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Natural Resources Committee
February 17, 2011

[LB38 LB391 LB392]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 17, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB38, LB391, and LB392. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Mark Christensen; Annette Dubas; Ken Haar; and Jim Smith. Senators absent: Tom Carlson; Beau McCoy.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. My name is Chris Langemeier, I'm the Chairman of the Committee. I'd like to introduce our committee that is going to be with us today. We're going to start to my far left. We have Jim Smith from Papillion, Nebraska. And then Senator Ken Haar is already in position and ready to go from Malcolm, Nebraska. And then we have Senator Mark Christensen from Imperial. And we have Ken Schilz, Vice Chairman of the Committee, from Ogallala. And then we have Laurie Lage who is the legal counsel for the committee. To my immediate right, all by yourself over here, is Senator Annette Dubas from Fullerton. And then as we swing clear over, we have Barb Koehlmoos who is the committee clerk for the Natural Resources Committee. Helping us today we have two pages. We have Kate DeLashmutt from Burwell, Nebraska, who is a senior at UNL. And then we have Ian Vosburg...not quite, I didn't get it right again, who is a sophomore from UNL and from Holdrege, Nebraska. And by the time the year is up, why we'll have that memorized. If you're coming up to testify today, we ask that in the corners of the room there are these green sheets, we ask that you fill one out in its entirety and when you come up you hand it to Barb. It helps us keep an accurate record of today's hearings. We also ask that when you sit at the table that you state and spell your name for the record, the first thing you do, it also helps us keep a good record. If you're here and you want to be on the record as of being here and having a position, there's also these spreadsheet-looking forms in the corners of the room; we ask that you sign in and tell us whether you oppose or support and that way we have a record if you're not going to testify. If you're going to hand stuff out to us, we ask that you have 12 copies. If you know that you don't have 12 copies right now, please raise your hand and one of our pages will come help you and assist you and some copies. One warning is, if you give it to us to look at, and you give it to the committee, we are going to keep it. So if you have some particular photo or something you want to show us that you want back, we ask that you just keep it and show it to us from the table because once you hand it to us it will become part of the permanent record and we will retain it. So, with that said, we ask at this time that if you look...everybody look at your cell phone and make sure they're turned off and so we don't disrupt those that care to testify and that's their part of this process. With that, we are ready to begin. We are going to take the bills as posted outside and we have Senator Haar with LB38, our first one up and welcome.

SENATOR HAAR: Thank you very much, Senator Langemeier, and members of the committee. LB38 is a bill that very simply prohibits employees of a public power district

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from serving as a director of any public power district. As you probably are aware, this came up because Kevin Pollard, the general manager of Norris Public Power, ran for a seat on the NPPD board. The way I look at this situation is that there is a ongoing and enormous conflict of interest between working for one district and serving as an elected official for another district. So who do you serve? The person who pays you or the people who elected you? Conflict of interest is a real or seaming incompatibility between one's private interests and one's public or fiduciary duties. That's from Black's Law Dictionary. Now you will likely hear an argument that this conflict of interest is the same as with any other customer of NPPD. I think there's a difference between working for a company that buys power like any other customer and serving a board of directors of a public power district that distributes power. There are going to be times when NPPD's interests and Norris' interests are not the same. Then who do you listen to? There will be conflicts with pay. If you're going to an NPPD meeting, do you continue to get your director's salary or what happens to that? And other benefits as well, which might go along with both boards. I think there's a difference between working for a company that buys power from NPPD, a company, like let's say, Behlen Manufacturing, something like that, and a political subdivision that buys power from NPPD. I think there's quite a difference there. Another example, some examples in the law, for example a teacher cannot serve on the board of education, would be another example of where the law recognizes this kind of conflict of interest. And with that I will be open to questions. [LB38]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Smith. [LB38]

SENATOR SMITH: Thank you, Senator Langemeier. Senator Haar, you mentioned comparing to teachers. Is it correct that a teacher can sit on the board of education in another district from which they are employed? [LB38]

SENATOR HAAR: Well I will read you the statute; I brought that along: No member of a school board shall be engaged in a contract to teach pursuant to sections with the school district which he or she serves as a board member. [LB38]

SENATOR SMITH: Okay. So it's one in the same. Okay. [LB38]

SENATOR HAAR: Yeah. [LB38]

SENATOR SMITH: Okay, thank you. [LB38]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB38]

SENATOR HAAR: Thank you. [LB38]

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SENATOR LANGEMEIER: You have heard the opening for LB38. We'll now move to testifiers. Again we do use the light system in the Natural Resources Committee. You get five minutes; you'll have four minutes of green. When the yellow light comes on that's your one-minute warning; and when the red light comes on, we ask that you conclude so we can then ask some questions. With that, Mr. Hansen, welcome. Proponents. [LB38]

JOHN K. HANSEN: Mr. Chairman, members of the committee, for the record my name is John K. Hansen, J-o-h-n, Hansen, H-a-n-s-e-n, I'm the president of Nebraska Farmers Union and appear before you today as the president of our general farm organization, as well as our lobbyist. We thank Senator Haar for bringing this commonsense bill forward. This is a, in our view, a bit of a no-brainer, if you will. The members of my organization from the affected district, were extremely upset about the prospect of the general manager of Norris running for a NPPD seat and trying to claim there was no conflict of interest there. And the calls that we got in on this issue were clearly folks who said how can you represent both sides of a buy/sell arrangement of that magnitude and that nature at the same time? Well you can't. We obviously, when opposing interests are in court they don't use the same lawyer. They use different lawyers, because there's a conflict of interest. Our organization was instrumental in the formation of public power districts. We are certainly a big supporter, have been a longtime supporter of our public power system, been very protective of it. In talking to some of the older folks in my organization who have been familiar with things, no one can remember in their memories this issue ever coming up before. And the reason it didn't come up before is because everyone just generally understood that it was a conflict of interest. And so if this issue has come up before, it's certainly new to us. The old understanding, the status quo, has served us extremely well in years gone by. And to avoid the either the reality or the appearance of impropriety or conflict of interest we would strongly urge the committee to give favorable consideration to this bill. We believe that it will help clarify the situation. There should be no questions in voters' minds about whether or not this particular candidate is appropriate or not. In our members' cases, they've all said it's either/or. If he wants to resign from the employment of the district and run for the office, as the former general manager did before him after he retired, fine. But you can't serve two masters at the same time. And as we do workshops with our board and also deal with ethics issues, we looked at this and it just seemed very clearly one of those cases where your personal financial interests and also the interests of your employer were in clear conflict at the point of sale when, in fact, the primary supplier for Norris, in this case, is Nebraska Public Power District. How can it not be a conflict of interest? How can all of the information that you acquire as a board member that is used in the development of the pricing structure and all of those things not give you an unfair advantage at the time of negotiation for your public entity at the point at which you're going to be buying electricity? I mean it's just...so this is one of these deals where we feel in the interest of everyone involved we ought to not have these kinds of questions raised and we ought to just do the right thing and move the bill

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forward. And with that, I'd be glad to end my testimony and answer any questions if there are any. [LB38]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Smith. [LB38]

SENATOR SMITH: Thank you, Senator Langemeier. The...let's see, in Section 1, we talk about that the only exceptions would be if they resign or they assume an unpaid leave of absence. And if they assume an unpaid leave of absence, as a board member they could still influence what their pay could be when they return from that leave, would it not? I mean are you comfortable that that also helps to avoid the appearance of impropriety by leaving that unpaid leave in there? [LB38]

JOHN K. HANSEN: I haven't really given that a lot of thought, frankly. I never really thought of it until you raised the question. [LB38]

SENATOR SMITH: Because if you were to take an unpaid leave for the duration of the term, say that's four years, during that period of time I imagine you probably would still receive benefits. You probably would not accrue any more pension, but you still might have some influence for when the leave was complete. [LB38]

JOHN K. HANSEN: Well the cleaner cut would be...the former situation I described where the general manager had completed his service, he was retired from the REA. He had an interest, he had expertise, he was no longer in any way whatsoever financially tied to the...his old public entity. He ran for the office. That's fair; that's clear. Then there's no opportunity for impropriety at that point, and so...or conflict. [LB38]

SENATOR SMITH: Seems like it might be cleaner if it was only in...whenever employment is ended and concluded. [LB38]

JOHN K. HANSEN: Perhaps, and, you know, again, going back to the comments from our members in that district was the phrase double dipping was brought up over and over again and saying, you know, so just, you know, how much, so, so just exactly who's paying your salary and your benefits at which point? And they were concerned that there was going to be not only conflict of interest, but also double dipping. And so just that perception we found very troublesome. [LB38]

SENATOR SMITH: And I can certainly see it with NPPD because there's so many interconnections with selling power for wholesale to local municipals and such, but in the case of like a...and I can't imagine how it would necessarily be that you might have someone that is employed by OPPD and wanting to serve on the board of directors of NPPD where there is really not that type of connection that would create a conflict of interest or even between NPPD and LES, or LES and OPPD or something like that. What do you think about that? [LB38]

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JOHN K. HANSEN: Well, generally I would say, in my years of experience and as a former public official myself, I would say that most folks think that you ought to be one public official all the time. And so they're concerned about having anybody who has two elected positions anywhere. And so in the case of elected positions, that's always, I thought, both as a public official and in my years of service here, seems like a reasonable expectation where, you know, one job at a time is usually, in most cases, a plenty. And if you're going to be a board of director of both OPPD and NPPD you'd also have to be a masochist I think. [LB38]

SENATOR SMITH: No, I mean, I'm sorry, not a board of each one, but an employee of one and a board member of the other. [LB38]

JOHN K. HANSEN: Okay. Yeah. In the case of an employee of one and a board of one, I would say that would raise maybe some issues because there are confidentiality issues within their corporate structure about who shares how much of what information. And if you're in a decision-making capacity, you should be in a position to have all of the necessary information to make all of the details for strategic decisions and so then when you get into the business of who gets how much, what information, it seems to me that there could be some...it would be hard to compartmentalize it cleanly sometimes. [LB38]

SENATOR SMITH: Thank you. [LB38]

JOHN K. HANSEN: Thank you. [LB38]

SENATOR LANGEMEIER: Mr. Hansen, I have a couple of questions. Currently now, you can be on an irrigation district board and an NRD board and a mayor. We have...Senator Avery has a bill in government to talk about that. You, to my understanding is is I could be on Norris Public Power District's board and I could run to be on NPPD district's board. This issue is about the manager running for the NPPD board. But in a lot of things in our statutes, we allow people to be on multiple boards. If there's a conflict of an interest for a manager from a rural power district to be on NPPD's board, wouldn't there still be the same conflict if one of their board members was also on NPPD's? So truly to get to your...what you're hoping this bill would do, should that not be expanded to board members as well, I guess is...? [LB38]

JOHN K. HANSEN: Well I would say that the...I think that where the bulk of our members would come down would say pick, do one or the other, but you shouldn't be on both of those boards with competing interests at the same time. And I don't...I'm not aware of it, maybe I just don't know, but I'm not aware of a situation where you've had someone who served in both capacities at the same time, but I would think I would find it awkward. [LB38]

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SENATOR LANGEMEIER: But yet we want to prohibit it in one case, but not in the others, even though you're leaving it up to good judgment in the other case that you wouldn't want to run for both. [LB38]

JOHN K. HANSEN: Well I...I certainly would not be opposed to expanding it to cover that potential issue. I mean, we've gone a very long time and never got to the point where we had to address this first issue. And so we haven't really, you know, I don't know that we've had that before. So if that's a consideration, I would think that that..it would seem reasonable with the concerns and the conflicts and the perception of those things that our members raised to add that. [LB38]

SENATOR LANGEMEIER: Okay. Very good. Are there any questions? Seeing none, thank you very much for your testimony. [LB38]

JOHN K. HANSEN: Thank you very much, and I wish the committee deliberations well. [LB38]

SENATOR LANGEMEIER: Thank you. Further testimony in support of LB38. Good afternoon. [LB38]

JOHN McCLURE: (Exhibit 1) Good afternoon. Chairman Langemeier, members of the committee, my name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm interim president and CEO of Nebraska Public Power District here today in support of LB38. Let me provide some brief background information. The page is handing out for you three maps that I think help clarify this issue. As you know, we have four types of electric utilities in the state; we have municipal electric utilities, cooperatives, joint action agencies, and public power districts. There are 31 public power districts in Nebraska. They're the only group that has a publicly elected board. And you are eligible to serve on the board of a public power district if you are a registered voter within the chartered territory. So as you look at the first map that's been handed out, all of those colored sections are rural power districts and a cooperative in the state that are supplied by NPPD. They get all of their power requirements from NPPD under 20-year contracts. So citizens in those areas are eligible to run for the NPPD board even though they may be served by the rural power entity. In addition, as this notes, there are 266 incorporated municipalities that they serve directly in those areas. The red communities you see are better identified on the second map. Those are wholesale communities in the state where NPPD is the wholesale supplier to the local electric utility which is a municipally-owned electric utility that provides the ultimate retail service. Those citizens are also eligible to run for NPPD's board. And then finally the last map you see are the 80 retail communities around the state that NPPD operates or owns the retail distribution system and provides the service. So if you think about it going back to that first map, with respect to public power districts, you couldn't have someone from Custer Public Power District running for the Loup Valley's board, but you could have someone from anywhere within this

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area running for the NPPD board. To the Chairman's question about can a director serve on two boards, the current law provides that no person shall be qualified to be a member of more than such district board. So that's in present law. But it is altered in this and maybe needs to be looked at further. Let me make several comments. If you think about the board of directors of a power district, it does four principle things: it makes policy; it sets rates; it authorizes expenditures; and it selects a CEO. There are many other tasks, but I think those are the four major areas. And so I look at our board and I've been at NPPD for 30 years, and we've had director backgrounds including small business, farmers, ranchers, bankers, engineers, lawyers, business executives, and retired electric utility employees. In fact, of our current board of 11 directors, we have three on that board that have some sort of utility background: one was with a municipal electric system; one was with a rural electric system; and the third has been a member of a rural electric board. So again in their former lives they had those utility backgrounds. And we think...and I think it's a matter of public policy, the board of a public power district should be independent because it does have a fiduciary responsibility to protect the assets of the district. And the question comes up, are there inherent difficulties if you have someone who is an executive or employee of one power district attempting to be on the board of directors of a power district, especially where it's one where there's a contractual relationship? As a practical matter, a NPPD board member couldn't get on an OPPD board in all probability going forward because you wouldn't be in the service territory following LB53 being implemented. This doesn't just restrict other power districts that buy from us, but Loup, for example, this would prohibit NPPD employees from potentially dominating the Loup board. Loup is headquartered in Columbus. That's where our corporate headquarters is. We could take over that board if enough employees were elected. We don't think that's a good idea. They have a long-term contract, as well as a hydro contract. Obviously, these issues are not black and white. Every customer has some personal stake in decisions, but we think that the inherent conflicts between being an employee of a customer, in particular of a power district, and trying to serve on both sides, you know, as you deal with issues, who are you representing? Are you representing the utilities' interests where you came from, or are you representing the utility that you're on the board of? With that I'd be happy to attempt to answer any questions. [LB38]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. McClure?
Senator Smith. [LB38]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. McClure, going back to the question I had before, do you see a problem with...a potential problem with allowing the employee to take a leave of absence and remain on the board, take a leave of absence as an employee and remain on the board? [LB38]

JOHN McCLURE: I...I haven't thought that through, as the previous witness indicated. In 70-plus years of public power districts in the state, I think this is the first time that this

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issue has come up where an employee of one district was trying to get on the board of another. I was thinking about NPPD, if you took an uncompensated leave of absence, I think you would lose all salary, all benefits, that would be accruing. We don't have a pension; we have a 401K. If you don't have a salary, you're not contributing to that. So it would be a huge personal sacrifice for someone to take a leave of absence in order to serve on our board. It would be a huge financial sacrifice. [LB38]

SENATOR SMITH: It may be a little bit different from public power district to public power district, so I'd encourage maybe to process through while you have the hood up on this one. [LB38]

JOHN McCLURE: Sure. [LB38]

SENATOR SMITH: Maybe really think through that and see what the implications of that would be. And then also, currently, let's say an OPPD employee can live outside of the service tier of OPPD, be unemployed, but they may reside in the NPPD territory to be on the board. Would that necessarily have the same impact or problem as the other example that was given? [LB38]

JOHN McCLURE: I think that would be less of a conflict, but there are contractual relationships between NPPD and OPPD. Nebraska City too; NPPD buys 159 megawatts under a life of a project. OPPD is buying from NPPD on the Ainsworth Wind project and on other wind projects. We do have employees of NPPD who live in Omaha who are OPPD customers. We have employees all over the state who are served by other utilities. But again, I think with our wholesale customers who have those 20-year, long-term contracts, you're potentially on opposite sides of contractual questions of rate-making issues, of other things, and again, these utility executives...and we have one case example, have tremendous utility knowledge and would bring that to the table. But are there certain inherent conflicts and is that the governance model that is contemplated in the current public power statutes? [LB38]

SENATOR SMITH: Okay. I think you're on the right track on what you're trying to do and I appreciate you moving down this path. I would just, you know, those are the two issues that I would see with this bill. But thank you. [LB38]

SENATOR LANGEMEIER: Senator Dubas. [LB38]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. McClure. Do your board members have to sign any kind of confidentiality agreements? [LB38]

JOHN McCLURE: They don't sign confidentiality agreements, but we have certain issues that get discussed in executive sessions that are confidential. They deal with pricing information from vendors that they tell us this is confidential, you can't discuss it.

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There's strategy discussions about litigation, strategy discussions about negotiations, those kind of things that are done in confidence and cannot be disclosed. [LB38]

SENATOR DUBAS: And so something that a person could learn or participate in, in an executive session could influence or give them an unfair advantage in their position with another... [LB38]

JOHN McCLURE: Potentially. I mean we certainly...again, when this situation arose and it's the first time it's ever come up, we were all scratching our heads about certain situations where we saw inherent difficulties and inherent conflicts because of the contractual relationship. And I have two of my largest wholesale customers out here and we like to be in alignment, we don't like to be on the opposite sides of things. So it's not, you know, we don't like to come in front of the Legislature and have differences of opinion and you're going to probably hear some differences of opinion today. But long term for public power district governance, at least under the current statutes, we think that there is inherent conflicts if the employee of a power district could serve on the NPPD board. [LB38]

SENATOR DUBAS: Thank you. [LB38]

SENATOR LANGEMEIER: Very good. Are there any other questions for Mr. McClure? Seeing none, thank you very much for your testimony. [LB38]

JOHN McCLURE: Thank you. [LB38]

SENATOR LANGEMEIER: Further testimony in support of LB38. Good afternoon. [LB38]

GARY THOMPSON: (Exhibit 2) Good afternoon. Senator Langemeier, members of the Natural Resources Committee, my name is Gary Thompson, G-a-r-y T-h-o-m-p-s-o-n and I am here in support of LB38. The primary difficulty that I have, I have some written testimony which I'm presenting to you, and it deals particularly with the interests, the breach or the difference, the conflicts of fiduciary interests. Certainly as a member of the NPPD board, I have a fiduciary obligation to the ratepayers, to the people of Nebraska with regard to my interests in Nebraska Public Power District. At the same time, any member or an employee of one of our customers certainly has a fiduciary obligation to that employer. And it is when those two interests conflict that I think we see a real problem here. So indicated, certainly we understand that if there is a financial conflict of interest that is governed by present law, but it's where you get into the fiduciary interests that I think is the problem. I want to point out a couple of things that I think I saw that could happen. As an attorney, I'm an attorney, I certainly recognize that I cannot represent one party to a contract and at the same time represent the other parties to that contract. That's clearly a breach of interest. In the public power industry we do have

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a contract between NPPD and our wholesale customers. And I would like to think, as John McClure just said, that we have identical interests. We try to make sure that we are working together, cooperating, and so forth, but we have to understand that we do not have identical interests all the time. We do have a contract. That contract is like 30 pages long and it represents the rights and obligations of each side of the contract. And so it is...would be very difficult for one person who has a fiduciary obligation to NPPD and a fiduciary obligation to the other party to try and represent those things. I have one instance I would point out, and we mentioned about 20-year contracts, simple thing, from NPPD's point of view because we issue bonds that are revenue-based bonds, we need as long a term contract as we can get with our wholesale customers because that's what our bonds are based upon, the ratings. And at the same time our wholesale customers would like to have fairly short contracts because there are options in the future which they might want to look at. So the question is would I as a member of the NPPD board, I certainly want as long a contract as I can get. On the other hand, as an employee of the customer, I want as short a contract as I can get. So which way do you go in that kind of a situation? This is not just simply an issue of rates. I want to keep my rates as low as I can, but I don't have a fiduciary obligation to any other ratepayers since I am independent and represent the people who elected me. On the other hand, if I were an employee of a particular district, then I have a fiduciary obligation to keep those rates as low as possible and I understand that. But it's not simply a matter of a conflict of rates or of finances. We talk about confidentiality. As we negotiate these terms of contracts and so forth, it would be virtually impossible for particularly the manager of a customer utility to sit in the NPPD board while we're discussing the strategies of negotiating with a customer. It simply could not be done. At the same time, that individual could not represent the customer that he serves because he would be a member of the NPPD board and he simply could not do that. So I think there are a number of problems that exist, far more than just a simple conflict of interest over rates. Some very complex issues, and I think this bill does begin to get to that and I think it's a good step and I would certainly ask that you support it. Thank you. [LB38]

SENATOR LANGEMEIER: Thank you very much. Are there any questions for Mr. Thompson? Seeing none, thank you very much. [LB38]

GARY THOMPSON: Thank you very much. [LB38]

SENATOR LANGEMEIER: Further testimony in support of LB38. Good afternoon. [LB38]

VERN JANTZEN: Good afternoon. Chairman Langemeier, members of the committee, my name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I am a farmer from Plymouth. I am also a...get my electricity from Norris Public Power District and so when we found out...when my neighbors and I heard that the general manager from Norris was considering or had filed to run for the Nebraska Public Power Board, we were a little puzzled how this was

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going to be in our best interests because as you heard from previous testimony, there is a buyer/seller situation that exists many times in this situation and we were just really concerned about. So whose interests are going to be represented here? How does this all work without getting in crosswise or finding things out that you need to know and that you need to know from one standpoint, but you are not allowed to share with some people. And so I'm just here to tell you that we are really perplexed by how this happened and we weren't sure how this was all going to play out. We don't think it's a good idea and that's why I am here urging your support of this bill. Thank you. [LB38]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. Further testimony in support of LB38. Seeing no other testifiers in support. Testifiers in opposition, against LB38. Good afternoon and welcome. [LB38]

GARY HEDMAN: Chairman Langemeier and members of the Natural Resources Committee, my name is Gary Hedman, that's G-a-r-y H-e-d-m-a-n. I'm president and CEO of Southern Public Power District, primarily located out of Grand Island, Nebraska. I'm here today appearing before you on behalf of my board of directors who have voted to oppose this legislation. I looked at the statement of intent and really there weren't many reasons given in that. And so my testimony, I guess, is based on reasons, numbers of reasons why we feel that the current situation should remain. First number I would throw at you is a billion, 35 million. That's the number of kilowatt hours we purchased from NPPD in the last year. We think those are a lot of reasons why we ought to have some sort of say in how they operate their business. I've sent \$68 million of my customers' revenue to NPPD to pay for the costs they have created. I have 26,000 customers who have their retail bill at stake with what NPPD does, because 70 percent of my total cost comes from cost of power from NPPD. The next number I would throw out is 44 percent. That's the rate increase that we've incurred in the last four years compounded from NPPD. Now there's lots of reasons for that, but we've had no say in really in the decisions that have been made by the NPPD board that have created those costs. There are 11 members there, two of which actually reside in Lincoln and won't be serving, and you take that down to nine. Of the nine, seven of them live in municipalities. So there are two members of the board that have any rural impact at all. The final number I would give you is one, and that is my board member, John Kuehn, who is the chairman of our legislative committee, would love to have been here today, feels adamantly about this issue, and he says let the voters decide if there is a conflict of interest, not the Legislature. And I believe that's what happened in this instance. If we were to be elected, I think we have a very vested interest in the efficiency and the operation of NPPD and that the inclusion of those people would be actually good for the operation of the entity. I look at Tri-State G&T in the western part of the state which is all wholesale. NPPD is part wholesale, part retail. The really retail represented on their board, every wholesale customer is a member of the board of Tri-State. I think they have 24 of them. I've heard that there are two sides, and that's the

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problem right now. There are two sides. It really should be one side working for the best of the customer. I would be there working for the best of the customer just as they are. I asked myself why would anybody want to run? Why would they want to do that? And I can tell you that there are wholesale customers that are distraught by the actions of the NPPD board at times. I am personally familiar with a meeting whereby a group of wholesale customers got together and they asked the NPPD board not to approve something and they went ahead and did it anyway. So are they looking out for our best interests? We're doubtful at times. And with that I would conclude my testimony and be willing to answer any questions. [LB38]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Dubas. [LB38]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Hedman, for being here. And I have so much respect for both our REAs and for NPPD, that's what makes it difficult to process this bill because I know what you guys do for us as customers, but I also know what NPPD does. So I guess my first question would be do you have, and it doesn't sound like it in your testimony, but do you have any means of addressing conflicts or concerns or questions in the way NPPD deals with you or you interact with them? [LB38]

GARY HEDMAN: You know, I listened to that, Senator Dubas, and I basically don't know that there is that conflict. If it's good for NPPD, it's good for Southern. If it's good for Southern, it's generally good for NPPD. I don't see a real conflict. [LB38]

SENATOR DUBAS: Okay. You raised that NPPD has made some decisions that you haven't...your board, your power district hasn't necessarily been supportive of. Do you...outside of just meeting with them, is there any public hearing process that you go through? [LB38]

GARY HEDMAN: Oh sure, there's not...I'm not saying they're not opening to listening, but I remember painfully the rate hearing that I filed a protest at, one of the board members saying, well, we have a lot of responsibility here and we're the ones that have to decide these things, not you. We are the ones that look at this stuff and determine the costs. Every cost they create comes back to us. If they run short, they put it in the next rate period. We pay for it sooner or later, every cent. And right now with our current contracts, and this is something I personally feel is wrong, the NPPD board can make decisions to create costs within their organization that my customers have to pay and we have no say on that whatsoever. They can advertise on the Nebraska football games and pay a big bill and that becomes cost of power and we have to pay for it. [LB38]

SENATOR DUBAS: So there are some decisions that are made that directly impact you, but you feel like you don't have any ability to interject on. [LB38]

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GARY HEDMAN: None. None. I mean, I interject; they will testify that's true, I interject, but, you know. [LB38]

SENATOR DUBAS: All right, thank you. [LB38]

GARY HEDMAN: You bet. [LB38]

SENATOR LANGEMEIER: Senator Smith. [LB38]

SENATOR SMITH: Thank you, Senator Langemeier. Just a clarification, an employee of Southern Power District, you would want them to be able to run for office on the NPPD board? [LB38]

GARY HEDMAN: I just don't think they should be prevented from doing it. [LB38]

SENATOR SMITH: Okay. Just so they should be allowed to do that. But would you agree that it would not be a good idea for an employee of Southern to have the opportunity to run for Southern's board. [LB38]

GARY HEDMAN: I would agree. And there's a difference. They would have the opportunity to influence things that would affect them personally, personally by being fringe benefits, wages, those kinds of things. As an employee for Southern on NPPD they would not have that same conflict. [LB38]

SENATOR SMITH: So there would need be full disclosure and avoid the conflict of interest then, basic...basic elements of business, right? [LB38]

GARY HEDMAN: Absolutely. [LB38]

SENATOR SMITH: All right. All right, thank you. [LB38]

GARY HEDMAN: Absolutely. Um-hum. [LB38]

SENATOR LANGEMEIER: Mr. Hedman, with the numbers you gave on the kilowatts and the millions of dollars paid and the rate increases that you say you're unrepresented on, even though you have representation in your district, would it not make sense then to say why do we have an elected board at the NPPD? Why don't we put all the general managers from all the rural electrics and why don't they just run the operation? [LB38]

GARY HEDMAN: Well first of all... [LB38]

SENATOR LANGEMEIER: That's what you said. [LB38]

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GARY HEDMAN: I'd like to thank you for asking the question, because I was going to bring it up when the light came on. It would not be wrong, in my opinion, to have a mixture of elected residents, and that's what you have to be now, and wholesale customers elected at-large. I would not think that would be a bad mixture. You would have the interests of both parties involved there. And I should know the percentage of sales that goes to wholesale, but it's...I think it's roughly 55, 58 percent, something like that. That's a lot of their costs going back to us and we just don't have anybody there to speak up for us. [LB38]

SENATOR LANGEMEIER: Very good. Thank you. Seeing no other questions, thank you very much. Further testimony in opposition. Good afternoon. [LB38]

JAY HOLMQUIST: Good afternoon. Mr. Chairman, members of the committee, I'm Jay Holmquist, that's J-a-y H-o-l-m-q-u-i-s-t. I'm the general manager of the Nebraska Rural Electric Association. We represent 35 rural public power districts and electric cooperatives in the state of Nebraska; and 23 of our members are wholesale customers of NPPD and therefore care about all things that impact NPPD. But it is important to remember that LB38 doesn't just apply to NPPD. It applies across the entire state and that's, at least in part, the reason for our opposition to it. I'd point out that it was just two years ago that the Legislature passed LB53 which was a bill brought to you by NPPD. And that bill basically changed the statutes that would allow people that are not customers of NPPD to serve on the NPPD board. Under the new law, under LB53, to be able to serve on the board, to vote for the board you have to either be a retail customer or a wholesale customer that gets at least 50 percent of their electricity from NPPD. We thought we were very supportive of that bill; thought it was a very good idea to ensure that the people that are on the NPPD board have a financial stake in the decisions that are made. At the time of passage of LB53, there were three members of the 11-member board that were not even customers at the wholesale or retail level of NPPD. And two of those still are on the board. That will change after the redistricting with the 2010 census and I think the NPPD board will be better after that. But to us, LB38 looks like we're turning, basically, turning back the clock, trying to go back to the old way and not allow people that are impacted by NPPD's decisions to serve on the board. I would point out that LB38 unfairly singles out the employees of public power districts. NPPD has some very large private companies that are customers, in fact, that have probably pay a larger bill to NPPD than our members do, many of our members. This does not prohibit an employee of Nucor Steel from serving on the NPPD board, or Tyson Foods, or any of the other large customers of NPPD. It also does not prohibit anybody that is an employee of a city utility that gets their power from NPPD from serving on the board. And I think as John McClure pointed out, there are 52 wholesale towns and about 80 that are retail towns of NPPD. This bill would not restrict their service on the NPPD board or one of our members that's an electric cooperative, they would not be impacted either. In closing I think I'd like to point out that others have stated, this is the first time

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anyone can remember this issue coming up and NPPD has been in existence for over 40 years. I think it was made an issue in the election. The voters took that into consideration as they went into the...and marked their ballots. The public power district manager lost. And I think it's best to just trust the voters to make the right decision in this situation. Personally, I think Senator Smith pointed out, you could have...and this does apply outside of NPPD. You could have somebody who is a great employee at OPPD that lives in Butler Public Power District's territory that might want to serve on the Butler board; this bill would prohibit that. And we would oppose it. Thank you for your time. [LB38]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much, Mr. Holmquist. [LB38]

JAY HOLMQUIST: Letting me off easy. Thank you. [LB38]

SENATOR LANGEMEIER: You got off easy. Further testimony in opposition. Good afternoon. [LB38]

KEVIN POLLARD: Good afternoon. My name is Kevin Pollard. I'm the manager of Norris Public District in Beatrice, and I'm probably why we're here today. I just want to make a couple of clarifications and give you the opportunity to ask me a couple questions. The reason I chose to run for the board were many. [LB38]

SENATOR LANGEMEIER: I gotta stop you. You need to spell your name first. [LB38]

KEVIN POLLARD: Oh, K-e-v-i-n P-o-l-l-a-r-d. [LB38]

SENATOR LANGEMEIER: Thank you. [LB38]

KEVIN POLLARD: But before I made that decision to run, I went to NPPD to the gentleman that just testified for this bill and asked him if he or his board had any issues with me doing so. He said none whatsoever. And so today we sit before you with him testifying in the exact opposite direction. That conversation took place. I guess just to clarify, maybe to ask a couple of questions, what are we afraid of? I think that Mr. Hedman and I back here represent about \$130 million of the \$700 million or so dollars of wholesale power costs to NPPD. We have a lot at stake, about 70 percent of all of our costs go to NPPD. And so we really feel that to have a voice and to be able to, you know, have a direction with that board was very important. One other major clarification, retail customers sitting on a board of directors have more of an ability to have a conflict of interest than a wholesale customer, period. I cannot negotiate a rate with NPPD because everybody at NPPD pays the same wholesale rate, period. What are we going to do next year when the CEO of NUCOR, which is a huge retail customer of NPPD, who will be devoting on his direct retail rate runs for their board? Are we going to be

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back here excluding him from running? Most of the real public power districts in Nebraska are made up of a majority of different kinds of customers. Some of those have a majority of irrigators. They have a very specific interest, believe me, I know, because I have some, about the way retail rates are set. As a wholesale customer, a large wholesale customer of NPPD, I cannot affect the wholesale rate any differently than any other wholesale customer; we all pay the same rate. So I think to say that a retail customer has less of a conflict of interest than a large wholesale customer is absolutely false. Double dipping, if you want to take away the salary for an employee of a public power district that runs for another, fine with me. The salary was not my main concern. My main concern is seeing that all of us continue to have the advantage of public power in Nebraska that we've had. And some of us are concerned with the way things are going. We've had almost 50 percent rate increase in the last five years. I don't know what kind of a vested interest I could possibly have for myself, except for the 20,000-some odd customers we serve in southeast Nebraska. I...I fail to see how anybody could look at that and say Kevin Pollard has a vested interest for himself. It's just for the customers, where we send 70 percent of our money to, period. With that I would answer any questions you may have. [LB38]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Pollard? Seeing none, you did a good job. Thank you very much. [LB38]

KEVIN POLLARD: Thank you. [LB38]

SENATOR LANGEMEIER: Further testimony in opposition. Seeing none, is there any testimony in a neutral capacity? Seeing none, Senator Haar, would you like to close? [LB38]

SENATOR HAAR: It kills me sitting back there not being able to ask questions, but I'm learning. (Laughter) [LB38]

SENATOR LANGEMEIER: Us too. [LB38]

SENATOR HAAR: Thank you very much. Well I think today I won't really add anything except to say I think this bill is just common sense and this hearing also illustrates how things can be made better, and I think some of your suggestions, Senator Smith, are right on in terms of expanding this to boards perhaps. And I'm sure we will work on this in committee. So thank you very much and I appreciate everyone. And I'd also like to just congratulate John McClure in his new position; probably gets less sleep at night than he did before. Thank you very much. [LB38]

SENATOR LANGEMEIER: Very good. Thank you, Senator Haar. That concludes the hearing on LB38. We will now open the hearing with Senator Schilz on LB391. We're going to take a couple minute recess. [LB38]

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RECESS

SENATOR LANGEMEIER: (Recorder malfunction) ...LB391, Senator Schilz, welcome.
[LB38]

SENATOR SCHILZ: (Exhibits 3, 4, and 5) Good afternoon, Senator Langemeier, and members of the Natural Resources Committee. My name is Ken Schilz, K-e-n S-c-h-i-l-z and I represent the 47th Legislative District. And I'm here today to introduce LB391. LB391 is introduced to raise awareness of the impacts of invasive species in Nebraska and creates the Nebraska Invasive Species Council to coordinate invasive species management and research in the state. The bill would assign duties to the council with a purpose and obligation to fulfill them and would provide a mechanism to report on invasive specie issues to the Legislature. Duties of the proposed council would include developing a statewide adaptive management response plan, facilitating communication and collaboration, assisting with public outreach, and provide information to the Legislature and other interested parties on invasive species issues. Creation of this council would also provide land managers with the information needed to utilize funding and resources more effectively and efficiently to reduce the impacts of invasive species on the economy of Nebraska. Products and activities of the Nebraska Invasive Species Advisory Council would be advisory in nature based on the most current, scientific evidence and not intended alone to dictate management actions or regulatory action. Nearly 20 states have created invasive species councils through legislation to aid landowners, natural resources managers, and legislatures in invasive species management decisions. I've received a few e-mails today from folks that were worried that cats somehow would be included in this legislation and could be included as invasive species. I would like to address that at this point. This bill in no manner or in intention would include any cats or domesticated animals. The U.S.D.A. National Invasive Species Information Center has an invasive species definition clarification and guidance whitepaper that states: invasive species are those that are not native to the ecosystem under consideration and that cause or are likely to cause economic or environmental harm, or harm to human, animal, or plant health. Plant and animal species under domestication or cultivation and under human control are not invasive species. Again, I'd like to emphasize that this legislation is not intended for any pets or domesticated animals. This is serious legislation that is directed toward a very serious issue that could potentially cause millions of dollars in damage and repair to our state. Whether it's the zebra mussel or vegetation that has no native competition, these are just some of the examples of the types of organisms that we're trying to address and manage. I will continue to work with the committee, the university, and National Invasive Species Information Center to make sure that we can get a council in place that addresses and answers the issues that are at hand. Thank you, and I'd be happy to answer any questions at this time. [LB391]

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SENATOR LANGEMEIER: Are there any...Senator Smith. [LB391]

SENATOR SMITH: Thank you, Senator Langemeier. Senator Schilz,... [LB391]

SENATOR SCHILZ: Um-hum. [LB391]

SENATOR SMITH: ...thank you for clarification on the cat issue because I received many of those e-mails as well. [LB391]

SENATOR SCHILZ: I seem to be pretty good at that...producing e-mails this year. [LB391]

SENATOR SMITH: Yes, second only to Daylight Savings Time, right? (Laughter) Can you clarify...would that be an amendment then to Section 2 of the bill to better define what invasive species are? [LB391]

SENATOR SCHILZ: And I think...yeah, and we can look at that. I'm more than happy to put a better definition in. What we didn't want to do was restrict that definition too much to where a real invasive species could not be included in there. And at first we had a whole list of species that were included in the legislation itself. And we took that out just because we thought it was too proscriptive and too narrow. So we did that with the reasoning to be able to give these folks flexibility in naming those themselves, putting it into the rules and regs of what they do. But if we need to do that in statute, we can take a look at that. [LB391]

SENATOR SMITH: All right. Thank you. [LB391]

SENATOR LANGEMEIER: Are there any other questions? Senator Dubas. [LB391]

SENATOR DUBAS: Thank you, Senator Langemeier. Senator Schilz, is any of this work already being done to a degree anyway like by Game and Parks or Department of Ag? [LB391]

SENATOR SCHILZ: Sure. Yeah. And there's other folks here that could better answer that than me, but I think what we've seen so far is a kind of a piecemeal patchwork type of an approach and this would, hopefully, what this would do, and what my intention of seeing this go through, is to start to build a clearinghouse. Start to build a one-stop shop for people to come and say, hey, these are the issues facing our state and to go around so we don't invent the wheel or re-create the wheel as we move forward to try to mitigate some of this that's going on. [LB391]

SENATOR DUBAS: Thank you. [LB391]

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SENATOR LANGEMEIER: Are there any other questions? I think we can point blank put a line in there that says we're excluding all domesticated cats. [LB391]

SENATOR SCHILZ: Okay. I'm okay with that. [LB391]

SENATOR LANGEMEIER: To slow my e-mail down. Senator Smith. [LB391]

SENATOR SMITH: Thank you, Senator Langemeier. [LB391]

SENATOR SCHILZ: Uh-huh. [LB391]

SENATOR SMITH: One more question, Senator Schilz, so there's...none of the people that would be on this review council, review committee would be compensated. Many of those would be from existing departments and there would be a few that would be at-large. [LB391]

SENATOR SCHILZ: Right, absolutely. [LB391]

SENATOR SMITH: All volunteer. [LB391]

SENATOR SCHILZ: Right. As far as I understand, that's the way it would be. [LB391]

SENATOR SMITH: All right. Thank you. [LB391]

SENATOR SCHILZ: Yep. Thanks. [LB391]

SENATOR LANGEMEIER: Senator Haar. [LB391]

SENATOR HAAR: There's a weed council that's very similar to this right now that looks at... [LB391]

SENATOR SCHILZ: If you're talking about the Riparian Task Force... [LB391]

SENATOR HAAR: Yeah. [LB391]

SENATOR SCHILZ: ...Vegetation Task Force. [LB391]

SENATOR HAAR: I mean this has to do with animals, but we already have something in place for plants. [LB391]

SENATOR SCHILZ: Right. And basically, and having talked with Senator Carlson about this, that council will sunset in 2013. And so we have talked that this may be a logical next step to move forward, but with the understanding that the Riparian Vegetation Task

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Force has done important work on that level and in no way is this to stop any work that's being done over there. [LB391]

SENATOR HAAR: Good. Thank you. [LB391]

SENATOR SCHILZ: All there to help augment and enhance what's happening. [LB391]

SENATOR LANGEMEIER: With that said, that brings up another thought is,... [LB391]

SENATOR SCHILZ: Uh-huh. [LB391]

SENATOR LANGEMEIER: ...can we just charge them with the same task and utilize the committee we already have? [LB391]

SENATOR SCHILZ: We can talk about that. The only problem that's there right now, we could probably use the same format, it is just do we have the expertise on that to deal with some of the aquatic and terrestrial species that we're talking about. But I think that is something that we could look at for sure. [LB391]

SENATOR LANGEMEIER: Okay. Thank you. [LB391]

SENATOR SCHILZ: Thank you. [LB391]

SENATOR LANGEMEIER: Very good. You have heard the opening on LB391. Now we'll move to open testimony, those that would like to testify in support of LB391. [LB391]

DAVE TUNINK: Good afternoon. Chairman Langemeier, members of the Natural Resources Committee, my name is Dave Tunink, that's D-a-v-e T-u-n-i-n-k. I serve as an assistant fisheries division administrator of the Nebraska Game and Parks Commission. I'm here today to testify for the commission in favor of LB391. At this time there's an estimated 50,000 invasive species in the United States including thousands of plants, anthropoids, microbes, hundreds of birds, fish, mollusks, reptiles, amphibians, and mammals. The combined economic impact of these species are estimated at over \$100 billion each year annually. This includes agricultural, commercial, recreational losses, infrastructure damage, and costs of controlling these invasive species to prevent additional damage. In addition, these invasive species have a major impact on environmental conditions and have been implicated in the decline of nearly half of the species currently listed federally threatened or endangered. Many invasive species have gained access to the United States via our ports through commercial transportation. Due to Nebraska's location in the center of the United States, we have been sheltered from the early infestation of many species. In recent years, Nebraska has had to start dealing with the expanding populations of phragmites, salt cedar, purple

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loosestrife, all found along our lakes, rivers, and streams. We now have expanding populations of Asian, silver and bighead carp in the Missouri River and its tributaries. This past fall, you've probably seen it, we found our first documented population of zebra mussels in a public lake in Millard. Our ash and pine trees are currently being threatened by insects and pathogens that are already at our neighboring states and unfortunately the list of invasive species continues to grow and it is important to stay on top of this issue. Dealing with invasive species, either controlling or preventing their introduction to Nebraska, is a statewide issue, thus the importance of creating the Nebraska Invasive Species Council. Membership of this council would have representation from several state and federal agencies, as well as from the private sector. It is also important to have membership that represents a wide variety of interests, since most of these invasive species can have wide impacts of which a considerable amount will be on private lands. This council will provide for a means for exchange of information concerning invasive species such as the current status of existing invasive species, new species of concern that may be coming in here, along with specific action that may best address them. I'm sure Senator Carlson wish we would have had this council years ago when we just had small populations of phragmites and we could have addressed it then at a lot lower cost. Gathering information or input from these various representatives, as well as from nonvoting members from federal agencies will ensure a development of a statewide adaptive plan, management plan that will have broad support. Currently most agencies, groups, and organizations are working independently when dealing with invasive species. This council will provide a reliable source of information for both the Legislature and the Governor on issues related to invasive species since an annual report is required that will cover all activities related to invasive species across the state by all members represented on the council. The creation of the Nebraska Invasive Species Council will result in a more systematic approach and invasive species management would be more effective and efficient. Thank you for your consideration of this bill and I would hope that you support it. Any questions? [LB391]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Dubas. [LB391]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Tunink, for being here. Could you not do this same thing without this legislation? What makes this legislation work? [LB391]

DAVE TUNINK: I think this bill will give credibility to this group. Yes, we already have a small group that meets periodically, but this bill would give us more credibility and actually would help support and give us a reason to be together and have more power to make better decisions. And it would improve the communication between all these groups and get ideas from the private sector how best to handle these things. [LB391]

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SENATOR DUBAS: Okay. Thank you. [LB391]

DAVE TUNINK: Yes, Senator. [LB391]

SENATOR LANGEMEIER: I'm going to follow up on that question. And I'm not a big one for creating these task forces, and that's why I brought up to Senator Schilz the idea of combining something else. You talk about having more power to make decisions; expand on that a little bit, you lose me there. [LB391]

DAVE TUNINK: Well I think when you have a group decision and you get consensus among all the groups, you'll get some better decision making. Also communications between different agencies and private people about the severity of certain species. Not all invasive or non-native species are going to have the same level of impact. We know what phragmites does. We know what zebra mussels do. But there's other invasives out there that may or may not have an issue. It's a better way to get information between the groups. [LB391]

SENATOR LANGEMEIER: Okay. And then my other question is, just kind of a side note of interest. I'm not sure if Senator Schilz gave us this piece of paper or you did, but it talks about feral hogs and my first year in the Legislature I didn't want Class I schools bill to come up, so I spent two days on the floor talking about feral hogs to delay us from getting to the next bill. It talks about on here that we're still having significant problems. It doesn't give a state value, but it says on a national level \$800 million in annual damage. What kind of damage are we still having in Nebraska, because that bill, I remember it so well... [LB391]

DAVE TUNINK: Yeah, I think we pretty well got them wiped out. The only one that might be still around is around in Harlan County. The rest of the state is pretty well cleared out. But you go south of here in Kansas, Oklahoma, they wish they didn't have them. [LB391]

SENATOR LANGEMEIER: Yeah. I had a whole group of friends that went to Texas and went hunting. So I can relate. Well thank you very much. [LB391]

DAVE TUNINK: All right. Thank you. [LB391]

SENATOR LANGEMEIER: Further testimony in support of LB391. Don't be shy. Mr. Edson, welcome. [LB391]

DEAN EDSON: How are you today? [LB391]

SENATOR LANGEMEIER: Doing really good. [LB391]

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DEAN EDSON: (Exhibit 6) Good. Chairman Langemeier and members of the Natural Resources Committee, my name is Dean Edson, it's spelled D-e-a-n E-d-s-o-n and I'm executive director of the Nebraska Association of Resources Districts. What I've prepared...provided for you is a letter from John Thorburn who wanted to come in and testify in support of the bill today, but due to a schedule conflict he couldn't come in. I want to hit just a couple of highlights in his comments and then try to answer any questions you may have. Several of the NRDs have been working on invasive species issues in the past and we've worked closely with weed management areas working on phragmites. We've been part of the Vegetation Task Force and provided some funding for that activity. We've also worked with the Forest Service on pine bark beetles in western Nebraska and emerald ash borers, and most recently the Papio district has been working with Game and Parks on the zebra mussel issue in Zorinsky Lake. We want to offer our support for this concept; or if you'd like to pare it down a little bit and take a different approach, we would be willing to work with you on that. One thing we would also offer is that the NRDs be part of this group. We can provide some expertise to you and possibly also some funding. So with that I will close and answer any questions you may have. [LB391]

SENATOR LANGEMEIER: Are there any questions for Mr. Edson? I'll ask you one. I should have asked the previous testifier. We talk about zebra mussels. We've seen hundreds of pictures of them now been provided to the committee, but how big are they? Just the size of a dime, a quarter, two inches? [LB391]

DEAN EDSON: They're relatively small. I've never seen one personally up front. I've seen pictures of them. [LB391]

SENATOR LANGEMEIER: I'm getting some examples behind you of about that big, so. [LB391]

DEAN EDSON: Are you? I've seen pictures of a tennis shoe. [LB391]

SENATOR LANGEMEIER: I assume they start small and work up to a full size, a couple of inches. [LB391]

DEAN EDSON: Yeah, I've seen a picture of a tennis shoe that's covered with them. It looks...they're relatively small. They could be the smaller, younger, immature zebra mussels, so I imagine they vary in size. [LB391]

SENATOR LANGEMEIER: I'll Google it later, I'll handle it. [LB391]

DEAN EDSON: Yeah. [LB391]

SENATOR LANGEMEIER: Thank you very much. [LB391]

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DEAN EDSON: Yeah. Okay. [LB391]

SENATOR LANGEMEIER: (Exhibits 7, 8, 9, and 10) Is there anyone else who would like to testify in support of LB391? I have a letter in support from Joe Herrod with the Nebraska Council of Sportsmen's Clubs. I also have a letter from Bruce...does he want it read in for both of those? [LB391]

LAURIE LAGE: Um-hum. [LB391]

SENATOR LANGEMEIER: Okay. He wants it read in for this, Bruce Rumsey with the Nebraska Weed Control Association, Wes Sheets with the Nebraska Division of the Izaak Walton League, and Tim Anderson with Central Nebraska Public Power and Irrigation District in support of LB391. Is there anyone that would like to testify in opposition to LB391? Seeing none, is there anyone that would like to testify in a neutral capacity to LB391? Welcome. [LB391]

KARIE DECKER: (Exhibits 11 and 12) Hi. Chairman Langemeier, members of the Natural Resources Committee, thank you for allowing me to be here this afternoon. My name is Karie Decker, K-a-r-i-e D-e-c-k-e-r and I am the coordinator for the Nebraska Invasive Species Project at the University of Nebraska. The university does not have an official stance on this bill, thus I'm testifying in a neutral capacity today. Invasive species are a threat to both human enterprise and ecological systems, and are economically and ecologically detrimental. Specifically, cost estimates associated with the somewhat 50,000 invasive species in the United States exceeds \$120 billion per year. Recognizing the growing impacts of invasive species, the National Invasive Species Council was established by executive order in 1999 to ensure that federal programs and activities to prevent and control invasive species are coordinated, effective and efficient. Twenty states have now followed this effort by recognizing state invasive species advisory councils through legislation. In Nebraska, a number of invasive species are impacting our natural resources. This includes invasive plants, fish, feral hogs, insects, and many more. There are many agencies and organizations involved with invasive species management in Nebraska and many more individuals. However, these persons and institutions are often largely unconnected and are often unaware of the efforts of others, a source of frustration and inefficiency for managers responsible for the stewardship of our natural resources. The Nebraska Natural Legacy Project identifies invasive species as a key stressor to the biologically unique landscapes of Nebraska and recognizes that actions are needed to advance collaboration and communication regarding this threat. One such action is the development of a network of agencies and organizations to share information such as management techniques, information on existing projects, and invasive species range and risk information. LB391 would create the Nebraska Invasive Species Council. It would provide the opportunity to coordinate invasive species management and research across the state of Nebraska for the prevention,

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detection, and control of invasive plant and animal species. In addition, the bill would assign duties to this specified group with a purpose and obligation to fulfill them and would provide a mechanism to report on all invasive species issues to the Legislature and other interested stakeholders. Duties of the proposed council would include, for example, developing a statewide adaptive management plan, facilitating communication and collaboration, assisting with public outreach, and providing information to the Legislature and other interested parties on invasive species issues. The proposed partners of the Nebraska Invasive Species Council each bring a unique expertise to the table. Several members have collaborated on projects such as the Riparian Vegetation Management Task Force, the Platte River Recovery Implementation Program, the Aquatic Invasive Species Management Plan and others. A collaborative group representing all invasive species through this bill would serve as a reliable and consistent source of information for developing management plans and providing the most up-to-date prevention and control measures. The Nebraska Invasive Species Council as proposed would represent a coordinated effort with a goal of minimizing the impacts of invasive species on Nebraska's citizens to ensure the economic and environmental well-being of the state. And I'll be happy to take any questions. [LB391]

SENATOR LANGEMEIER: Very good. Are there any questions? Ms. Decker, I have a question. And I understand you're with the university and it's in a neutral capacity, but do you think you really need us as a group to tell you all to get along and have a meeting? I mean, could not Senator Schilz take this as a personal...and I'm not trying to put any judgment on this. [LB391]

KARIE DECKER: Sure. [LB391]

SENATOR LANGEMEIER: I'm throwing ideas out, but couldn't he take this on as his personal quest in his eight years in the Legislature to say I'm going to have these monthly meetings and I'm going to call you until you show up? And we're going to, at the end of the day, he's going to put something neat on his letterhead and a press release that says we did something? Do you really need us as a group to say...I feel a little like I'm talking to my 11-year-old and my 8-year-old saying you're going to share the Wii. [LB391]

KARIE DECKER: Right, right. No, and I understand, that's a very good point. What I think this bill might help with is sort of recognizing a group that is responsible for providing that information. It actually would give them the responsibility and make one group...give them the obligation to report on invasive species issues. Right now there isn't that obligation. There isn't an annual report or a report submitted to the Legislature or stakeholders on actions that are going on in the state with invasive species. So I think that would be one benefit of the group. [LB391]

SENATOR LANGEMEIER: Okay. And for the record, I get more reports than I can read

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now. [LB391]

KARIE DECKER: Oh, I'm sure. [LB391]

SENATOR LANGEMEIER: Senator Dubas. [LB391]

SENATOR DUBAS: Thank you, Senator Langemeier. And I think I'll just follow up on this. Apparently this is an issue that is very important; you're working on it, it must be very important to these groups too. We want to be sure that we keep these types of things under control, even get ahead of them if we possible can. Correct? [LB391]

KARIE DECKER: Right. [LB391]

SENATOR DUBAS: So wouldn't that be enough incentive for you to have that as this is our opportunity without the Legislature necessarily saying you have to do it. But if it's that important, do you need any additional incentive to come together? [LB391]

KARIE DECKER: Right. And that's a good point as well. And this group does see that as a very big incentive to come together and they do meet fairly regularly. What I think would be beneficial, as well, with this group is that in my position I get a lot of phone calls and e-mails with questions in regard to all invasive species. And it would be nice to be able to give them a solid answer; to say, you know, this group, the Invasive Species Council, this is what they are advising. This is what their recommendation is, rather than, hmm, this is what, you know, is based on scientific evidence. Or a lot of times what I end up doing is telling them what other state advisory councils can provide, because it is a more official answer. [LB391]

SENATOR DUBAS: Thank you. [LB391]

SENATOR LANGEMEIER: So at the end of the day, we're looking for an official answer. [LB391]

KARIE DECKER: Yes. Yeah. [LB391]

SENATOR LANGEMEIER: Okay, very good. Very good, you did a great job. No other questions? Thank you very much for your testimony. [LB391]

KARIE DECKER: Thanks. [LB391]

SENATOR LANGEMEIER: Any other testimony in a neutral capacity? [LB391]

SCOTT JOSIAH: (Exhibit 13) Good afternoon, Senator Langemeier, and members of the Natural Resources Committee. My name is Scott Josiah, S-c-o-t-t J-o-s-i-a-h. And

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I'm the state forester and director of the Nebraska Forest Service, which is part of the University of Nebraska. Thanks for the opportunity to testify today on LB391, establishing the Nebraska Invasive Species Council. As an UNL employee, I am testifying in a neutral capacity and will confine my comments to the very real threats of highly destructive invasive species. I'm also a member of the Governor's Riparian Vegetation Management Task Force along with Senator Christensen. So I can respond to any questions on that as well. Expanded international trade has dramatically increased the spread of non-native, invasive species into countries all over the world. These plants, animals, insects, and other organisms can cause great damage to native ecosystems and economies costing \$138 billion in environmental damage and losses each year. This damage has severe ecological, economic and social impacts such as the destruction of habitat, loss of recreational opportunities, loss of entire industries dependent on a particular resource, the elimination of native species, human health implications, and major damage to agricultural and forestry crops. You've heard about a lot of these already, West Nile virus, zebra mussels, salt cedar, and phragmites are just a few of invasive species that have caused tens of millions of dollars in damage in Nebraska. Another invasive species of great concern that I'd like to talk about is emerald ash borer. You've heard about this, I'm sure, in the news. Introduced from Asia into Detroit in 2002, this voracious insect kills every native species of ash tree in North America. Since its introduction into the United States just short of ten years ago, it has killed more than 50 million ash trees across ten states and two Canadian provinces. It has cost states, municipalities, property owners, nursery operators and forest products industries hundreds of millions of dollars in damages and has inflicted enormous ecological and economic harm on forests and communities across the Midwest. Ash has been the preferred species to plant in conservation and urban tree plantings in Nebraska for many years, probably 30 years, and comprises one-third of our riparian forests, our natural riparian forests. EAB is expected to kill every last one of our 44 million ash trees in our rural and urban forests with huge impacts on forest ecology, wildlife habitat, health and buffer effectiveness of riparian forests and increased wildfire risk. We estimate that EAB will cost Nebraska municipalities more than \$1 billion in ash tree removal, disposal, and replacement costs. It will also cost farmers millions of additional dollars to replace the ash component in over 30,000 miles of windbreaks across the state. Further, the loss of hundred of thousands of community ash trees will increase energy costs for homeowners, reduce the interception of precipitation and thus increase costs for stormwater infrastructure, require more repaving of streets, and reduce property values. It has been found as close as eastern Iowa, Missouri, and Minnesota. It's just a state away. And it's never been found yet in Nebraska, but the Nebraska Forest Service in partnership with other agencies are nevertheless preparing for its inevitable introduction and spread. This is just one of several highly destructive invasives poised to enter our state. Thousands canker disease of walnut is blowing up out of the southwest currently killing every last black walnut tree up and down the front range of Colorado and can kill, will kill if it gets into the state, 1.5 million walnut trees worth \$80 million in our state. Asian longhorned beetle is another one previously found

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in Chicago and now out of control in Massachusetts. If it gets here, it could cause enormous damage to our deciduous urban and rural forest resources. Invasive species create complex problems that can only be effectively addressed by coordinated action of many federal, state, and local agencies and private organizations. The Nebraska Invasive Species Council would focus on all invasive species, plants, animals, insects and other organisms. Since invasive species affect everyone in the state and public citizens are often the first line of defense for early detection programs, public education is absolutely essential for effective action. Currently, reactions to invasive species are often ad hoc, are focused on a particular problem, or are usually implemented after an invasive has spread widely, a good example is phragmites, raising the cost of control and reducing the chances of effective eradication. The Nebraska Invasive Species Council would fill this important need for public education and voluntary coordination of early detection, planning, and proactive mitigation activities. These services would reduce costs and create efficiencies in our response to EAB and other invasives. Formal establishment in state statute would solidify the standing of the Nebraska Invasive Species Council. It would enable the council to be more effective in conducting its educational and coordination functions, especially among state and federal agencies, and would improve fundamentally its effectiveness in external grantsmanship. I would be pleased to answer any questions that you might have. [LB391]

SENATOR DUBAS: Thank you, Doctor Josiah. Questions? Senator Christensen. [LB391]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Doctor Josiah. Is this emerald ash borer the...what bores in the side, makes a tree rot from the inside out on ash? [LB391]

SCOTT JOSIAH: No, its...that would be the native ash borer, and that's not the threat that we're talking about. The emerald ash borer is a small green insect that burrows into the bark of the tree and then lays its eggs in the...just under the bark and those eggs hatch and girdle, burrow out across the cambium of the tree, the inside of the tree. [LB391]

SENATOR CHRISTENSEN: Okay. [LB391]

SCOTT JOSIAH: And basically starve the tree of moisture. And so it just literally dies from lack of moisture. [LB391]

SENATOR CHRISTENSEN: Because I see what the native's doing in Kansas just real close to Nebraska. [LB391]

SCOTT JOSIAH: That just burrows right into the tree all the way. It damages the wood certainly, but it doesn't kill the tree, every last tree like we were afraid of like emerald

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ash borer. [LB391]

SENATOR CHRISTENSEN: Well I guess I haven't found the bug, but what I'm talking about, it's just literally taking every ash tree off the Prairie Dog to the edge of Kansas right by Harlan County Lake. And what it's doing is, you'll see where it bores in and then the tree rots from the inside out. You'll just see it turned like brown soil on the inside. I hope that's not what this is. [LB391]

SCOTT JOSIAH: This one is worse, frankly. That one attacks stress trees. Emerald ash borer attacks every tree, every ash tree. [LB391]

SENATOR CHRISTENSEN: Okay. All right. Would you say the other reason that you maybe have liked, like the Vegetation Task Force, by having a senator on board and that's why I wondered if there shouldn't be one in the committee if it's going to be set up. It's a fact like Senator Carlson calls regularly to make sure that there's meetings. And then you got a person on the inside to relay the information then and deliver the message well. Is that an advantage that should be here? [LB391]

SCOTT JOSIAH: You know that could be. That could be an advantage in the sense that it would improve the communication link between the Invasive Species Council and the Legislature. That could be, should be considered probably. [LB391]

SENATOR CHRISTENSEN: Okay. Thank you. [LB391]

SENATOR DUBAS: Other questions? I would have one for you, Doctor Josiah. Are there any preventive measures you're taking for this ash borer? [LB391]

SCOTT JOSIAH: We have organized a four-state effort from Kansas to North Dakota to develop education programs, inventory programs to know what we have out there, policy initiatives and fund-raising initiatives, as well as, what are we going to do with all this wood from 44 million trees. So developing markets for the wood as well. So those are things that are underway right now. There are efforts to develop treatments and species that would attack other species of insects that would attack the emerald ash borer by the U.S. Forest Service and other groups. None of those have been particularly successful to date. [LB391]

SENATOR DUBAS: So you're saying that if we did find any of these insects in Nebraska, there's not a lot of options available to bring them under control? [LB391]

SCOTT JOSIAH: That is correct. We can implement rapid response, rapid detection programs, and we have those already outlined with a number of different agencies, but the...and we can slow the spread through those actions and we fully intend to do that. But, no, we have no tools in the toolbox to actually stop and control this insect. [LB391]

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SENATOR DUBAS: Thank you. [LB391]

SCOTT JOSIAH: Sure. [LB391]

SENATOR DUBAS: Any other questions? Thank you. [LB391]

SCOTT JOSIAH: Thank you. [LB391]

SENATOR LANGEMEIER: Is there any other neutral testimony? Seeing none, Senator Schilz, would you like to close on LB391? [LB391]

SENATOR SCHILZ: Yes, thank you, Senator Langemeier. I guess, just sitting here I was taking a few notes. You know I understand people's trepidation on having a new task force and just throwing stuff out there for the sake of throwing stuff out there, but I think that it's extremely important that the problems that we're trying to get in front of, really aren't the things we know about today. They're the upcoming things that we may not be aware of that other states are dealing with that if we get the heads-up on it we may be able to do some of that. Do you need a task force such as this to do that? I think it does add some legitimacy to the process and to the work that they do, so I look at it that way. I would be more than willing to work on who the participants in that should be. If there needs to be legislative representation on there I'd be more than happy to include that. Talking to NRDs, public power districts, things like that, there may be interested parties there too. And quite honestly, you know, as we go through this stuff, Senator Langemeier, you're exactly right, and as the saying goes, you know, some would say that there is more than one way to skin a cat and we might be able to get there to do that. And I think its...that one fell flat in its face, didn't it? I think that we live...they brought it in...I think that we need to look and see what we can do to do this. And I would be willing to work with the committee and anybody else to help make this happen. Thank you very much. [LB391]

SENATOR LANGEMEIER: Very good. And cat skinning will not be part of their task, correct? [LB391]

SENATOR SCHILZ: Absolutely not. [LB391]

SENATOR LANGEMEIER: Thank you. That concludes the hearing on LB391. Very good. While you're there, we'll recognize...you will open the hearing on LB392. [LB391]

SENATOR SCHILZ: (Exhibits 14, 15, and 16) Good afternoon, Senator Langemeier, and members of the Natural Resources Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z and I represent the 47th Legislative District and I bring LB392 before you today. Just to start out, I'm sure you've all heard about the article I'm passing out

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right now. Some of you may remember, about four or five months ago, a scout was out walking with his troop picking up cans and other litter around Lake Zorinsky. He picked up a beer can that happened to have a zebra mussel attached to it. Fortunately, he recognized it; understood it for what it was, and reported it to Game and Parks, which is the proper thing to do. Obviously, there was an immediate search of the lake and they are continuing to monitor that. The lake has been drained in order to try to freeze out any possible remaining mussels. And to this point we are hopeful that that will take care of the problem. Also, Lake Offutt was drained in the past as well due to zebra mussel infestation. However, after the eradication efforts there it has been noted that the zebra mussels have returned. Zebra mussels have been found in Missouri, Iowa, Kansas, Colorado, and many other states around the nation. And as you noticed, those are all states that border ours. This poses a great threat to Nebraska and areas around Nebraska, especially areas like Lake McConaughy where over 50 percent of our visitors come from states that have infestations. So LB392 would provide powers and duties to the Nebraska Game and Parks Commission relating to aquatic invasive species. Nebraskans rely on limited water resources for a number of activities. This resource is being impacted and further threatened by these invasive species. At this point, Nebraska has no monitoring or preventative measures when dealing with these aquatic invasive species like zebra mussels. LB392 would prohibit the possession, importation and exportation of aquatic invasive species and allow Nebraska Game and Parks Commission to establish rules and regulations to better manage against the impacts of such species. It also sets up a funding mechanism to develop an aquatic invasive species monitoring program focused on the prevention of new introductions and species eradication when feasible. The funding would come from a \$30 user fee imposed on nonresident boaters, similar to what Wyoming recently initiated, and a 20 percent increase in the resident-boater registration. For most Nebraska boaters, this would equal an increase of around \$6 to \$9 for a 3-year registration. Several neighboring states have developed programs to manage these species. Kansas, Iowa, Colorado, all have passed legislation similar to this bill. And some states, Wyoming, Colorado, and Iowa, have allocations from General Funds. The threat of infestation by aquatic invasive species is high for many water bodies in Nebraska. An aquatic invasive species program could help mitigate the associated costs. This legislation follows recommended actions in the new statewide Aquatic Invasive Species Management Plan which is approved by Governor Heideman and the National Aquatic Nuisance Species Task Force last fall. And with that I would take any questions. I do have some folks here that will be testifying on this bill as well. So, any questions? [LB392]

SENATOR LANGEMEIER: Are there any questions? I appreciate the scale to the quarter. Senator Smith. [LB392]

SENATOR SMITH: I do have a question. Thank you, Senator Langemeier. Senator Schilz, the \$30 for boats registered outside, not registered in Nebraska, is there currently a charge or would that be a new charge? [LB392]

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SENATOR SCHILZ: I think, I believe that would be a new charge. I'm not sure. There's other folks here. But having never brought a boat in from out-of-state, I guess I wouldn't...I wouldn't have that experience. But I'm sure that the Game and Park reps can answer you that. [LB392]

SENATOR SMITH: Okay. All right. Thanks. [LB392]

SENATOR SCHILZ: And if not, I'll find that out and get back to you. [LB392]

SENATOR SMITH: Thank you. [LB392]

SENATOR LANGEMEIER: Senator Schilz. [LB392]

SENATOR SCHILZ: Yes. [LB392]

SENATOR LANGEMEIER: I'm going to ask a question now and maybe it's a heads-up for someone else. As we look at this picture, and on here the zebra mussels on the prop of this particular boat, this boat has been in the water awhile. [LB392]

SENATOR SCHILZ: Right. [LB392]

SENATOR LANGEMEIER: Do we know anything about these? I mean, do we know how quick they're going to attach? I mean, if I take my boat out, if I took my boat to Zorinsky Lake today and boated around for 45 minutes and loaded it back on my trailer and took it home, what's the chance that I would have one stuck to it? I mean, there's lots of nodding going on behind you. So somebody will answer it after you if you don't. [LB392]

SENATOR SCHILZ: Right. I was just going to say, I'm pretty sure they can't swim extremely fast. But I do know that they are very good at attaching to things. And I think...and those folks can answer it, but the problem isn't one or two, it's after the infestation is there. And just...they cover everything. So I'm not sure how long you would have to leave it in there. And I'm sure others can answer that for you. [LB392]

SENATOR LANGEMEIER: I'm just thinking how quick they would attach to move to the next lake. [LB392]

SENATOR SCHILZ: Right. Yeah. And quite honestly, more of a problem than that is the nymphs, or whatever you call them, that are so small you can't see, that get into live wells and things like that. You don't even know you're transporting them. In a drop of water I believe you can have some of those, but I'm sure there's people that understand this much better than I coming up. [LB392]

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SENATOR LANGEMEIER: Very good. Thank you. [LB392]

SENATOR SCHILZ: Thanks. [LB392]

SENATOR LANGEMEIER: You've heard the opening on LB392. We'll take those that would like to testify as proponents of LB392. [LB392]

DAVE TUNINK: Good afternoon, Senator Langemeier, members of the Natural Resources Committee, my name is Dave Tunink, D-a-v-e T-u-n-i-n-k. I serve as assistant fisheries division administrator of Nebraska Game and Parks Commission. I'm here today to testify for the commission in favor of LB392. Senator Schilz covered a lot of things I was going to cover in mine, so I'll probably skip over a few things, but aquatic invasive species are a problem and concern not only in Nebraska, but across the entire United States costing billions of dollars for treatment alone annually. This past year Nebraska completed a statewide aquatic nuisance species plan which was approved by the board of commissioners, by Governor Heineman, and recently by the federal government. And this bill will accomplish several items that are identified in this plan. So what are aquatic invasive species? We talked about the definition of invasive species before, but as defined in this bill, they are any exotic or non-native aquatic organism that pose a significant threat to aquatic resources, water supplies, or water infrastructure of this state. They could be vascular plants like phragmites. They could be algae, fish, mollusks, and pathogens to various diseases. In recent years, Nebraska has taken a multi-agency approach to control the massive stand of phragmites along rivers with good success, but it's going to be a continued effort. As we talked about the zebra mussel being found for the first time in Zorinsky Lake, they are present in Iowa, Missouri, Kansas, and Colorado, and they are all working hard to prevent the expansion of these species and also evaluate in different ways to control them. We talk about Zorinsky Lake being drawn down, actually Offutt Air Force Base was treated with copper sulfate. They were gone for a few years and then they came back. We're hoping to freeze them out with a draw down at Zorinsky. This past year we had high water flows in the Missouri River and the Asian carp, the flying carp as you might know them, took great advantage of the spawning conditions and high recruitment. They were just all over the place in the Missouri River and its tributaries. Fish diseases are probably the least apparent of aquatic invasive species, but they probably could cause the biggest concern environmentally. Currently fish...fishery departments across the state regulate fish movement and require health inspections of any fish being moved across state lines to prevent the passage of these diseases across through the country. So why is LB392 important? First, it defines aquatic invasive species in game law and would allow the Nebraska Game and Parks Commission to create a list of these species and promulgate rules and regulations to prevent...to make it illegal for a person to possess, import, export, purchase, sell or transport these species. It also allows authorized personnel to inspect and impound and decontaminate any conveyance that may have

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aquatic invasive species like zebra mussels attached to them. Most states have some level of boat inspection on their major reservoirs, along with major public education programs. Several states like the state of Minnesota require boats, before they can leave a lake, to completely drain all water out of their boats and remove all vegetation on their trailer. If they leave that lake without doing that, they're going to get fined. As with any issue, you need to get public support and buy-in, thus informing and educating the public about the problem related to aquatic invasive species is the goal of this program. Since boating is a primary means of aquatic invasive species getting transported across country, it would be reasonable to obtain funding from the program for boat owners which are currently...which is currently the status in several states. To reduce the program's costs, only nonresident boats would be required to purchase a \$30 aquatic invasive species stamp, which would be new, in order for them to launch their boats in Nebraska. A boat survey just completed at Lake McConaughy last summer found that 51 percent of the boats there were from Nebraska residents, 49 percent were nonresidents, which those were...made up of 43 percent from Colorado. The rest, there were 22 different states represented at Lake McConaughy. So thus you can see the mobility of these boaters. We talked about the 20 percent increase in registration of boats of Class I, Class II, it's 95 percent of the boaters in Nebraska. That relates to about \$5 to \$10 respectfully for a 3-year registration. Currently, out of 19 western states, only North Dakota charges less for a boat registration. Combined, from boating registration, be about \$200,000 a year for income and for nonresident boats we estimate about 3,300 nonresident boats for another \$100,000. So what will that be used for? We'd have a coordinator, hire temporary employees that would purchase and utilize equipment to look for existing populations of invasive species, look of new ones, utilize that equipment to decontaminate boats on selected lake, train staff to conduct inspection and decontamination, create public education activities, and conduct research to help to prevent, control and eliminate aquatic vegetation. Of course, any time you have regulatory enforcement type of stuff, we need to get informed and educate the public, because without their compliance, it won't be a successful program. Thank you for your support and your support is to protect the aquatic resources of Nebraska would be greatly appreciated. And the commission would like to thank Senator Schilz for his interest in this issue and willingness to introduce this important legislation. Sorry about running over. [LB392]

SENATOR LANGEMEIER: Very good. Senator Christensen. [LB392]

SENATOR CHRISTENSEN: Thank you, Chairman. So let's say you went into a lake and you was leaving, you see one or two on your boat; besides notifying Game and Parks, how do you kill it, remove it, things this way? [LB392]

DAVE TUNINK: Well it's clean, drain and dry is the message. You talk about how fast are they attached. You went 45 minutes, they probably wouldn't attach. What zebra mussels have is during...when the water temperature is 50 degrees or warmer they

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reproduce. They reproduce like real microscopic what we call veligers that will at some times attach to a hard surface. So if you have your boat sitting in there for overnight or something like that in the right stage of attachment, they can attach. We do boat inspections; we did some training, and it basically feels like sandpaper on the side of your boat. They can get inside of your water pumps. Probably the biggest concern is people, say right now, in Nebraska if you're fishing one lake, say you're fishing Lake McConaughy and you wanted to...you had a few fish in your live well, these boats got great live wells, just drive to the next lake nearby. Fish around Lincoln, they're all within ten miles of each other. Go to the next lake, oh, I got to freshen up the water to keep my crappie alive, what did you just do? You just contaminated anything that was in that live well, fish diseases, zebra mussel, larva of zebra mussel, and you just contaminated it. The state of Minnesota, you cannot do that. So hot water, we're working on protocol for my own staff that do surveys around lakes. They go from one lake, get done surveying, they go to the next lake, they may hit three lakes in one night, we're electroshocking. So now we got to work on protocol, how are we going to decontaminate before we go from one lake to the other. Hot, 140 degree pressurized power washer is probably the biggest key. You can also use vinegar. Vinegar will also take care of veligers. Now the adults, they're a little more harder to kill and it's proven by some of the work they have to do in lakes. That's why we're trying to freeze them out in Zorinsky. They're a little bit harder to kill because they can close up. The treatment that they did at Offutt Air Force Base, they tried to use copper sulfate, tried to kill them with copper. You got to keep that copper at a toxic level for a week or so, several days at least. Otherwise they're just going to clam up and not breathe for a while. But it would kill the veligers, but it wouldn't kill the adults. So they're a little bit tough. [LB392]

SENATOR CHRISTENSEN: So if you washed this off into...with a pressure washer, and got into the sewage system, is it going to contaminate that? [LB392]

DAVE TUNINK: Absolutely. When we recommend it, it would be a closed system; have a little washout bay that all the water is contained in and hope it just dries out. One way to kill these things is to dry them out and desiccate them. Fourteen days is probably the max you'd have to do, depending upon air temperature and humidity. If it's real hot and dry, August, hot and dry day like you have out west, it probably wouldn't take very long to kill them. If it is a humid day in June, rainy, it could be two weeks they can survive. That's why they can survive in live wells in your boat trailer where there's a little moisture, they can get in there and they can live quite well if it's humid. [LB392]

SENATOR CHRISTENSEN: Okay. Thank you. [LB392]

DAVE TUNINK: But zebra mussels aren't the only concern. Fish diseases are another big concern, so moving water around is a big concern. Any other questions? [LB392]

SENATOR LANGEMEIER: Any other questions? Seeing none, very good, thank you

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very much. [LB392]

DAVE TUNINK: All right, thank you. [LB392]

SENATOR LANGEMEIER: Further testimony in support of LB392. Good afternoon. [LB392]

LARRY HUTCHINSON: (Exhibit 17) Good afternoon, Senator Langemeier and committee members. My name is Larry Hutchinson, L-a-r-r-y H-u-t-c-h-i-n-s-o-n. I represent the Nebraska Chapter of the American Fisheries Society. And it's our pleasure to be here in support of the bill this time, especially a bill that we think is very important in funding and providing duties to help control the invasive species and aquatic invasive species. We've long recognized as, at least as a past employee of the Game and Parks Commission and that these things are new to us in a fashion, but I've been around the country for many, many years, and they've caused a great deal of damage to a lot of different systems, power systems, water transportation systems, and the ecology of lakes and reservoirs. So we really support and hope that the committee will put this forward to a vote by the Legislature and urge that it gets passed. [LB392]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Hutchinson? Seeing none, thank you very much for your testimony. [LB392]

LARRY HUTCHINSON: Sure. [LB392]

SENATOR LANGEMEIER: (Exhibits 18 and 19) Further testimony in support of LB392? I do have a number of letters. I have one from Tim Anderson with Central Nebraska Public Power District; Wes Sheets with Nebraska Division of Izaak Walton League of America; and Bruce Rumsey with Nebraska Weed Control Association. Also one from Joe Herrod with the Nebraska Council of Sportsmen's Clubs and Dave Kumlien with Trout Unlimited. Okay. Is there anyone that would like to testify in opposition to LB392? Seeing none, is there anyone who wants to testify in a neutral capacity? Welcome. [LB392]

MIKE KRUMLAND: (Exhibit 20) Good afternoon, Chairman Langemeier, and members of the committee. My name is Mike Krumland, M-i-k-e K-r-u-m-l-a-n-d. I'm the environmental protection supervisor for the Nebraska Public Power District. I'm testifying today on behalf of the Nebraska Public Power District, the Nebraska Power Association. The Nebraska Power Association represents all segments of the electric power industry including municipalities, public power districts, power and irrigation districts, as well as cooperatives. I am testifying in a neutral position on LB392. We commend Senator Schilz on his efforts to tackle this issue. NPPD is the largest electric generating utility in Nebraska. We have many power plants located across the state. Cooper Nuclear Station in southeast Nebraska near Brownville, Gerald Gentleman

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Station close to Sutherland, all require water for once-through cooling. Copper Nuclear Station uses water from the Missouri River and Gerald Gentleman uses water from Sutherland Reservoir which is fed by the Platte River. As you've heard already, invasive species has the potential to disrupt the normal operation of business at NPPD. NPPD, in conjunction with other groups, works to control them, things such as phragmites which narrow river streams in the Platte River system and have less water for our cooling and potential for flooding during heavy rains. Recently, Nebraska has encountered new invasive species like the asiatic clam and zebra mussels. These affect our ability to withdraw water through our intake structures. I brought with me some pictures you'll see in my testimony, the damage that clams can inflict on power plants circulating water systems. You'll notice these are not necessarily...these pictures are not from our plants, however, the one that I will draw your attention to is the one on the zebra mussels and quagga mussels. Those little guys are...you asked about how big they were, I mean, there's a pencil that kind of gives you a relative scale, so they're about the size of your fingernail. And if you look at the shopping cart in the upper right hand corner, think of that as a support structure at a cooling water intake structure. Well the way to remove that, you either replace or remove the equipment or you mechanically remove them through grinding or, you know, scrapping them off, that's a labor intensive and expensive proposition. You've heard all kinds of numbers this afternoon about how much it costs. Well that's why...that's what drives the price up. NPPD is currently monitoring for infestation of zebra mussels. We have monitoring sites in the Missouri River and Sutherland Reservoir. To date we have not detected any zebras in our samples. However, if we did and according to this bill, if we found them in our samplers and we would be in possession of them, we would be fined for that. So I would encourage the...request that the committee look at the language for what causes the fine and misdemeanor because it's, you know, we're trying to do the right thing and don't really want to get caught in a situation like that. We have seen an influx of Asiatic clams in three of our facilities: Cooper Nuclear Station located in southeast Nebraska, Gerald Gentleman Station and Canaday Station which is south of Lexington along the Tri-County Canal. Asiatic clams are slightly different than zebra mussels and quagga mussels. They don't attach themselves to structures. However, they are prolific breeders and their shells clog heat exchangers, as well as other safety systems. NPPD and NPA support the efforts to control all invasive species. Thank you very much for the opportunity to testify and I'd be glad to answer any questions. [LB392]

SENATOR LANGEMEIER: Very interesting. Are there any questions? Senator Christensen. [LB392]

SENATOR CHRISTENSEN: Where are you identifying that you think you'd be in trouble? Are you in Section 37-548? Do you have the bill there. [LB392]

MIKE KRUMLAND: I do not. [LB392]

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SENATOR CHRISTENSEN: You don't. Okay. I'll continue looking. [LB392]

MIKE KRUMLAND: Okay. [LB392]

SENATOR CHRISTENSEN: This section talks about the import. [LB392]

MIKE KRUMLAND: Import, transport... [LB392]

SENATOR CHRISTENSEN: To exploit and export of this. [LB392]

MIKE KRUMLAND: Possession. [LB392]

SENATOR CHRISTENSEN: And I guess I didn't see possession, that's why I was wondering. I'll continue looking. Thank you. [LB392]

MIKE KRUMLAND: Okay. Thank you. [LB392]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB392]

MIKE KRUMLAND: Thank you. [LB392]

SENATOR LANGEMEIER: Further testimony in a neutral capacity. [LB392]

KARIE DECKER: Hello again. [LB392]

SENATOR LANGEMEIER: Welcome back. [LB392]

KARIE DECKER: (Exhibits 21 and 22) Thanks. Chairman Langemeier and members of the Natural Resources Committee, thank you again for allowing me to be here and testify. My name is Karie Decker, K-a-r-i-e D-e-c-k-e-r and I am the coordinator for the Nebraska Invasive Species Project at the University of Nebraska. The university does not have a stance on this bill, thus I'm testifying in a neutral capacity today. In the U.S., aquatic invasive species are causing widespread damage to power plants, municipalities, and irrigation systems and are threatening recreational fishing opportunities costing over \$20 billion a year in treatments. Nebraska's limited water resources are threatened by a number of aquatic invasive species including phragmites, Asian carp and most recently, zebra mussels. Zebra mussels are known to clog irrigation pipes, clog intake pipes at power plants and water treatment facilities and they out-compete sport fish for food. Zebra mussels have recently been discovered at Zorinsky Lake in Omaha representing the first infestation identified in a public lake in Nebraska. Control efforts are underway. However, the outcome of this project is still unknown. The costs associated with zebra mussels can be quite high. Past research by

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the Pacific States Marine Fisheries Commission estimates costs to hydroelectric plants at nearly \$150,000 per generator in mitigation strategies, with annual maintenance costs of near \$100,000. In addition, the city of Wichita in Kansas recently allocated more than \$2 million through an increase in their city taxes to upgrade water treatment facilities due to zebra mussel problems. What makes zebra mussels and many aquatic invasive species so challenging to manage is that they are primarily spread by hitchhiking on boats and recreational equipment. Because of this, several states, including many that neighbor us, have implemented programs to help manage these species. So for example, Kansas, Iowa, Colorado, and Wyoming all have recently passed legislation that is very similar to this bill. And at this point, Nebraska has no regulatory authority over aquatic invasive species like zebra mussels. As LB392 reads, it would provide powers and duties relating to aquatic invasive species. Particularly, it prohibits the possession, importation and exportation of such species. It also sets up a new funding mechanism to help prevent and manage these species. The funding would come, like Senator Schilz mentioned, from a new \$30 user fee that would be imposed on nonresident boaters, and this is very similar to a program that Wyoming started last year. In addition, funding would come from a 20 percent increase in resident boater registration. So for most of our resident boaters, this would equal an increase of around \$2 to \$3 per year. The development of this bill follows actions described in the newly developed statewide Aquatic Invasive Species Management Plan which was approved by Governor Heineman and the Federal Aquatic Nuisance Species Task Force last fall. As is the national recommendation, this plan has a strong focus on prevention which can be very effective. For example, one study at a large lake in Florida shows that the benefits of zebra mussel prevention far outweigh the costs. An expenditure of \$125,000 annually in prevention efforts saved over \$12.2 million annually in control costs. The threat of zebra mussels and other aquatic invasive species infestation in Nebraska is high. Kansas, Colorado, and Iowa already have zebra mussel problems that could easily spread to Nebraska. Take for example Lake McConaughy which is considered a lake that is at very high risk for zebra mussel infestation, probably because nearly 50 percent of the boaters visiting McConaughy are from other states, 43 percent of which are from Colorado. Zebra mussel infestation at Lake McConaughy would likely have an impact on the recreational sector which draws in on average 850,000 visitors each year with an economic value estimated to be over \$10 million annually. The threat of this infestation by aquatic invasive species is high for many of our other water bodies in Nebraska as well. An aquatic invasive species program could help ameliorate these associated costs. And I would be happy to take any questions. [LB392]

SENATOR LANGEMEIER: Senator Christensen. [LB392]

SENATOR CHRISTENSEN: Thank you, Chairman. Karie, just a curious question, because I'm sure somebody will wonder that's listening, will they attach to people in the water? [LB392]

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KARIE DECKER: Potentially. I've heard stories of folks that fish in some of the...the lakes in the Great Lakes region. And they pull up lines with the zebra mussels attached to the lines. [LB392]

SENATOR CHRISTENSEN: Do they bite? Do they...are they difficult to remove? [LB392]

KARIE DECKER: No, no. Right, I see where you're going. No, I mean, the likelihood of them attaching to a person is very slim. And I think when it comes to people's concern and sort of their health, what they find in other states and especially in some of the lakes in Kansas that have a heavy infestation of these critters is that when they die they wash ashore and just sort of stay there and you have millions and millions of dead zebra mussels on the shoreline and on the rocks, and the shells are really sharp. So you have to implement some sort of cleaning mechanism to get them off the shore so people can walk on the beach again. [LB392]

SENATOR CHRISTENSEN: Okay. Thank you. [LB392]

SENATOR LANGEMEIER: On that note, and an idea that Senator Christensen had a year ago, do they float? [LB392]

KARIE DECKER: Do they float? [LB392]

SENATOR LANGEMEIER: Do the empty shells float? [LB392]

KARIE DECKER: I'm sure they do. It's a clam. [LB392]

SENATOR LANGEMEIER: Okay. So we can stop evaporation if we had a permeable surface of these. (Laughter) Like ping-pong balls. [LB392]

KARIE DECKER: Yeah, potentially. [LB392]

SENATOR LANGEMEIER: But on a serious note, you said the Governor signed an agreement on these invasive species. [LB392]

KARIE DECKER: It was a statewide management plan that he approved. [LB392]

SENATOR LANGEMEIER: Okay. And were you part of that creation of that? [LB392]

KARIE DECKER: Yes. [LB392]

SENATOR LANGEMEIER: Was there any discussion in there that it was going to take funding to do this statewide management plan? [LB392]

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KARIE DECKER: Yes. It didn't require the state to provide funding by any means, but it was a high priority to seek funding to help deal with these issues. One of the things that we find is that there are a number of federal grants that we can apply for, but without at least the 25 percent state dollar match, we're not eligible for a lot of these federal funds. [LB392]

SENATOR LANGEMEIER: Okay. Senator Haar. [LB392]

SENATOR HAAR: This maybe is more appropriate to LB391, but here too. How...sometimes species are brought in for good purposes. [LB392]

KARIE DECKER: Sure. [LB392]

SENATOR HAAR: And then they turn bad. So when does something become a biologic form for taking care of this or that and become an invasive species? [LB392]

KARIE DECKER: That's a great question. A lot of our noxious weeds actually started out as great, beautiful plants that we wanted, or they were planted for erosion control, for example, and, you know, without the foresight to see what might happen down the road, it's hard to predict those. What we do as a group, and the group of experts that I work with in invasive species is try to keep up on all of the research that's going on. Take a look at what's going on in other states, what other councils are doing and what their concerns are. When something is brought in for potentially beneficial purpose and then goes bad, so to speak, I think that's a great opportunity for a coordinated group to sort of discuss those issues, to discuss with the public what the impacts of that are and sort of the route to take from thereon out. [LB392]

SENATOR HAAR: Are there examples of that...aquatic creatures that have been brought in and now...for a good purpose and have turned bad? [LB392]

KARIE DECKER: My understanding is that Asian carp was brought into the U.S.... [LB392]

SENATOR HAAR: Okay. [LB392]

KARIE DECKER: ...to sort of keep out some algae and things like that, and, yes, they have certainly gone bad as you've heard, maybe around the Great Lakes area there's a lot of attention on that right now, yeah. [LB392]

SENATOR HAAR: Okay. Thank you. [LB392]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for

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your testimony. [LB392]

KARIE DECKER: Thank you. [LB392]

SENATOR LANGEMEIER: Well done. Further testimony in a neutral capacity? Seeing none, Senator Schilz, would you like to close? [LB392]

SENATOR SCHILZ: Just real quick. Thank you, Senator Langemeier. Just a couple of real quick notes. Obviously, we...in crafting the bill we want to make sure that somebody such as NPPD or anybody that's testing for these things don't fall under the law of having possession of these, so we'll work on language for that. And the other thing, obviously, is the funding mechanism and how we can make that work. I don't want to see something as important as this die because of that. But I know that it is an issue and we will keep trying to find other avenues to bring funding to bear. So with that, I would appreciate your support, unless you have another question. [LB392]

SENATOR LANGEMEIER: Senator Haar. Senator Haar does. [LB392]

SENATOR HAAR: Yeah. It is sort of the same question I just asked. I take it that the council, the Invasive Species Council would also be looking...when things are brought in with good intentions to the possibility that they could turn bad. [LB392]

SENATOR SCHILZ: And I think that that would be one of their...one of the things that they would do. As I said before, if...the best time to have some of this information there is not when you figure out you've got them yourselves, but when you're working with others around the country and around the nation to kind of preempt that so that you don't have to be in that position of, oh jeez, we've got them, now what do we do? So I think that's an important role. [LB392]

SENATOR HAAR: Thanks. [LB392]

SENATOR SCHILZ: However it's set up or however we decide to move forward. [LB392]

SENATOR HAAR: Yeah, sure. [LB392]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB392]

SENATOR SCHILZ: Thank you. [LB392]

SENATOR LANGEMEIER: You've heard the closing on LB392. And that concludes the hearing for LB392 and our hearings for the day. We'd like to thank everyone that came and was part of the Natural Resources Committee today and have a great weekend.

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(See also Exhibit 23) [LB392]