LB561]

JOHN McCLURE: Thank you, Chairman Langemeier, members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm vice president and general counsel for Nebraska Public Power District. And I wanted to come up just to offer some brief remarks in support of this and with my lawyer's hat on hopefully be able to answer some questions you may have. I want to emphasize that I generally agree or I agree with Mr. Richards' characterizations. I might expand on a few things. When we did a C-BED project we looked at this issue and whether we could contract away our right to exercise eminent domain. We had some independent research done on that and the conclusion of our outside counsel was at best it was questionable whether we could delegate that away or waive that right. So you may recall there was legislation passed allowing this sort of waiver or agreement on a discretionary basis with respect to a C-BED project. This goes one step further and would pick up what might be a non C-BED project, but a privately developed wind project in the state, where again, the public power district at its own discretion, could decide to contract such that it would not be exercising the right of eminent domain. Again to reemphasize the history in Nebraska, public power districts created in 1933 were given the authority to exercise eminent domain to acquire the investor owned utilities. And if you look higher up in this statute it talks about shall exercise that authority. So I think there is a very legitimate question that has been raised by some of these potential private developers in the state and we believe this is reasonable so long as it stays as it is and it's discretionary, it's up to the public power district it wants to voluntarily contract this right away with respect to a particular project. And with that I'd be happy to answer any questions. [LB561]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB561]

SENATOR HAAR: My problem is the next one is my bill and I can't sit up here and ask you questions so I have to do it now. Does this destroy public power? [LB561]

JOHN McCLURE: No, sir. [LB561]

SENATOR HAAR: Then expand on that a little bit. [LB561]

JOHN McCLURE: Well again, these are very capital intensive projects and we're going through a time of substantial capital investment throughout the electric industry. The

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idea that you may have a partnership with a private developer who currently has tax advantages in building these projects that public power does not have. So ultimately that type of partnership can be beneficial to Nebraskans. This gives us another tool in the toolbox to effectuate that sort of an arrangement. [LB561]

SENATOR HAAR: Now, the way the statutes are and so on currently, a private developer can't just come into Nebraska, though, and build a wind farm and do an end run, or can they? [LB561]

JOHN McCLURE: The steps to build a wind project...first of all you have to have a customer, someone who's going to buy that. You have to have certain sorts of permits to build that project and so there are a number of steps you have to go through, you can't just waltz in and build a project without generally having customers, having been through various regulatory and environmental siting approvals so there are a lot of steps prior to a project being developed. [LB561]

SENATOR HAAR: But what more specifically would be the steps that some developer would have to go through in Nebraska that gives public power some power in that situation? [LB561]

JOHN McCLURE: Well, first they're going to have to have a customer to sell it to. There may be a handful of developments in the country where someone has simply built a project and sold it into the market but based on general transmission availability and the state I don't think that would be a good business plan. You have a private developer who may be testifying, I don't think they would just speculate today in the Nebraska marketplace but I can't speak to that. No one has tried to do that thus far. [LB561]

SENATOR HAAR: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Senator Dubas. [LB561]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. McClure, you made the comment you can be supportive of this as long as it's in the form that it is now. Do you see this as having the potential of putting a little crack in public power or undermining public power in any way? [LB561]

JOHN McCLURE: As written, no, because it's voluntary agreement. If this became...if this were structured a different way, if it was mandatory, there was not right of condemnation under any circumstance, that's a different provision of law. As written, if it stays this way I think it's compatible with our public power state. [LB561]

SENATOR DUBAS: So it's permissive enough but yet it's not demanding that you go down a road you don't want to go down. [LB561]

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JOHN McCLURE: Correct. [LB561]

SENATOR DUBAS: Thank you. [LB561]

SENATOR LANGEMEIER: Senator Carlson. [LB561]

SENATOR CARLSON: Senator Langemeier. John, if you mentioned if a private developer came in and was going to spend a lot of money they need a customer, or they need customers. Would NPPD be one of those customers? [LB561]

JOHN McCLURE: Potentially. As you know, NPPD has a plan to have 10 percent of its electricity come from new renewable energy by 2020 and so we've contracted in two C-BED projects and we continue to look at what is the best option for our customers, is it to build it ourself or is it to contract with another developer to build that facility. [LB561]

SENATOR CARLSON: Would NPPD be apt to enter into an agreement to buy a certain percentage of this new developer's power, which heads NPPD in the direction of 10 percent, at a given price for a long period of time? [LB561]

JOHN McCLURE: We have entered into long-term contracts thus far and in all likelihood that would be the type of arrangement. If you have a private developer, you enter into what is known as power purchase agreement and you set out the rights and responsibilities between the parties and typically those are going to be 10 to 20 years in duration. [LB561]

SENATOR CARLSON: Would you enter into this kind of an agreement for a 10 or 20 year duration that pays out more than your current production costs that you're dealing with right now? [LB561]

JOHN McCLURE: We would look at it in terms of what is the cost of new wind power, because that's what we're comparing it to. To the extent we are adding new wind, we look at what is our cost of developing, what is our cost of buying it from someone else who develops it? And we look for the best value for our customers. Is the cost of new wind higher than our current embedded cost of generation? Yes, sir. [LB561]

SENATOR CARLSON: Okay. Then on final question, why do you want to do that? [LB561]

JOHN McCLURE: Because longer term, we think there are advantages in having a diverse portfolio of generation resources. There is certainty associated, relative certainty associated with that price and we want that as part of a diverse portfolio. There is also a high probability of a federal renewable energy standard being passed by this Congress.

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[LB561]

SENATOR CARLSON: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: A couple more questions. To follow up on Senator Carlson's question, right now because we burn a lot of coal in our system, what's your best prediction of what's going to happen to the price of that source? Is it going to remain the low-cost fuel that we're used to? [LB561]

JOHN McCLURE: Over time, I think the price of coal will go up, coal fired generation. But it still should remain the lowest base-load cost of producing electricity, depending on what ultimately happens with carbon policy, which is impossible to speculate on. There's all kinds of ranges of possibilities. [LB561]

SENATOR HAAR: Another question. Let's say that you buy power from this person who is willing now to put in a wind farm, a private developer, and you buy power. Are there any restrictions right now that allow you, or disallow you from exporting power generated by this new facility? [LB561]

JOHN McCLURE: Not that I'm aware of. The utilities in the state today export power under both longer term contracts and also in the spot market, short term contracts [LB561]

SENATOR HAAR: Good. Thank you, very much. [LB561]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony, Mr. McClure. [LB561]

JOHN McCLURE: Thank you. [LB561]

SENATOR LANGEMEIER: Further testimony in support of LB561? Come on up. Welcome. [LB561]

MIKE DONAHUE: Thank you, Mr. Chairman. My name is Mike Donahue, D-o-n-a-h-u-e. I'm executive vice president of Midwest Wind Energy. Our offices are located at 211 East Ontario Street in Chicago, Illinois. Midwest Wind Energy is a wind power development company registered to do business here in the state of Nebraska. Midwest Wind Energy is also the first private wind power development company to successfully negotiate a wind power purchase agreement with NPPD and to successfully develop the state's first privately-owned wind power project, which is our Elkhorn Ridge project operating near Bloomfield, Nebraska. I'm here to testify on behalf of Midwest Wind

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Energy and private developers in support of LB561. As Mr. McClure alluded to, the last several months both the large public power districts, NPPD and OPPD, have announced targets for renewable energy generation for approximately 10 percent of their portfolio by the year 2020 totaling approximately 900 megawatts of new wind power generation that would come in as a result of those targets. Thus far, both NPPD and OPPD have opted to contract with private companies like ours because we are able to take advantage of the federal production tax credits and then to pass those savings on to the public power districts which results in lower power prices for Nebraska customers. Presently, it's widely held by legal and finance experts that private wind power development companies like ours cannot obtain financing for their projects without first obtaining a waiver from public power districts to obtain a waiver from the eminent domain. Simply put, it is hard to finance a project that could be condemned at any time. So I'm here simply to say that LB561 is important for the public power districts to be able to continue to develop their renewable energy portfolios, to work with private companies like ours, and to obtain the lowest cost wind power alternatives for customers. That concludes my statement. If you have any questions I'd be happy to answer. [LB561]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB561]

SENATOR HAAR: Thank you. Are you a partner or do you actually own the wind farm near Bloomfield? [LB561]

MIKE DONAHUE: I am an owner of Midwest Wind Energy which are the project developers and we have a partner which provides the equity and the financing for the projects. So we represent the whole thing from concept through to operation. [LB561]

SENATOR HAAR: Okay. So without giving away eminent domain at this point, are you just sort of in a trusting mode or how do you work that with your organization right now? [LB561]

MIKE DONAHUE: Well, the only way we've been able to do the one project that we're able to do is that we did that as a C-BED and they did contract the eminent domain authority away, however, as Mr. McClure testified that that's potentially questionable. And I think certainly as a private company bringing hundreds of millions of investment to the state, this prospect of eminent domain is something we'd really like to get clarified and it is posing an issue with regard to financing. Just so you know, our company and our equity partner, we build these projects at least up until now we've been building them with cash on hand but then after they're up and they're operating fully commissioned, we finance those projects and pull the cash out to fund further development projects. So the ability to finance a project is extremely important to keep the development portfolio going. [LB561]

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SENATOR HAAR: Without the C-BED project being part of this, would your company have participated, or I mean, is that the reason they made this a C-BED project? [LB561]

MIKE DONAHUE: Well, we responded essentially to an RFP in August of 2007. Upon looking at the current legal requirements here in the state of Nebraska, I think we were of the opinion that the only way you could do it would be as a C-BED. Now, the only way you can do a C-BED, in my opinion, and have it be still the lowest cost alternative is you have to have full equity C-BED partners. And we were able to obtain individual Nebraska residents that had the wherewithal to become full equity C-BED partners and through that structure we were able to do it. There are other structures with C-BED that don't involve equity partners but those, in our opinion, add cost and don't produce the lowest cost project. I think that the benefit of LB561 is it gives public power districts the flexibility to evaluate various proposals that would be submitted as part of an RFP, for example. And again, the primary objective is they get the lowest cost proposal. [LB561]

SENATOR HAAR: I'm a proponent of C-BED projects, I think it's a great idea. Would passage of LB561 threaten the development of more C-BEDs? Excuse me. [LB561]

MIKE DONAHUE: No, I don't believe so because C-BEDs are...there is a financial concern about them, but they're also something that is desired in certain parts of the state. Certain communities like the C-BED concept and, you know, where local communities and individuals want to participate in a C-BED, our company basically would like to be in a position where we go in and offer both alternatives, where we could offer the C-BED alternative, we could offer a non C-BED alternative and leave it to the will of the local community how they want to participate. Some people would just simply prefer to be landlords and collect their regular and reliable rent check for the turbines and not necessarily get involved in the risk and the complexity, you know, that comes with a C-BED. Other people want to have that participation and I think there's plenty to go around. As I've been saying for a long time in the state of Nebraska, if you look at not only what's going on now but and we'll be talking later about the long term, there's a lot of new wind development, hopefully, to come in the state and there's plenty to go around for C-BEDs, non C-BEDs, and for public power if they were to decide to develop some of their own projects at some point as well. [LB561]

SENATOR HAAR: I appreciate that. Days like today when we all believe in wind energy. [LB561]

MIKE DONAHUE: Yes, especially today. [LB561]

SENATOR HAAR: Thank you, thank you very much. [LB561]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your

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testimony. [LB561]

MIKE DONAHUE: Thank you. [LB561]

SENATOR LANGEMEIER: Further testimony in support of LB561? Seeing none, any testimony in opposition of LB561? None, oh, one. Awful shy group today. Are there others that are going to testify in opposition? Okay. Come on up. Welcome. [LB561]

KEITH DITTRICH: (Exhibit 1) Welcome. Good afternoon, Senator or Chairman Langemeier and members of the committee. I'm Keith Dittrich, spelled K-e-i-t-h D-i-t-t-r-i-c-h, chairman of the board of the America Corn Growers Association. I'm from Tilden, Nebraska, and a farmer up there with my brother John as a partnership. I'm here today to speak to LB561 regarding eminent domain issues. As you know, the American Corn Growers Association has been involved nationwide in the promotion of the C-BED model, as we see this as the best avenue for wind energy production and local community development across the country. We're very excited about wind power in the country here in Nebraska as well. I am also a farmer who uses the public power system and is very supportive of the public power system in this state, very protective of that public power system. And so when this issue came to light, this bill came to light we analyzed the potential that C-BED has the potential that there is for some sort of undermining of the public power system and decided to oppose this piece of legislation. We did that with great caution and consideration given the fact that the American Corn Growers Association wants to develop wind power in the country as quickly as possible yet, Nebraska is a unique situation. We are one of the few public power systems in the country and I do not think anyone here has any interest in changing that system because it's worked so well and kept our costs down so well. But so if a bill came to the Legislature today and in support of eliminating the public power system, I am sure it would fail readily. So for anyone to attempt to change that system would be a very long, arduous, and slow process. And, in fact, the proponents of this legislation I do not believe have any intention of that at this point either. But I do believe that this legislation has the potential to, as numerous people have spoken to or questioned, has potential to take one step in that direction. There has been discussion about the fact that this is voluntary. I understand that, and that would not be my point on why this legislation would be dangerous. The American Corn Growers Association has worked many years and to protect farmers interests across the country. And we have fought large interests who have worked very hard to take advantage of the agricultural system and, in fact, farmers have sold below the cost of production many more years than not when it comes to agricultural commodities. So when we look at large interests coming into the country, into the state we understand that long term through a slow process of potentially having a good large interest, having a good share of the total production of wind power in the state and developing relationships, developing economic power and developing political power within the state due to that presence, we become concerned that the door may have been opened a crack today, and that the committee should

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carefully consider this. There are options out there aside from...through the C-BED model to do what Nebraska Public Power is trying to do in wind production today. And their goals have been met to this date for wind brought power, there is another RFP out there now that easily be met the same way. So therefore, in closing, my time is up, I would ask the committee to carefully consider this legislation before they move forward. Thank you. [LB561]

SENATOR LANGEMEIER: Thank you very much. Are there questions? Senator Fischer. [LB561]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, sir, for being here. [LB561]

KEITH DITTRICH: You're welcome. [LB561]

SENATOR FISCHER: Do you believe that this bill weakens public power in the state of Nebraska? [LB561]

KEITH DITTRICH: Yes, ma'am. [LB561]

SENATOR FISCHER: Even with OPPD and NPPD coming forward in support of the bill and I'm sure their legal departments have looked at it and they support it? [LB561]

KEITH DITTRICH: Yes, ma'am. Because... [LB561]

SENATOR FISCHER: Okay. Do you feel this bill is a threat to the C-BED model? [LB561]

KEITH DITTRICH: I believe that there's room for large interests within the state to work within the C-BED model to achieve both parties' goals. And in fact, that's what has already happened. So I do think that it is a concern to the C-BED model as well. And but I think the primary concern is the potential for a weakening of public power in this state. [LB561]

SENATOR FISCHER: You've probably heard me mention before that I have constituents who talked to me about the problem of eminent domain. In fact, when I was home this weekend I, we had the Bull Bash in Valentine, I'm sure you've all heard of that. [LB561]

KEITH DITTRICH: I would have loved to have been there, not riding them. [LB561]

SENATOR FISCHER: And as I was...of course, the Bull Bash...and I was spending my afternoon on the streets there in Valentine, seriously, I did have one person come up to

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me and say when are we going to see legislation that takes away that power of eminent domain from public power? Because I do have constituents who don't want to use the C-BED model, they want to be able to negotiate directly with companies that are interested in coming into our area. Why shouldn't we allow them that choice if they don't want to use that C-BED model? And these are people in agriculture that are not just concerned with their bottom line, but they're looking at what they can produce and provide in terms of renewable energy on their land. So why shouldn't we offer them that choice and flexibility? Why should we say, no, you can only do this through a C-BED model? [LB561]

KEITH DITTRICH: I would answer, Senator, that they can do it either way. They can chose to lease their land to developers. But the C-BED legislation says that any development in the state...one third of the proceeds needs to stay within the state. That's all it says. That does not mean that the farmer who would like to have a wind tower on his farm or a landowner has to invest in the turbine. They can invest...they can simply take a lease income or royalties from that project. So in no way does the C-BED model not allow people to lease property. [LB561]

SENATOR FISCHER: But under the C-BED model how do you...if nobody wants to invest in it, if no landowner wants to invest in it and they just want the royalties, how do you keep that one third in the state, then? [LB561]

KEITH DITTRICH: Well, I would find that highly unlikely given the potential economic benefit for anyone to get involved in ownership of wind production. [LB561]

SENATOR FISCHER: But if they don't have the capital available to make that investment. [LB561]

KEITH DITTRICH: The C-BED approach and model does not require a huge investment, capital investment, on landowners' parts. There are ways that that can be handled that does not involve the local landowner putting in hundreds of thousands of dollars. I'm very sure of that and very understanding of that. And, secondly, I lost my train of thought. But secondly, I believe that they have the ability, oh...the...if it was just strictly a leasing situation on all of the wind towers on the project, I mean, I guess I would assume that the lease rates would have to be quite high to qualify as a C-BED [LB561]

SENATOR FISCHER: Okay. Thank you. [LB561]

KEITH DITTRICH: You're very welcome. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

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SENATOR HAAR: Thank you. I'm a big supporter of C-BED and I'd like to see as much of this money stay in the state as possible. [LB561]

KEITH DITTRICH: Thank you. [LB561]

SENATOR HAAR: Is it possible though, to have both and? And I'm trying to understand the position of why having two models that are competing with each other would be a detriment. Can you? [LB561]

KEITH DITTRICH: I think that the, there's a profitability--economic return interest--obviously, we've seen a flood of developers coming to this state because obviously, wind power is profitable. I do believe that C-BED can be competitive, very competitive with large private developers and I do not believe that private developers have an economic advantage over local C-BED projects. Can they compete? Can they both be within the state at the same time? I'm not sure, but I do believe that the will of the Legislature in the past has been that C-BED is a good model, and that it can achieve both satisfied interests of outside developers who want to come into the state and simply pay royalties--not royalties, but leases to landowners and export production. Basically, what this legislation does is say that a minimum of percentage of that income needs to stay in the state. And both private investors can profit and local landowners and communities can profit as well. That's what the legislation says. I do not think we need two models out there to achieve and satisfy both interests. [LB561]

SENATOR HAAR: Well, if we do indeed get two models, I'd certainly be interested in your ideas on how we can make C-BED more competitive because the part I like about it as well is you know, profits have to stay in the state and. [LB561]

KEITH DITTRICH: Correct. [LB561]

SENATOR HAAR: Well, thank you very much. [LB561]

KEITH DITTRICH: Thank you, Sir. [LB561]

SENATOR LANGEMEIER: Any other questions? Senator Dubas. [LB561]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Keith, for being here. You heard NPPD and I believe OPPD also state that their use of eminent domain with C-BED could be questionable. Your thoughts on that? [LB561]

KEITH DITTRICH: Within the C-BED model? [LB561]

SENATOR DUBAS: Correct. [LB561]

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KEITH DITTRICH: I see. I'm not an attorney so I guess I can't answer to that question, Senator. [LB561]

SENATOR DUBAS: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB561]

KEITH DITTRICH: Thank you, Mr. Chair. [LB561]

SENATOR LANGEMEIER: Further opposition to LB561? Mr. Hansen, welcome. [LB561]

JOHN K. HANSEN: (Exhibit 2, 3) Mr. Chairman and members of the committee, good afternoon. For the record, my name is John K. Hansen, H-a-n-s-e-n, and I'm the president of Nebraska Farmers Union appearing before you today as our organization's president as well as our lobbyist. I have sent two different sets of handouts around today. One is a sign-on letter. We had organizations that were not sure whether they were going to be able to be in attendance today or not so there is a sign-on letter of opposition from a variety of farm and renewable energy organizations in opposition. And two, the handout that I have I thought would be helpful in the file folders. One is the starts out with wind energy development and where that's at and I thought it would be particularly helpful for the committee to look at where we were in 2006 in wind development in our country and where we are today as of 2009, and as you can tell there is just enormous wind energy development going on including in our neighborhood. And you can also see that just in a very short order, Nebraska has gone from 73 megawatts of wind energy development to what should be by the end of the month when the Elkhorn Ridge project gets online, we should be up to 150 megawatts. So we have also been making progress and on the back is also the set of all of the state wind resources potential for the top 20 in the country so you can see that we are strategically located in the middle of where the wind energy belt is north to south, from North Dakota to Texas. And I thought it would be helpful also just to share with you some of the information that we share on a regular basis with your constituents across the state and we've been in Senator Fischer's district already this week, twice, as well as Senator Schilz's district twice and so we've been around the state. But here's some of the information that we share, that as we do joint presentations and single presentations. The first is just to simply bring you up to speed which is to indicate that Nebraska is in fact moving forward with wind energy development. And so here's the schedule going back to July 2007 where we start out with the RFP from NPPD for 80 megawatts. And it's instructive to notice that when that 80 megawatt RFP went out, there was a total of ten projects brought forward by seven developers. That's a healthy response rate to an RFP. October 2007, NPPD selected the top three projects; Elkhorn Ridge, Crofton Hills, and a third project 30 megawatts. August 14, 2008, OPPD

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announced an RFP; it was closed October 10, 2008. They are now studying 12 proposals, so these are robust responses given the status quo of where we're at today for wind energy development. NPPD has another RFP out of 80 megawatts. It will close April 15. There is another RFP that MEAN has out for 30 megawatts which closed February 6 and we're not knowing how many proposals they got but we understand that there's a lot of interest in the second NPPD RFP. So it's not like we're not getting proposals and we're not getting bids in with the status quo. The next sheet shows you where the selected sites are that are, where there are met towers by NPPD and these are targeted areas that will be considered for wind energy potential as you look forward. The other is another handout that I stole off of the NPPD power point program that we did yesterday, always glad to share their information, but it tells you where they're going and the rate that they're going forward which is a very substantial rate. You've got the press releases from both the Crofton and Bloomfield projects with a lot of the project particulars as well as OPPD, very instructive. This issue is about what kind of economic development we're going to have. And the current state policy actually maximizes the amount of economic development potential that is available for wind energy because it uses the economic development model that is far and away the most economically efficient, provides the most benefits and that has all of the...that is a very pertinent part of this entire discussion. The recent National Renewable Energy Lab study that was released at the 2008 wind conference as you look through that summary which is also included with your packet on page 12, if you look at the second paragraph on page 12 you're seeing that based on the assumptions of actual real world projects and economic analysis that they did that it would appear based on that that the average annual equity payment assuming 20 years of operations and 80 percent of development is C-BED is \$16 million per year in contrast of the traditional development model of which this bill would allow dominates only 3.3 percent. So project revenues are expected to remain in Nebraska as opposed to 26 percent with the C-BED model. And so we're looking at a substantial difference in economic outcome as well as tax revenues. And so the economic model we use is important as well as the issues of protecting the potential long-term integrity of the public power system itself. And so with that I would close and just tell you that we have C-BED handouts and economic benefits of C-BED models that are in the public sector that you can look at to refresh yourself either with C-BED or if you're new to the issue you can look at it and then ask questions later. Thank you. [LB561]

SENATOR LANGEMEIER: Thank you, Mr. Hansen, are there any questions? Senator Dubas. [LB561]

SENATOR DUBAS: Thank you, Senator Langemeier. John, thank you for your information; it's always very helpful. I guess I will ask you the same question that I asked Mr. Dittrich and see if you have a thought on is the use of eminent domain by C-BED projects in jeopardy or in question as public power has said it may be? [LB561]

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JOHN K. HANSEN: Senator, if you could, I'm not quite sure what the question you asked me. [LB561]

SENATOR DUBAS: NPPD and OPPD raised the question that using eminent domain for C-BED might not be legitimate either. It's a stretch, I think, trying to rephrase what they said. It's a little bit of a stretch and so they feel by changing the statute it gives them that ability to use eminent domain without question. [LB561]

JOHN K. HANSEN: Well, my...Senator, thank you for the question. I think I have a better idea what you're asking but when Nebraska Public Power District originally asked our organization and others to bring them a C-BED project to see if we could do this administratively without the benefit of changing the state law at all in the fall of 2005, we did do that. We had a developer that was jointly hired and it was primarily funded by the American Corn Growers Foundation through grants and we went through this process and as we went through that power purchase negotiations in 2006 up to August, one of the primary obstacles that we had was the issue of how to address eminent domain reach relative to the law as it was before. And I just want to say for the record that my good friend John McClure and I shared the mistaken belief that you could voluntarily contract away that authority if you had a binding power purchase agreement in place. That, at least, squared with my background in eminent domain as a public official and similar things that we had done through the NRDs we systematically signed long-term contracts that bind the hands of future officials. We do things with easements, with waterways, all those kinds of things. It seemed to be consistent with the general practice of how we deal with eminent domain. But when the legal firms were hired, as John McClure indicated, the legal firms for both parties were...when they came back they said nice try, no cigar. If you go to court there's about a 60-40 chance that if you go to court that you likely will lose because the court will likely set aside all of those compelling arguments that you folks have for why it's normal practice and they'll say that you can't in all likelihood voluntarily contract away statutorily derived authorities. And so based on that conclusion of the legal research, that was why primarily we were forced to come back with a C-BED bill itself then in January of 2007. And one of the key components of that was to make sure and certain in the law that it was clear that public power had the right to voluntarily decide, they weren't forced to, their original authority was that impacted or impaired, but they voluntarily had the right to exercise that authority if they so choose and a power purchase agreement was in place to set it aside so that the law was clear. The Legislature had cleared the path. And so I think that is the status of the law. I perceive no problem with that legal rendering or that opinion or that clarity. I think what the bill in question seeks to do is to expand a very similar and comparable exception to include all renewable energy based development. [LB561]

SENATOR DUBAS: Thank you. [LB561]

SENATOR LANGEMEIER: Senator Schilz. [LB561]

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SENATOR SCHILZ: Thank you, John. Welcome, this afternoon. Thank you for coming in. The one question that I have and that as I sit here and look at the C-BED act are...is C-BED available to all public power entities within the state of Nebraska? [LB561]

JOHN K. HANSEN: The...in my opinion, the...it is. [LB561]

SENATOR SCHILZ: Because I know we set out some definitions here of what an electric utility is and there's a couple three things here that says...and I just wonder if everybody including, you know, in my area in the Panhandle and around the rest of the state, does everybody qualify to be a part of C-BED? [LB561]

JOHN K. HANSEN: The...I know there's been some questions asked about that but my, but the C-BED bill itself set out to identify through a joint negotiation process with public power and the C-BED proponents a way to make an appropriate (inaudible) that didn't get to be burdensome and so the C-BED law says to the four primary public utilities in the state of Nebraska, NPPD, OPPD, LES, and Tri-State, who are the four primary generators in the state who provide either wholesale or retail service to the rest of the state, that if you're going to look at additional renewable energy and you're going to look to build additional generation, you have to take a look. You have to consider a C-BED project to see if it's feasible and all of those things. And then secondly, you're required to file a report at the end of the year telling the Legislature what you did. Did you follow up on that, did you act in good faith to do that? They don't have to buy the power in the case of a negotiation, they have to negotiate in good faith so there's no predetermined price level, they just have to take a look to see if it's a good appropriate fit. And so, the language that the five qualified owners of C-BED are Nebraska residents, Nebraska LLCs made up of Nebraska residents, Nebraska based nonprofits, the tribes, and public utilities so that if a muni or an REA, rural electric association or a rural electric cooperative or any of the other entities wanted to be part of a C-BED project they could. And I see no prohibition in the law that would restrict any of those entities from buying part of the output from a C-BED project. For example, now in the case of the C-BED project that's already been completed and in our project that's in process there are multiple public power buyers of the power. [LB561]

SENATOR SCHILZ: Right. And back to my original question. Let's just...in my area, we have Central Nebraska Public Power and Irrigation District. You know, they generate some power out of McConaughy and I asked them if they could use C-BED to build some wind turbines to take over interruptible power when they couldn't run their hydros. And I was very surprised when they told me they don't qualify as a C-BED utility and I'm just asking the question. Because if that's the case, then we need this because out west there's all sorts of opportunities and no transmission that's able to get there and if C-BED isn't available to everybody, then to be real honest with you, I'll have a real problem with that. [LB561]

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JOHN K. HANSEN: Well, and, thank you for the question but in my opinion I have no idea where they get that legal interpretation. [LB561]

SENATOR SCHILZ: Okay. [LB561]

JOHN K. HANSEN: Frankly. And I know that there's been some discussions about that with others but I'm certainly not been approached by that and I have no idea where the legal basis for that comes from. [LB561]

SENATOR SCHILZ: Okay, well I appreciate that. Thank you very much. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: Thank you. Your question reminds me of a question asked to me when I met with co-ops. Can a co-op be a participating...you know, like the one I buy my propane from, can they be a participant? Do you know, John? [LB561]

JOHN K. HANSEN: They are not listed as a part of the five qualified owners. And co-ops because of the patronage distribution system doesn't work well as a sponsoring entity based on how production tax credit works. It gets incredibly complicated, incredibly expensive and our experience with the folks in Minnesota was you're way better off to use LLCs that model cooperative behavior than you are to try and use a cooperative because you'll end up just killing yourself in legal costs and confusion. [LB561]

SENATOR HAAR: Okay. So the essence, then, between traditional and C-BED in terms of this...what we're talking about today? [LB561]

JOHN K. HANSEN: The normal private sector development? [LB561]

SENATOR HAAR: Yes. [LB561]

JOHN K. HANSEN: Or the normal public power development? [LB561]

SENATOR HAAR: No, the private development. [LB561]

JOHN K. HANSEN: Well, the primary difference between normal private sector development and C-BED is where are the profit centers located and where do the profits go? And so as you read this NREL report, for example, and you look at the economic development benefits of wind energy development, you've got the construction jobs which are clearly delineated, the long-term jobs relative to the service jobs afterwards, you have the related service jobs, the indirect, the induced benefits, all

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of those things. The...obviously, the payments to landowners for leases for the turbines, all of those things but the primary economic development benefit of wind energy is the profits. So the question is, where do the profits go? And C-BED says that 33 percent of the total revenue which includes the power purchase agreement, the local taxes paid, and the lease payments are a part of that 33 percent based on the Revenue Department regulations, have to go to qualified owners in Nebraska. Which means that you're looking at four to five to eight, depending on how you measure it, more economic development and tax revenue benefits from this activity. And so the...I understand why the private sector developers would support this bill and it's because they don't really want to share the profits. They would...you know, everybody in this process makes money. The developers make money, the lenders make money, the equity partners make money, everybody involved gets their cut. But the folks who end up with the bulk of the benefits are going to be the owners and the owners themselves, I understand why they don't want to share it with a bunch of farmers and ranchers and folks in the rural community, I get that. [LB561]

SENATOR HAAR: Would there be any inherent reason why like NPPD or it could be OPPD, whatever, would choose a private developer over a C-BED model or vice versa? [LB561]

JOHN K. HANSEN: Sure. I can see some advantages why they perhaps would want to do that. I think it's simpler and cleaner, in some respects. [LB561]

SENATOR HAAR: With which one? [LB561]

JOHN K. HANSEN: With a private sector developer. You know, our concerns are not that. Our concerns are that if you look at who the primary wind energy developers are in the region and in the country, these are folks who also are...own development arms that come from private sector utilities. So we're concerned about the integrity of the public power system and the risk that this bill we think brings with it because Florida Power and Light is the big dog, they're the biggest wind energy developer, Excel is right up there, these are utilities. The biggest developer in the area by far right now is Warren Buffett's MidAmerican Energy out of Iowa, those are the guys that have just skyrocketed forward and so if the only criteria that you have to restrict this is whether they're renewable energy, these are all folks that can be renewable energy exceptions that come in and once that starts then you've got a whole legal precedent that's been set and once you go down that path...then after these guys are here, they've set up shop and these are big time operators then, you know...well, we're already here and while we're here already why don't we just start providing service in this area, we know how to do that and so we fear for the long-term integrity of the public power system. And while we are...we work very closely with public power and defend it, our organization helped create it, we also assume at the end of the day that the reason that these kind of decisions about policy come back to the Legislature is because the Legislature created

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the public power system and authority for it. They decide the mission and they decide really how the system should operate. Public power does a great job of carrying out its responsibilities once those parameters are set. [LB561]

SENATOR HAAR: Thank you. [LB561]

SENATOR LANGEMEIER: Senator Carlson. [LB561]

SENATOR CARLSON: Senator Langemeier. John, I've been sitting here the whole time and I'm trying to get it through my head a little bit better what the concern really is. So if you have a private developer that comes in and spends a lot of money, \$10 billion, and has an agreement on eminent domain and let's say has an agreement with NPPD or whoever it is, not even to buy a certain amount of power that they generate. Then if that would happen, the threat to you and the C-BED is you're fearing that you've lost a customer. Your customer is going to be NPPD. You're going to generate power and you want NPPD to buy it. That's okay, I don't have a problem with that. But if the private developer comes in and spends more money and maybe gets in a better position, it's potentially putting you out of business. That's a bigger concern than worrying about public power, isn't it? [LB561]

JOHN K. HANSEN: Well, we wear two hats and we're very protective of the public power system and we have differences of opinion about how to best protect public power and how public power also ought to sometimes operate, and as stakeholders, that's our job. We're the owners of the system and so we're not just ratepayers, we're owners. So we take those things very seriously and if you think about it, public power is like a publicly owned cooperative and of course we built 436 cooperatives in the state so there's a reason why we helped bring forward this idea of public power. So we're not just a watcher in public power, we have this long history. And so our concern is that in the interest of to cut a better deal in the short term for a particular project, you set a precedent in place that opens up the door to all those...you know, we have the third largest utility in the world in buying up wind easements in Nebraska and they're from Italy. Go down the list of the folks that are in here. These are massive operations and a lot of them are utility funded. And so when you see the developers come in and you know, maybe if you're lucky who owns them today you don't know who is going to own them tomorrow. From a public power standpoint, you know, as we look at it through that perspective we can see the risk of setting a precedent in place that will open up the door that once opened, will not close again. And at that point, then we will have undermined the public power system. The other issue, I think, relative to your question on C-BEDs if...it seems to me that the only developers that are really at risk today are the ones who are not planning to use the C-BED model. And the Legislature, you know, there's two really good reasons for passing the C-BED bill and one was that it maximized the rural economic development benefit. So if you're going to do the same activity anyway, why wouldn't you want to get three or four times more benefits? I mean,

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why wouldn't you want to get three times more jobs? Why wouldn't you want to do it in the most beneficial way? And two is the way that you could harness the private sector and says without having to suffer the risk of undermining the public power system. Because the C-BED structure itself is made up of Nebraska citizens and so the threat to the public power system is minimal, I would say nonexistent I would say, from the C-BED structure. The same cannot be said for the other kind of development, but if I were a private sector developer and I had my choices and one of them was I could keep the money myself or two, I could share it with a bunch of farmers and ranchers, I know which one I'd pick. [LB561]

SENATOR CARLSON: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Okay. Seeing no other questions, thank you very much for your testimony. [LB561]

JOHN K. HANSEN: Thank you very much. [LB561]

SENATOR LANGEMEIER: Mr. Burns, I thank you for coming to the front row, but we're going to let Senator Dierks trump you here so he can get back to his committee and his responsibilities. Senator Dierks, welcome to the Natural Resource Committee. [LB561]

SENATOR DIERKS: Thank you. Senator Langemeier, members of the Natural Resources Committee, my name is Senator Cap Dierks, spelled C-a-p D-i-e-r-k-s. And I am here today to oppose Senator Lathrop's bill, LB561. I really dislike testifying against another senator's bill and will only do so when I feel very strongly about an issue. Wind energy and C-BED are the issues that bring me here today. As the main introducer of the C-BED bill, LB629 in 2007, I feel I must ask the Natural Resources Committee to kill this bill and give what we began less than two years ago a chance to continue to work. Two years ago the Legislature passed the Community Based Energy Development bill, or C-BED. On Final Reading by a vote of 49-0, negotiations between my office, the public power companies, and wind energy advocates took place for six weeks before the bill was advanced from committee. The C-BED model was chosen out of all the others because it provides the most real economic development to land holders and to the communities in which they live. Money made through wind energy should stay in Nebraska and help the struggling rural economies. This is the advantage of the C-BED model of wind energy and that is why the Legislature supported this concept two years ago. Senator Lathrop played an instrumental role in the passage of the C-BED bill two years ago. He sponsored another bill which I testified in favor of with eminent domain provisions that became a part of my C-BED bill. The issue of eminent domain is a major hurdle to the development of the C-BED projects. It was one of the issues that prevented a C-BED project from moving ahead in Bloomfield, Nebraska, which is in my legislative district before LB629 was passed. My concern with LB561 is with the eminent domain provision applying to all wind projects. There will be little motivation on the part

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of public power and private developers to work with the small landowners in small communities with that provision. Landowners will be offered very little compensation as is the case right now by many private developers for the use of their land. No money will go into the local economies because the private developers will not live in the areas where these projects are located. Quite frankly, people who live outside of Nebraska are not concerned with the survival of our rural communities. They are in business to make money. NPPD and OPPD have both issued RFPs for wind projects. NPPD has developed two C-BED projects near Bloomfield, Nebraska. It takes time for wind projects from beginning to end but Nebraska is finally headed in the right direction regarding wind development thanks to C-BED. I ask that the Natural Resources Committee and the Legislature give C-BED a chance to prove that it is the best model to develop wind power, provide rural economic developments, and to assist our Nebraska landowners. Please IPP LB561. I will try to answer any questions. [LB561]

SENATOR LANGEMEIER: Thank you Senator Dierks. Any questions for Senator Dierks? Senator Haar. [LB561]

SENATOR HAAR: Thank you. Would you agree...it's sort of the question I asked John Hansen, whether...why would OPPD or NPPD choose, you know, a traditional developer over C-BED if it's more economic development for Nebraska, do you think? [LB561]

SENATOR DIERKS: Well, philosophically I think that they would from the standpoint of providing economic development in rural Nebraska. I mean, they're a publicly owned facility. Why wouldn't they promote rural economic development? That would be to their benefit. That's my philosophical reason. [LB561]

SENATOR HAAR: Thank you. [LB561]

SENATOR LANGEMEIER: Are there other questions? Seeing none, thank you very much,... [LB561]

SENATOR DIERKS: Thank you. [LB561]

SENATOR LANGEMEIER: ...Senator Dierks, for your testimony. Further testimony in opposition to LB561? Welcome, Mr. Byrnes. [LB561]

ROBERT BYRNES: (Exhibit 4) Good afternoon, Senator Langemeier and members of the Natural Resource Committee. I'll keep my comments here brief. Nebraska is a state rich with...Oh, I'm sorry. Robert Byrnes, spelled B-y-r-n-e-s, Oakland, Nebraska, owner of Nebraska Renewable Energy Systems. Nebraska is a state rich with natural resources. These resources are the raw materials that can provide the new carbon sources that will power our future. We need to develop these resources and realize the

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many benefits that will arise as a result. The eminent domain issue is one of concern to those that would develop wind energy systems or any other power generating facility. I think the limitation on these powers could be considered a positive thing if the approach was well thought out. I would recommend the following two points for your consideration. I primarily oppose the bill in its current form because I don't feel that there is a thorough enough process in place to consider these things. First, the consideration public power is supposed to provide to limit their eminent domain powers only apply to wind energy systems. Any renewable energy powered facility or producing renewable electricity primarily needs to be given these same considerations. Actually the firm power attributes from other renewable technologies would actually make them more desirable for eminent domain action than intermittent wind facilities. Secondly, in a public power state citizen owned systems should be given a clear exemption from eminent domain, since the public making power is the essence of a public power system. We should provide a risk relief from 100 to, excuse me...we should provide risk relief to 100 percent Nebraska-owned projects. Currently these are provided to C-BED only, which again only applies to wind energy technologies. A criteria should be created to ensure that when this risk relief, i.e., limiting eminent domain powers, is provided to out-of-state or certainly foreign interests it is done through a transparent process that can be evaluated in terms of value to Nebraska. More detailed requirements are needed in this bill to ensure our ability to control private developers is not relinquished without thorough deliberation. Perhaps a component of the proposed LB437 wind power task force study could recommend a percentage of distribution or balance that they see as being optimal between private and public ownership as we go forward with development of large wind energy systems. And with that I'll take any comments. [LB561]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB561]

SENATOR HAAR: A question, thank you. In your last paragraph on your handout you stated is done through a transparent process that can be evaluated in terms of value to Nebraska. Could you expand on that just a little so I can understand it. [LB561]

ROBERT BYRNES: Well, I think we've seen certainly embodied in LB629 where certain preferences or advantages are given to Nebraska-based C-BED projects. It is in the interest of the state to do so. We've seen this also in Senator Langemeier's bill last session before, I think it was regarding the biodiesel tax incentive, that these incentives were provided to businesses that have predominant Nebraska ownership. Currently the LB641 advanced biodiesel production incentive bill is also considering how to ensure that these advantages are given to the homegrown options. Because as well all know and is well documented, those economic development impacts are far greater. I think...I certainly don't want to exclude outside capital and given the fact that there already is a privately owned and operated facility in the state indicates that the gates have already been flung open. I think it goes back to what I've said oftentimes about having a plan as to what we see or what public power...do we have a limit out there? Do we want to

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establish a limit, no more than 30 percent privately owned in the state, period, as a goal or a number that would be part of a bigger plan which we lack. But I think the transparent process is if we are going to allow public power to have these negotiations, it needs to be done in such a way that we ensure that the process is available to all that we see how this process is conducted and why such a decision would be rendered. [LB561]

SENATOR HAAR: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Is there any other questions? Seeing none, thank you very much... [LB561]

ROBERT BYRNES: Thank you. [LB561]

SENATOR LANGEMEIER: ...for your testimony, Mr. Byrnes. Further testimony in opposition of LB561? Seeing none, any testimony in a neutral capacity? Welcome. [LB561]

KEN WINSTON: Good afternoon, Senator Langemeier, members of the Natural Resources Committee. My name is Ken Winston, last name spelled W-i-n-s-t-o-n, and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in a neutral position on LB561. This is kind of a difficult position for us to be in because of the fact that there are two competing policies here that are being discussed today and both of which we support. We support efforts to increase wind development in Nebraska which the bill would do, or is intended to do and definitely support the goals that Senator Lathrop is talking about in that regard. However, we also are strong and long-term supporters of C-BED and Mr. Hansen gave a long description and provided you with a large amount of information on that subject but I'm just going to give a couple of points that are reasons why we are supporters of C-BED. There are a number of studies that have shown that there is significantly greater benefits that flow to local investors and communities through C-BED. We believe that the Legislature should support policies that benefit Nebraskans. C-BED has only been in effect for two years at this time and appears to be working. We have some concern that LB561 would have a negative impact on further C-BED development. We'd be glad to work with the committee and with the introducer in support of both of the policies that we favor. Would be glad to answer questions if I can. [LB561]

SENATOR LANGEMEIER: Okay, thank you. Senator Haar. [LB561]

SENATOR HAAR: Do you see any kind of middle ground between the way it is now and LB561? [LB561]

KEN WINSTON: Well, I think that there is a number of ways that you can look at it and

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obviously Senator Lathrop is a very good lawyer and I'm sure that he could provide definitions that would be able to describe if there was a desire to have a specific benefit for C-BED that it could be included in there. And I guess that's what we're asking for is to have something that specifically relates to C-BED included in the language. [LB561]

SENATOR HAAR: Okay. And do you think it's a demise of C-BEDs if LB561 is passed? [LB561]

KEN WINSTON: I don't know if I'd go that far. I mean, I think as a couple of previous speakers have indicated, there are some inherent benefits of C-BED and hopefully it would be sufficiently attractive to people with or without those provisions. However, I do think that there are some benefits that flow through C-BED and from where we sit we would like to encourage people to use the C-BED model because of the additional benefits that flow to Nebraskans. [LB561]

SENATOR HAAR: And those benefits are? [LB561]

KEN WINSTON: Financial benefits, I mean, John Hansen was talking about the idea of the example that he used where you'd get \$2 million worth of benefits on the non-C-BED model and \$16 million of benefits for the C-BED model. So that would be a significant difference in terms of the amount of benefits that would be available to Nebraskans. [LB561]

SENATOR HAAR: Okay. Thank you. [LB561]

KEN WINSTON: Thank you. [LB561]

SENATOR LANGEMEIER: Senator Fischer. [LB561]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Winston, for being here. If the bill would be advanced from committee in its present form, would you still be neutral or would you be in opposition to the bill? [LB561]

KEN WINSTON: I would have to consult with our legislative committee and ask for further direction. [LB561]

SENATOR FISCHER: Okay. Thank you. [LB561]

KEN WINSTON: Thank you, Senator. [LB561]

SENATOR LANGEMEIER: Mr. Winston, I have a question. It's been stated today in opposition by a number of people about the C-BED model works. We have it two years, let it work. The two RFPs that have been out, there's been a number of people applied

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for those, so everything is working dandy in wind. Yet, we have yet today we have LB437 which requires us to put a task force together to look at more ways to aid in wind development and we have a number of bills before the committee that I would say contradict everything that we've heard in the opposition to C-BED working. Do you have thoughts to that? [LB561]

KEN WINSTON: Well, I don't know as it necessarily means that C-BED isn't working other than...I think what...my response to that would be that we're starting from a long way down and we have some opportunities to look at how are we going to go forward in terms of wind energy development? I mean if you look at the chart, we...at the beginning of 2008 had 73 megawatts of wind development and our neighbors were in the thousands of megawatts of wind development. And some of that is because of federal tax policy, some of that's because of other policies but I think what LB437 intends to do is to look at the entire gamut of issues and not just the development model. So I guess I'm not saying...what I would say is it's not just a matter of things haven't developed all that much. I don't think it's just because of C-BED that things haven't developed. I think it's we need to look at all of the entire picture of how wind gets developed and not just one model versus another model. [LB561]

SENATOR LANGEMEIER: I would agree. Senator Schilz. [LB561]

SENATOR SCHILZ: Thank you. Ken, thanks for being here. As you said, you know, it's not just the fact of the C-BED working. Would you say that this eminent domain clause is another one of those factors of why things haven't moved along quicker? [LB561]

KEN WINSTON: It, yes, it could be. I mean, obviously I haven't been...well, I won't say obviously but I have not been engaged in those discussions... [LB561]

SENATOR SCHILZ: Sure. [LB561]

KEN WINSTON: ...but the ones that I've heard described, I mean, I understand as a lawyer why one would advise your client that... [LB561]

SENATOR SCHILZ: Stay away from that? [LB561]

KEN WINSTON: ...exactly. That you would not want to advise somebody to sign something where, I mean, I've had several people tell me you can't waive something that's a matter of statutory provision. So maybe you can, maybe you can't. But that would be a provision that would cause me grave concern as an attorney. [LB561]

SENATOR SCHILZ: A lot of dollars to risk... [LB561]

KEN WINSTON: Sure. [LB561]

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SENATOR SCHILZ: ...for maybe. [LB561]

KEN WINSTON: Right. [LB561]

SENATOR SCHILZ: Yeah, thank you, sir. [LB561]

KEN WINSTON: Sure. [LB561]

SENATOR LANGEMEIER: Very good. Thank you very much for your testimony. [LB561]

KEN WINSTON: Thank you. [LB561]

SENATOR LANGEMEIER: Further testimony in a neutral capacity to LB561? Seeing none, Senator Lathrop, you're recognized to close on LB561. [LB561]

SENATOR LATHROP: Thank you. A very interesting discussion and I appreciate the remarks of the proponents and the opponents and those in a neutral capacity. It does lead me to make a couple of observations having listened to the testimony. I don't think that there's any question after you listen to OPPD, NPPD, the power producers that the bill's necessary. If they're going to enter into arrangements with those who develop wind farms, they need to be able to assure the developers that they're not going to eminent domain. We're not going to develop wind until that happens, so the bill is necessary. But the opponents, as I listened to them, really had two concerns that they expressed. One was the suggestion that it was the end of public power. That's not the case. We had OPPD, NPPD, and the electricity generators come before the committee and say we want it. So I think if anybody was going to identify the end of public power it would be them, that's their job to defend that. So I don't think the first suggestion is really the problem. I think it's the second one, which is there's a little bit of a turf battle. C-BED and for those who want to come along and try to develop wind energy, they owe a lot to C-BED because C-BED was out in front on this. I remember a year or two ago when we had a number of bills that came through, one of which I sponsored on the eminent domain. They understandably positioned themselves in a primary place. We're the guys that have the permission, you're going to use our methodology or our system if you're going to develop wind in Nebraska. And I understand why it's better for the state of Nebraska and I agree that C-BED projects are better for the state of Nebraska and if we can give them a tax incentive so that they have a jump on other developers I wouldn't have an issue with that. But that's not...you know, the other thing that occurred to me when I listened to them talk about well, we should have C-BED and C-BED only. I think we have to potential to generate so much electricity and have so many of these projects, C-BED may not be able to keep up with it. There is enough projects, there is enough acres out there, there is enough potential out there that I think there's room for

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the C-BED projects to prevail and some of the private developers and frankly, the C-BED does offer the landowner a little better deal and they should be able to sell that to the landowners and continue to develop it. So as far as this particular piece is concerned, my close is it's necessary, it's appropriate, and it really doesn't have anything to do with the end of public power or the difference between whether we ought to make it more advantageous to be a C-BED project or a private developer. [LB561]

SENATOR LANGEMEIER: Okay. Very good. Are there any questions? Senator Haar. [LB561]

SENATOR HAAR: Thank you. If C-BEDs are better for Nebraska, and yet this bill is necessary and this is just brainstorming...do you see any ways to incentivize C-BEDs to...so that we get more of them, if they are actually better? [LB561]

SENATOR LATHROP: I think C-BEDs in some sense have a built in incentive and I'm not an expert on C-BEDs but I did some work on the C-BED work with some of those folks two years ago, I believe it was. And they can go to the landowner and say, I've got a better deal for you than the developer. The developer is going to give you a lease payment and I'm going to give you an opportunity to own the wind turbine, have an equity interest in it. They have, I think, to the extent they get around and make that pitch to folks and they can raise the capital and do those things, they probably have a natural advantage but can those projects get around and do all the development and meet all the potential need for the state of Nebraska? I don't have an answer for that. [LB561]

SENATOR HAAR: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Thank you very much for your testimony. [LB561]

SENATOR LATHROP: Sure. [LB561]

SENATOR LANGEMEIER: You have heard the closing in LB561. That closes the hearing. Now we will open the hearing on LB437. Welcome, Senator Haar. [LB561]

SENATOR HAAR: Thank you very much. Senator Langemeier, members of the committee. First of all, I want you to throw away the green copy. [LB437]

SENATOR LANGEMEIER: You have to state your name, just like everybody else. [LB437]

SENATOR HAAR: (Exhibit 5, 6) I'm sorry. I'm Senator Ken Haar, K-e-n H-a-a-r. Okay. So throw away the green copy. We've worked with a lot of people and I know this excuse won't work next year, but we didn't have all that much time to work on it so. Like I say, we worked with a lot of people, we've met and the spreadsheet that I've handed

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out to you is what I'd like to talk about today and because I'm saying throw away the green sheet, we also handed the spreadsheet out to the audience. So I'd like to go through this with you. First of all, LB437 in the green form really is what I call phase two. And if you know spreadsheets, it's column D, that's where we started. And really it just said we ought to come away with some studies showing where wind facilities are and the transmission. And I handed this out, this is the Colorado Governor's Energy Office Report, and the reason I handed this out is it gives you kind of an idea of where we started. This is one of the models; we also used a model from Michigan. But if you get time to go through this, it's really interesting. On the first page, the premises of the legislature and the governor of Colorado are very exciting and then they go through region by region in Colorado identifying where renewable energy resources are. So it's a marvelous study and it's the kind of thing I wish we had in hand today. So phase two was really kind of modeled after this study. After meeting with various people, in particular folks from OPPD, NPPD, we added phase one, and so I'd like to talk about the whole thing now. First of all, on row two is the affirmation of public power, to low cost electricity, dependable electricity for Nebraskans and really the new emphasis I would like to add and I think we're talking about in this study is export for the benefit of Nebraskans. Row three, the premise of this study and we just said, okay let's just kind of set a goal here of what we might see happen and then as the reports get developed and so on it's going to concentrate on that. Seventy-five hundred megawatts by 2030, one third for Nebraska, two thirds for export. So that's kind of the premise and this was the premise of a study by the national energy group looking towards this possibility of having 20 percent of our renewable energy generated by electricity in the nation by wind by 2030. So that's the premise of this study. Then rows four through 24, and I...this again is open to development and to discussion but I believe it's very important to get the players to the table. One of the interesting things about the Colorado study is if you look at some of the initial part of it on page 5 is their, kind of their list of players. And it's really impressive because what it tries to do and what we've tried to do is to say get the stakeholders at the table and get them in early. And so you can see their designated people here: we've said the executive director of the Power Review Board, so on and so forth, appointments by the Governor, by the Executive Board of the Legislature, and then we would have a task and a technical group which would include public power technical people, wind energy developers, etcetera. In other words, this isn't all developed yet. The tasks for phase one, review Nebraska statutes to identify challenges to the development of Nebraska's vast wind resources, specifically. And then here are some of the issues that as we sat down and talked with OPPD and NPPD that really we have to face if we're going to be talking about generating or developing our wind potential. One, eminent domain; who pays for transmission; the role of the PRB, the Power Review Board; the role of the Nebraska Public Power in export; cost of expansion for export, how is transmission addressed; the role the private developers play; land use; environmental concerns; revenue; distribution; and that item on row 34 relates to if you have wind energy development in a locality you could sort of have a bubble of property taxes coming to a community and then all of a sudden they're gone.

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So a big issue here is how would you distribute the revenue generated by wind and other energy products in a way that develops local communities over a period of time? And we'd set a timetable for that, November 15, 2009, that's less than a year away. And phase two then, after this study basically is done, then we get to phase two. You still have the advisory group and task force working together and you can see that the tasks there would be combining the various studies under way, ensure optimal location of wind energy facilities in the state, ensure transmission infrastructure, and then maps of the transmission corridors and a strategy for implementation June 30, 2010. And you'll hear some testimony later on as to why we put such...the dates that we did. I mean, this is a pretty tight timeline and a large part of that would be so that we can take advantage of federal incentives as they come down the pike being shovel ready as people are talking about. So again, this would be the Wind Energy Development Task Force. Obviously the players do need to be looked at, expanded perhaps, looking at the tasks, the deliverables, and the timeline. And so what we will do after today is...our last meeting with NPPD and OPPD were last night and there was just no way to put together a resolution or I'm sorry a bill with all the language, but our next step of course after the testimony today is to put the language to this. Some of the things we have not agreed on totally and you'll probably hear about that too, I'm sure, is exactly what the role of the advisory group versus the task force group. Being an organizer at heart, I think you need all the players there to begin with and the technical people will kind of argue at some point saying, well, let us do our work so we're going to have to work that out. And then so that's one item to be worked out, the timetables have to be worked out yet. The exact tasks have to be worked out, so I guess that's where we start. Here's a model, a very good model, it would be nice if we had this in hand right now. And so I'd be open to questions. [LB437]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Haar? I'll ask one. [LB437]

SENATOR HAAR: Yeah, go ahead. [LB437]

SENATOR LANGEMEIER: So you're offering this spreadsheet in lieu of an amendment at this point? So that this is it. [LB437]

SENATOR HAAR: Yeah. We just, there...we couldn't put it together. [LB437]

SENATOR LANGEMEIER: I like a one page amendment. Lots of interpretations. [LB437]

SENATOR HAAR: This is kind of how I think this is a view into the mind of Senator Haar. [LB437]

SENATOR SCHILZ: Easy to understand. [LB437]

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SENATOR LANGEMEIER: We won't go there. Other questions? [LB437]

SENATOR COOK: I'll be getting that out. Thank you. [LB437]

SENATOR LANGEMEIER: Seeing no questions at this time we'll see what the testimony is behind you on your one pager here. [LB437]

SENATOR HAAR: Okay. Thank you so much. And it just hurts that I can't ask questions, but I'll sit in my seat. Thank you very much. [LB437]

SENATOR LANGEMEIER: This too will pass, this pain. (Laughter) We will now take testimony in support of LB437. Welcome back. [LB437]

KEN WINSTON: Thank you. [LB437]

SENATOR LANGEMEIER: Welcome. [LB437]

KEN WINSTON: Good afternoon. Once again for the record, my name is Ken Winston. Last name is spelled W-i-n-s-t-o-n and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB437. We've long supported renewable energy and support the study of siting and transmission that's envisioned by LB437. And of course I've talked on a number of occasions about all of the reasons that we support renewable energy development including the fact that renewable energy does not generate greenhouse gases or other polluting emissions and does not use water in its generation. And it's our understanding that the bill is going to be rewritten as per the spreadsheet, so we're commenting on that understanding. First, as I indicate, we understand that there's going to be various experts who are going to be called upon to study and make recommendations, and I guess one of the things that we're saying is that there should be experts not only in with regard to electricity and how it's generated and distributed, but we ought to have experts in a number of different areas. Some of the areas that we're asking about would be experts in wildlife habitat and migration and the criteria be developed to protect sensitive wildlife habitat areas as well as criteria to prevent siting in major bird migration pathways. And we also think that there should be people who have expertise in the historical significance of various sites including particularly significance to Native American tribes or prehistoric people, that that should also be included. And we believe that there should be expertise on health issues to the extent that they may be involved related to transmission and generation and then obviously legal experts would be important. Then, secondly, we're asking that the process be open as much as possible and of course we understand that there are some things that are sensitive and may not be appropriate for public discussion. We don't...I mean, obviously, there may be some proprietary interest and we wouldn't want things to result in land speculation. But nonetheless to the extent possible because of the fact that this has the potential of

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shaping energy policy for years to come and this is important business that's best conducted in public. And third we're asking that there be a broad based citizen group as Senator Haar indicated that would be included in the process of developing the recommendations that come out of the study. And I guess I mention a personal anecdote that good ideas often come from people who aren't involved directly in the industry. For example, the idea of geothermal heat pumps for the Lincoln Public Schools came from a citizen advisory group and not from the engineers. The engineers didn't think it would work. They said, don't do it, it's not going to work, you know. It's going to be a big waste of money and it's turned out to be enormously successful. It's a model that's being followed throughout the country. So sometimes those good ideas come from people who aren't the experts and I guess I also throw in on the next page that people like Bill Gates and Steve Jobs weren't part of the industry that they later came to dominate. They were people, they were outsiders. And so we would highly suggest that people not necessarily...that this shouldn't just be an inside industry study. And then, in addition, there's a great deal of interest and the more people that can be involved in this the more likely they are to get stakeholders involved in the process. More people you would have buy into the end result. And then, as I indicated earlier although we're behind in terms of our development, we have an opportunity to do this right, to really come up with the best of all...the best way of doing this. And it's like the old saying last in, best dressed, let's make sure that we show up with our end product is the best that we can create. And then, finally, we believe that the premise of the study should be that the benefit should be for Nebraskans. We're concerned that there may be some provisions that might provide a vehicle for out of state developers to take advantage of infrastructure paid for by Nebraskans and to bypass the public power system that's provided many benefits to this state and its people. So we would ask that these recommendations be included in the final bill and that the bill be advanced to the floor of the Legislature. I would be glad to answer questions. [LB437]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, they'll let you off the hook easy. [LB437]

KEN WINSTON: Thank you. [LB437]

SENATOR LANGEMEIER: Thank you very much for your testimony. Further testimony in support of LB437? Welcome back. [LB437]

ROBERT BYRNES: (Exhibit 8) Senator Langemeier, members...good afternoon, members of the Natural Resources Committee. My name is Robert Byrnes, still spelled B-y-r-n-e-s, from Oakland, Nebraska. And I'd like to testify in support of LB437 as an important step toward development of our natural resource. The Wind Energy Development Zone being--the concept here being developed is one I am a strong fan of and have actually used in conversation with economic development folks across the state. This concept can be a tremendous tool in spurring development for the short and

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long term. Even in the year 2009, Nebraska has no clear plan how this is to be accomplished in terms of utilization of our wind resource. While RFP responses have been active, the rate of development is still at a crawl at a time that many states are sprinting. The report due June 2010 published by the LB437 task force will surely need to be integrated into the state energy plan and into policy. Much like the much needed LB246 Biopower Committee will produce a report due December 1, 2010, regarding biomass development opportunities in the state. I support these projects and would certainly serve in support of these undertakings if requested and able. I would add the following observations for the committee to consider in their deliberations on the LB437 task force. We have taken a somewhat narrow focus here in talking about large wind only. While this is certainly the big potential, the big kahuna as it were, it leaves a lot of opportunity behind. Consider this. The central authority or lightning rod that coordinates these committees takes input, disseminates data should be considered in the context of these reports that we seek to generate here. Without the strategic restructuring provided for in last session's LB921, we still do not have a framework for these and many other initiatives. This could be a green power czar of sorts, using today's political lingo. The impacts of this lack of structure is obvious in many areas. But broadening the study focus to renewable electricity and establishing an overview of potential generating sources will help keep things in perspective. For example, the study could find it optimal to produce these 75 or 7,800 megawatts of electricity by this 2030 date as an optimized combination of 70 percent wind, 5 percent biomass, 7 percent small wind, 6 percent methane, 10 percent geothermal, and 2 percent solar. Electricity can be directly made emissions free using geothermal resources available in the western parts of the state. All of these represent utilization of current resources for a green grid. We should be inclusive of these technologies, and not overly focused on one particular model. The goal of good energy policy is to create jobs. I suggest that this goal to be included in the list of things the task force is to support. By measuring technologies in jobs per BTU produced, for example, policy development can consider the best bangs for the public dollar. Public comment period should be open during the life of the committee. Comments submitted earlier will obviously be given a greater consideration and the development process should be available on a state green energy website, which I hope is still under development. I again contend an independent office for renewable energy needs to be established for these topics apart from the NEO. Although large boards can be cumbersome, the task force board should include Department of Economic Development folks and representation from the Nebraska based wind industry. And believe it or not there is one, at least the beginnings of one. This would help to ensure things are considered with the best interest of Nebraska business in mind that will supply the energy jobs we seek to create in all of this. In a public power state, Nebraska based businesses are the natural partners in the system. No funding mechanism is provided for here. A substantial amount of time will be needed to be spent by specialized folks to complete a report of this magnitude and scope. Whatever it does cost, I believe this money is well spent. I do not believe we have any more time to waste regarding green energy development in Nebraska. We need a clear policy

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roadmap that will get us there starting yesterday, not 2010. And I believe there's a lot that can be done with what we already know, but the committee and the deliverables outlined in LB437 will be needed if we are to capitalize in these opportunities in the long term. With that, I'll take any questions. [LB437]

SENATOR LANGEMEIER: Thank you, Mr. Byrnes. Are there any questions? I have one. In your testimony, on the second page where you have the goal of green energy policy is to create jobs. Is that a primary goal? [LB437]

ROBERT BYRNES: I believe it is. It's obviously not the only goal. These things have to be tempered obviously by cost and reliability. We cannot unrealistically burden the energy industry with creating jobs if it's not cost-effective to do so. However, energy policy should...an integral component of energy policy in my understanding of it and certainly I've taken some of that understanding from DOE references in the past in regards to energy policy creating jobs as being kind of an important relationship. [LB437]

SENATOR LANGEMEIER: Okay. Seeing no other questions, thank you very much. [LB437]

ROBERT BYRNES: Thank you. [LB437]

SENATOR LANGEMEIER: Further testimony in support of LB437? Welcome. [LB437]

MARY HARDING: Good afternoon, Senator Langemeier, members of the committee. My name is Mary Harding, it's M-a-r-y H-a-r-d-i-n-g. I appear today on behalf of the Nebraska League of Conservation Voters in support of LB437. We believe that this proposal may be one of the most important that comes before you this year in terms of the breadth of impact for Nebraskans and the length, the duration of benefit to our economy and our citizens that could result from this kind of a study. It certainly is worthy of the legacy of George William Norris in taking a big idea and a complex situation and attempting to systematically address and prescribe solutions and a path toward maximizing return to Nebraskans on a resource. We do have a shining example of what government can do when it puts its mind to the greater good in the creation of our public power system here. And we also do have a world class resource that we're sitting on top of, that if we develop it wisely and systematically it could contribute substantial revenue to the economy across the state, keep jobs and young people in Nebraska. I've personally visited with representatives from countries around the world who would like to develop manufacturing sites here in Nebraska and would be especially interested if we developed our capacity to also manufacture electricity from wind here in the state. I think the opportunities are beyond many of our imaginations. But an ounce of prevention, an ounce of planning is worth a pound of cure and this is that ounce of planning that is needed. It's a very complex project and the magnitude is quiet broad.

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And so a task force like this is essential. We want to emphasize our support for the breadth of the committee that Senator Haar proposed. We think it's very important at this point to keep the public at the helm of public power and that means involving a broad perspective of the citizen base. We also want to note siting concerns especially regarding habitat and wildlife benefits, and that's been included in the original form and we want to see that continue. And I thank you for the opportunity to be here today. [LB437]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Harding? Seeing none, thank you very much for your testimony; so noted. Further testimony in support of LB437? Welcome to the committee. [LB437]

HANS DETWEILER: Thank you. My name is Hans Detweiler, H-a-n-s Detweiler D-e-t-w-e-i-l-e-r. I'm the manager of state legislation and policy for the American Wind Energy Association. And first express our great appreciation for the time that the committee is putting into these issues. And just by way of introduction for those of you that haven't had a chance to work with us directly in the past, the American Wind Energy Association has over 1,900 members around the country. We're comprised of not only some of the developers that you've met here today, but also the construction companies, the companies that do the modeling and the engineering work, the electric utilities and both of the public power companies that have spoken today are also members of us. We don't pretend to speak for all of our members on every issue by any stretch of the imagination, but we do try to work together with all of the members to develop the industry and help the industry move forward. In 2007, the wind industry thought we had a good year, nationally. We developed over \$10 billion of projects, 5,200 megawatts. We thought that was a good year until 2008 where we developed \$17 billion in projects all around the country, 8,300 megawatts representing a 50 percent capacity growth over the prior year from that. As of this day, across the country there are about 85,000 people working directly in the wind industry, manufacturing turbines, installing turbines, in the development companies. Eighty-five thousand direct jobs, that does not include jobs that are supported by those people when they go out and buy cars or buy hamburgers and all those secondary impacts, it's just directly in the industry, 85,000 jobs across the country. The wind industry for each of the last four years was actually the number two resource in terms of new power plants that have been installed around the country, so only natural gas has been building new facilities faster than the wind industry. We've been ahead of coal and ahead of nuclear for each of the last four years. I want to speak in support of LB437; I need to provide just a little bit of background before I do that. I think people are very aware that the stimulus package just passed the Congress and will be signed into law in the very near future by the President. The production tax credit which is a critical tax vehicle was approved for four years through 2012. That is a rare long-term opportunity and makes this a great time for the state of Nebraska to figure out what its plan is moving forward. There's also a high expectation as NPPD mentioned earlier today, that there will be a federal renewable

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energy standard. That will create significant economic development opportunities for the global wind resource that Nebraska has, as well. I don't want to dwell too much on that but if there is interest in that I would be happy to take any questions on how any of the recently enacted or expected federal legislation could impact the Nebraska process. In terms of understanding the scale of opportunity in Nebraska, there was a recent report from the United States Department of Energy called the Twenty Percent Wind Report and it basically, I don't need to get into the details, but it said look, there's no technical reason why the United States can't get 20 percent of its electric capacity from wind. And what that report specifically found relative to Nebraska was that to be on course for 20 percent wind by 2030, they found two things. One, that Nebraska would probably experience around 7,500 megawatts of development of wind by ten years from now and that's where I believe this 7,500 megawatts number that's included in the LB437 bill, I just want people to know that's where its derived from. The report also identified as a significant barrier transmission issues. And in this case, Nebraska is no different from any of its other states. That if Nebraska, which has a peak summer load of around 7,000 megawatts wants to develop 7,500 megawatts of wind and have a reliable electric grid, there's no way to do that without significant transmission improvement. And so that's true across the country, it's true in Nebraska as well and that is, I think for us, one of the dominant reasons why we're very supportive of this legislation, LB437. Because we think that, frankly, building transmission is very complex, that it involves a lot of stakeholders and processes that may be new to people. The public power districts have recently joined the Southwest Power Pool, the Southwest Power Pool has a process for planning, approving, figuring out who pays for new power lines, critical issues like that and we think that those issues are not adequately understood by many of the stakeholders in the state through no fault of their own. It's just it's all very, very new and so we would second all the comments that have been made so far that really what this bill is about is providing an opportunity for great...for stakeholder education in the broadest sense, all of the many different stakeholders that would be envisioned participating in the process. So those are my comments and I'd be happy to take any questions if there are any. [LB437]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, they're going to let you off the hook easy too. Thank you for your testimony. [LB437]

HANS DETWEILER: Thank you. [LB437]

SENATOR LANGEMEIER: Further testimony in support of LB437? Welcome. [LB437]

DAVE SAVAGE: Good afternoon. I'm Dave Savage, S-a-v-a-g-e. Senator Langemeier, Natural Resources Committee, Senators Haar and Dubas, thank you for sponsoring LB437. I work for Renewable Energy Systems Americas, manager of development for the north central region. A little history on the company, we've been doing wind and solar projects in terms of development and construction for about 30 years now. We are

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a family-owned business. We've done 3,400 megawatts of installed wind capacity in the United States. We did 25 percent of the wind in this country last year and the year before. So that's a little background on the company and why we're interested in LB437 and Nebraska, specifically. Well, first of all a little history, we built the Ainsworth wind farm for NPPD back in, I believe, it was 2005, a 59 megawatt facility there. We are currently developing a large utility-scale project in southeast Nebraska and that's where our real current interest lies in this bill. We believe it's the right way to develop wind in the state. Doing zones and transmission and cost allocation models to get the transmission to the zones is very important. And as Hans mentioned earlier, that 7,500 megawatts of wind that we have the potential for exporting or for having here in the state in the next ten years, of that we only see about 2,500 megawatts serving native load here in Nebraska. So you're going to need to get 5,000 megawatts out of the state and that's where folks like us and other developers come in allowing for that export of wind. The project I'm working on now in southeast Nebraska, basically in terms of economic development will bring about \$800 million in infrastructure to the county that we're working in and depending on the tax models in that community if we look at an energy production tax like we have in Minnesota--the county is still debating on how to tax that project--but basically that project would bring about \$1.5 to \$2 million a year to the county coffers in that county. Looking at that size project, there are some assumptions that we're using energy production taxes and we're not depreciating the taxes. It's a perpetual tax basically as long as that project's there. In addition to the tax revenue stream to the local community, we'd also be providing hundreds of jobs on the construction side for the project, dozens of jobs on the permanent side just to operate and maintain that project. That being said, we're the type of company that doesn't necessarily have ownership interest in a project so whether it's community based, whether it's private development, it doesn't really matter to us. We get value from construction and from development so we're open to any models of development that are beneficial for that particular community. I think there has been some misconceptions today about the amount of value that private development brings to a community. If you look at current business models in other windy states, the royalty model is very significant and the risk is very low to landowners. If you look at the community wind model which we are doing in other states, the risk is significantly high for those folks that do invest in those projects. They're putting in up front capital in significant amounts to invest in these projects that may or may not happen. So you have to look at that side of the equation as well. That being said, we are in support of LB437, we think it's the right way to go. We worked with the competitive renewable energy zone process in Texas, which is very similar to what could happen here in Nebraska. Texas is kind of an insulated regional transmission operator, ERCOT down there similar to public power here in Nebraska in terms of transmission infrastructure. That process worked very well, they worked out the cost of allocation. It was not extremely expensive to bring in a transmission per month basis per ratepayer. We think that's the right way to go, identify zones, get the transmission to the zones and wind energy will come or the other renewable energy will come. Also, another example to look at is the Upper Midwest

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Transmission Development Initiative which we're actively involved in out of our Minneapolis office. The five governors of Minnesota, North Dakota, South Dakota, Iowa, and Wisconsin have put together this group of public utility commissioned administrators to basically study wind energy zones throughout that five state region. The study was actually done by MISO, the Midwest Independent System Operator, but they are in the process of selecting zones and looking at the cost allocation piece in terms of how they're going to pay for the transmission to get to these zones so. It is being done in other areas right now. The key to this particular bill and this particular process, establishing a committee to study these zones is timing. We need to look at getting something done in the near term, at least in terms of structure, by this fall and then hopefully have some results by next spring. That's our goal and we believe that's the timeline to set forth in the legislation right now so. That being said, I'd be happy to answer any questions. [LB437]

SENATOR LANGEMEIER: Very good, Mr. Savage. Are there any questions? Senator Fischer. [LB437]

SENATOR FISCHER: Thank you, Senator Langemeier. Welcome, Mr. Savage. Where are you from? Where is your company located? [LB437]

DAVE SAVAGE: My office is in Minneapolis, Minnesota, 12 South 6th Street. We're based in Denver, Colorado, our company is. We also have offices in Austin, Texas, Montreal, and Portland. [LB437]

SENATOR FISCHER: That's good enough. Welcome to Nebraska. [LB437]

DAVE SAVAGE: Thank you. [LB437]

SENATOR FISCHER: You mentioned Texas and maps I see in Texas, they do kind of have their own grid system and they...tell me if I'm correct in this, do they hook up outside of the state to any great extent or the energy they produce in the state, is it just held in the state? [LB437]

DAVE SAVAGE: The interconnects are primarily for liability out of the state but it is pretty independent grid in all but the panhandle of Texas, and in the panhandle, it's SPP, Southwest Power Pool which NPPD will be going to this spring. So it's primarily ERCOT in most of the state, but it is pretty independent so that does simplify things in terms of setting up zones. [LB437]

SENATOR FISCHER: Are they using the energy they produce then, within the state of Texas or are they selling any great amount of it outside of the state, do you know? [LB437]

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DAVE SAVAGE: They are selling quite a bit out of the state now because they have...because it's been such a successful model, they have 9,000 megawatts of installed capacity now so there are entities outside of the state that are purchasing the power. It's basically a virtual grid, so you don't necessarily have to purchase power within the state to take advantage of the renewable attributes so. [LB437]

SENATOR FISCHER: Okay. On the Ainsworth project, that's within my legislative district, how was the location chosen? [LB437]

DAVE SAVAGE: That was NPPD, actually did the development effort there and I defer to them on that. We just came in on the construction site of that project. [LB437]

SENATOR FISCHER: You know, as I'm...I thought I read the bill but we got a new deal today, so, as I'm looking at the idea on the bill I think part of that is to find out where the greatest wind potential is in the state, is that your understanding of it? [LB437]

DAVE SAVAGE: Right. Yes and, you know, a lot of preliminary work has been done on that. [LB437]

SENATOR FISCHER: On where we can look to maximize some growth in wind projects, is that what you're seeing? [LB437]

DAVE SAVAGE: That would be, that's the way it's been done in other areas. I'm not sure if we're to that point in planning now on this particular effort. But I know there's been a lot of background work done by NPPD in that very area so we could draw on their expertise to help out with that. [LB437]

SENATOR FISCHER: I was just going to point that out. I think NPPD, for a number of years including the Ainsworth site, they've monitored wind in order to know where it would be the most profitable to install those turbines. [LB437]

DAVE SAVAGE: Right. So between NREL and NPPD a lot of the groundwork has already been laid. Now we just need a structure such as LB437 provides us. [LB437]

SENATOR FISCHER: Do you know with NPPD and maybe one of their representatives is going to come up. Do you know if the information that they gather from those monitoring points, is that information available to the public or is that...since they're spending the money and gathering the information, do they hold that information pretty closely? [LB437]

DAVE SAVAGE: I would have to defer to Dave Rich over at NPPD on that but I'm sure there's something to be worked out. I'm not going to speak for NPPD, though so. [LB437]

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SENATOR FISCHER: I see Mr. Rich moving forward so maybe he's going to get ready to answer a question here. Okay. Thank you very much. [LB437]

DAVE SAVAGE: Thank you. [LB437]

SENATOR LANGEMEIER: Senator Carlson. [LB437]

SENATOR CARLSON: Senator Langemeier. You, initially you mentioned \$800 million in southeast Nebraska on that project. Can you expand on that a little bit, what does that mean, \$800 million? [LB437]

DAVE SAVAGE: That's just in terms of installed infrastructure, turbines, access road, collector systems, overhead transmission lines that we would build ourselves. That doesn't include any of the other benefits of the project. [LB437]

SENATOR CARLSON: Okay. So that's investment, that's initial investment. [LB437]

DAVE SAVAGE: That would be initial investment and beyond that there would be the jobs associated with it and significant tax revenues associated with that as well. [LB437]

SENATOR CARLSON: Okay. And your firm built the Ainsworth facility. [LB437]

DAVE SAVAGE: Yes, sir. [LB437]

SENATOR CARLSON: And when was that? [LB437]

DAVE SAVAGE: That was in 2005 or at least the start of that so. [LB437]

SENATOR CARLSON: Now, we understand there's been a lot of maintenance problems there. [LB437]

DAVE SAVAGE: Right. [LB437]

SENATOR CARLSON: How has technology improved since 2005? [LB437]

DAVE SAVAGE: Yes it has and the issue there was the turbine manufacturer, Vestas had a machine, the v82 that had not been tested in a highly turbulent environment and there were some blade crack issues. And it is my understanding that those have been corrected but they were reduced on their output. It limited, some of those machines were limited to 12 meters per second in terms of operating ranges. [LB437]

SENATOR CARLSON: But there have been definite technological improvements in all

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aspects of building a wind energy structure in the last few years? [LB437]

DAVE SAVAGE: We've learned quite a bit, Senator Carlson, and that same manufacturer is now manufacturing a much larger, more robust machine called the v90 that may be more appropriate in that type of wind regime so, the Class I wind regime. [LB437]

SENATOR CARLSON: Has your company constructed any of those between Council Bluffs and Des Moines? [LB437]

DAVE SAVAGE: No, we did a v90 project in central plains down in Kansas. [LB437]

SENATOR CARLSON: Thank you. [LB437]

SENATOR LANGEMEIER: Very good. Thank you. Seeing no other questions, thank you very much for your testimony and welcome to Nebraska. Further testimony in support of LB437? Welcome back. [LB437]

MIKE DONAHUE: Thank you, Mr. Chairman. Again, my name is Mike Donahue, D-o-n-a-h-u-e, executive vice president of Midwest Wind Energy, a company registered to do business here in the state of Nebraska and developers of the Elkhorn Ridge project near Bloomfield. I am here to testify in support of LB437 as amended today by Senator Haar and represented on the spreadsheet you have before you. Lately there has been a substantial amount of discussion about the role that the state of Nebraska has to play in our nation's quest for energy independence. As Hans mentioned in his testimony, the United States Department of Energy has put out a broad plan discussing how we can achieve 20 percent of our nation's energy supply from renewable resources. Per that plan, more than 200,000 megawatts of this power would come from wind situated in the great plains from the Canadian border down through the Texas panhandle. Now, recently for Nebraska the key question has become how much of this 200,000 megawatts should be developed in this state and how would we possibly get it done? As Senator Haar outlined in his opening comments and again as Hans referenced, the discussion lately has been about this figure of 7,500 megawatts with approximately one third of that serving your domestic use here in the state of Nebraska and two thirds being used primarily for export. Over the past couple of weeks, representatives of our company and others interested in renewable energy and economic development have been meeting with stakeholders on this matter, including many of the members here on this committee, to determine if the state of Nebraska is ready to pursue a bold new wind power manufacturing industry. This industry would produce a valuable commodity in the form of clean, renewable energy, a large component of which would be available for exporting to other states. The benefits of doing this would include billions of dollars of investment in Nebraska, the creation of thousands of jobs, and unprecedented economic development in rural communities and

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new revenues for public power districts. The feedback we received from these stakeholders including the members of this committee was very clear and very consistent. Yes, generally, we're interested in this but you need to show us how this will not increase electric rates for Nebraska customers and we need to see that public power supports this as well. As a result of the feedback that we received from you all and others in the state, we reached out to representatives of public power to relay the feedback we had received and discuss directly with them certain threshold topics such as: is this something that we really want to do in the state of Nebraska; how much power are we really talking about; we talked about the 7,500 megawatt goal, is that something we're really interested in; what transmission improvements would be needed to support this effort, if we collectively chose to pursue it; how much would it cost; and who would develop it; and who would pay for it; and also who would own and operate these facilities? The response we received from public power, and I'm not going to put words in their mouth, but at least what I heard them say was that, well, we're interested too, but before we can get on board we need to look at the pros and cons of expanding this portfolio to include export projects. We need to understand the transmission requirements that are needed to support all that additional wind energy. We need to understand the financial impacts and generally, we need to look before we leap. Midwest Wind Energy agrees with all of these sentiments and we agree that a thoughtful and comprehensive assessment should be made by all stakeholders to determine if this is the right direction for the state of Nebraska. We believe that that is what the spirit and intent of LB437 as amended here today is all about and we support that. That concludes my remarks. [LB437]

SENATOR LANGEMEIER: Very good, Mr. Donahue. Senator Carlson has a question. [LB437]

SENATOR CARLSON: Senator Langemeier. Mr. Donahue, you used the term that this will create thousands of jobs. [LB437]

MIKE DONAHUE: Yes, sir. [LB437]

SENATOR CARLSON: And I don't argue it, but I think in a lot of these statements a pretty good bulk of those jobs are in construction pays and I'm not minimizing that. But to me, maybe the real value is the long-term jobs and the economic stability that lends to a community that's got this facility. What percent of figures that you put out saying it will create so many jobs are really good paying long-term jobs? [LB437]

MIKE DONAHUE: Well, the direct jobs in terms of long paying are, I'd have to get a calculator out to do this but we usually figure between six and eight permanent employees per 100 megawatts. So if you take six or eight times 75, I can't do that off the top of my head, those would be generally permanent service oriented maintenance type jobs. Now there are other direct jobs that support these projects on a regular basis and I

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believe the NREL study that was referred to earlier does a better job of quantifying those kind of job related impacts than I can do here off the top of my head. But I recall working at a project here a few years ago up in the northwestern part of the state and it was a small project, it was 100 megawatts and there were eight permanent jobs that would go with that if it were built. And I recall a local official there telling me that in this neck of the woods, eight jobs is something to fight for. We believe that, but we're not talking about a handful of jobs when we're talking about the big picture. And I think that's one of the things why we decided to engage in the dialogue initially is to talk about the big picture. Because frankly, I think the big picture is bigger than people have really contemplated prior to this point. And that's why I think LB437 and the resulting study is needed so that everybody can get their collective heads around what this really means. I'm not sure that we all understand it even as we sit here and certainly, the effort that would go into LB437, the resulting study, would help all of us no matter what your perspective is, as an elected official, as an investor, as a landowner, transmission system operator, public power, all the stakeholders--it's a learning curve here--understand this and that's what this bill, I think, would set the framework to do that. [LB437]

SENATOR CARLSON: Thank you. [LB437]

SENATOR LANGEMEIER: Senator Fischer. [LB437]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Donahue. At the Elkhorn Ridge project, how many megawatts is it? [LB437]

MIKE DONAHUE: That's 80 megawatts. [LB437]

SENATOR FISCHER: Eighty megawatts. And how did you pick that location? [LB437]

MIKE DONAHUE: We basically identified it as one of the best wind resource locations in the state that also was in close proximity to a transmission facility and then...go ahead. [LB437]

SENATOR FISCHER: Where did you get the information that it was one of the best in the state in terms of wind? [LB437]

MIKE DONAHUE: Yeah, there is published wind mapping that's out there that provides a starting point. Now, it's not entirely accurate, but it's a guide as to where to go look. Now, you know, from developing projects over the years you can go out there and physically eyeball these locations and there are certain features you can identify such as change in topography and so forth. It means that this could potentially be a very good site, but the only way to really do that is you need to erect the meteorological equipment on the site and start to actually measure the wind data there and that's what

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we did. And it proved, you know, our initial thought that it was a good site, and I think that's what most developers do. They need to put up the wind measuring equipment and verify that the wind resource is there. [LB437]

SENATOR FISCHER: How long did you have that equipment up? [LB437]

MIKE DONAHUE: Well, it's been up now I think over three years but usually you need it up for a minimum of one year before you can really establish what the wind resource is there. [LB437]

SENATOR FISCHER: Any how many jobs are still in that area in...how many turbines are there, first? [LB437]

MIKE DONAHUE: There are 27 three megawatt turbines in that project. [LB437]

SENATOR FISCHER: Bigger than Ainsworth, big turbines, then? [LB437]

MIKE DONAHUE: Yeah, large generators, yes. [LB437]

SENATOR FISCHER: And how many jobs, permanent jobs, new jobs are there? [LB437]

MIKE DONAHUE: There are eight jobs there. [LB437]

SENATOR FISCHER: Eight jobs. Okay, thank you. [LB437]

SENATOR LANGEMEIER: Very good are there any other questions? Seeing none, thank you very much for your testimony. [LB437]

MIKE DONAHUE: Thank you. [LB437]

SENATOR LANGEMEIER: Further testimony in support of LB437? Don't hesitate, come on up. We're a pretty docile group. [LB437]

BRITTANY CRAWFORD: Thank you, Senator Langemeier and members of the committee. My name is Brittany Crawford, B-r-i-t-t-a-n-y C-r-a-w-f-o-r-d. I'm here to support LB437 on behalf of Nebraskans for Peace, which you may know is the oldest statewide peace and justice organization in the U.S. There's been a lot of great testimony here today with which we do heartily agree. LB437 will indeed launch Nebraska onto the path of seriously developing our state's renewable energy resources and fostering homegrown economic growth. It will set up the stage for us to start weaning ourselves away from fossil fuels that are contributing to global warming and threatening our environment. But equally important to Nebraskans for Peace, LB437

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can assist our nation in achieving the goal of energy independence, thereby freeing us from what our former President George W. Bush described as our addiction to oil and foreign policy that has contributed to costly military and economic interventions abroad. So along with Nebraskans for Peace, I urge that you advance LB437. Thank you for your time. [LB437]

SENATOR LANGEMEIER: Very well done. Are there any questions? Seeing none, like I said we're easy to get along with, Welcome. [LB437]

BRITTANY CRAWFORD: Thank you. [LB437]

SENATOR LANGEMEIER: Thank you for your testimony. Further testimony in support of LB437? Welcome. [LB437]

REED BARTELS: (Exhibit 9) Good afternoon. I'm Reed Bartels, I'm here on behalf of Tradewind Energy. We're a Lenexa based... [LB437]

SENATOR LANGEMEIER: I need you to spell it, please. [LB437]

REED BARTELS: Oh, I'm sorry. It's Reed, R-e-e-d Bartels, B-a-r-t-e-l-s. [LB437]

SENATOR LANGEMEIER: Thank you. [LB437]

REED BARTELS: You bet. I'm here on behalf of Tradewind Energy. We're a Lenexa based wind farm energy development firm and we're currently actively looking into 12 states and 30 some odd projects and we're definitely interested in Nebraska and we've been here a little over a year looking extensively at your resources and your state, your politics, learning a lot about what we have and what you all have to offer. I really do appreciate the opportunity to be here today and the one thing that I think that needs to be stressed is the fact that the resource that you have and the opportunity that is before you, and that you really look in the big picture as far as what's here. Others have touched on the opportunity and I want to just emphasize that. There's room both for the C-BED projects as well as private developers here in this state. A company like ours, we come in and look at the state as a whole and a big picture and we have environmentalists that look at the state, bird path, I apologize, I'm a little nervous. I normally don't speak in front of this many people with suits. Most of the time I'm talking to groups of farmers that are a little more casual then I'm standing up and wearing boots. I apologize, but getting back on hand and track, what we do is we look at the state as a whole and look at the resource, and we're not just a group of engineers and meteorologists in a room, we look at the bird flight path corridors, flyways...you all where you live, work, play, how that's going to impact you all. Your recreational facilities, your lakes, your streams, how our farm is going to impact them. We invest a lot of time, a lot of resource, a lot of money in that. Once we then find a location, we take the pulse of

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the community and find out what their appetite is for a project. It really made me pleased on when I was traveling in Georgia and opened up the USA Today and a town I thought I was really going to save on the cover, they're losing their gas station and hopefully we'll be able to develop a park in their town and revive and revitalize that town. We're open to any and all development opportunities we have here in Nebraska and we just want to help you develop your resource. In developing that resource, we don't just put in one meteorological tower and put up a plant in a year and a half, these are really, really highly scientifically balanced studies and research. We go in, put up multiple meteorological towers, we literally have biologists walk through every single piece of these projects to make sure that every raptor nest, (inaudible) for bats, birds, all documented ahead of time. So there's a lot of research that goes into it, it's not a fly by night operation. The brochure that I handed out to you all, it's Smoky Hills wind farm project, it's our flagship for our company. Again, we're down the street in Lenexa, Kansas. This project is a little southwest of you all, but it's off I-70 and I'd invite any and all of you to visit that facility, tour it, it would be a utility-sized park and that's what our company does so it's a 250 megawatt park, in which case you do have sites in your state but I would encourage you all to view this park. When I meet with landowners, I encourage them also to visit our sites. The people that were on one of our sites, we hired a bus and drove them all down so they could walk, meet, talk to all the landowners and the community, get a feel for how their town would change. So I appreciate the fact that you allowed me to sit, talk, and not stand in boots and I appreciate being here. And if you have any questions, I'll do my best to answer and thank you. [LB437]

SENATOR LANGEMEIER: Very good. If you come back in June we'll all be in boots too so. [LB437]

REED BARTELS: Okay. [LB437]

SENATOR LANGEMEIER: Are there any questions? Senator Fischer. [LB437]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Bartels, for being here. As Senator Langemeier said, a bunch of us on this committee wear boots in our real life. But what are you looking for in this study? You know, we've had a number of private companies come up and tell us we have this great resource which I can assure you everybody on this committee knows about and I believe we all support, not just wind but all renewables. Studies always sound great. What are you guys looking for in this study? What is it going to do to help you? [LB437]

REED BARTELS: This study...internally, our company has the ability to...we look at all of these attributes ahead of time. We don't want to put our park in the whooping crane flight path. [LB437]

SENATOR FISCHER: But do you think this bill is going to have that information in a

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study so you can access it or? [LB437]

REED BARTELS: My company is large enough... [LB437]

SENATOR FISCHER: Why do you want this bill? [LB437]

REED BARTELS: I want this bill to educate you all and the people of the state of Nebraska so you can make informed decisions and site your parks in a responsible manner so your wind farm parks will help...one black eye hurts my projects in Iowa, Illinois, Michigan. One ill-sited turbine next to a home will create an issue or a problem so we internally regulate ourselves. So I'm for this bill because it will make the industry as a whole better and therefore make my job here easier as well as everywhere else. So if you don't have a group of educated people, it's hard to make a decision and the right decision. [LB437]

SENATOR FISCHER: I have some constituents, in the Custer County area there is a couple of projects being looked at in that area too and some of those folks aren't happy with the idea of having turbines next to their homes. Some of those folks aren't happy with having transmission lines crossing their property. How do you handle the public in a case like that? What do you tell them? This is for the benefit of the greater good and so I'm sorry you don't like these huge lines going across your land but it's a benefit to the greater good? What do you say to them? [LB437]

REED BARTELS: Well, I personally, my company, we don't have the privilege of eminent domain. Whereby I have to compensate people for what we call the view shed as well as having those lines come across their property. So as a company and a business model, we take the approach that we don't go out and just cherry pick the ridgetops. I won't just take the...and typically we take 2 percent out of production for our wind farm parks. And when we develop them we don't just take 2 percent ownership or lease. A lot of it...this is an open room so I'm not going to tell you exactly how we structure our deals, but we set them up whereby everyone is a stakeholder in the community, not only on the tax issue, but the gentleman who might not have turbines, might not even have collection lines or systems on his property he still receives a payment for being a part of the project. [LB437]

SENATOR FISCHER: I would think that would be a benefit of the previous bill we discussed because when you have companies coming in, you guys can't use eminent domain so you always have a willing seller and as you said, willing partners in this whether it's a turbine or transmission lines. Would you agree with that? [LB437]

REED BARTELS: I would and the reason I didn't speak before, as you can tell I was a bit nervous when I got up here, so I feel a little better now. [LB437]

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SENATOR FISCHER: No, we're nice people here, come on. (Laughter) We're all okay, we're all okay. [LB437]

REED BARTELS: So I feel a little more comfortable now after sitting here for a couple of minutes, but yes, I could have had much to say earlier as well; they overlap. What we're trying to do is just that. [LB437]

SENATOR FISCHER: Okay. Appreciate you being here. Thank you. [LB437]

REED BARTELS: Thank you. And again, you're more than welcome, again, as your committee and knowledge base grows we can set up a tour for you all and hopefully look forward to seeing many of you again. [LB437]

SENATOR LANGEMEIER: We like field trips, but Kansas might stretch us. Senator Carlson has a question. [LB437]

SENATOR CARLSON: Senator Langemeier. On the Smoky Hills project, 250 megawatts, how many permanent jobs does that provide? [LB437]

REED BARTELS: I believe it's 13 to 15 permanent jobs. [LB437]

SENATOR CARLSON: Okay. Any ballpark estimate of the kind of compensation in those jobs. [LB437]

REED BARTELS: I believe it's in the \$60,000 plus a year. [LB437]

SENATOR CARLSON: Okay. Thank you. [LB437]

REED BARTELS: You're welcome. [LB437]

SENATOR COOK: I have a question. [LB437]

REED BARTELS: Yes, ma'am. [LB437]

SENATOR COOK: In June I am not likely to be wearing boots, but affirm my colleagues who probably will be. I have a question somewhat related to Senator Fischer's line of questioning. You, as a private business, yes, would you be investing in the research to locate in Nebraska whether or not this bill passes and we create this committee knowing that business is motivated by profit? Do you...I guess my question is, how much of your resources or that of the other businesses represented here would be invested in identifying us as a great place to have that business anyway? [LB437]

REED BARTELS: Sure. Senator Fischer, this kind of goes back to your question earlier

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and in essence what you're asking is, is the business climate in Nebraska conducive for my company to justify spending, one net tower is minimum \$30,000 for us to put up. [LB437]

SENATOR COOK: Your business climate, absolutely,... [LB437]

REED BARTELS: In Nebraska is. [LB437]

SENATOR COOK: ...and also if it is a good proposition. [LB437]

REED BARTELS: Proposition. But it isn't just...we don't just look and say it's windy in Nebraska. There's a lot of other things we need to look at. Just because I live in Kansas City. If I think it's windy up on a hilltop in Nebraska, that doesn't mean that I can come put in a tower. That's up to the farmers, the community, and you all and the other entities that be it may. So there's a huge education curve on our part there. However, what we do need to do is, as you all know, is money is finite right now. You know, we have 30 projects. We've looked...I've personally spoken to two or three different individuals who have collectively put together one individual 30,000 acre tract in a very windy robust part of your state and another individual who put together 100,000 acre tract in your state. And I was thrilled because I'm in four other states and I spend all day and all night talking to individuals that have 10 and 20 acres and we have to put them all together to get 30,000 acres. And these people have already done the groundwork in your state, which is very unique and very special. These people have done the work that most of these developers in the room spend years and hundreds and thousands of dollars to do. You have already done that, or you have groups of people who have. Your political climate doesn't allow them to export that power to Colorado or Wyoming where it naturally would go. So our company, when I presented them that opportunity, we passed. And I was amazed and I was told that we have a couple of opportunities in Nebraska and we're not going to aggressively seek our dollars and resources in going after those right now. We would be misleading those people. [LB437]

SENATOR COOK: Thank you. [LB437]

REED BARTELS: And again, it's a different part of the state but again, you know, there's not the infrastructure to make that happen at this point. [LB437]

SENATOR LANGEMEIER: I have one more question for you. You talk about how when you're working to place these you're looking at raptors and flight paths and all these things as a company and we've heard that we should have outside people not in the industry voicing their opinion in our one-page amendment, and it talks about all the players that should be in it. Why don't we just hire you to do this? [LB437]

REED BARTELS: Well, we do all of those studies and all of that research because,

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again, we have to get...there's a site that I'm working on right now, there is something like in the neighborhood of 55 permits that we have to pull before we can go into construction. So I'm going to do all of my homework. I'm not going to invest hundreds of thousands of millions of dollars unless I know I can build something. And we're talking about a billion dollar investment. So we go out independently and hire third parties to do these studies. As a whole, you all...you're not just responsible for one single piece of your state, you have a whole state as a whole so you need to be educated on smart development and I can't tell you how to regulate your development. I know that the company that I work for, we self-regulate because the penalties are just simply too high for us to have a black eye on our company for developing in the wrong area. [LB437]

SENATOR LANGEMEIER: Okay. [LB437]

SENATOR FISCHER: One more. [LB437]

SENATOR LANGEMEIER: One more, Senator Fischer. [LB437]

SENATOR FISCHER: Senator Langemeier. Can you tell me are there other states that have studies like this and how many that you've dealt with where you can go and see something that's being proposed in this bill. [LB437]

REED BARTELS: I could not, I could defer to the gentleman from AWEA. He would be much better suited to answer that question so. [LB437]

SENATOR FISCHER: Okay. Thank you. [LB437]

REED BARTELS: Thank you, again, for your help. [LB437]

SENATOR LANGEMEIER: Thank you very much. I see no other questions. We were really nice. [LB437]

REED BARTELS: Okay. [LB437]

SENATOR LANGEMEIER: Further testimony in support of LB437? Mr. George, welcome. [LB437]

ED GEORGE: Welcome. Thank you, Mr. Chairman. Yes, my name is Ed George, E-d G-e-o-r-g-e. As I look at this whole issue in Nebraska I've been thinking about tremendously about what we were thinking about when we created the Nebraska Renewable Energy Association approximately five years ago. Robert Brynes, who testified before you, and I sat in the East Campus Union on the university campus thinking about what entity represented for Nebraska. We never dreamt we'd come to this point where we'd be sharing all these things before you today. One of the things

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that I looked at when I was thinking about all this listening to testimony today was the national 2525 initiative which probably most of you know about. Twenty-five percent of our energy will come from the land by the year 2025, excuse me, which, the Legislature has endorsed and our Governor Heineman has supported. I want to share briefly with you this book that I've been reading. It's called The Green Collar Economy: How One Solution Can Fix Our Two Biggest Problems by Van Jones. He focuses on energy in relationship to the environment and the economy. When I look at this whole situation and think about what he says on page 156, "Increased production of renewable energy, America needs to fully deploy its abundant renewable energy resources including wind, solar, biomass, sustainable hydroelectric, geothermal, and wave tidal. At a minimum, the next Administration should require that 25 percent of our electricity comes from renewable resources by the year 2025. As a market for renewables grows with technological improvements and economic to scale, the objective should be to drive the price cheaper than traditional fossil based energy in the market, allowing for a sunset on any financial incentives. The first vacation of electricity and fuel supplies hedge against disruptive spikes in energy cost. Renewable electricity creates more than twice as many jobs per unit of energy and per dollar invested than traditional fossil based electricity. And the electricity and heat account for more than 30 percent of all U.S. carbon emissions, a figure that can be drastically reduced by turning to low carbon renewable energy." As I look at this whole thing and I think about what's been happening in Nebraska, I focus back on what I feel very gratified in seeing our 2525 Nebraska Steering Committee did. They focused in on our last comprehensive energy plan was in 1991. With their recommendation there was created a position, a cabinet level position with Mr. Neil Moseman heading the Nebraska Energy Office. I see all these fragmented things happening in our state. We're talking about this bill, we're looking at what the 2525 group has done. We're looking at various sectors and we all have one common cause, the cheapest affordable electricity we can produce that's beneficial to everybody. I encourage you, if you want to think about job creation, Senator, you were talking about, this here book focused in on how he created jobs for what he calls, I didn't even know what green collar jobs were, so I asked myself, and he explains what he called green collar jobs in his definition. Green collar job: one, is blue collar employment that has been upgraded to better respect the environment; two, family supporting career track, vocational or trade level employment in environmentally friendly fields; and three, he gives examples, electricians to install solar panels, plumbers who install solar water heaters, farmers engaged in organic agriculture and some biofuel production, and construction workers who build energy efficient green buildings, wind powered farms, solar farms, and wave energy farms. So we talk about what we're looking at is the initial stage of this could end up being a long-term ramification. He gives the classic example in L.A. where in the penal system there they worked, and in the youth detention programs, they created training career opportunities for young people and those incarcerated that once they leave they had employment skills going to work in highly productive employment, jobs that were anywhere from \$15 to \$35 per hour. And then for us, we're talking about incarceration programs and the cost to the state for penals

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and county and city government facilities and at the local level here in Lancaster County. I encourage you, if you want to really get serious about the whole ramifications to take a look at this book. It's just a tremendous documentary that focuses on what this bill addresses. Excellent, excellent literature. I can see that we're to the point. Again, it's called The Green Collar Economy: How One Solution Can Fix Our Two Biggest Problems by Van Jones. With that, if there's any questions I'd be glad to try and answer them for you but I think you have the gist of how I feel. [LB437]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. George? Seeing none, thank you very much for your testimony. [LB437]

ED GEORGE: Thank you. [LB437]

SENATOR LANGEMEIER: Further testimony in support of LB437? No more supporters. Now, those that would wish to testify in opposition to LB437? Excuse me, it is LB437, I was corrected. Thank you. [LB437]

MARC NICHOLS: (Exhibit 10) Senator Langemeier and members of the Natural Resources Committee, my name is Marc Nichols, M-a-r-c N-i-c-h-o-l-s. I'm division manager of sustainable energy and environmental stewardship for the Omaha Public Power District. I'm here today on behalf, though, of the Nebraska Power Association to oppose LB437 as it has currently been drafted. That being said, we've had some very productive discussions with Senator Haar and other stakeholders. Senator Haar's spreadsheet amendment has many of the substantive issues that we've discussed with him. However, we want to point out some of the issues that we think are very crucial to however this moves forward. One of those is, is that we think its essential that we step back and look at what public power is all about. For 62 years we have looked inwardly and we have a model that has worked very effectively for the citizens of Nebraska. We've focused on reliability and cost-effectiveness and economic development for the citizens of Nebraska and this model has worked very effectively for that. We have an opportunity now to look at perhaps doing a different model that may, and I underline may, allow us to do something different that may actually help us in the future, that meanwhile would look at exporting energy. In other words, we would generate more energy than we need as has been discussed by many of the people that have testified here today and we would export that energy to others. One of the issues, once you start doing that is, is who...and I think it came up in several of the testimonies today, who gets the benefit of that? In our view, public power has always brought the benefits back to the citizens of Nebraska and I think we need to assure, whatever we do, if we venture into the arena of exporting power that we need to continue to bring those benefits back to Nebraskans. And the third piece that the bill itself as originally drafted did not adequately address was looking at the issue of how do you develop transmission and land use and siting of turbines? How do you put all that together so it works for us? And more importantly is how do you make it work technically? Those issues cannot be

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resolved by a group of citizens. Those issues certainly can be reviewed by a group of citizens but cannot be resolved by a group of citizens. So we have a suggested alternative to the bill and our suggestion is, is that we use a legislative resolution instead of a bill to move forward on this subject. We think that if we...by using the legislative resolution, it will allow this process actually to perhaps speed up. If my understanding is clear with a resolution, it can move forward fairly rapidly, it doesn't have to wait until a law takes effect. We think that there's several things that need to be studied as I've talked about before. The pros and cons of, do we want to be a net exporter for the state? How does that impact the stakeholders? How does that impact the citizens of Nebraska? We think that part could certainly be, and should be, reviewed by many, many different kinds of stakeholders and many of those folks have talked here today. In addition to that, though, the issue of how do we put transmission together and how do we site facilities? And one of the senators mentioned today that not everybody wants a windmill and not everybody wants a power line. I can tell you that I've been in the transmission siting business and not everybody's excited about a pretty power line in their front yard so we have to address that very carefully. So we think that NPA, the Nebraska Power Association, already has a process in place. We've started by doing a wind integration study which is looking at how much wind we can really handle electrically in this state, followed by...it'll be followed by a transmission study and a land use study. We think that that is already in place and now that we belong to SPP, we think we should that as the model to move forward for the technical aspects of it. What statutory requirements need to be changed? Once we decide do we want to move in the direction of exporting then we need to look at what statutory requirements need to be changed and when we do that, we need to do that very, very carefully. Because I really believe we need to make sure that we protect the principals of public power that have served this state so well for 62 years. If we do this piecemeal, we run a very high risk of accidentally maybe doing damage to those and the benefits of this process may not come back to the citizens of Nebraska. We think that the task force to do this certainly can involve a lot of stakeholders. We also think, as we mentioned, that a task force of technical people or stakeholders that really understand the aspects should be developed not...very similar to what Senator Haar has in his spreadsheet. And finally, what I want to say is that I hope that if we do this well...and I have grandkids and I hope in 62 years from now those grandkids can look back and say, you know, those folks back 62 years ago made some changes to public power but we're benefitting from it and they were really pretty smart the way they did that. So it really is a big issue for us and Nebraska is unique, and the red light is on so I'll shut up. [LB437]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. Very good. Further testimony in opposition of LB437? Mr. Hansen, welcome. [LB437]

JOHN K. HANSEN: Mr. Chairman, members of the committee, again for the record my name is John K. Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union

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and we are clearly coming down in opposition to the green copy and for many of the same reasons that Marc Nichols just mentioned. And I am also a member of the Nebraska Power Association, National Renewable Lab task force. We have been working with NREL for a very long time. We've done a lot of things to encourage NREL to encourage Nebraska to look strategically at transmission. And as we look at wind energy development, transmission is a big part of that through the Nebraska Wind Working Group. We have also had an informal group of folks who have struggled over and with and around transmission issues and it seems to me from a practical standpoint, the logic is fairly clear that we really ought to get the facts and the information as best we can about what the possible impacts and consequences of injecting various amounts of additional wind energy into the Nebraska transmission system and grid are. So then we have the facts at hand to go forward with a more appropriate and effective way to deal with that new information which should be coming out September and October. But as that study goes forward, it looks at the need to diversify the Nebraska portfolio and meet domestic consumption needs which is a part of the grid. Two, it needs to look at this brand new thing which is tremendously different and I think has a lot of positive potential, being a part of the Southwest Power Pool which is the southwest part of the eastern grid, which would take us as the most northwest state down into the southeastern parts of the country which are long on load and short on wind. So we have those opportunities. Three, looking at things regionally and how we fit into that. And then four, looking at the, what I call, the international, or the kind of the interstate highway megatransmission system which, you know, goes north to south, east to west, however that national grid looks to look at national goals of taking excess capacity out of the central corridor and moving it to other parts of the country, and the on and off ramps issues and of course all of the where it's located issues. And certainly those of us who represent agriculture have a big stake in all of this because last time I checked, we're talking about how it is all these other folks are fixing to use our wind. And if you own the land, you own the wind rights. You also have the, in a lot of cases not necessary welcome opportunity to have all kinds of new transmission lines going across your property so transmission siting and all of those issues are a mighty dicey issue for folks of use who are involved in agriculture. And so I think that the idea that was brought forward by Mr. Nichols is a very good one, to look at a legislative resolution that can be informally structured and gone forward in a reasonable way that has lots of stakeholders in it, but also a lot of expertise. And it just seems to me that we're going to have a lot more better, appropriate information come next fall but then it's going to take us a while to work our way through to figure out what all of that means as then we get to second or third levels of that consideration. And I so far am pleased with the level of commitment on the part of everyone involved, and particularly the public power community are doing a lot of the nuts and bolts work to be able to make this work. And certainly, you couldn't ask for a better technical partner in all of this than the National Renewable Energy Lab. And with that, I would end my remarks and answer any questions if you have any. [LB437]

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SENATOR LANGEMEIER: Very good. Are there any questions? Quiet group; thank you for your testimony. [LB437]

JOHN K. HANSEN: Thank you. [LB437]

SENATOR LANGEMEIER: Further testimony in opposition of LB437? Seeing none, any testimony in a neutral capacity? Seeing none, Senator Haar, you're recognized to close. [LB437]

SENATOR HAAR: Thank you. Chairman Langemeier and members of the committee. My only big surprise to is that Marc Nichols is old enough to have grandchildren. [LB437]

MARC NICHOLS: Thank you. [LB437]

SENATOR HAAR: I guess it's good we got rid of the green copy and we're onto the spreadsheet. I'll start and end with a question, Is this something we really want to do? And I think that's what it boils down to. I'm going to tell you about my dream and the reason I'm so excited about what we're talking about. I think someday probably soon, with what's going on nationally we're going to see a transmission superhighway that comes down the middle of the United States to catch the wind as some people have termed it, the Saudi Arabia of wind. And then it's going to stretch east to west to the coasts and that's a total oversimplification but you get the idea. And we're going to be right in the middle of both of those things. So not only do we have this great wind potential, but we're also right where we need to be in terms of transmission. So that's the first part of my dream. The second part is the jobs it will create. Now, the most jobs created are in the construction phase, but this is something that's going to go on for 10 or 20 years. So when we talk about, you know, hundreds of construction jobs, that's this year and next year and next year and next year and next year. And then the long-term jobs that will be created...the direct economic development that we'll get from new jobs and new taxes, the other kinds of things...if you look at the last page of the testimony that John Hansen gave, this one called economic development benefits, it's a really neat diagram talking about the direct impacts, the indirect impacts, and there's just huge economic opportunity for Nebraska. And then the third one, the third part of my dream goes like this...that just is for every ton of coal that comes into Nebraska we pay the property tax for Wyoming people in terms of an excise tax. And I would see the day if we can export twice as much energy as we need in Nebraska where people in California and New York can be paying our property taxes. And it's just that we're used to looking down towards the ground for our resources but we just need to feel the wind today; that's our resource. We also have great solar potential, which, in some future date, can feed into the supergrid so that if, you know, the wind is blowing in one part of the country and not in another, that energy can be shifted. The wind tends to blow during the night, the sun shines during the day so someday we're going to have this

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transmission superhighway that serves almost as a battery for renewable energy. To talk a little bit about going back to the spreadsheet, when I was on the Lincoln City Council for eight years, one of the first things I did was to call a group of small business owners that I hadn't gotten along with very well, and I said, let's meet. And I met with them every month for eight years and the important lesson for me was that if you can get to know people, you can get through issues much easier later on. You can debate instead of hating, instead of just hollering at each other. And I see the task force as part of that, that as we get all these stakeholders, and people are going to have really various interests. The whole thing of where transmission goes, these are not easy issues and that's why in the spreadsheet we've included people like county officials and city officials and ag interests and so on. These are really daunting hurdles, but I think if we get people together and work at this, we can come through as solutions. Just a couple miscellaneous comments. I'm not sure on my spreadsheet whether I got this right in terms of 7,500 megawatts by 2030 or should it be 2020? People have been talking about ten years. There's been lots of studies so far and I certainly recognize the need for the technical people in this process. A lot of the work has already been done. It's going to be a matter of putting it together. I don't want to forget small wind, the whole thing of net metering and so on is still really important. And I see LB437, as somebody put it, look before we leap. We don't want to give away the farm, I want most of the benefits to stay in Nebraska. And in Nebraska we do look before we leap. I think LB437 is the platform for that and so I end with the same question. Is this really something we want to do? And if so, I think LB437 is a good step. Thank you very much. Questions? [LB437]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Seeing none. Thank you. [LB437]

SENATOR HAAR: Thank you very much. [LB437]

SENATOR LANGEMEIER: That concludes the hearing on LB437. And we will move on to Senator Dubas' bill. Welcome, you are recognized to open on LB568. [LB437]

SENATOR DUBAS: Good afternoon, or maybe it's almost evening, Senator Langemeier and members of the committee. My name is Senator Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s, and I represent the 34th Legislative District. I introduced LB568 because wind development is our state and our nation's new frontier for economic development. The public wants the development and developers see a great many opportunities in the sixth windiest state in the nation. Many of these developers are very honest in their conduct, but some are not. Two years ago, my office began fielding phone calls from landowners who had been approached to enter into various types of contracts. Some had already signed easements and leases that were not in their best interest. My advice was then, and still is now, to talk to legal counsel before signing anything. But many times they've called me back stating that their counsel that they talked to did not feel

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qualified to advise them on these contracts. This is a new industry in our state and the nation. My original intent for previous bills introduced was consumer protection and that continues to remain true for me today. To my knowledge, there are upwards of 15 different companies with some type of presence in Nebraska and I think we saw an indication of that this afternoon just by the various testimony that we heard on the previous bills. My main aim is to create a set of uniform standards for easements and leases. I've spent a great deal of time working on this issue. We held an interim hearing on it last fall. I was still in the process of working on this bill at the beginning of the session. Unfortunately, my personal family issues brought a lot of my bill work to a standstill. So the bill that I introduced is definitely not in the shape it needs to be to do the work that I want it to do. I'm currently still in the process of working with vested parties to craft a very concise and tight bill, or an amendment to the bill. Unfortunately, I did not have it ready in time for the committee hearing today. But I know there are people here today who will be testifying on the bill and I'm looking forward to their testimony because I think it's important for me to hear as well as the committee to hear what are the types of things that we need to be collectively looking at to draft the kind of legislation that we need to deal with contracts, easements, and leases. I know that the consensus is that we need to address this issue. Most times...as with most cases, the devil is in the details but I feel that I am very close to having those details worked out. So I appreciate your attention and your indulgence as I give this bill and its objective the due diligence it deserves. So I'd be happy to try to answer any questions you may have at the moment. [LB568]

SENATOR FISCHER: Thank you, Senator Dubas. Are there questions? Senator Langemeier, I will clarify, Senator Langemeier had to step out to work on an amendment with legal counsel for another bill, a committee bill and asked me to take over the hearing since Senator Dubas happens to be Vice Chair of the committee, and this is her bill. Senator Haar. [LB568]

SENATOR HAAR: Thank you, it's nice to be able to ask questions again. Senator Dubas, thank you so much for bringing this because I, too, have heard some of them are really horror stories about what people have basically given away. Could you just quickly outline your bill for me, or is that yet to be done? [LB568]

SENATOR DUBAS: Yeah. And the bill in the form that it's in...we don't want to be putting contractual language into statute and... [LB568]

SENATOR HAAR: You bet. [LB568]

SENATOR DUBAS: ...you know, I was trying to be very careful not to do that. Unfortunately, I just think that the direction that the bill went maybe started stepping that direction, and that's not what I want to do. We want to put protections in place. I said create that uniform set of standards--kind of a boilerplate--so that lawyers know what

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they're looking at, consumers know what they're looking at, and they have that protection in place. So as I said, I'm very close to getting there with the amendment. It's going to be tight. It's going to be concise. It's going to take into account what developers--good, honest developers--are putting out there towards their consumers and what consumers should be looking for when they're approached with a contract. I also know that the University of Nebraska, I think, is working at bringing in legal experts in this particular field to help educate our state's attorneys and helping them understand what are the types of things you need to be looking at if you're asked to draft some type of a contract or a lease or if you're asked to look at a contract or lease. What is it that you should be advising your counsel? So we're making some progress just based on what's been introduced over the last two years. [LB568]

SENATOR HAAR: Do you know, kind of...will any of this be retroactive or are some people just going to be left holding the bag? [LB568]

SENATOR DUBAS: I think it's pretty hard to be retroactive with contracts that have been signed. [LB568]

SENATOR HAAR: Okay. [LB568]

SENATOR FISCHER: Thank you, Senator Haar. Other questions? I see none, thank you, Senator Dubas. Can I ask how many are here to speak in support of the bill, would you raise your hands? One, two, three, four, five. And how many in opposition? One. Any in neutral? I see two, three. Okay. So could I have the first proponent step forward, please? Good afternoon. [LB568]

RANDY PRYOR: (Exhibit 11) Good afternoon, Senator Fischer and Natural Resources Committee members that are here. It's been a long afternoon. My name is Randy Pryor, Randy, R-a-n-d-y, P-r-y-o-r. I'm an extension educator for the University of Nebraska Extension in Saline County. First, let me clarify that the University of Nebraska does not have an official position on this bill. I serve as a local extension educator in Saline County with experience working with local landowners in the area. Since 2008, last June, two different out of state wind developers have approached landowners in Saline County to consider signing a wind energy options agreement which could develop into a long-term wind farm easement. As a result, area landowners organized in Saline County and they call themselves the Saline County Wind Association. Several members have been listening here today including Darrel Hayek, Kevin Krivohlavek, Doug Horak, Roger Belohlavy, Nicky Zalesky. They're to my left over here in the front row and I think I'm going to encourage them to speak from a landowner's perspective which you folks were missing here today. And I know they have strong opinions on what was said and debated here this afternoon. The main goals of this landowner association behind me here, was education and to pool money to hire a good legal counsel. Rather than admittedly jumping into a long term wind contract, the landowners are continuing to do

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some research before they sign and negotiate. Whether it's with NPPD or a private developer, they continue to do that. One of the least positive wind energy contracts that has happened, that has actually happened in a nearby state calls for a 50 year lease with two 20 year extensions and a payment of \$3,500 per year per megawatt with a 2 percent annual inflation adjustment. In this lease, the landowner has no say where the access roads or the underground lines will be placed on their property. The title could be clouded for 90 years with possibly negligible payments after the first couple of years. Many landowners won't sign a two year farm lease or a three year farm lease, let alone they're signing something that might affect the title on that property for 70 plus years. That's documented there with a source in your handout. Certain base language in LB568 could protect Nebraska landowners with a large wind resource in this state. And if Nebraska law changes, this would allow more utility scale wind developments in this state beyond the 80 megawatts every other year that we're experiencing at this time. If that occurs, more landowners are going to be faced, do I sign an agreement with a private developer or do I let it go. More specific, and I have specifics here, on page 2, line 17, the bill makes a reference concerning the issue of filing easements. Don't take this lightly, because it's a huge issue. Whether landowners in Nebraska will have full disclosure of these easements in the future is what's at stake in that particular legislation. In other words, can a developer just simply file a five page memorandum and that is going to be attached to the title, or would the entire document need to be filed at the county clerk's office or at the register of deeds? You need to decide, I feel, as a committee concerning whether Nebraskans want full disclosure or not. On page 2, Section 2, beginning with line 17 discussing the recording of the lease, it doesn't discuss at all about attached schedules. Oftentimes payments are specified on attached schedules. I'm not an attorney but maybe legally that's not part of the lease. On page 3, line 22, there's a description of what landowners can negotiate. Well, that list is not comprehensive and so at the least you would need to add the terms but not limited to these items. Decommissioning is an important issue to landowners in this room here today. As you're aware, there is no regulatory agency concerning this issue in Nebraska, how wind farms will be decommissioned and reclaimed in the future, 30, 40, 50 years down the road. A good wind lease will address decommissioning and talk about bonding, escrow requirements or set-aside funds. It's an important issue that needs to be addressed. Page 6, line 18 and 20, I suggest adding the word wind energy. So I think this is a good bill but it needs some, what I call, cleanup for a good amendment to improve it. A big issue besides full disclosure, if that's going to happen, or partial disclosure at the county courthouse is you talk about a limit on wind easements of five years. Many developers would say with current laws in Nebraska they need five to seven years. But the bill does not talk about land options. Land options is what NPPD offers for ten years to some landowners with payment and to other landowners without payment. It really needs to discuss wind easement and wind options. The option could turn into a permanent easement. Wind energy agreements can be a land option or an easement so if a wind company comes to a landowner and says here's our standard lease, we can't negotiate with you, take it or leave it, the

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landowners really need to study the issue and really need to get things in writing to protect their interests also. And in closing, I'm sorry, in closing, there's some resources there on the Internet that the university has and I'm sorry I went overtime but we have a lot of experience this past year. Are there any questions? [LB568]

SENATOR FISCHER: That's okay. Thank you, Mr. Pryor. Are there any questions? Senator Haar. [LB568]

SENATOR HAAR: Yes, thank you. Sorry, I had to leave for a minute. Are there actually lawyers who are expert in this field? [LB568]

RANDY PRYOR: The Saline County Wind Association behind me has been looking at wind attorneys and just hired legal advice. It is very difficult in the state of Nebraska to get a good wind attorney that has negotiated multiple agreements. In fact, there's...with only 79 megawatts of installed wind in Nebraska right now, there's very few attorneys that have negotiated a lot of these private wind leases. We have to go out of state. So that's why it's important that you mentioned, Senator Fischer, about future education of attorneys in Nebraska. [LB568]

SENATOR HAAR: And that also I suppose speaks to the usefulness of people getting together and working in groups on this instead of one at a time dealing, trying to deal with wind developers. [LB568]

RANDY PRYOR: Highly competitive industry, it's difficult to know the market, it's difficult to know the differences in leases because there's not full disclosure. [LB568]

SENATOR HAAR: Thank you. [LB568]

RANDY PRYOR: And so landowners need to do their homework and hire outstanding legal advice. [LB568]

SENATOR HAAR: Thank you. [LB568]

SENATOR FISHER: Other questions? Your last comment, I agree with totally that landowners need to hire good legal advice. There's...all of us enter into contracts. I'm a landowner, all of us enter into contracts on various things and it's our responsibility to be educated on it. There's a variety of easements that an individual can enter into whether it's with power companies, you have easements there, whether it's with the state or city or counties when it comes to roads, conservation easements, those are usually in perpetuity and your easements with power companies and roads are long, long, long time frames. Why does this...why do you think the state needs to step forward and set standards on this when to my knowledge, the state hasn't stepped forward to set any standards on other long-term easements or easements that are signed in perpetuity

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such as conservation easements? [LB568]

RANDY PRYOR: I think this committee has the ability to put certain base language that any wind land option and easement agreement could... [LB568]

SENATOR FISCHER: Well, why is it different with wind than anything else with a person's land? A conservation easement usually ends any opportunity for development on land, which includes wind development. [LB568]

RANDY PRYOR: Thinking about it, there are private interests out there that do take advantage of landowners potentially that go door to door and please sign this. It'll be a good thing, your neighbor signed it, they didn't seek legal advice. It's interesting, the largest wind farm in Kansas, in Spearville, Kansas, the landowner didn't seek legal advice. He told me personally, he said, you know what? I got lucky. The neighbors came over, they signed it too, there was 21 of us. Constituted the largest farm in Kansas. We were lucky, we got an excellent developer. They took care of us. But were they really lucky? Did they sign away their mineral rights, did they sign away their water rights? What were the decommissioning clauses in there? I think there could be some certain base language in there that could be required if you so choose. [LB568]

SENATOR FISCHER: Should the state step in then and set standards and language requirements on other leases, other easements with power companies, with counties on roads, with conservation easements so we can protect landowners? [LB568]

RANDY PRYOR: I don't have any opinion on that. I just see what's happening with the wind industry right now because it's a booming industry outside of this state and we all have experience with it and I can see where it's possible certain landowners would sign documents that weren't something that there...it may be something they regret 30 or 40 years down the road. [LB568]

SENATOR FISCHER: Right, and I don't disagree with you on that either. But I think it's a larger policy question. If the state steps in and sets standards on this, then we should do it on all easements and we should limit the time frame on all easements then. Thank you. [LB568]

RANDY PRYOR: You bet. [LB568]

SENATOR FISCHER: Other questions? I see none. Oh, I'm sorry, Senator Schilz. [LB568]

SENATOR SCHILZ: Thank you, Senator Fischer. [LB568]

SENATOR FISCHER: You can't just go (makes a noise), you have to go (makes a

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noise). [LB568]

SENATOR SCHILZ: Jump up and down? [LB568]

SENATOR FISCHER: Yeah. [LB568]

SENATOR SCHILZ: Okay. Next time. Thank you, sir, for coming here today. As I see in your testimony, I'm sorry I had to step out, but you are an extension educator for Saline County, is that correct? [LB568]

RANDY PRYOR: Yes, I am. [LB568]

SENATOR SCHILZ: And I guess my question comes on the tail of Senator Fischer's and it seems to me like maybe UNL extension is where this needs to be because that's what you do is educate landowners as to what's important going forward and what works best, best management practices and things like that. So instead of putting it into statute, don't we want to just give...besides, even if a landowner comes out and says, hey, I know this, this, and this, isn't it still incumbent upon them to hire legal counsel to make sure...and this just gives them some sort of a thumbnail of what's going on? I, like Senator Fischer I believe, are very, very nervous when we start to put contract language into statute. I just think we're going in the wrong direction there. But anyway, do you think that... [LB568]

RANDY PRYOR: I was asked to review the language in the bill and comment on it here today. [LB568]

SENATOR SCHILZ: Sure. I guess my question is do you think it would fit well as an extension type of endeavor? [LB568]

RANDY PRYOR: I think the model that we're serving in Saline County could serve across the state, if we're headed to more utility-scale developments beyond 80 megawatts. [LB568]

SENATOR SCHILZ: Sure. [LB568]

RANDY PRYOR: The proposal in Saline County is a 400 megawatt project. If the...if it becomes feasible through the transmission study with NPPD, the landowners formed to do education, research, and to slow down and say is this what we want to do together as a group? And I think that model could serve as a model across the state with other landowners. [LB568]

SENATOR SCHILZ: Right. Even without a law, huh? Amazing, I love it. [LB568]

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RANDY PRYOR: And so the issue is that one person out of 100 that signs something and I don't know whether you want to go there or not. [LB568]

SENATOR SCHILZ: But my point is, my point is, as a landowner I have responsibilities to make sure that I protect myself and I'm not sure that the state should be standing over us and leading us or holding our hands. [LB568]

RANDY PRYOR: And I guess my position on this bill is I wouldn't be in favor of it as presented; it needs a lot of cleanup work. [LB568]

SENATOR SCHILZ: I appreciate that, yeah. I understand. Thank you. [LB568]

SENATOR FISCHER: Other questions? Thank you, Mr. Pryor. [LB568]

RANDY PRYOR: Thank you and Senator Langemeier, Commissioner Pinkerton gave his regards as he gave my tooth a filling this morning. (Laughter) [LB568]

SENATOR LANGEMEIER: That's pretty good. [LB568]

SENATOR FISCHER: Senator Langemeier has returned and so he will resume as Chair. [LB568]

SENATOR LANGEMEIER: Further testimony in support. I'm coming back, I didn't want to have to see Senator Schilz jump up and down. Welcome. [LB568]

MIKE DONAHUE: Thank you, Mr. Chairman. Mike Donahue, D-o-n-a-h-u-e, executive vice president Midwest Wind Energy. I'm going to be very brief, you've heard enough from me this afternoon. I just want to let this committee and Senator Dubas know that we do support LB568. If the state of Nebraska wants to ensure that landowners are protected from disreputable developers, we're all for it. We're reputable developers, there's nothing generally in the bill that we don't already do. As Senator Dubas said, she is still in the process of tweaking some of that language. We do have some comments on some of the language which we have already conveyed to Senator Dubas' office, but assuming those technical changes that we recommended are incorporated in the final bill, we would be in favor of that and in favor of the concept. Thank you. [LB568]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, thank you for your testimony and your day in Nebraska. Further testimony in support? Welcome back. [LB568]

ROBERT BYRNES: (Exhibit 12) Hi. Good afternoon, Senator, members of the Natural Resources Committee. My name is Robert Byrnes, B-y-r-n-e-s and I will also be brief in my comments here. I realize it's going to undergo some changes and I think the areas

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that Senator Dubas has mentioned are some of the areas that I'll have of concern. I don't know that this bill is so much focused it's trying to save people from themselves, but I do think in response to Senator Fischer's comments about is this different from other leases, I would say that it is because in a public power state, the natural resources are publicly owned, especially natural resources that could be converted to power. This is different from an access easement or a conservation easement. That is a decision that a private owner does with private property. This is a private owner, but I'm not sure who owns the wind. I think it is, could to be considered as geothermal power, as solar power can be converted to a public resource and it is in the best interest of the state to institute some safeguards of that public resource. I am in support of LB568, the systemic improvements that will be provided to the assignment of publicly owned natural resources in Nebraska. I would further encourage that this bill be put into effect immediately on passage due to the urgency. However, I am concerned with some provisions of the introduced bill. The assignment of wind development rights is more than just buying air. It determines who is legally allowed to develop the natural resources of our state. This assignment should not be taken lightly. The buying air comes with the carbon credits, but that's another topic. Currently, there are tremendous efforts and capital going into the acquisition of wind rights in Nebraska. To say it is roughly a free-for-all would not be inaccurate. While LB568 brings badly needed visibility to the process, it may go too far in that it regulates the specific components required for such agreements. The requirements for developers to register and file deeds would help to provide ownership--oversight needed in this area. Lands in leases should be annotated in the report developed by the LB437 task force, but currently, we have little idea who is holding the rights to develop these public resources in a public power state. NPPD has also been involved in buying wind rights and this must also be open to public and/or legislative inspection. Expiration of the wind contracts if the site is undeveloped after five years is a good concept. Undeveloped could also be more clearly defined as having installed capacity of less than one megawatt, for example. Otherwise the definition of not having started a project can be easily stretched. Methane gas rights are similarly being purchased from livestock producers who may not understand the value that is available through carbon trading or combustion of methane to CO<sub>2</sub>, which is a 20 time reduction in greenhouse effect. The scope of this bill may also include all renewable energy development rights like hydropower, geothermal, biogas, etcetera. Decommissioning, site reclamation, and keeping other rights to the land for the landowner like hunting and mineral rights are also excellent provisions. Toward the end of this bill, line 16, page 6, includes foreign-owned corporations as one of the eligible holders of wind development rights in this state. This also seems to provide a separate timetable. I'm not sure foreign ownership is in lines with the goals of public power so we must proceed carefully with a highly public process so that we can monitor the progress. I also encourage the landowner associations and the development of those types of arrangements. I think the analogy I use is unionization of farms in this regard and I think that's a very helpful and encouraging development. And then finally, I encourage the committee to consider these discussions and support for

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LB568 in its final form. [LB568]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Seeing none. Thank you very much for your testimony. [LB568]

ROBERT BYRNES: Thank you. [LB568]

SENATOR LANGEMEIER: Further testimony in support of LB568? Welcome back. [LB568]

KEITH DITTRICH: (Exhibit 13) Good afternoon again, Chairman Langemeier and Senator Dubas and Senator Haar. I see Senator Dubas is gone. Keith J. Dittrich, D-i-t-t-r-i-c-h. I'm representing the American Corn Growers Association. I stand in support of this legislation to help further protect landowners' rights in leasing of wind power. I'll be very brief and would concur with some of the concerns the extension educator mentioned and some of the challenges landowners face regarding making decisions on whether or not to sign a wind lease contract that may come to their area. We've faced those issues on our farm operation and we understand when we sit down with a developer that...and many of them have good intentions as the gentleman from Midwest suggested. But landowners do not know for sure who they are dealing with yet, and have to make decisions, you know, on very limited knowledge and typically are dealing with someone who does this on a daily basis maybe for his entire life. For instance, the gentleman that came of our farm had, was older than me, and which I feel I am getting quite old already, but he spent his life in the oil and gas industry, procuring land for oil, the oil companies. So, I mean, he was very experienced in what he did. That can be good, that can be bad when you're negotiating something. But I would also point out that there is challenges in determining fair lease arrangements. I believe that they should be indexed for inflation, especially if we get into a serious inflationary cycle, maybe possibly one that we've never...extremes we've never seen before after this downturn in the economy. And I would also suggest that possibly some sort of share arrangements of...one of the reasons we promote C-BED is that it is a fair arrangement, a share in the profits of the projects could be a possibly better avenue and a safer avenue. With that, I'd entertain any questions you may have. [LB568]

SENATOR LANGEMEIER: Thank you. Are there any questions? Seeing none, thank you very much for your testimony. [LB568]

KEITH DITTRICH: Thank you. [LB568]

SENATOR LANGEMEIER: Further testimony in support of LB568? Come on up, she's just going to give him a sign in sheet we need. Welcome. [LB568]

STEVE EVEANS: Senator Langemeier and committee, Natural Resources Committee,

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my name is Steve Eveans, S-t-e-v-e- E-v-e-a-n-s and I'm representing Windrow Energies, LLC, a Nebraska limited liability company. We are in the process of developing three community based energy developments in the state in Cass County and in Custer County and a combine project in Blaine and Brown Counties. We are in support of Senator Dubas' guidelines and her bill. We would like to see it come in the form of guidelines coming from a consensus of landowners from the state. We have already incorporated into our lease an easement process several of the concerns that Senator Dubas has brought up in her discussions over the last two years about these types of things and quite honestly, the landowners have brought them to our attention based on her testimony and questions in the Natural Resources Committee. In particular, the five year limitation on development obtaining a development in process in the five-year term. That is a major component of our easement and lease process. We would like to be involved with the input in this process from a standpoint of representing in the neighborhood of 60 Nebraska participants at this point. And I think you for your time. [LB568]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. Further testimony in support of LB568? Come on up, don't be bashful. Welcome. [LB568]

DARREL HAYEK: Welcome. Thank you. My name is Darrel Hayek, D-a-r-r-e-l H-a-y-e-k. For good or bad, I guess I'm the one that started the Saline County Wind Association and the deal is we have some unscrupulous developers going out, trying to buy wind rights for many years and even if they can sell their wind rights to another company, if the next company wants to increase the size of that project, there's a place in Oklahoma, one company came in, was only paying the people that had the turbines on their ground. Next company bought their wind rights from that company, expanded the project and now the people on the outside, the neighbors also get paid. So the first ones can never put up a turbine now because there's no room and they're never going to get any payments. And there's things like this that need to be addressed in this bill. [LB568]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. [LB568]

DARREL HAYEK: Thank you. [LB568]

SENATOR LANGEMEIER: Further testimony in support of LB568? Seeing no more in support, are there any testifying in opposition to LB568? Welcome. [LB568]

JESSICA KOLTERMAN: Thank you. Senator Langemeier and members of the Natural Resources Committee, for the record, my name is Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. I'm a lobbyist for the Nebraska Farm Bureau Federation and I'm here

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on behalf of them today in opposition to LB568. I want to begin by commending Senator Dubas for taking an interest in this area because even though we oppose this bill, we recognize that it raises an important topic for discussion. We share many of her concerns in regard to landowners leasing or selling wind development rights. In fact, our policy actually states that landowners should be made fully aware of all the opportunities and risks associated with wind farm leases on their property. Last year, Senator Dubas had a bill similar to this and after the session we worked with her to provide more information to landowners in our organization in regards to the wind development rights in order for them to protect their interests. We would be happy to work with Senator Dubas on this again, and also the committee as you see fit. Our policy, however, is very clear and it states that we maintain that ultimately the decision whether to lease or sell wind energy easements or development rights lies with the landowner. We believe the decision and the conditions relative to the easement should continue to lie with the landowner. That's our primary reason for opposing the bill. We also have concerns of how this legislation might affect Nebraska's competitive position relative to other states when we look at developing wind energy. We understand that currently, Iowa does not have a provision like this and we haven't been able to find out about our other surrounding states but our thought is if we place these restrictions on our wind leases here in Nebraska, wind energy developers might bypass Nebraska and go to other states where they do not have such restrictions. And this would be unfortunate for us, as we have a considerable untapped potential in the wind area. The provision of the bill that wind energy leases must be developed within five years or the lease is revoked is of great concern to our members. One of our landowners told us that some landowners view wind easements similar to leasing mineral rights. Many of them lease the rights never see any development and they say that's fine with them. They receive an additional source of income but there's no disturbance to their property. The requirement in LB568 would prevent that from occurring. Ultimately, we believe this is a private property issue and we believe the landowner is the person responsible for making the decisions regarding the land and the easements. With that, I would thank you for the opportunity to present these comments and answer any questions you might have. [LB568]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Kolterman? Seeing none, thank you very much for your testimony. [LB568]

JESSICA KOLTERMAN: Thank you. [LB568]

SENATOR LANGEMEIER: Further testimony in opposition to LB568? Seeing none, is there any testimony in a neutral capacity to LB568? Come on up. Welcome. [LB568]

DAVID RICH: Chairman Langemeier and members of the committee, my name is David Rich. D-a-v-i-d R-i-c-h. I am the renewable energy development manager for Nebraska Public Power District and I am here to testify in a neutral capacity on LB568. The intent

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of LB568 has merit, but we believe needs certain clarifications and modifications. I would like to share NPPD's efforts in this area. I've passed around a map showing in red the ten locations where we are monitoring wind through a land agreement with landowners. Our agreement is very open and it is only for the study phase of the agreement. It allows landowners to prepare for the long-term operating agreement in the future. And I'd like to commend the Saline County Wind Association for organizing and taking the time to understand before they sign with any long-term project. I see the major issue as lack of information and education coupled with the trusting nature of many Nebraska farm and ranch owners. Senator Dubas moderated a panel discussion on landowner's rights at the Nebraska Wind Conference last November. We videotaped that and we have provided dozens of DVDs of that panel which included two attorneys from Nebraska and one from Colorado as well as John Hansen and myself discussing landowner rights and issues. Also, John Hansen with the Farmers Union through the National Renewable Energy Lab has hosted dozens of meetings with landowners throughout the state to help educate landowners regarding their rights and is to be commended. Even with these efforts, it is my impression that a few developers are inappropriately pressuring landowners into signing agreements without a thorough understanding or appropriate review by family or legal professionals and we would offer to work with the senator and the committee to incorporate changes that would improve this bill. That's my testimony, any questions? [LB568]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Rich? Seeing none. Oh, Senator Haar. [LB568]

SENATOR HAAR: Thank you. If someone comes to you and says who should I hire as an attorney, do you have a list of people who have some experience in this? Or how do you direct people to the resources? [LB568]

DAVID RICH: One thing we've provided is the DVD to the landowners and I think we provided close to 100 copies to the Saline County group the night we were there and we'll provide that to other landowners. We provided it to John to share at his meetings and there were three attorneys there, one from Lincoln, one from Omaha, and one from Denver, Colorado. Also with our C-BED, excuse me, with our land agreements in the Broken Bow and Petersburg area where we're looking at developing projects, we've had two meetings with those groups and last time we brought in a couple of local attorneys who had some experience in this area. Again, not recommending them, but just sharing at not cost to those landowners things that should be considered. [LB568]

SENATOR HAAR: Thank you. [LB568]

SENATOR LANGEMEIER: Seeing no other questions, Mr. Rich, thank you very much for testifying. [LB568]

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DAVID RICH: Thank you. [LB568]

SENATOR LANGEMEIER: Further testimony in opposition? Oh, excuse me, neutral? Excuse me, we've moved on to neutral. You're the second in neutral to LB568. Welcome back. [LB568]

JOHN K. HANSEN: Mr. Chairman, again, members of the committee, for the record, my name is John K. Hansen, H-a-n-s-e-n and I'm the president of the Nebraska Farmers Union. I have marked I think my testifier's copy today is all capacities except introducer. And I've settled on neutral but we are in strong support of the concept and the need to set some minimum standards relative to the number of years that any developer can tie up land relative to a potential project. And then after that, then as you get a project in place you need to have the option for renewal. So as you're looking at 20 or 25 year projects that actually have a...that actually are in place and then as you're looking at an extension, then 40 to 50 years gets to be a reasonable period of time. What is not reasonable is some of the contracts that I have read that tie up all of the easements, all of the potential, and all of the income for 55 years for one \$1,000 payment. And I'm here to tell you that if our folks are dumb enough to sign it, they're smart enough to let them. And so we have copies of most of the contracts that are in play in the state and boy, the disparity between the provisions is just enormous in terms of legal reach, in terms of other kinds of things that they ask for. A lot of the folks who come in, you have nondisclosure agreements and so folks are pushed quick and hard to make decisions they're not ready to make. They can't compare the provisions of the contracts that they have with anything else because they're really locked into nondisclosure provisions. And so how would they know what the standard legal practice is? How would they know what the standard business practice or financial terms are? Well, they wouldn't. And so we continue to tell folks sign in haste, repent at your leisure and there's some very good folks out there doing some very good things in a development standpoint. And I compliment the Nebraska Public Power District, by far, one of the best, simple, most straightforward I can almost understand it contracts and they go to great lengths to let folks know what's in the contract and how it works and the development period that they have is reasonable. We were in strong support of the approach that Senator Dubas took in the last legislative session and that was a much simpler approach and the problems we had with the green copy was that it just gets too detailed and too involved in contract law which is really inappropriate. And as I look at that, it was...well, frankly, it was overkill. We started out with a simple idea, we should have had some simple parameters and guidelines and I was very pleased to hear what Senator Dubas' comments were upfront on her bill and I think that a more simple, basic standard would be appropriate. And of course, we did do 65 information meetings last year and a lot of those are in direct response to landowners wanting us to come in and try to explain what their options are. We compliment the Saline County landowners, we did go and talk to them and they did put together a landowner association as did some of the folks out in Senator Schilz neighborhood. And we were out there Sunday and met with two of

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those groups in Bridgeport Sunday night, and in Hyannis Tuesday. And we continue to encourage landowners to pool your resources, work together, get good legal counsel and is that easy? Absolutely not because in most cases if you were to take it to the local attorney it's going to be the first contract of that kind that they have ever seen. They would not know standard legal provisions or other kinds of things, and secondly, they would have no idea whatsoever what good business practice is. And yes, it is entirely possible to have a completed well-drafted, legally appropriate economic disaster of a contract. And so you really have financial decisions and you have legal decisions and so this is a sticky process and we try to do the best we can of giving folks the very best and latest information resources to go to, places to look, and to think through the process of how all this works and be aware that yes, it could affect hunting rights, yes it could affect 20 other things you hadn't even thought of. And so we thank Senator Dubas for bringing this bill forward and starting the process again over this legislative session. I'd be glad to answer any questions if I could be of help. Thank you, Mr. Chairman. [LB568]

SENATOR LANGEMEIER: Are there any questions? Senator Carlson. [LB568]

SENATOR CARLSON: Senator Langemeier. Mr. Hansen, I think I get to ask the last question here about what you just said and about a testifier earlier brings out the importance of, I think, finding a good wind attorney. Now, in your experience, is it easier to find a windy attorney or a windy state legislator? [LB568]

JOHN K. HANSEN: Oh, I don't know about that, Senator, but I know windy lobbyists are a dime a dozen. (Laughter) [LB568]

SENATOR CARLSON: Thank you. [LB568]

SENATOR LANGEMEIER: On that, thank you very much for your testimony. [LB568]

JOHN K. HANSEN: Thank you. [LB568]

SENATOR LANGEMEIER: Is there anyone else wishing to testify in a neutral position? Welcome. Now you know you won't get a question because that was the last one. [LB568]

ELAINE MENZEL: Yeah, because that's what I was hoping. Senator Langemeier and members of the Natural Resources Committee, my name is Elaine Menzel, M-e-n-z-e-l. I'm here on behalf of the Nebraska Association of County Officials. We did not take an official position on this bill, but we have been working with Senator Dubas on incorporating language that recognizes that counties have zoning regulations that address wind energy including discontinuance and decommissioning language. If you're so inclined and interested in some of that sample language, we do have that back at the

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office and with that, I know Senator Carlson won't ask me any questions but if anybody else has any I will attempt to answer. [LB568]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Seeing none, you're going to get off. Thank you very much. [LB568]

ELAINE MENZEL: Thank you. [LB568]

SENATOR LANGEMEIER: Further testimony in a neutral capacity? [LB568]

REED BARTELS: Just real quick. Reed Bartels, B-a-r-t-e-l-s. Just real quick. On the five years that you have proposed for the wind lease, this is just neutral but just a comment and the fact that if you are trying to seek 75,000 megawatts, that's a lot of land, a lot of capacity, a lot of research and you should just be thinking about that time frame to allow that to all come on line. Thank you. [LB568]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. Any other testimony in a neutral capacity? Seeing none. Senator Dubas, you are recognized to close and you will get the final word for the day. [LB568]

SENATOR DUBAS: We'll see about that. Thank you, Senator Langemeier and members of the committee. I do appreciate those who came forward and shared their personal experiences and their thoughts and ideas, they are very valuable to me. I think we have some policy questions to ask us here and wind is different than some of the other things that we have on our land. Who owns the wind and how do we harvest it and control it and sell it? Those are questions we are having to ask ourselves now and I think through legislation like this, this gives us that opportunity to set those parameters. We do have things in statute that deal with mineral rights and things like that. And so again as I stated in my opening, it's not my intention to put strict contractual language into statute. That's not what we need to be doing as a state, but we do need to set those parameters about how we go about entering into this new arena of wind and renewable energy, wind, solar, there are a lot of things on our horizon. So I think one of the important parts of my original bill was the filing of public documents, and you know, we have to be careful that we aren't infringing on people's privacy issues but by the same token, some of these documents that are filed publicly are of a resource to people who are looking at entering into various contracts and easements. So I think that's an important component that we have to look at also. So with that, again, I do appreciate your kind indulgence and would be happy to answer any questions if you have any. [LB568]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none. Thank you very much. And with that, that concludes and closes the hearing for LB568 and our

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hearings for the day. And I thank you all for your participation. [LB568]

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Disposition of Bills:

LB437 - Held in committee.

LB561 - Placed on General File with amendments.

LB568 - Placed on General File with amendments.

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Chairperson

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Committee Clerk