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Natural Resources Committee
February 11, 2011

[LB155 LB156 LB393]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 11, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB155, LB156, and LB393. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Annette Dubas; Ken Haar; and Jim Smith. Senators absent: Mark Christensen; Beau McCoy.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. My name is Chris Langemeier, I'm the Chairman of this committee. I'd like to introduce the committee members that are going to be with us today. Starting to my far left or your far right we have Jim Smith from Papillion. Then we have Senator Ken Haar from Malcolm. And then we have the Vice Chair, Senator Ken Schilz from Ogallala, Nebraska. Then we have Laurie Lage, is the legal counsel for the Natural Resources Committee. And then to my immediate right and your left we have Annette Dubas who is doing her radio program; she will be with us momentarily and from Fullerton. And then we have Senator Tom Carlson from Holdrege. And then at the end of the table we have Barb Koehlmoos, our legal counsel for the committee. Excuse me, clerk for the committee, excuse me you're legal counsel, you just got a demotion and you didn't even know it. We have two pages that will be helping us throughout the year. We have Kate DeLashmutt who is from Burwell; she is a senior at UNL. And we have Leslie Riekenberg from Omaha who is also a senior at UNL. They will be helping if you have things to hand out. If you are coming up to testify today, in the corners of the room you'll find these green sheets. We ask that you fill them out in their entirety and when you come up if you would give that to Barb please before you start your testimony it helps us keep a more accurate record. If you're here and you're not going to testify, but you want to be on the record of having an opinion on one of these bills, you also see there's also kind of a spreadsheet looking form on the tables in the corners of the room. We ask that you sign in and put on there whether you oppose or support; you don't have to do both, just one sheet or the other one. If you have things to hand out, we ask that you have 12 copies. If you know right now you need a couple more copies just raise your hand, one of the pages will come help you make some more copies to make that happen. Also, if it's something you want us to look at and you hand it to us, to the committee to look at, we are going to keep it for the permanent records. So if you have a photo or something that's personal of nature please show it to us from the table and then allow the senators access to it after the hearing if they would like to come up and look at it in more detail. But again, if you do give it to us, we are going to keep it for the record. At this time I would ask that you turn your cell phones off and so we give attention to the testifier and not to disrupt that individual while they're testifying. We ask when you come up to testify that you say and spell your name; first thing we need you to do is say and spell your name. It also helps us keep a more accurate record of today's hearing. And with that, we do use the lights in the Natural Resources Committee, but it doesn't look like we're going to have a big issue. We don't have a lot

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of people here today. But we do give you five minutes to testify; the green light will come on when you start. The yellow light will come on when you have one minute left. And when the red light comes on we ask that you discontinue your testimony and open yourself up to the committee for questions if they have some. So with that, we will begin today's hearings with LB155. Senator Utter is here and welcome back to the Natural Resources Committee.

SENATOR UTTER: Thank you, Chairman Langemeier. I had so much fun here the first time I was here I decided to come back. [LB155]

SENATOR LANGEMEIER: Welcome. [LB155]

SENATOR UTTER: Colleagues on the committee, my name is Dennis Utter, that's spelled D-e-n-n-i-s U-t-t-e-r and I represent District 33 in the Nebraska Legislature. Today I'm here to introduce LB155. LB155 allows public power entities formed under the Nebraska Interlocal Cooperation Act to comply with the public bidding laws similar to all other Nebraska public power entities like Omaha Public Power District and the Nebraska Public Power District. The bill, this bill specifically pertains to the Public Power Generation Agency in Hastings. This plant is owned by the cities of Hastings, Grand Island, Nebraska City, and also by the Municipal Energy Agency of Nebraska, MEAN is the acronym, along with the Heartland Public Power District in South Dakota. All of these entities are not-for-profit organizations that came together for a joint project, thus an interlocal cooperation. Back in 2007 when the bidding laws were changed for public power, it was not changed in the interlocal laws because at that time there were no interlocal power stations in Nebraska. LB155 corrects that problem in that it duplicates what is already in law for other power stations. LB155 amends the existing Interlocal Cooperation Act to reflect consistency with the other power statutes. LB155 adds the minor exception to the current sealed-bidding requirements that will give interlocal agencies, like the plant in Hastings, additional options for operating, maintenance, or repair on power plants in a cost-effective and timely manner. Similar to other statutory exceptions to sealed-bid requirements already in the public laws, this bill would only mirror what is currently in state laws for others. Ultimately, LB155 will save the city money. I will be happy to take any questions. However, I should mention that I have witnesses to follow to answer any technical questions and I know they are...they can do that because I know some of them personally and they've all got suits and ties on and that's usually an indication of a witness. (Laughter) [LB155]

SENATOR LANGEMEIER: I like your narrow definition there. Senator Haar. [LB155]

SENATOR HAAR: Well, last year when you came and had so much fun you brought us cookies and I don't see any today. (Laughter) That's my only question, where are the cookies? [LB155]

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SENATOR LANGEMEIER: Senator Carlson. [LB155]

SENATOR CARLSON: Senator Utter, I don't have a technical question, but I got a technical statement. [LB155]

SENATOR UTTER: I would welcome you making your technical statement. [LB155]

SENATOR CARLSON: Your bill crosses out one word and adds 17, none of which are "may" or "shall" or "intent" and I think I could support your bill. (Laughter) [LB155]

SENATOR UTTER: Sounds like it's a slam dunk to me. [LB155]

SENATOR LANGEMEIER: There are a lot of "or." Seeing no other questions, thank you very much. We will now move to proponents of LB155. Come on up. [LB155]

KEVIN GADEN: I do have some handouts for the committee. Thank you. [LB155]

SENATOR LANGEMEIER: Good afternoon. [LB155]

KEVIN GADEN: (Exhibits 1 and 2) Thank you. Good afternoon to you all too. Thank you, Mr. Chairman, for allowing me to testify on behalf of LB155. Good afternoon, Committee, my name is Kevin Gaden, name is spelled K-e-v-i-n G-a-d-e-n and I am the director of wholesale electric operations for the Municipal Energy Agency of Nebraska otherwise known as MEAN. I've worked in the electric industry for 24 years. I have an engineering degree in construction management and a master's degree in community regional planning. I'm here to testify on behalf of LB155, on behalf of the Municipal Energy Agency of Nebraska, the Public Power Generation Agency, as Senator Utter alluded to, the owner of the generation plant in Hastings, and also on behalf of the entire Nebraska public...excuse me, the Nebraska Power Association. By way of background, MEAN is a wholesale power entity for municipalities in four states. We're based here in Lincoln, again, public power entity. We were established in 1981 under state statute that is currently governed by Chapter 18. MEAN is a wholesale electric supplier and related services to 67 communities in four different states. With that, the page is handing out various brochures and a map of MEAN's membership, as well as some of the products and services that MEAN offers. In addition to my activities in MEAN, I am currently the chairman of the PPGA, or the Public Power Generation Agency Board of the project in Hastings. PPGA was formed under the Interlocal Cooperation Act in 2005. As the senator alluded to, the PPGA is owned by the city of Grand Island, the city of Hastings, the city of Nebraska City, as well as the Municipal Energy Agency of Nebraska and Heartland Consumers Power based in Madison, South Dakota, which is in the business vernacular a joint action agency very similar to MEAN. MEAN was very instrumental in forming PPGA. The sole purpose of PPGA is to own, finance, construct and operate a 220-megawatt power plant in Hastings. That power

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plant uses the best available control technologies to meet the required permit limits. It ensures clean, low-cost, reliable power supply for over 40 Nebraska communities well into the future. We're in the testing and start-up phase of that plant right now. It is anticipated to be on-line in spring of this year. I'm here to testify on behalf of LB155 on behalf of the group I mentioned earlier. LB155 will modify existing statutes to allow any interlocal agency, such as PPGA, to enjoy the same bidding laws that are currently in effect for the public power districts, the rural public power districts, as well as MEAN. Those bidding laws allow utilities to contract for services associated with the electric generating and related facilities that are estimated to be less than \$100,000 without advertising for sealed bids. As you noted in the bill, it deletes the word "operations" and adds the word "maintenance" plus 16 other words as you mentioned. Important things that need to be considered in this, is that there is still a process to go through that public documentation. But what happens is it allows us to work through those issues so that you don't have to go to the bid document preparation, the bid notice, the bid openings, the solicitation, etcetera. All this would be going on, and continues to go on, while our large generating capital asset continues to sit idle. And with that, what ends up happening is the owners then have to go to the open market to replace that power. The longer that that takes the more risk there is out there. The cost to the owners and therefore our ratepayers is that that could total hundreds of thousands of dollars per day by not having the ability to take...to utilize this provision in the law while potentially saving a few thousand dollars of extending that bidding opportunity. So presently these allowances are not allowed under interlocal agencies, but they are allowed, as I mentioned before, under the power districts and the municipalities. This issue was not addressed in the past, as Senator Utter alluded to, because we just...there hadn't been a generating facility in the past. In effect, it's a cleanup for the activity. The safeguards are included in the bill. They require the posting of that information, the general nature of the work, the contact information, as well as it's required to be published three separate times no sooner than seven days apart, and then moving forward through that process. It also requires a two-thirds majority of the PPGA board to approve that activity. So in summary, PPGA as an interlocal agency is asking for the same bidding laws as the public power districts and the municipalities have in the utility business. If I'm allowed, can I summarize my details? [LB155]

SENATOR LANGEMEIER: Yep. [LB155]

KEVIN GADEN: Again, identical to those that are afforded to the existing generators. We believe these same cost-effective procedures should be allowed under the LB155 provisions. In summary I would like to...PPGA would like to thank the committee and I'd like to thank the committee for considering this measure. We'd also like to thank Senator Utter for introducing this on behalf of thousands of Nebraska ratepayers. LB155, in our opinion, is a cleanup bill to a provision that was taken care of before. It is supported by the Nebraska Power Association; it also isn't deemed to be a controversial bill and it saves the Nebraska ratepayers a considerable amount of money in

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accordance with what the rest of the utilities do in the state. So with that I would entertain any questions that the committee might have. [LB155]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, very good, well done. [LB155]

KEVIN GADEN: Thank you. [LB155]

SENATOR LANGEMEIER: Further testimony in support of LB155. Good afternoon. [LB155]

MARVIN SCHULTES: Good afternoon, Senator Langemeier, and members of the Natural Resources Committee. My name is Marvin Schultes, spelled M-a-r-v-i-n S-c-h-u-l-t-e-s. I am the manager of utilities for Hastings Utilities, city of Hastings, Nebraska. I'm here testifying in support of LB155. I will keep my testimony very short other than to say I support what Mr. Gaden has said and on behalf of the Public Power Generation Agency, Municipal Energy Agency of Nebraska, and all the partners. Hastings is a municipal electric system; operates the electric system in and around Hastings. We're also a participant in the Public Power Generation Agency and are also the operating partner for the group. Hastings supports the bill and I'm not going to repeat again what people said, but I certainly will answer any questions that the committee has. We urge and thank you for hearing the bill and ask for your support of the bill. [LB155]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. [LB155]

MARVIN SCHULTES: Thank you. [LB155]

SENATOR LANGEMEIER: Well done. Further testimony in support. Just out of curiosity, how many more people are going to testify on this bill in some fashion? Okay. Good afternoon. [LB155]

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n and I'm a staff member at the League of Nebraska Municipalities. And again, we also would like to thank Senator Utter for bringing this forward. Interlocal arrangements and interlocal agreements are a very important method of facilitating municipal operations. And increasingly, I think, interlocal agreements and similar arrangements are going to become an important tool and these tools need to be refined to ensure that the municipalities involved can provide those services on an available basis and a competitive basis. So we are in favor of this bill. Anybody have any questions? [LB155]

SENATOR LANGEMEIER: Very good. Are there any questions? [LB155]

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LASH CHAFFIN: Thank you. [LB155]

SENATOR LANGEMEIER: Seeing none, thank you very much. Further testimony in support. Seeing none, is there any testimony in opposition? Seeing none, is there anyone who wants to testify in a neutral capacity? Seeing none, Senator Utter, do you want to close? [LB155]

SENATOR UTTER: No, I don't think I can add a thing. [LB155]

SENATOR LANGEMEIER: Senator Utter waives closing. And now that concludes the hearing for LB155. Now we're going to go to LB156. Welcome back. [LB155]

SENATOR UTTER: Thank you, again. Chairman Langemeier, colleagues, Senator Dubas, you weren't here the last time we started. [LB156]

SENATOR DUBAS: Hello. [LB156]

SENATOR UTTER: Let me acknowledge you. I am Dennis Utter, that's spelled D-e-n-n-i-s U-t-t-e-r, I'm the senator representing District 33 in Hastings, Nebraska, area, Adams County and part of Hall County. Today I'm here again to introduce LB156. LB156 has to do with the emission fees that electric generating facilities pay under the Clean Air Act. The purpose is to allow mid-sized electric generating facilities to be considered a separate source of emissions for purposes of the Clean Air Act emission fee even if the facility is subsequently permitted with another larger general unit under separate ownership. Under the Nebraska Clean Air Act, facilities that produce certain emissions are required to pay a per-ton fee to the Department of Environmental Quality to fund the administration of the clean air program. There are two caps on which the emission fees are paid. One cap is on 4,000 tons on large facilities which means it can generate over 115 megawatts. The other cap is 400 tons on mid-sized electric generating facilities. A mid-sized electric...a mid-sized facility can generate between 70 and 115 megawatts. The city of Hastings' electric facility is one of the mid-sized electric generating facilities. It has the ability to generate 77 megawatts. It serves the Hastings area, along with surrounding communities. It has paid emission fees under the smaller cap for several years. But now it is faced with having to comply with a higher cap because another larger electric generating facility has been built next to the Hastings plant. The other facility is under separate ownership, but is being operated jointly. It will have the capacity to generate around 220 megawatts. Under the law the Hastings facility is being considered to be a part of the new, larger facility and therefore has to pay emission fees under the higher cap. This means that the customers of the Hastings electric utility will pay emission fees higher than the fees paid by customers of other electric facilities. LB156 amends Section 81-1505.04 to provide that a mid-sized electric generating facility would be considered a separate emission source for the purposes of

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the emission fee even if the facility is subsequently permitted with another general unit larger than the 115 megawatts under separate ownership. This would allow the mid-sized facility to retain the smaller cap even if paired with a larger electric facility as long as the facilities have separate ownership. Under LB156 the Hastings facility will continue to pay emission fees under the smaller cap. The new facility will pay emission fees under the larger cap. I would be happy to take any questions, however I should mention those guys with the suits and ties are still here and will be available to answer your technical questions. [LB156]

SENATOR LANGEMEIER: Very good. Are there any questions? Very good. See none. [LB156]

SENATOR UTTER: Thank you. [LB156]

SENATOR LANGEMEIER: Now we will move on to testifiers in support of LB156. Good afternoon again. [LB156]

MARVIN SCHULTES: (Exhibit 3) Chairman Langemeier and members of the Natural Resources Committee, my name is Marvin Schultes, that's M-a-r-v-i-n S-c-h-u-l-t-e-s, the manager of Hastings Utilities, Hastings, Nebraska. I'm testifying today on behalf of Hastings Utilities, a municipally-owned electric system of the city of Hastings. Thank you for the opportunity to address the committee in support of LB156. I'm asking for your support of this bill which affects several sizeable Nebraska communities, including Hastings, Grand Island, Fremont. Each of those communities own and operate electric generating facilities to serve their customers. In way of a little background, in 1992, the Legislature authorized the Department of Environmental Quality to manage the Clean Air Act in Nebraska. As part of this authorization, the Legislature authorized a fee system on regulated emissions for the purpose of funding the administration of the program. Early in the program it became clear that the fee system created a competitive imbalance between large generating units, such as those owned by NPPD and OPPD, and smaller electric generating units, such as those owned by the city of Hastings, Fremont and Grand Island. In 1996, in order to restore the competitive balance to be fair, the Legislature adopted LB634, that's Section 81-1505.04, of the Nebraska state statute for mid-sized generators which created a cap on emission fees to be paid by the smaller generating units in Hastings, Fremont, and Grand Island to balance the cap on the larger units. This system has been in place for many years and has worked very well for the past many years, at least 15, from 1996 to current. Currently, the Public Power Generation Agency, a group of entities including the city of Hastings, Grand Island, Nebraska City, the Municipal Energy Agency of Nebraska, and the Heartland Consumer Power District of South Dakota, is completing the construction of a new generating electric facility next to the unit already owned by the city of Hastings. The Department of Environmental Quality was required under the Clean Air Act to put both of these units under the same emission permit, even though they were owned by

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separate owners. As a result, the older unit owned solely by the city of Hastings will lose the competitive balance that was granted as part of the 1996 legislation. This legislation, LB156, would restore the existing fee structure in place today for the older units solely owned by the city of Hastings. The new unit would also pay emission fees, but would not be classified as a mid-sized generator because it does not meet the conditions of the mid-sized generator. Passage of LB156 is necessary to void the payment of double fees, those from the Public Power Generation Agency's new facility and those increased fees for Hastings' existing facility, in addition to the existing payment that Hastings is making and will continue to make. With passage of LB156, the state of Nebraska will receive not only emission fees that they received last year from unit one, but in addition to that, the fees provided by PPGA for the addition of the new unit. I want to thank you for your consideration and I urge you to support and pass LB156. At this time I would answer any questions the committee has on LB156 or my testimony. [LB156]

SENATOR LANGEMEIER: Are there any questions? Senator Smith. [LB156]

SENATOR SMITH: Just for clarification, this fee...the fee that would be reduced by Hastings would be shifted to the remaining plants or units in the state, right? [LB156]

MARVIN SCHULTES: Yeah. The fee is spread out to everybody. What would happen with LB156 is Hastings would pay the same fee that it always paid under the 400-ton cap for the last 15 years. They would pay that same fee under that same fee structure. And the Public Power Generation Agency, which owns its separate unit, would also pay its fee so they would actually get more money to fund the program because PPGA is going to pay where they didn't pay in the past and Hastings would pay the same fee they paid for the last 15 years. [LB156]

SENATOR SMITH: All right, thank you. [LB156]

MARVIN SCHULTES: Okay. Did that answer that? [LB156]

SENATOR LANGEMEIER: Are there any other questions? I do have one. [LB156]

MARVIN SCHULTES: Senator Langemeier. [LB156]

SENATOR LANGEMEIER: The whole purpose of the Clean Air Act is concentration of pollutants in the air. As we look at our ethanol industry and we talk about dust emissions or just any kind of emissions and clean air, we don't, as the state of Nebraska, we look at a particular facility, whether it's ADM in Columbus, and say we're looking at the total dust coming off your facility to polluting the air in a particular area. We don't look at the whole state and say, okay, you've got 15 plants, they're all putting out X-amount and the whole state now has this dust in the air because of the ethanol industry. So your facility, even though the one is right next to it and it's a separate facility, combined you still have

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a concentration of air emissions in the air and that's the whole purpose of the bill...I mean the whole purpose of the clean air emissions and the fee. So, in the spirit of why we have the Clean Air Act, to separate them and say well they're in the same town but they're not connected really violates the whole purpose of the Clean Air Emissions Act. I understand why you want this exemption, but the reality is, it's still back to a concentration of particles in the air. You just happen to have two together. That becomes one bigger unit because your concentration of dust in that particular area is high. So I understand why you want to go off, but I think it's a defiance of the whole reason we have the Clean Air Act to do that. [LB156]

MARVIN SCHULTES: This is for the purpose of the emission fees to fund the DEQ. That's the only purpose of it is to fund the DEQ, okay. The permit is still the permit and the conditions of the permit stand. Okay? And we operate and we'll follow all the conditions of the permit. But this is for...just for the permit fees. In other words, how do you deal with the permit fees? The permit fees are dealt with in the same way they've always been dealt with on unit one with passage of LB156, exactly the same way they were for the last 15 years. And now the additional unit also pays separate additional fees for the purpose of funding the DEQ which is to administer the program. So from the administration of the program, passage of LB156 seems fairer from the standpoint you're...also you're getting all the money that you got to fund the program before for the site, plus additional funds from the separate unit. And it's just for the purpose of funding the emission fees and funding the support of the oversight of it by the NDEQ. And that's what this is for, just for this purpose of the fee itself. I think that's...maybe I...and just so you understand that. [LB156]

SENATOR LANGEMEIER: I'm well aware of the fee structure and why it's there. But the whole point was built on emissions out set your fees based on your size. That's how the fees were created in the first place. So it's based on potential tons of emission put out over a year's time or a lifetime; that's how it was established. If it's just...if you want to take it down to the simplest measure that you have on just funding an agency, then the fee should be the same for every power facility in the state disregarding their output. [LB156]

MARVIN SCHULTES: And that gets back to the initial Clean Air Act in 1992, how that was funded initially and the federal legislation had in at this cap. And then when it looked at it from the state of Nebraska, a fair way to fund the fees for the DEQ was determined way back in 1990s that the fair way to do it in Nebraska to do it...because you can argue both sides of your discussion. Okay. So it was determined back then that the fair way to do it in Nebraska was the two-tiered cap to do that because you could argue...any kind of different way to fund it. That was settled years ago as a fair way. We think it's still a fair way for the units that were existing at the time. And we think that fee structure should be maintained. And then with the addition of the additional unit, the fee structure gets added to by the new unit paying its fair share of fees in addition to the

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existing unit paying the fees they've been paying for 15 years. And you can...as far as the whole discussion of how you fund the DEQ, that can...was discussed years ago and I think that, Senator, gets into the discussion of what is the fee for and how should it be determined. Should there be one way, fixed fee? Or should there be another one based on tons? Or should there be this cap? That was determined and this two-tiered structure was laid out years ago as a fair way to do it and I think this is consistent with that structure that was put in place 15, 20 years ago. [LB156]

SENATOR LANGEMEIER: Okay. Any other questions? Seeing none, thank you. [LB156]

MARVIN SCHULTES: Thank you. [LB156]

SENATOR LANGEMEIER: Welcome. [LB156]

CHRIS DIBBERN: Good afternoon, Mr. Chairman and members of the committee. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n and I'm the general counsel and I'm a registered lobbyist for MEAN and the Nebraska Municipal Power Pool. And I'm here in support of LB156 on behalf of MEAN and the power pool. You've heard about MEAN and PPGA from Kevin Gaden in LB155 and the new Hastings power plant. You've heard that the two power plants are together; that one is under a small cap. Senator, the new power plant will bring in new funds so it actually should lower the rates for the remaining power plants. So it shouldn't pass on higher rates to other entities, because PPGA will be bringing in new funds. We believe the bill is fair to Hastings and to all generators. If you look at the fiscal note, you will see that there was no money that should be lost under this. You've heard about, sort of a theory of emissions fees. And I'm no emission expert, but we do operate in Iowa, Colorado, and Wyoming, and they also have this 4,000-ton cap. And it sounds logical. Everything you said, Senator Langemeier, that it is the more you pollute the more you should pay. But under this capping system, it is really just to run the state programs. It isn't a polluter's fee. It is a mechanism to run the programs that we have in the state. So with that, we think that it is a fair bill and ask that you make this change in the law. A couple of years ago Fremont had a system on their emissions and they came back to the Legislature and said there's some ambiguity between the way DEQ was interpreting it and the way the system thought it should be interpreted, so we bring them back to you to say, help us with this and let's make sure that we're following the law correctly. [LB156]

SENATOR LANGEMEIER: Are there any questions for Miss Dibbern? Seeing none, thank you. Other testimony in support. Welcome. [LB156]

GARY MADER: Good afternoon, Senator Langemeier, members of the committee. My name is Gary Mader, G-a-r-y M-a-d-e-r, I'm utilities director for the city of Grand Island. In reviewing LB156, it is my opinion that that bill is just one of basic fairness. Here in

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Nebraska we have set up this emissions fee system whereby we fund the NDEQ, the enforcement agency to ensure that we do things properly. We also have fairly difficult economic times just now and I think it's commendable that public power utilities are working together because it's not always been that way. We've been a bit more adversarial in the past. So we've had a number of joint projects across the state. And this is one of them. I think the city of Hastings has done a fine job in hosting this project. PPGA, as you heard before, has created some new wrinkles that need to be addressed. But we have a situation where a utility agreed to host a joint effort of public power utilities and it seems to me that it was probably inappropriate that that ownership separate from them would jeopardize their current fee structure to a point that their citizens and their ratepayers would be paying a fee higher than others. So just as a matter of equity, it seems to me appropriate that the city of Hastings unit should be treated as it has been treated in the past. And that the new agency, under new ownership, should pay its share of fees just like the rest of the power plants operated in the state of Nebraska. So with that I would conclude my comments. I agree with previous testifiers as to the processes and the reasons for requesting this action on the part of the Unicameral. [LB156]

SENATOR LANGEMEIER: Are there any questions? Seeing none, you're getting off easy. [LB156]

GARY MADER: Thank you. [LB156]

SENATOR LANGEMEIER: Thank you, well done. Further testimony in support. [LB156]

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a staff member at the League of Nebraska Municipalities and the league is in support of LB156. We agree, this is an issue of fairness for our city-owned facilities. And what's important to remember here is that the two Hastings facilities east of the city of Hastings, as a matter of regulation will be treated as one source. And in spite of the fact there's two ownership groups, they're going to have to coordinate with respect to the DEQ to determine how those plants are going to be run, how the emissions are going to come out. So they...as a practical matter with respect to the environment, those issues, they will be treated as one source and the two entities will be required to cooperate. With respect to the fees, it becomes a little more difficult and this bill solely deals with that element of it. And what's important to remember here is that Nebraska really doesn't have a pure pay-as-you-pollute system. Right or wrong, this is the system that was put in place in the late '90s by the state of Nebraska. We have a hybrid system. And the hybrid system creates some sort...sometimes creates some anomalies. And the anomaly here is that the two units at Hastings aren't large enough to cap out under the second cap. So what happens is, both units would end up...are going to end up paying; it sort of creates some financial anomalies. And on the flip side, another anomaly could work the other way, completely in violation of the pay-as-you-go system where let's say

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if the city of Holdrege was to build a very, very large facility that was in excess of the 4,000-ton cap and then the city of Ogallala was to come right next to it and build an equally large facility, both of the those would be under the same...current law would be under the same 4,000-ton cap, so the second unit wouldn't pay any fees at all. So the anomalies exist within this hybrid system and I think the way to clarify the...and the competitive balance issue is to deal with LB156 at this time. But I would certainly answer any questions. [LB156]

SENATOR LANGEMEIER: Are there any questions? Seeing none, very good. [LB156]

LASH CHAFFIN: Thank you. [LB156]

SENATOR LANGEMEIER: Well done. Further testimony in support. Seeing no more support, anybody testifying in an opposition? Seeing none. Any testifiers in a neutral capacity? Seeing none, Senator Utter, would you like to close? I like your hearings, by the way. [LB156]

SENATOR UTTER: Beg your pardon. [LB156]

SENATOR LANGEMEIER: I like your hearings, by the way. [LB156]

SENATOR UTTER: Thank you. [LB156]

SENATOR LANGEMEIER: Quick, to the point. [LB156]

SENATOR UTTER: I kind of like them myself. Just a sentence or two in closing. This is an issue, I think, that is extremely important to the city of Hastings and to the people who are consumers. And in all fairness, I'm one of those people and certainly we strive to keep our electric bills down as much as we can. I will say to you that they have spared nothing, I don't think, to make these plants, even at the time the first Hastings facility was built and upgrades that they have made to them, and particularly the new 220-megawatt plant, are state of the art with regard to pollution control and doing those types of things. They have really went to the extremes, I think, to make them as friendly a plant from a pollution standpoint as they possibly could. And I guess that...that the final word is that they built these two plants together. I assume they could have been built, you know, halfway between Hastings and Grand Island or something like that, but I think the word is that we built the plants together from an efficiency standpoint. Hastings has had a lot of experience in operating an electric generating facility. We've got a great utilities department and they do an excellent job and have operated these facilities for a long time. And now by operating the two together, why we bring efficiencies and electrical generation to the whole state of Nebraska and even to our neighbors in South Dakota. So I think it's extremely important to them to do what we can to keep electric fee...electric generation costs in check. And with that I thank you very

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much. Thank you for your courtesy in hearing both of these bills. Look forward to an early kick out to the place upstairs. Thank you. [LB156]

SENATOR LANGEMEIER: Excellently done. Thank you very much. That concludes the hearing on LB156. We'll now move on to Senator Schilz and LB393. [LB156]

SENATOR SCHILZ: Thank you, Senator Langemeier and members of the Natural Resources Committee. For the record my name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I represent Legislative District 47. I introduced LB393 to help raise awareness of domestic biodiesel and the Nebraska biodiesel industry. It is an industry that I think is extremely important and has an ability...has an opportunity to play a huge part in the economic process of Nebraska. The proposed requirement for state agencies to use domestically produced biodiesel will create a competitive local market in Nebraska. The intention of this bill is not to increase costs for the state if they purchase biodiesel pursuant to LB393. It does allow agencies to freely purchase off the open market if Nebraska produced biodiesel cannot be sourced. There have been a couple of issues that have risen since the introduction of LB393, so we've been working with the Department of Administrative Services and we plan to continue to have those discussions to work out those issues. And with that, I know that we have a few people to testify here that are much more familiar with the industry than I do, but I'd be happy to try to answer any questions that you have. Thank you. [LB393]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Schilz? Not at this time. Very good. [LB393]

SENATOR SCHILZ: Thanks. [LB393]

SENATOR LANGEMEIER: And I know you're sticking around to close. Testimony in support. Welcome. [LB393]

ROBERT BYRNES: (Exhibits 4, 5, 6, 7, 8, and 9) Thank you. My name is Robert Byrnes, spelled B-y-r-n-e-s and I'm here from Oakland, Nebraska. And thank Senator Langemeier and the Natural Resources Committee for the opportunity to discuss biodiesel. It was...I'll keep my comments concise. We have three testimonies coming around. The first is my own. The second is Farmers Union and then the third is the Omaha Biodiesel Coop which are biodiesel producers in the Omaha area. So those are the three testimonies that I'm delivering. Kind as a policy overview, having made the first gallon of commercial biodiesel in 2006, I kind of had a front-row seat. It wasn't always the most pleasant view, but nevertheless I've been kind of...been very involved with this industry from its inception here in the state. It started out as a great opportunity, and it still is, with a lot of optimism that irrational exuberance we heard about years ago, followed by a food-versus-fuel argument and a near perfect storm in the commodity markets. Biodiesel has had a tough time these last couple of years. And my...the plant,

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the facility that I had worked with, the Scribner biodiesel plant, was the last one standing, closing its doors in 2010. From a policy overview, Senator Langemeier should be proud that LB343 is our only current biodiesel policy that is in effect as an investment tax credit to encourage investment into these plants. However, in that year, 2007, and we had that discussion here in this committee, we've been in Agriculture ever since, discussing the production tax credit or some kind of incentive or credit to enhance the economics on the actual production side. And I'll never forget that was my first day meeting Ernie Chambers face to face in the Ag Committee; very interesting afternoon that was. These next three handouts that are coming around are just technical background, some information on B2 mandates that are going on in other states. There is a review of a B2 mandate versus volumetric mandate and there's the REG handout is an excellent overview of statewide and national state policies in that nature. So we never got our production incentive. And the opportunity now, I believe, is beyond us, especially given the economic conditions that we have at this time. Bills with new fiscal notes are a tough go. They were a tough go in the best of times. I don't know that that's the route that we're...is being currently pursued because of these conditions. LB393 creates a degree of market certainty for local production without the costs associated with the new incentive or credit. I applaud and I remember very proudly reading of the Governor's directive in 2005 to encourage state fleets to use these materials. I think in my view to require 2 percent usage in these same state fleets is just a natural extension and evolution of that policy statement. Before I go any further, the word biodiesel I'd like to maybe define a little bit. There is a bunch of \$5 words strung together in the official definition that talks about methyl esters and all kinds of chemical stuff. The word "biodiesel" over the years has been used very generically to describe a renewable diesel made from renewable feedstocks. However, I do want to mention that the technical meaning for biodiesel ties that to an ASTM test result that it must meet that ASTM test to be called biodiesel and it's a very specific set of circumstances. Since that time, renewable diesel, green diesel, clean diesel has been used in this industry to separate itself from the ASTM standard. The federal tax credit, the dollar a gallon tax credit has recently been renewed by the federal government. That's hopefully going to be around consistently. That was part of that perfect storm that we had in 2009 with the lapse of that and no immediate renewal. So that is in place and that's tied to the ASTM standard, not the BQ-9000 standard which is a different marketing standard that is used optionally in the industry. One of my hats I wear is the manager of a now off-grid solar powered renewable fuel filling station in Lyons, Nebraska. I feel that this bill helps to develop the private/public partnerships I think that we need. We have several state employees that work in and around Lyons, Nebraska, and they have flex-fuel vehicles...if I could just finish briefly... [LB393]

SENATOR LANGEMEIER: Yep. [LB393]

ROBERT BYRNES: ...and they have flex-fuel vehicles that go up and down main street by our station all the time. And I inquired one time, you know we have E-85 right here.

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Why can't you guys use that, it's right here? And the response was, well, you need a PO and you need to be in the system and you need, need, you know, burdens. I'd like to see...I think this bill starts to address that and breaks those potential barriers down and gets our state government connected to our state producers in a way that benefits everybody. LB393 provides a very moderate standard that will support some level of biodiesel infrastructure in the state. Currently, there's only a handful of producers and you'll hear from Tighe Biodiesel here who is one of them who is still currently in production. Our current production capacity, actual production monthly, is extremely low. We do have reserve capacity, probably approaching two million gallons per year that could be very quickly brought on-line and Tighe Biodiesel can talk about their potential expansion capability. One half a billion gallons a year of fats and oils is produced in Nebraska annually. And we're not...and I think...I don't know all the true numbers that are potentially out there that this bill might entail, but we're talking about a very, very small component of that figure. And then finally, we need a first generation biodiesel infrastructure in place just as we need corn ethanol in place as a first generation ethanol feedstock. If we don't have these first generation fuels, corn ethanol is great and has done tremendous things for our state. It is not the end-all of alcohol of renewable fuels and biofuels; there's better things yet to come. However, we cannot build a second generation infrastructure if we don't have the first one in place. And this helps to provide a certain surety and market security for the maintenance of at least a minimal level of biodiesel infrastructure. With that I'd be glad to take any questions. [LB393]

SENATOR LANGEMEIER: Very good. Questions? Senator Dubas. [LB393]

SENATOR DUBAS: Thank you, Senator Langemeier. Nice to see you, Robert. [LB393]

ROBERT BYRNES: Good to see you, Senator. [LB393]

SENATOR DUBAS: I haven't talked to you in a long time. A couple of questions for you, aside from financial incentives, and I think you may have hit just a little bit on this in your testimony, what else is holding us back on moving this development forward? [LB393]

ROBERT BYRNES: Development in terms of more production capacity. We had the near...one of the biggest ones was the dollar a gallon tax credit which was allowed to lapse by the federals at the beginnings of 2010. If you would have told someone in the fall of 2009 that that thing was going to be dead for a year, they would have laughed in your face. That hurt. That's back now. So that's a big piece of that coming back into the pie...into the picture. The other thing that happened right on the heels or right just prior to that tax credit lapse was this commodity storm, some of it artificial, some of it not so...you know, for whatever reason. There was a very difficult economic set of circumstances where soybean oil, which is typically coupled to petroleum, decoupled and it caused the economic combination was devastating to the industry nationwide.

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Some of the larger plants in Iowa, a lot of the infrastructure has come back into production; Nebraska facilities have not. That's coming back into line because of the increasing price of petroleum diesel now. So right now, if we...and that's why I hate to lose the infrastructure because once it's gone you've got to start from scratch all over. And we've got...we could turn the lights on on some of these facilities and have a couple million, at least, gallons per year. And I can't even speak for the 50 million gallon plant sitting idle in Beatrice. So I think the conditions have changed now and certainly with the weakening dollar going forward, the petroleum, I think our best prices of petroleum are behind us at this point. [LB393]

SENATOR DUBAS: Well that's good to hear. We know that there's a lot of misconceptions surrounding ethanol and talking about increasing that blend and kind of fighting the same battles again about what it will do to motors, etcetera, etcetera. Are there any similar misconceptions about soy diesel? [LB393]

ROBERT BYRNES: Not so much. I think, yeah, I'll spare comments on the E-15 situation. Should be pretty clear cut, you would think. But biodiesel does not have the compatibility issues that ethanol has in combustion ignition engines. The reason is, gasoline is a five molecular chain average length which means it has about...it has much more energy content than the 2-carbon ethanol. So you need more ethanol to compensate for that, a little lower mileage, you need a different motor, back and forth. Biodiesel fuels average about the same length as petroleum diesel; there's 16-carbon chains. They burn cleaner. In every way it is a superior fuel. They can be used interchangeably from one to 100 percent. They can be blended readily. There's none of those issues with compatibility like you have with ethanol. Any diesel vehicle can run high blends of biodiesel and I've converted numerous vehicles. I normally come here on B-100, but little cold in recent past to be using it. And that language actually is included on the third page of my testimony. I do recommend that if there is a requirement for state agencies to use biodiesel that they be exempted during winter months because biodiesel has the one downfall of biodiesel is that it will gel more readily than petroleum diesel typically. There are some super seeds coming out of the university and other things that can be done to mitigate this, but those can add cost to the fuel. So I did add suggested language on the third page that would exempt this use during the winter months so they didn't have to go out hunting and finding B-2 which is about impossible to do in Nebraska in the winter. [LB393]

SENATOR DUBAS: Well I always appreciate your expertise and understanding and you actually explain it so that I can...that I can grasp it also. And I know you mentioned the economy and the challenges that we're facing with our budgets and costs which makes it a little more difficult for us to move these types of issues forward. So anything that we can do in any other supportive ways, you know, I hope that we can send that message and lead by example and not let us lose what little opportunity we have left. [LB393]

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ROBERT BYRNES: I agree, and I'm glad you...that's what we kind of looked at for this year too. We talked about...we've worked with issues together on death by fiscal note. I think that's pretty much the pervasive environment at this point. But that doesn't mean there's things we can't do. And just like a rainy day when you have to stay inside, there's plenty of good, productive activities that could be done. And in my mind that means working on renewable energy policy. Because in a lot of cases, we're not talking about net metering this year, I promise, but net metering is a free thing. Some of these policy things don't cost anything as long as they're done considering all the impacts. And I would consider this one to be revenue neutral as well, because the price of biodiesel petroleum now is on par with, I think, petroleum is going to far out pace biodiesel in the near term. So I think this is; there is good free stuff that we can still be involved with. [LB393]

SENATOR DUBAS: Well thank you again for your work. [LB393]

ROBERT BYRNES: Thank you, Senator. [LB393]

SENATOR LANGEMEIER: Senator Haar. [LB393]

SENATOR HAAR: Thanks for being here. I'm going to talk about net metering next year, but...(laughter). I would like to just a little...for you...your thoughts on how has ethanol able to gain a foothold to get a renewable fuel standard nationally and diesel has not been able to do that? [LB393]

ROBERT BYRNES: Well, the...when you look at...there's a couple of reasons, first the practicality of the ability to produce those gallons. When you look at two to three gallon per bushel yield on a 200-bushel-acre yield, you're talking 400 to 600 gallons per acre, okay. An acre of soybean will get about 60 gallons of biofuel. So we're talking kind of in orders of magnitude, different just in terms of raw potential. I think that's the first one. Ethanol also had about a hundred year head start. And if you count the nonmotor fuel related ethanol activities it probably goes back much earlier than that. But ethanol got an earlier start, I think an early market awareness and acceptance and was the primary fuel was the Plan B fuel during the last energy crisis. Biodiesel, even though the patent actually goes back to World War II, biodiesel is a fairly recent phenomenon. And the word biodiesel actually...biodiesel from German, came from Germany in the '90s. So it got a later start. It has just volumetrically a lower potential and I think really here, I worked in a...as an industrial chemist, I worked in the renewable fuels industry in Nebraska and watched the ethanol industry grow all around Nebraska and nothing was coming here. We had the AGP, the wet mills were here, but the dry mills weren't getting built. When that ethanol incentive passed, we had an explosion, early enough in the game so when the tough times came, most of those plants that were already in production were able to weather that storm and are here today, thank goodness. The bio...we couldn't quite get the connection made for a number of things over the years to

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get that production incentive early enough for the biodiesel industry to get them into the game, to help them get that plant paid down, so unfortunately, in this state when that storm did come, as they inevitably do, they weren't prepared and were pretty much smoked in the process, for lack of a better word. Some have recovered in various shapes, but we got into the game late with a very, kind of a feedstock pull. Now I understand the Artifest-2 has a carve-out for biodiesel gallons which is, again, that and the federal tax credit is why a lot of these other states have seen their production capacity come back on-line. [LB393]

SENATOR HAAR: Okay. And what you're proposing here will help shove that forward. [LB393]

ROBERT BYRNES: Well it creates a market security. Because what we have now, and I applaud the Governor's policy decision to say, hey, let's use renewable fuels made in Nebraska, renewable fuels as much as we can. That's good stuff. [LB393]

SENATOR HAAR: Makes sense. [LB393]

ROBERT BYRNES: Now to go the next step and say we will use a certain amount. Okay. "Encouraged to use" and "will use" is, you know, the banker will tell you they have nothing to do with each other if you go in to finance a plant or restart a plant. Guaranteed usage to some nominal level that we're discussing creates a corridor, it's got to be competitive, it's got to be available, it's got to meet criteria, it's not just a giveaway. It's got to be competitive and available as required by the agency to use. But that creates a surety; that creates a consistency that we have not had in biodiesel. It's been just a real roller coaster ride, it's been tough to hold on. [LB393]

SENATOR HAAR: Thank you very much. [LB393]

ROBERT BYRNES: Thank you. [LB393]

SENATOR LANGEMEIER: Senator Carlson. [LB393]

SENATOR CARLSON: Thank you, Senator Langemeier. Robert, is this your first time to testify this session? [LB393]

ROBERT BYRNES: Yes, sir. [LB393]

SENATOR CARLSON: Because I didn't think I had seen you. So I enjoy listening to you when you do testify. You don't have the bill in front of you, do you? [LB393]

ROBERT BYRNES: I do not, but I'm pretty familiar with it. [LB393]

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SENATOR CARLSON: Okay. It's okay. I'm just referring to the last statement. An agency shall be required to comply with this requirement only to the extent that Nebraska biodiesel fuel is available. And I wrote down possibly four categories of availability because fuel is available, what does that really mean? There is available; there is readily available; there is somewhat available; and there is minimally available. So how do we determine whether or not it's available? [LB393]

ROBERT BYRNES: Whether...it kind of depends to some extent on the application, how it's being used. Right now I would say it's not available at all. I don't know that we have...we have a nominal amount of production that could say, hey, I'm looking for 2,000 gallons of biodiesel that's Nebraska-made. You're going to have to look kind of hard to get that. It's doable. But this is a recovering industry. So we allowed that, or the thought was with available meaning that the production capacity is there. It can be delivered to where it needs to be delivered in a form that the agency can use it. If it can only be delivered in a shuttle tote, but you need it preblended, that's not readily available. So it needs to enhance or be fairly seamless in how the consuming agency utilizes it. If they have to spend hours and hours hunting and pecking trying to find the stuff, that's a detriment. So, I think there's naturally going to be built here a public/private partnership that is a benefit to everybody involved to create the consumption of what's being produced here in the state. That doesn't exist that I know of. I know the plants will sell to distributors who will then sell to the state, but that distributor has no...if that biodiesel come from China or anywhere else, it just goes into the tank as ASTM biodiesel. This may require direct plant involvement because the biodiesel blender may say, hey, I can't have two tanks. I can't have a Nebraska tank and an everybody else tank. So that may be...there may be some logistical things and I know I'll be involved in the discussions with the administrative services as to how to implement this in a way that is reasonable and available for the agency without having to disrupt operations. [LB393]

SENATOR CARLSON: Okay, thank you. [LB393]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. Well done. [LB393]

ROBERT BYRNES: I appreciate the opportunity to discuss this. [LB393]

SENATOR LANGEMEIER: Well done as always. Further testimony in support. [LB393]

SCOTT RICHERT: (Exhibit 10) Good afternoon, Senators. My name is Scott Richert, S-c-o-t-t R-i-c-h-e-r-t. I'm a soybean producer from Gresham, Nebraska, and currently serve as the president of the Nebraska Soybean Association. I'm here today to testify in support of LB393, a bill that would require state agencies to develop plans to use Nebraska biodiesel fuel. The Nebraska Soybean Association has adopted several

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resolutions supporting the utilization of biodiesel, both at the state and federal government levels. According to the National Biodiesel Board, nationally there are over 140 biodiesel production facilities. We are not aware of any commercial-scale sized plants operating in Nebraska at this time. However, there may be some smaller scale producers that utilize their production for their own use. In 2009, the U.S. biodiesel production was approximately 490 million gallons. The economic factors in the industry and the federal tax credit uncertainty in the past year has dictated production. However, Nebraska is fortunate to have available suppliers within reasonable distances that are ready to supply biodiesel to meet our needs. My local farmers cooperative has biodiesel available for purchase and I will be utilizing it in my operation this spring as fieldwork begins. Also the University of Nebraska is utilizing biodiesel when available in their bus system. LB393 is an enhancement to the 2005 executive order which was signed by Governor Heineman that directed the state fleets to use E-85 and 2 percent biodiesel blends whenever practical. Since biodiesel is made in the U.S.A. from renewable resources such as soybeans, its use decreases our dependence on foreign oil and contributes to our economy. Fuel-graded biodiesel must be produced to strict industry specifications, meeting the ASTM D6751 standard, in order to ensure proper performance. Biodiesel that meets ASTM D6751 and is legally registered with the EPA is a legal motor fuel for sale and distribution. The Nebraska Soybean Association encourages this committee to consider adding to LB393 a requirement that Nebraska biodiesel producers supplying biodiesel to state agencies be a BQ-9000 certified producer, which is a voluntary accreditation program. The National Biodiesel Accreditation Program is a cooperative and voluntary program for the accreditation of producers and marketers of biodiesel fuel called BQ-9000. The program is a combination of the ASTM standard for biodiesel and quality systems program that include storage sampling, testing, blending, shipping, distribution, and fuel management practices. This requirement will help to assure that biodiesel fuel is produced and maintained in the industry standard, ASTM D6751. It also promotes the commercial success and public acceptance of biodiesel. In summary, we are supportive of LB393 and Nebraska state agencies utilizing Nebraska biodiesel fuel for their fuel needs. Anytime we can utilize a homegrown agricultural product that benefits the environment and helps creates jobs, that is a step in the right direction to being less dependent on foreign oil. Thank you and I'll be happy to answer any questions. [LB393]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB393]

SENATOR CARLSON: Thank you, Senator Langemeier. Scott, thanks for being here. At the pump, how does biodiesel compare to diesel? [LB393]

SCOTT RICHERT: I checked this morning and I could buy a 5 percent blend for the same price as a premium diesel fuel today. So there's no difference. If you're buying straight, like straight biodiesel, I believe it's about a penny per point, or it's a few cents

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higher than what regular diesel fuel is now. So a 2 percent blend, if you're buying them separate may cost you 2 cents more than what straight number 2 diesel would. So the cost is right now is basically the same. [LB393]

SENATOR CARLSON: Okay. Thank you. [LB393]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB393]

SCOTT RICHERT: Thank you, Senators. [LB393]

SENATOR LANGEMEIER: Further testimony in support. While we wait here, how many others are going to testify in some fashion? You're our last one. Good afternoon. [LB393]

MIKE TIGHE: (Exhibit 11) Good afternoon. Senators, appreciate the opportunity to address this committee. My name is Mike Tighe, that's M-i-k-e T-i-g-h-e. My brother Terry and I are partners in a biodiesel production facility located in Springfield, Nebraska. We're named Tighe Biodiesel, LLC, and it was founded with the vision of producing high-quality biodiesel fuel from renewable energy sources. We were formed in May, 2009, and since our beginning we've been building a repeatable process for biodiesel production from renewable energy sources. We've partnered with the University of Nebraska-Omaha chemistry department to measure our fuel quality and any improvements made with suggested processed modifications. And we also teamed up to provide a hands-on educational experience to student interns that are interested in being a part of the future of renewable energy sources. We do stand ready to provide Nebraska produced biodiesel in support of this legislation. We are currently licensed by the state of Nebraska to produce biodiesel. Our current capacity is roughly 50,000 gallons per year. We have already on hand equipment to expand our capacity to 100,000 gallons per year and our existing facility can accommodate a plant of about a million gallons a year production size. This legislation then would give us a willing and ready market to purchase our expanded production. Quality is of the utmost importance at Tighe Biodiesel, LLC, so we support the ATSM requirement in this legislation, but we would discourage a BQ-9000 element. BQ-9000 certification is time consuming, costly, and right now is industry optional. And we would, down the road, attempt to gain DQ-9000 certification, but at this time it would be more of a detriment to our operational growth. ATSM actually certifies the quality of your fuel and in order to maintain that level of quality then we naturally purpose to standardize our production process. And that's, in essence, what a DQ-9000 certification does. It just verifies a standardized process. That's really about all I've got. Thank you for your time. Are there any questions? [LB393]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson.

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[LB393]

SENATOR CARLSON: Thank you, Senator Langemeier. Now on your start with this, and it's you and your brother, correct? [LB393]

MIKE TIGHE: Yes, sir. [LB393]

SENATOR CARLSON: You can't be profitable already? [LB393]

MIKE TIGHE: Well we are...no, you're right. [LB393]

SENATOR CARLSON: Okay. What would it take for the two of you to take care of yourselves? [LB393]

MIKE TIGHE: As was discussed earlier, the profit margin on a gallon of biodiesel is right now fairly small. So quantity is really our biggest hang-up. Because we're not making a lot of money, we're both full-time employed elsewhere, so this is, right now, a side for us, a secondary job. So we would need to get up around the million gallon a year production to maximize that profit...profit margin. [LB393]

SENATOR CARLSON: And you could get there with your existing facility? [LB393]

MIKE TIGHE: We still need more equipment. We've got equipment that we can plug in and get up to 100,000 gallons a year right now, but yeah, we would need equipment to expand to a million gallons a year. [LB393]

SENATOR CARLSON: But with things the way they are right now, if you were able to produce a million gallons a year, then would that...you could make a go of it at that level. [LB393]

MIKE TIGHE: Yes, sir. [LB393]

SENATOR CARLSON: With no more incentives? [LB393]

MIKE TIGHE: Yes, sir, that's correct. [LB393]

SENATOR CARLSON: Okay, thank you. [LB393]

SENATOR LANGEMEIER: Senator Haar. [LB393]

SENATOR HAAR: For business like yours, how do you distribute this? I mean, how would you see distributing this so that Nebraska state vehicles could make use of it? [LB393]

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MIKE TIGHE: Right now we...our production is small enough, our batch size is small enough that we deliver in 250 gallon totes, square totes on the back of a pickup truck. If we expanded capacity, we'd also need to purchase a tank truck, fuel tank truck. [LB393]

SENATOR HAAR: And do you see this as...there would be certain stations that would offer this and so that there would be some kind of symbol that state cars knew where you were or how would this function? Have you thought about that at all? [LB393]

MIKE TIGHE: Honestly, I hadn't, no. [LB393]

SENATOR HAAR: Okay, and I don't mean to put you on the spot, I'm just...like with electricity, when we talk about that, you know, distribution becomes...if we could distribute our wind power we'd see turbines all over the place. [LB393]

MIKE TIGHE: Right. Well if we can deliver to a state garage and have it on hand there. [LB393]

SENATOR HAAR: Okay. Well thank you. Good luck on your business. [LB393]

MIKE TIGHE: Thank you, sir. [LB393]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much, well done. [LB393]

MIKE TIGHE: Thank you. [LB393]

SENATOR LANGEMEIER: Are there any others wanting to testify in support of LB393? Seeing none, is there anyone else that would like to testify...I had that letter but, Mr. Byrnes gave us a copy of that same letter and said it again, so that's covered. Is there anyone testifying in opposition? Seeing none, is there anyone wanting to testify in a neutral capacity? Seeing none, Senator Schilz, would you like to close? [LB393]

SENATOR SCHILZ: Thank you, Senator Langemeier. And just to very quickly here, I'd really like to say thanks to Mr. Byrnes and the folks that he brings to the table. He always brings a cogent argument and we're working on that. As we said, we're working with the Department of Administrative Services to address some of these issues that everybody has brought up here today. And so we will also be wanting to work with the committee as we go forward to make sure that we get something there that can move forward and actually does what we need it to do which is to highlight Nebraska biodiesel industry and help that get a kick-start moving forward. So thank you very much. [LB393]

SENATOR LANGEMEIER: Very good. That concludes the hearing on LB393 and the

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hearings for the day. We'd like to thank everyone that came and was a part of the hearing and that came to observe and...have a great day. Thank you. [LB393]