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Natural Resources Committee  
January 22, 2010

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[LB832]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, January 22, 2010, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB832. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; and Beau McCoy. Senators absent: Ken Schilz. []

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. I'm Chris Langemeier, Chairman of the committee. I'd like to welcome everybody that's here in the audience, as well as those that are watching us via the live camera video cast and those that are watching us on the Internet. I'd like to introduce the committee. From my left, your right, Senator Beau McCoy, who was here, who will be back, from Omaha, Nebraska. Senator Ken Haar, who is kind of holding down that side of the table today, from Malcolm. Senator Ken Schilz will not be with us. Senator Annette Dubas will be joining us later, is the Vice Chairman of the committee. Laurie Lage is the legal counsel for the committee. To my right or to your left we have Senator Deb Fischer from Valentine, Nebraska. And then we have Senator Tom Carlson from Holdrege, Nebraska. And then we have Senator Tanya Cook from Omaha, Nebraska. At the end of the table you'll see we have Barb Koehlmoos, she is the committee clerk and as you come up and you have things to present, please give those to Barb. We have two pages that will be helping the Natural Resources Committee throughout the year. We have Tony Pastrana from Colorado and I should always ask him what town in Colorado, but he is a freshman student at Union College. And then we have Kiana Mathew from Omaha, Nebraska, is a sophomore at UNL. And we want to thank them for their help. Today as you testify, if you choose to come to the front of the room and testify, we have these green sheets located on the back corners of the room. We ask that you fill those out so we can aid us in creating a record of those that testified. If you're here today and you'd like to be on the record as having an opinion on the bill one way or the other, but you don't choose to testify, there's another white sheet in the back corners and we'd ask that you just sign in and put your information on it and put on it whether you support it or oppose the bill and then you'll be added to the record as having had that thought without testifying. Senator McCoy has joined us and Senator Dubas has joined us. At this time I'd ask that you turn your cell phones off so we don't disrupt the process. As you come forward, we ask that if you have something to hand out that you have 12 copies; if you don't, our pages will assist you in getting some more copies. Also, if you have something you want to show us that you don't want us to keep, I ask that you just show it to us from the table. If you pass it out to us, it will become part of our permanent record and we will not return it. So don't hand it over if you want it back. As you come up to the stand today, the microphone is kind of set so we can make a good record; we ask that you don't touch it to make sure that we get a good clean record. We also ask that you spell your name, first and last, no matter how simple it is or isn't, we ask that you spell it out fully and it helps transcribers to make sure we have an

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excellent record of the hearings today. And with that, we will open the hearing. We have one bill today with Senator Fischer, LB832. And welcome to the committee, Senator Fischer, and you're recognized to open when you're ready. [LB832]

SENATOR FISCHER: Thank you, Chairman Langemeier and members of the committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r and I am the senator representing the 43rd District here in the Nebraska Unicameral. I appear before you today to present LB832. The purpose of LB832 is to repeal Section 66-1532 of the Petroleum Release Remedial Action Act statute that requires owners of new petroleum tanks at a site where petroleum tanks have not been previously located to obtain private insurance to cover the costs of any remedial action to the petroleum tanks or the site. In essence, this current law provides two insurance policies for these petroleum tanks, as all petroleum tanks are also required to be covered by the Leaking Underground Storage Tank Fund or the LUST Fund. In addition to this private insurance requirement, petroleum tank owners are required to pay nine-tenths of a cent on gas and three-tenths of a cent on diesel to this fund for the same coverage. The requirement for private insurance was passed in 2005 to begin moving petroleum tank owners away from the fee-based fund and onto private insurance. Until all petroleum tank owners are able to clean up existing sites and go to private insurance collectively, they would like to use the fund as their sole means of proving financial responsibility. Representatives from the Nebraska Petroleum Marketers and Convenience Store Association, as well as the Department of Environmental Quality are here as well to hopefully answer any questions you may have. [LB832]

SENATOR LANGEMEIER: Thank you very much, Senator Fischer. Are there any questions for Senator Fischer at this time? Seeing none, thank you. [LB832]

SENATOR FISCHER: Thank you. [LB832]

SENATOR LANGEMEIER: We will now proceed to those that would like to testify as proponents in support of LB832. Welcome. [LB832]

TIM KEIGHER: (Exhibit 1) Welcome. Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. For the record my name is Tim Keigher, that is K-e-i-g-h-e-r and I'm the executive director and registered lobbyist for the Nebraska Petroleum Marketers and Convenience Store Association. NPCA represents approximately 1,200 petroleum retailers throughout the state of Nebraska with underground storage tanks. I am appearing before you today in support of LB832 and wish to thank Senator Fischer for introducing this bill on our behalf and also wish to thank all of you who are co-sponsors of the bill. The handout I'm giving you is a...was provided to me by DEQ and it talks about the LUST program, how much money has been taken in, how much money is in the program, how many sites have been cleaned up, how many sites there still are to clean up, etcetera. To give you a little more

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background on the subject, back in the late eighties, the federal government came out with requirements that all underground tank owners upgrade their tanks to prevent future releases and should a release occur, notice that release immediately to prevent further contamination. At the same time they required owners of underground storage tanks to provide proof of financial responsibility, so that if a release occurred the tank owner could cover the cost of cleaning up such contamination. The insurance industry was not able to take on these types of liabilities for the fact that any existing site more than likely had some level of contamination and an insurance company would not be able to charge enough premium to cover the immediate losses. Insurance companies, basically, were not willing to buy a burning building. Due to that fact no insurance carriers would cover this liability, states formed Leaking Underground Storage Tank Funds, also known as LUST Funds. As Senator Fischer has stated in her opening, the state of Nebraska assesses a fee of nine-tenths of a cent on gasoline, three-tenths of a cent on diesel sold in the state to fund the LUST program. The LUST program takes in approximately \$1 million per month. Most petroleum marketers look at these fees as the premium that we pay to provide insurance for financial responsibility to cover the cost of cleaning up contaminated sites. We look at the state of Nebraska Department of Environmental Quality as a third party administrator who oversees the funds and payment of claims. The LUST program has been running...up and running since its creation in 1989, providing underground storage tank owners in the state with proof of financial responsibility. Back in 2005, language was added to the LUST program that would require any new underground tank installation on a site where underground tanks had not been previously located to have proof of financial responsibility other than the LUST Fund, thus private insurance. While the intention was to wean locations away from the state program and put them on the private sector, it has not worked. The reasons that it has not worked is, is that the law says that you have to have private insurance if you put tanks on a site where tanks have never been, but it does not say that you're not eligible to quit paying the nine-tenths or the three-tenths, so you're basically paying for two insurance policies with the intention of only being able to get coverage from one. There is nothing in the law that says that if you have private insurance, you're not able to access the fund too. So I think that was an oversight. When the private insurance requirement was passed, there was nothing...I'm repeating myself now. Should follow my notes. There also have been some other issues in determining who needs private insurance and determining whether there were tanks at a location or not. That has come up a few times. And as you recall, LB502, which was heard in front of this committee last year and advanced to General File, would allow for a credit for anyone who has to pay for private insurance to take a credit as to what they're paying into the LUST Fund. That bill is still sitting on General File and it's my intention to combine LB502 and LB832 together into one bill. I was made aware this morning by committee counsel and Senator Fischer's staff that LB502 has an emergency clause attached to it and with successful passage of LB502 and LB832 separately, that there would be roughly a 90-day window to turn in the claim. This occurs because the language of the allowance for the credit and the repeal of the

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private insurance language are in the same section of statute. I have had a conversation with the Department of Revenue this morning if they could implement the process within a 90-day window, and basically said they would be willing to work with me, but it could be a little difficult, so. In working with committee counsel and Senator Fischer's staff, we are probably going to come back with a committee amendment that would combine LB502 and LB832 together and then implement the different sections of the credit and the removal of the private insurance so that they didn't overlap and one wipe out the other, so. At this point, I believe there are only...there are less than ten locations that probably would apply for this credit because it's only a site...new locations where underground tanks had never been before and there haven't been that many new sites built in the state for the last couple of years. Again, I thank everyone for their willingness to work with me on this bill and ask that the committee advance the bill to the floor as soon as we come up with the amendment. And also I'd be happy to try and answer any questions and as Senator Fischer said, you know, we feel that at some point in time when the backlog of all the claims is cleaned up, then we all move to private insurance collectively. So with that, I'd be happy to answer any questions. [LB832]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB832]

SENATOR HAAR: Yes, thanks. I'm just a little confused because I think you said when the LUST Fund was set up, that private insurance wouldn't cover this kind of... [LB832]

TIM KEIGHER: Correct, that's the reason the LUST Fund was set up back in the late eighties. [LB832]

SENATOR HAAR: Okay. [LB832]

TIM KEIGHER: When the proof of financial responsibility was...came out from the federal government that you had to have this, no insurance company was willing to take on this risk because most sites had some contamination and it would be like if you went out and bought a car and paid full retail value for it and it was already wrecked, but you had to pay the full retail. So they weren't willing to do that. And then I think every state but one formed a leaking underground tank fund to provide this type of coverage for underground storage tank owners. [LB832]

SENATOR HAAR: But in the future, are they doing that now? You said you'd eventually like to get people off the LUST Fund and just into private insurance again. [LB832]

TIM KEIGHER: Well that was the intent of the language for the private insurance...it wasn't my idea, it was someone else's, but I think that my members are willing to look at going to private insurance at the point of which they can quit paying the nine-tenths and the three-tenths. [LB832]

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SENATOR HAAR: Thanks. [LB832]

SENATOR LANGEMEIER: Senator Cook. [LB832]

SENATOR COOK: Thank you, Mr. Chairman. How much is the insurance? Let's say I'm one of these people putting in a new location, one of the ten locations, what kind of insurance premium would I be looking at for a new site? [LB832]

TIM KEIGHER: Well for the private insurance for a site that has never had tanks, it's very reasonable. [LB832]

SENATOR COOK: Okay. [LB832]

TIM KEIGHER: Anywhere from \$350 to \$500 is what I've found. So if you figure the average site has three tanks, you're talking somewhere in the \$950 to \$1,500 probably. [LB832]

SENATOR COOK: Thank you. [LB832]

TIM KEIGHER: Um-hum. [LB832]

SENATOR LANGEMEIER: I have a question. [LB832]

TIM KEIGHER: You can call on yourself, I think. [LB832]

SENATOR LANGEMEIER: I liked this bill before I heard your testimony. In the information you handed out, that was provided by DEQ, and they're here and I might ask them later, does it have the \$4 million that came in the stimulus funds in the accounting? [LB832]

TIM KEIGHER: You know that's a question... [LB832]

SENATOR LANGEMEIER: In the last stimulus bill that came, we got \$4 million in the LUST Fund. [LB832]

TIM KEIGHER: The answer to that, I don't know. [LB832]

SENATOR LANGEMEIER: You don't...okay. [LB832]

TIM KEIGHER: Maybe someone else could answer that. [LB832]

SENATOR LANGEMEIER: But yet we have a backlog of 1,116 sites... [LB832]

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TIM KEIGHER: Correct. [LB832]

SENATOR LANGEMEIER: ...that are contaminated out there or...they were going to use...my understanding is that 4 million they were going to use that for exploratory, not cleanup, but to go and check out the sites on the list. So maybe LUST isn't working. [LB832]

TIM KEIGHER: No, I think it's been working very well, honestly. It's provided the financial responsibility for those people who own underground storage tanks. The way I understand, I wasn't here when the program was implemented, but the way I understand it was done, is all the sites in the state, you had to go out and do a site assessment and determine the level of contamination and then because there wouldn't be enough money at one time, they categorized those by the sites that were heavily contaminated, those that were an immediate threat to drinking water or things like that, and then they've been going through and cleaning them up, you know, as fast as they can. It just...there's a lot of sites that they had to clean up. So I think it's been working well, myself. [LB832]

SENATOR LANGEMEIER: Okay. So LB832, you want us to suspend the need to have private insurance. [LB832]

TIM KEIGHER: Correct. [LB832]

SENATOR LANGEMEIER: I understand that. And then in LB502, which somehow you'd like these all melded together, you want your money back that you paid into LUST for... [LB832]

TIM KEIGHER: Private insurance. [LB832]

SENATOR LANGEMEIER: ...private insurance for a number of years. [LB832]

TIM KEIGHER: Well it would really only been from July 1, 2009, until the bill would pass. So at this point... [LB832]

SENATOR LANGEMEIER: Till...so about a year. [LB832]

TIM KEIGHER: Yeah, at this point, talking with the fire marshal, obviously, they didn't have an exact number for me, but they said that they thought it was well less than ten. [LB832]

SENATOR LANGEMEIER: Okay. That's all I have for right now. [LB832]

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TIM KEIGHER: Okay. Thank you. [LB832]

SENATOR LANGEMEIER: Senator Dubas. [LB832]

SENATOR DUBAS: Thank you, Senator Langemeier. Tim, what's an average time for an inspection and then a cleanup process? [LB832]

TIM KEIGHER: Well it depends on a lot of factors and I'm probably not the best qualified person for that, but from what I understand, I mean, some of them using the risk based approach, they look at the soil type and, you know, how close it is to groundwater and those types of things and some of those sites don't have to have any further remediation. Other sites, it's a lengthy process that could be several years. [LB832]

SENATOR DUBAS: Okay. Thank you. [LB832]

TIM KEIGHER: Um-hum. [LB832]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you. Very good. [LB832]

TIM KEIGHER: Thank you. [LB832]

SENATOR LANGEMEIER: Further testimony in support of LB832. Good afternoon. Welcome. [LB832]

ED WOEPPEL: Thank you. If my voice holds out, I think we'll be okay. I'm Ed Woepfel with the Nebraska Cooperative Council. And that's W-o-e-p-p-e-l and as I said, I'm here today representing the Nebraska Cooperative Council, which is the trade organization for the farmer-owned cooperatives. I think Mr. Keigher did a good job of laying out the issue that's before us. And so I won't replot all that ground, but just indicate that we support this effort and I'd certainly be happy to try and answer any questions that you folks may have. [LB832]

SENATOR LANGEMEIER: Are there any questions for Mr. Woepfel? Seeing none, thank you very much. [LB832]

ED WOEPPEL: Very good. Thank you. [LB832]

SENATOR LANGEMEIER: We're saving your voice. [LB832]

ED WOEPPEL: That's good. [LB832]

SENATOR LANGEMEIER: Further testimony in support of LB832. Is there any

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testimony in opposition? Is there any neutral testimony? Seeing... [LB832]

SENATOR CARLSON: This is a question... [LB832]

SENATOR LANGEMEIER: Would you like to testify or... [LB832]

SENATOR CARLSON: No, I'd like to ask a question, Senator Langemeier. When we have a hearing like this and we have DEQ here, can we call them up for questions? [LB832]

SENATOR LANGEMEIER: I can call them up. Do you have a question? [LB832]

SENATOR CARLSON: I do. [LB832]

SENATOR LANGEMEIER: I would...would Director Linder be willing to come up and... [LB832]

MIKE LINDER: Sure. [LB832]

SENATOR LANGEMEIER: ...answer a question? [LB832]

MIKE LINDER: If it's not too hard. [LB832]

SENATOR CARLSON: I don't think so. [LB832]

SENATOR LANGEMEIER: Thank you. [LB832]

MIKE LINDER: Good afternoon, my name is Mike Linder, that's M-i-k-e L-i-n-d-e-r, director of Nebraska Department of Environmental Quality. [LB832]

SENATOR LANGEMEIER: Thank you very much. Senator Carlson has a question. [LB832]

SENATOR CARLSON: Thank you, Senator Langemeier. Mike, in this fund, what..I think I heard Mr. Keigher indicate about a million a month comes in. [LB832]

MIKE LINDER: Um-hum. [LB832]

SENATOR CARLSON: How much goes out annually? [LB832]

MIKE LINDER: Well, we try to...there's a balance in the fund of about...ranges between...about \$5 million and \$7 million. Because the way these clean...it's a reimbursement process, so we need to keep a balance in there because we



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have...actually, I think we have something like \$12 million that we know is kind of in the pipeline and just based on what we know of the history of the fund, we want to keep about a \$5 million to \$7 million balance in there. So we spend, roughly, what comes in. [LB832]

SENATOR CARLSON: Okay. So roughly, what's the time line to get the whole project done? [LB832]

MIKE LINDER: Well like Tim said, it can be anywhere from just the initial investigation, you know, drilling a couple monitoring wells to see what kind of contamination is there, all the way up to a multiple year cleanup. [LB832]

SENATOR CARLSON: But eventually we're going to reach a point where the fund isn't necessary, so there must some time line? [LB832]

MIKE LINDER: Right. [LB832]

SENATOR CARLSON: When, roughly, would that be? [LB832]

MIKE LINDER: You know, we used to try to predict that, and now, I don't know if you got all of the...did you get this handout? We estimate there's probably somewhere in the neighborhood of a couple thousand sites still to deal with, that we know of. I mean... [LB832]

SENATOR CARLSON: It's a long time then. [LB832]

MIKE LINDER: It will be. Talking to our program manager, I think he's saying, maybe less than ten years now, which when we initially passed this, it was like, who knows how long. [LB832]

SENATOR CARLSON: Are you still going to be here when it's done? [LB832]

MIKE LINDER: I don't know. [LB832]

SENATOR CARLSON: Well we hope you are, but if there...you're not...you can't be precise on this, because you got money coming in every month, so when you're done, if there's \$10 million in the account, what's going to happen to the \$10 million? [LB832]

MIKE LINDER: That's a question we've never been asked, it's never been...I mean, as we get closer to that, we'll have to figure out a way to wind down the business of the fund and...it just seems to me it will become apparent at some point that, you know, the reason these new sites are affordable for insurance is because the risk is lower, you know, because of the type of equipment that's being put in. It just seems at some point

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we'll be to where we have a better grasp of what the future liability is and we'll know the status of the old existing tanks. But I can't predict when that would be. It's still several years out. [LB832]

SENATOR CARLSON: Okay. Well you couldn't change the nine-tenths of a cent and what's diesel? Three? Three-tenths? [LB832]

MIKE LINDER: Right, I believe so. [LB832]

SENATOR CARLSON: You couldn't change that thinking that you're phasing out so that you end up with practically nothing in the account. Probably not. [LB832]

MIKE LINDER: I'd be nervous about being that precise in predicting, but maybe...like I said, maybe there will come a time in a few years when we can have a better handle on that. [LB832]

SENATOR CARLSON: I think what's left over should probably be used to clean up the vegetation in the Platte River. (Laughter) Thank you. [LB832]

SENATOR LANGEMEIER: Senator Haar. [LB832]

SENATOR HAAR: I have some other ideas how...(laughter). When you talk about this process being done and the cleanup, won't there be any future cleanup at some point or is it the fact that tanks are built better and so on and so forth? [LB832]

MIKE LINDER: Well certainly the new equipment going in is much better than some of the legacy tanks that have...gone in the ground. I don't know that we'll ever entirely be on top of this because, you know, some tanks we still don't know about, really, from old filling stations or old businesses, even schools with heat...fuel oil tanks, all, you know, so I...I don't know. You know the fee is...the fee right now is covering our annual costs and, you know, there will be a point where we can probably predict the end of needing this kind of fund, but I don't know, even on the national scale of states that are really talking about winding these down, I mean there's still plenty of work to do. [LB832]

SENATOR HAAR: Thank you. [LB832]

SENATOR LANGEMEIER: Did you have a question, Senator Fischer? [LB832]

SENATOR FISCHER: Thank you, Chairman Langemeier. Director Linder, on the information that was passed out to us, I believe from your department; on that last page, it shows that the rates have changed over the years. [LB832]

MIKE LINDER: Um-hum. [LB832]

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SENATOR FISCHER: When it began it was smaller and I assume that happened because of the need for more money to take care of this, is that correct? [LB832]

MIKE LINDER: Yes. [LB832]

SENATOR FISCHER: So wouldn't it just be a statutory change on the part of the Legislature either to raise fees or lower them as they would deem necessary? [LB832]

MIKE LINDER: It's an entirely state law, yes. [LB832]

SENATOR FISCHER: Thank you. [LB832]

SENATOR LANGEMEIER: Now I'm going to ask a question. My understanding is that you have \$4 million in the incentive. [LB832]

MIKE LINDER: We got about \$2.3 million in stimulus dollars. [LB832]

SENATOR LANGEMEIER: Oh, 2.3, okay, someone...yeah, there's places then. What have you done with that? [LB832]

MIKE LINDER: We identified either eight or ten of our top priority sites that we wanted to get to. Besides the Underground Storage Tank Fund, the state tax fund that we had Title 200, we also have a federal fund that we get and it can be used for sites where...we call them orphan sites. We don't know the owner or the owner is long gone, and so we use the federal funds that I...I don't have in front me, how much that is every year, but that's where the stimulus dollars came through. They came through that account, not the Title 200 account. So we identified, I think, either eight or ten of the top orphan sites for remediation for cleanup and then about 30 or so sites to do investigations. [LB832]

SENATOR LANGEMEIER: Very good. Are there any other...Senator Dubas. [LB832]

SENATOR DUBAS: Thank you, Senator Langemeier. Looking at the sheet, on the front page, it talks about total sites backlogged, 1,116 and then on the last page, the number says backlogged 498. Are we looking at the same thing here? [LB832]

MIKE LINDER: I think that probably...I think the 1,116 probably includes the orphan sites. But... [LB832]

SENATOR DUBAS: Okay. Well you have the orphan sites... [LB832]

MIKE LINDER: Yeah, let me...let me check and then reconcile those for you. I don't...

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[LB832]

SENATOR DUBAS: Thank you. [LB832]

MIKE LINDER: Yeah. [LB832]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB832]

MIKE LINDER: You're welcome. Thank you. [LB832]

SENATOR LANGEMEIER: Any other testimony in a neutral capacity? Anyone else we want to call up randomly out of the crowd? (Laughter) Seeing none, Senator Fischer waives closing. And with that, that concludes the hearing on LB832. I'd like to thank everyone that was here today to participate. We appreciate you being part of the process and have a safe trip and a safe weekend. [LB832]