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Natural Resources Committee
March 09, 2011

[LB587 LB626 LB653]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, March 9, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB587, LB626, and LB653. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None.

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 thank everybody that is here in the audience to participate, as well as those that are watching us on-line and on closed-captioned TV. I'd like to introduce the committee members; we are going to be short a few because there are bills going on in other committees. I'd like to start to my far left, or your right; we have Senator Jim Smith from Papillion. Then we have Senator Ken Haar from Malcolm. And then we have Senator Mark Christensen who has a couple of bills in Judiciary and two in Government and then one here; he'll be in and out, from Imperial, Nebraska. Then we have Senator Schilz who is also in another committee right now; he's also the Vice Chairman of the committee. Laurie Lage is the legal counsel for the Natural Resources Committee. And to my immediate right or your left, Senator Annette Dubas will be back with us momentarily; she is from Fullerton, Nebraska. And then we have Senator Tom Carlson who even brought his own name tag there, is from Holdrege, Nebraska. And then to be here shortly we have Senator Beau McCoy who is from Elkhorn or west Omaha. And then at the very end we have Barb Koehlmoos who is the committee clerk. As you come forward, if you have anything to hand out, please give it to her as you come forward. We have a page that has been with us all year; we have Kate DeLashmutt from Burwell, Nebraska. She is a senior member at UNL. If you're going to testify today, in the corners of the room you'll see these green sheets. We ask that you fill it out in its entirety; when you come forward if you would give that to Barb, it helps us keep a clear and more accurate record of today's hearings. If you're here and you want to be on the record of having an opinion, but you don't care to testify, there's also kind of a spreadsheet-looking form in the corners that you can fill out and tell us whether you support or oppose a particular bill. You don't have to do both. When you come forward we ask that you say and spell your name, first thing, so we can get you in the computer and keep an accurate record of today's events. We ask that you have 12 handouts, if you're going to hand something out that you have 12 copies. If you know right now that you're short some copies, please raise your hand and Kate will come help you get the additional copies. The other thing is, we ask if it's something you want us to see, if you hand it to us to look at, we're going to keep it for the record; you will not get it back. So if you have a photo, a family photo, the farm operation, whatever it is that you want to keep, we ask you show it to us from the table and then allow yourself for the senators to come look at it after the hearing has completed. At this time I'd ask that you all look at your cell phones and make sure you turn those off or to vibrate so we don't disrupt

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those that care to testify before us today. In the Natural Resources Committee we do use the light system. We give each testifier five minutes. You'll get...the green light will come on when you start and it will last for four minutes. 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...open yourself up for questions from the committee. At this time we are...changing things a little bit, Senator Nordquist and Mello had a conflict so they're going to switch roles so we are going to start with LB626 and then we'll go back up and pick up Senator Nordquist's LB587. So Senator Mello, you're recognized to open on LB626.

SENATOR MELLO: (Exhibits 1, 2, and 3) Thank you and good afternoon. Chairman Langemeier, and members of the Natural Resources Committee, my name is Heath Mello, H-e-a-t-h M-e-l-l-o and I represent the 5th Legislative District which includes south Omaha and Bellevue. Electronic waste, or e-waste, is the fastest growing municipal waste stream in the country, particularly in regards to the outdated computers and televisions. The U.S. Environmental Protection Agency estimates that in 2008 the United States generated more than three million tons of e-waste, about 85 percent of which ended up in landfills. In that same year, only 18 percent of discarded computers and televisions were recycled. While virtually all major electronics manufacturers have voluntary take-back programs, such programs are limited in their scope. The topic of electronics recycling is by no means a new one for the Natural Resources Committee. In 2008, then Senator Don Preister introduced LB986 which advanced unanimously from the committee and passed the Legislature with 44 votes, including the votes of all four current committee members who were in the Legislature at the time. Despite this overwhelming support in the Legislature, the bill was vetoed by Governor Dave Heineman after adjournment, so there was no opportunity to override. Two years ago I introduced LB644, essentially a reintroduction of LB986 which failed to advance from committee. Since 2003 when California enacted the nation's first electronic recycling bill, 23 other states have passed electronics recycling laws. With the exception of California, these laws have generally filed what is known as a producer responsibility model. Prior to the enactment of these laws, the cost of e-waste disposal fell almost exclusively on local governments and property taxpayers who were left to deal with the hazardous materials and electronics being dumped in city and county landfills. LB626 also follows the producer responsibility model in order to help maintain a uniform system of laws among all states that have passed electronics recycling legislation. LB626 would require each manufacturer of electronic devices who sold at least 500 units in Nebraska to certify with the Department of Environmental Quality the number of units sold in Nebraska in the previous calendar year. A tiered-fee structure would be established for manufacturers based on the quantity of electronic devices sold in Nebraska. Smaller manufacturers would be exempt from both the reporting requirements and paying fees. Likewise, the fee is reduced by 50 percent for any manufacturer that certifies that more than 60 percent of the electronic devices they sold in the state were recycled. Fees collected would be credited to the Waste Reduction and Recycling Incentive Fund and

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would be used to award grants to assist the creation of jobs in electronics recycling industry; the infrastructure development, education, and information about electronics recycling and the collection, transportation, and eventual recycling of these electronic devices. During the debate on LB644 two years ago in this committee, concerns were brought up by the committee about the fee structure. In response to those concerns, the fee structure in LB626 has been cut in half from a top tier of \$20,000 to only \$10,000 per year per manufacturer. Unfortunately, due to an error in drafting by my office, language in Section 5 of the bill provides for a fee of \$1,250 for manufacturers selling between 25 and 250 units, for those same manufacturers do not have to report their sales to the Department of Environmental Quality. My office has also been approached by the Nebraska Retail Federation about potential changes to that section. I'm more than happy to work with both the Retail Federation and the committee to clean up that language in the bill. In addition to the fee structure, the bill provides two possible alternative funding streams for the committee to consider. First, Section 7 would require all electronics recyclers to pay an annual fee of \$50 to help fund the program. The committee should have received a copy of AM687 which provides for a definition of recycler under the act. With this amendment it should be clear that only electronics recyclers and not all recyclers have to pay the \$50 registration fee. The bill also contains a provision requiring the Department of Environmental Quality to apply for grant funding through the Nebraska Environmental Trust to help potentially fund electronics recycling. Given the multitude of discussions that the committee has already had regarding the Environmental Trust this session, I know that this funding is by no means a sure thing. I do, however, still want to include that language as a possible alternative funding source. LB626 also provides for a statewide ban on the disposal of electronic devices containing cathode ray tubes, CRTs, beginning on July 1, 2016. Prior to the enactment of this ban, however, the bill would require the Department of Environmental Quality to provide the Legislature with a report on the development of the electronics recycling industry's infrastructure. This CRT ban will be helpful...will help fuel the demand for electronics recycling while the report will ensure that the necessary infrastructure is in place statewide before the ban goes into effect. For an example, this approach working at the local level, the city of Lincoln's municipal code currently provides a landfill ban on all electronics on businesses...for businesses, I'm sorry. While many recyclers would prefer a complete ban like the city of Lincoln's, I feel that banning CRTs, which are some of the most hazardous electronics components, represents a reasonable first step to incentivize the development of the electronics recycling industry and infrastructure. One of the common arguments against electronics recycling legislation in Nebraska is that the bill will increase the cost to consumers and more recently the claim has been made that LB626 somehow constitutes a hidden tax on electronics manufacturers. As someone who has consistently opposed tax increases in the Legislature, I take great exception to that characterization. Simply put, Nebraska consumers are already paying the price of electronics recycling programs in other states, but they are not seeing any of the benefits. If you travel to neighboring states, the neighboring state of Missouri which has passed an electronics recycling law, the

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price of electronic devices will closely mirror the prices in Nebraska. LB626 will allow Nebraska consumers to take advantage of these programs rather than just paying for the programs in 24 other states and seeing no benefits. Besides paying for the other states' electronics recycling programs, Nebraskans also continue to pay higher property taxes to cover the landfill costs that would be eased through LB626. The bill also represents an opportunity to create green jobs through development of the electronics recycling industry in Nebraska. Throughout the state many small businesses specialize in recycling, but when it comes to electronics these businesses do not have much of an incentive to expand in that area. There's an untapped potential in Nebraska's electronics recycling industry, but the lack of recycling education and statewide infrastructure is currently holding us back. Throughout the interim and in the process of drafting LB626, my office tried to reach out to as many of the interested parties as possible to create a solid framework for electronics recycling legislation for this session. Since the bill was introduced, several potential amendments have been brought to my attention. Given the late hearing date and the fact that we are in the first of a 2-year legislative cycle, I'm hopeful that we can continue working with the committee and interested parties between now and next session to come to a workable framework and finally enact an electronics recycling program for the state of Nebraska. Thank you for your time and I would be happy to answer any questions you may have. [LB626]

SENATOR LANGEMEIER: Very good. Are there any questions? We'll start with Senator Carlson. [LB626]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Mello, would you explain the fiscal note? Do you have it? [LB626]

SENATOR MELLO: I will do my best, Senator Carlson. Essentially, the fiscal note was broken down, if you see the legislative fiscal note, is broken down by the electronics recycler registration, the potential for Environmental Trust funding, the manufacturer registration fees, and then there are some components that discuss a little bit more in regards to a reduction of fees that would be paid by manufacturers if they recycled 60 percent of their products in the state, as well as the administrative expenses and grant program that the Department of Environmental Quality feels they need to administer and run the program. So, looking at the fiscal note right here, we specifically wanted to make sure that by no means because we understand that there's no need to over, I would say, collect more fees than are necessary to enact this program and to provide for the development over a five-year period statewide; that we also have in the bill that the department shall have the flexibility to administer and make changes on the manufacturer fee registration to make sure that there is a certain amount of money in the fund each year to help build that statewide infrastructure that we know is going to be needed for the second component of the bill regarding the CRT ban. [LB626]

SENATOR CARLSON: Well the 2011/2012 year looks good, but then you go to the

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2012/2013 and it appears that the expenditures are \$55,000 more than projected revenue, so then you assume, well, that's not going to be any different the next year or the next year. So in your mind, do you think that that's somewhat ballpark figure that it may be \$55,000 short each year? [LB626]

SENATOR MELLO: You know, once again the way the bill is drafted it...the agency estimates that they would provide a certain amount of funding each year in grants. Now that doesn't mean that they will provide that amount of money. It was their estimate of \$1.2 million from the Department of Environmental Quality. With the additional revenues that are generated in 2011/2012, that provides a cushion even if this program was in existence for five years prior to the CRT ban. If you have that \$50,000 expenditure more than the revenue you're bringing in, do you still have a significant amount of cash funds that are available that are generated the first year of the program? Because the understanding is that it's going to take a little time that first year to establish the rules and regulations to be able to award the grants. So they will be collecting revenue while they will more than likely be always a year behind which...by just looking at the fiscal note, that's roughly, give or take, 12 years worth of additional funding at \$50,000 more a year to provide for the grant program. [LB626]

SENATOR CARLSON: Okay. Thank you. [LB626]

SENATOR LANGEMEIER: Senator Dubas. [LB626]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Senator Mello. You've touched a little bit on some of the questions I'm going to ask you, but one being, we do this recycling, do we have a market for the components that are being recycled? And is that one of the challenges we have in developing an effective recycling program for these types of components? [LB626]

SENATOR MELLO: Well I...that's a, Senator Dubas, that's a great question and yes we do have a challenge in part in regards, I think, everyone on this committee understands that when government takes action in regards to certain environmental and/or economic regulations or changes, so to speak, in existing regulations, that always changes the market. And right now with no banning of CRTs or electronic devices in city and county landfills, that hampers the ability to create a, I think, a larger market for electronics recycling in the state right now. Right now it's purely based on whether or not you as a consumer choose to look through, get on-line, or look through the Yellow Book, so to speak, or Yellow Pages, to see if there is an electronic recycler in your community and that's purely left up to you if you want to decide if you want to recycle that product. Otherwise, most people are taking it just to their landfill, which, talking with, I think, the League of Municipalities or NACO you will find that there are challenges with that because by the end of the day property taxpayers are paying for those costs of the landfills. So the opportunity, I think, that comes with LB626 is twofold. One, by using the

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producer responsibility model it's a partnership between the manufacturers, which primarily, I think, most of us in this committee understand that most...a super majority of these manufacturers are multinational corporations located in Asia, of having them help pay for...ultimately take part responsibility for the products that they are producing on a very fast basis so that property taxpayers at the end of the day aren't left holding the bag for all of this recycling cost. And in the meantime between shifting some of the responsibility away from property taxpayers to the manufacturers who are producing these materials, you see the actual electronic recyclers step in and help provide that new market of taking your products, essentially demanufacturing those products and then selling the products, if they're able to sell them and/or disposing them in an environmentally safe way. [LB626]

SENATOR DUBAS: Thank you. And do you see...my second question would be, do you see what your bill is putting forward, especially as you get into more rural areas of the state, we have less availability of finding a place to take our electronic recycling? You know, I can take some of mine to Grand Island; I've brought a lot of it to Lincoln. And, you know, I've paid a price for it and I don't have a problem paying for that, but again, as you get out into the more rural areas, we don't have the available sites or places to take. I know there are some communities who have undertaken such efforts; Alliance is one that has a great program. But will this bill help deal with the more rural areas of the state as far as helping them have a place to take their recyclables to? [LB626]

SENATOR MELLO: Senator Dubas, that was one of the main issues, actually, that we explored over the last year as we were redrafting LB626 from the previous bill that passed the Legislature, was trying to ensure that this was an equitable program statewide, because the fact is, we know that there is electronic recyclers, businesses in the Omaha-Lincoln area, as well as a few other cities around the state, but if, for example, you go to Arthur County, where can you recycle your television or your computer monitor? And the point is and the hope is that with tying in the CRT ban, it provides us a five-year window to be able to develop that infrastructure statewide with the understanding that Nebraskans know that these kind of products will eventually...they won't be able to toss them in their landfill. Once again, the rules and regulations component of this still is rested with the Department of Environmental Quality. Something we looked at, and in some of the other legislation you were provided a map of the other states that have passed this. The state of Wisconsin, and it's a concept that while it's not in LB626 it's something that we considered and I would be more than willing to share that information with the committee. The state of Wisconsin which is predominantly rural state, surprisingly, had a provision in there, electronics waste, or e-waste legislation that allowed the provided manufacturers, as well as the program itself, to provide a little bit more focus on the rural counties where they knew it was going to be tough to create that infrastructure. So whether it was larger grants that were given to these counties to help ensure that there were...that there was an electronics recycling business in the area, and/or a public/private partnership with the

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city/county and the business to help take care of it. That's something that we considered. It's not in LB626. I'd be more than willing to provide the committee that information, but that was something we learned through this process over the last year that helped the state of Wisconsin meet some of their challenges with trying to ensure that this was an equitable concept statewide, not just in your metropolitan areas or your localities that have a sizeable amount of population. [LB626]

SENATOR DUBAS: Thank you. [LB626]

SENATOR LANGEMEIER: Senator Haar. [LB626]

SENATOR HAAR: Do we...are there assurances in the bill so that a recycler would not just take these and maybe ship them to China or something else? [LB626]

SENATOR MELLO: Senator Haar, that's a very good question. And part of...I would say that there are some assurances, but probably not assurances that we know are one of those outstanding issues that we left, I would say, left unaddressed right now with the understanding that this would be a working issue hopefully for the Natural Resources Committee. There's a significant amount of information publicly about e-waste and electronic waste where recyclers essentially collect this waste and then ship it overseas for, essentially, a business model purpose, to be able to get away and move away from any of the environmental regulations that the United States has, as well as trying to ship the costs with their labor practices overseas. I think that's an issue that we would want to make sure that is addressed in this legislation. There's one component that deals more with labor practices and ensuring that businesses that receive grants from this program that they cannot hire prison labor, so to speak, or people or Nebraskans who are currently in the Department of Corrections. It's a...it's language that is used in many other states to ensure that you're not using, essentially, state labor, state subsidized labor through the Department of Corrections to help enact these programs. But to your main question, I would say that that's in a part of the bill that could be strengthened to ensure that the electronic recyclers in Nebraska follow a model. Something else that ties closely to and we received some feedback on, the registration fee for electronic recyclers and itself since right now they do not pay a registration fee. And in part, the fee in itself is to help finance the program which essentially these companies would return the fee, will receive the fee back. But the bigger question is, we...as we continue to analyze this bill is that there's not probably as much regulation over electronics recyclers in general in the state knowing that they deal with extremely hazardous materials and are ultimately held liable for these hazardous materials that they deal with, with the recycling of televisions and computer monitors and a host of other electronics that have dangerous components. So that's something else that's not addressed in the bill which has come up to our attention as well that whether it's through the Department of Environmental Quality which would more than likely be the state agency, we need to revisit the issue of how we regulate electronic recyclers similar to

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how we regulate other industries that deal with hazardous waste to make sure that we're being equitable in regards to their regulation and oversight, particularly regarding public health purposes. [LB626]

SENATOR HAAR: Yeah, because I mean, I care about the people who are doing this demanufacturing, but also some of these things just get in the environment and affect us all. And that's why I think your bill is really important. [LB626]

SENATOR MELLO: Thank you. [LB626]

SENATOR LANGEMEIER: Senator Christensen. [LB626]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator. In waste management, people talk to you, I see they have a proposed amendment. [LB626]

SENATOR MELLO: Uh-huh. [LB626]

SENATOR CHRISTENSEN: What did you think of their language? [LB626]

SENATOR MELLO: Um, you know, I...Waste Management...once again, they were one of the many groups that we had worked with over the interim. There are some changes that they had suggested, some further changes. I'm more than willing to look at the various changes that have been proposed, not just to my office, but I think the committee has also received some correspondence from some other organizations. The Nebraska Retail Federation has some suggested changes as well. I think the bigger question, Senator Christensen, is the fee structure component. I mean I understand that there is some technical components and changes that I think we can find common ground on with the committee and the Legislature, but at the end of the day I think the question is who ultimately will pay for the disposal of electronic devices in the state? And currently right now property taxpayers are paying for that disposal. And the question is whether we should look to develop a fee structure similar to other states where we bring in the manufacturers to help cover some of the costs of their products. So I'm more than willing to look at and consider, and I imagine the committee will too, Waste Management's proposals. They've been a good partner in this process of trying to identify changes to make the bill a better piece of legislation, a better public policy. [LB626]

SENATOR CHRISTENSEN: Thank you. [LB626]

SENATOR LANGEMEIER: Senator Haar. [LB626]

SENATOR HAAR: Since we're getting to the 11th hour and 59th minute for priority bills and stuff, do you see this as being a priority bill or just as we think about this and hear it

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today that's going to make a difference in the questions I ask. [LB626]

SENATOR MELLO: Senator Haar, I would hope to see this as a priority issue for the committee to continue to look at. I think that some of the conversations I've had with Senator Langemeier as the Chair, that I think there are still a lot of components of this bill that we have to get worked out in the sense of trying to bring sometimes opposing entities together to see where we can find common ground. So right now this is not going to be my priority bill. And as far as I've talked to other senators, I've encouraged, because of the late date, not to make this their priority bill right now. But the point being is that this is going to be a priority to find the solution to the problem because it is a statewide problem and it's only growing every year we don't do anything about it. And at the end of the day property taxpayers are being left to pick up the tabs for our inaction on this issue. [LB626]

SENATOR LANGEMEIER: Senator Mello, I just have one question, mainly because you and I have talked about this quite a bit, and it's sparked from Senator Dubas' comments. In rural Nebraska as we don't have the opportunities, maybe, to have this recycling, we do have a lot of roadside ditches. And I know my county and other counties have a big issue with picking up couches and refrigerators and whatnot on county road ditches. I'm a little fearful the ban is just going to make that mushroom out of control as they may be throwing it in their dumpster... [LB626]

SENATOR MELLO: Uh-huh. [LB626]

SENATOR LANGEMEIER: ...and then the trash guy picks it back out and sets it on the curb and takes the rest of the trash and leaves it. I'm a little fearful that Saturday night we get a six-pack of beer and they go out and dump it like they do the couch and the other stuff. Is that a fear? [LB626]

SENATOR MELLO: That, Senator Langemeier, that was a significant fear in regards to adding the additional component to this legislation. That wasn't in the previous bill that passed or the bill I introduced two years ago. And the way that we chose to try to provide, I think, a commonsense approach to that roadside ditching issue that comes with electronic waste is that the ban would not take effect for five years, giving the bill and the infrastructure development through the program four years to be able to provide those grants across the state to build up infrastructure with the city and county governments and the private sector. And the department is required to report back to the Legislature a year prior to the ban taking full statewide effect to provide us on whether or not the infrastructures are available to do that or whether or not roadside ditching would be a major concern because a majority of rural counties don't have the appropriate infrastructure they need to be able to take in electronic waste which would provide us, as the Legislature, the ability to delay the ban. Ideally I don't think it would be wise to strike it, but we could delay the implementation of the ban to ensure more

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appropriate time and resources are given to local governments and to ensure that that infrastructure is put in place. That was kind of a compromise that was developed in conversations with NACO, the sense that I fully appreciate, understand the concerns of roadside ditching and being able to do a delayed implementation on the ban and then revisiting the ban before it actually comes into effect to ensure the bill accomplishes what it is supposed to accomplish which is to build that infrastructure to handle this massive amount of electronic waste across the state. If it's not there, then we can delay the ban. [LB626]

SENATOR LANGEMEIER: Sure. Are there any other questions? Seeing none, thank you very much. [LB626]

SENATOR MELLO: Thank you. [LB626]

SENATOR LANGEMEIER: Appreciate it. You have heard the opening on LB626. We will now take those that would like to testify as proponents, or in support. Welcome. [LB626]

GARY KRUMLAND: Senator Langemeier, members of the committee, my name is Gary Krumland, G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in support of LB626. As you know, cities across the state get involved with both landfills and with the recycling because of the mandates imposed on them to handle solid waste within their jurisdictions. And as Senator Mello mentioned, electronic devices are a major concern recently. They are an increasing problem for handling this. And so we support any effort that would be out there that the Legislature could work on to help develop a statewide program to deal with electronic devices to help recycle them so they don't go into the landfill. There's probably many of the landfills across the state, and I don't know if it's a majority, but many of them already ban electronic devices from them, like Senator Mello mentioned, the city of Lincoln. And it's usually in areas where there are at least alternatives to handle the electronic devices. But we would be concerned with the ban without the program in place, so we're hoping that there will be a good program so it makes it easy to...for citizens to recycle their electronic devices so that they don't have to go into the landfill. And I even have in my notes what you're just talking about, without a program that makes it easy to recycle and a ban on the landfill, they do end up in the ditches and become even a bigger problem. At least in the landfill they're built to handle it so that the leakage and things does not get into the water. And if they're just dumped on the side, that's no longer there. But the solution, we think, is a statewide program so it makes it easy for the citizens to recycle their electronic devices. [LB626]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB626]

SENATOR HAAR: From the League's viewpoint, is the major problem space or health

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or both? [LB626]

GARY KRUMLAND: It's probably a little bit of both. I mean, space is always a problem, but electronic devices are even a more of a problem because of some of the metals and the makeup of the devices probably are more hazardous than other types of solid waste. And saying that, that...with the certified landfills and things, they are probably the best place to put them without an alternative for recycling, but if we had a better system to handle that, that would be the better solution. [LB626]

SENATOR LANGEMEIER: Senator Christensen. [LB626]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you. Do you think it's possible if communities didn't have a recycler come to town that the city could have a designated spot to drop these off and then have a recycler come pick them up? [LB626]

GARY KRUMLAND: I mean that's the way a lot of recycling is done right now. And cities even do have special days where they take electronic devices or hazardous materials to handle that way. But if you do it once or twice a year and someone misses that, it's hard for that. So if we could get a regular program in place, I think. [LB626]

SENATOR CHRISTENSEN: I agree with a regular program. But say, just like we have a current dump facility, or, you know, a place to take the solid waste, could you have a separate place where they could just drive over 24/7 and dump it? [LB626]

GARY KRUMLAND: Yeah, I mean if...yeah, if there were a place for the operator to be able to get rid of it or to send it someplace else... [LB626]

SENATOR CHRISTENSEN: Because that's one of the few ways I can see making this work in outstate is then the municipalities... [LB626]

GARY KRUMLAND: Uh-huh. [LB626]

SENATOR CHRISTENSEN: ...are going to have to have a location that's convenient to the public to have access to go leave it. I would take mine there and leave it if I could, but if I have to catch a certain date, I'm like you, I maybe can't. [LB626]

GARY KRUMLAND: Yeah, and that's what is happening. And that is a model that some of the cities are already using for their recyclables that...and where certain types of waste is that they have a temporary area where people bring it and they then take it to the proper place. So, yeah, I think that part could work. [LB626]

SENATOR CHRISTENSEN: Okay, thank you. [LB626]

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SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. Further testimony in support of LB626. Welcome. [LB626]

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. I'm for bill LB626. I'm a recycler from long ago. I was working for the state for 50 cents an hour. Had a friend, he had retired from the telephone company and he got telephones and we recycled them and got 50 cents a pound for the copper. Each telephone had two magnets, electromagnets in it with a lot of copper. Today, I don't...VCR has motors about the same size, but they're mostly steel. My son has a garage pretty well filled up with VCRs. He was fixing VCRs before they got so cheap he couldn't fix them and put him out of business and he was going to fix them and now they're not worth anything. I did find a recycler that would pick them up. I'm not sure what he would do with them because they're mostly steel and some aluminum. And so the problem now is not...for what you're going to get out of them is a problem. The labor is too high, \$7 for minimum wage. Any questions? [LB626]

SENATOR LANGEMEIER: (Exhibit 4) Very good. Are there any questions? Seeing none, thank you very much for your testimony. Further testimony in support of LB626. I do have a letter of support from Scott Cassel with the Product Stewardship Institute in Boston, Massachusetts, has a letter of support. We will now move to opponents, those that would like to testify in opposition to LB626. Welcome. [LB626]

THOR SCHROCK: Thank you. Senator Langemeier and committee. My name is Thor Schrock and I'm the owner of the Schrock Innovations Computer Company. I'm not a multi... [LB626]

SENATOR LANGEMEIER: I need you to say and spell your name for me first. [LB626]

THOR SCHROCK: Oh, I apologize, Thor, T-h-o-r, Schrock, S-c-h-r-o-c-k. [LB626]

SENATOR LANGEMEIER: Thank you. [LB626]

THOR SCHROCK: Not a multinational corporation, not based in Asia, based right here in Lincoln; started my company here 11 years ago. We're blessed with an amount of good fortune and keeping pride in check, a little bit of ingenuity, hopefully, but we've expanded into Omaha. And one of the things we do for our customers and we sell computers and repair computers, is we recycle components at no cost for those customers. It's a pain in the rear for customers to simply bring in a used computer or a monitor to our service center. On average we will recycle maybe four computers a day and three to five monitors, CRT monitors a week. We see fewer CRTs coming in now because there are fewer of them out there anymore. They're not as large of a component of the waste stream as they used to be. But LB626, I believe, represents good intentions, our best intentions as Nebraskans, but it's hard to find anyone that's going to argue that it's a good thing to throw CRT monitors in the landfill, you know, no

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one is going to say that. Or it's a good thing that we bury these computers under dirt and forget that they exist. But despite the good intentions of LB626, this bill is going to unleash a hoard of unintended negative consequences. It's going to damage local companies like mine, like other local companies in town. It's going to eliminate private sector jobs; it's going to impose hidden taxes that will hit every consumer in Nebraska. LB626 is branded as a job creation bill, however, as we've seen with the recycling programs in California and Wisconsin, these programs consistently operate at a cost over what they bring in. In fact, Senator Walker's famed budget bill is actually cutting funding completely for local municipalities for grants to recycle e-waste. They can't afford it; it's too expensive. And I don't want to see Nebraska put its local municipalities in a position where they become accustomed to a schedule or a method of removing this e-waste and then have to cut funding to it and lob that onto the local communities. LB626 is going to cost our state budget money in the long run. The cost goes up over time and only requires additional funding, taxes, or cuts in services to keep it profitable. To put it simply, when you tax a small business at this level, you're taking away the razor-thin margin that I operate at. We might make \$25 on a laptop, \$50 on a desktop; we don't make a lot of money on computers. Nebraska's technology entrepreneurs like myself, we're competing against larger, better funded, and more aggressive competitors. Victimized Schrock Innovations at the same dollar cost as you would Dell seriously damages our ability to serve our customers, but at the same time only represents a minor bureaucratic headache to a multinational corporation in Asia. If this bill passes, Schrock Innovations would stop building computers period, plain and simple, we're out, because we can't afford to do it with this bill in place. We would sell Dells or HPs instead because that's the alternative for our customers to keep on doing business. Those come to me built, in a box, preprogrammed, ready to roll out the door. I don't have to do anything to them. If I choose this route, I don't need three of my employees anymore. Let me see, those three employees...I will not need Denton in my Lincoln service center, Dalton in my Lincoln service center, or Dave in my Omaha service center anymore. They build my computers right now. Three jobs, roughly \$30,000 apiece, gone. And that's before this job...this bill saves or creates a single job in Nebraska. Dell and HP, they'll simply just move their physical presences to another state, avoiding the tax. It's not hard to do. Basically, they can move to Iowa, South Dakota, Colorado, costing the state an additional tens of thousands of jobs from their presences leaving. And if you think they wouldn't do that, think again. Look at what Amazon.com did in North Carolina last year. Now the state of New York, very, very high population base there, they want their money so they said to Amazon, you collect taxes. Amazon said, okay, we'll do it. North Carolina said, hey, that's a good deal, we want the tax money too. Amazon said, forget it, we...they fired everybody in the state that worked for them; eliminated all their associates and left the state. Now the state doesn't have any of the sales tax revenue from the stuff being sold there, and they don't have any sales taxes from Amazon. The numbers in this bill don't add up. LB626 gains its funding by taxing manufacturers \$10,000 plus an annual registration fee for the privilege of selling a computer here. And to a lesser extent it gains funding by the \$50 tax. Basically,

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this bill is supposed to save or create jobs. Well, if you look at what happened on a federal level, you can't measure that. You can't measure a saved job. LB626 states that the state will collect between \$1 million and \$1.5 million from local manufacturers. Well, if you add up all those local manufacturers and take away the small guys that aren't going to register anyway, the numbers don't add up. Where's the money coming from? LB626 has that base covered because the bill language says that the numbers must be hit annually. Ladies and gentlemen, what am I supposed to tell my employees when I go back to my service centers today? Are they going to have a job this time next year building computers at Schrock Innovations or are we going to let the free enterprise marketplace decide how this e-waste gets recycled because it's a problem that has to get solved? Thank you for your time and I can take any questions if you have them. [LB626]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB626]

SENATOR HAAR: Since we both agree that this stuff shouldn't go into landfills, do you have any other solution then if you're saying LB626...? [LB626]

THOR SCHROCK: You got to be careful here. You're asking an entrepreneur if he has a solution to a problem. That's like opening a can of worms. [LB626]

SENATOR HAAR: I understand that. [LB626]

THOR SCHROCK: In fact, I was discussing with some of my colleagues an excellent solution that would be free market-based. It would be charitable, and it would fund the collection of e-waste across the state. Make a service depot that resells remanufactured electronic equipment. The profit you would make from selling the equipment...trust me, I have people every day who call my service center wanting to buy a \$200 used computer because nobody sells them anymore. Well, people want them. People want big screen TVs if it's a 10-year-old TV if it works great; I think there's a market for that. And if we had a depot that would sell it, yeah, you could make a lot of money doing that and you could use...if you operated it as a nonprofit, you could use the funds, the revenues to fund collection efforts, because you're just collecting your own inventory. The more you collect the more money you make and the stuff you can't sell you pay to recycle. Problem solved. [LB626]

SENATOR HAAR: Okay. We'll see if we can put that into a bill. [LB626]

THOR SCHROCK: Oh, it's free enterprise, you don't need a bill for that. [LB626]

SENATOR LANGEMEIER: Senator Smith. [LB626]

SENATOR SMITH: Thank you, Senator Langemeier. Sounds like a great opportunity for

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an Angel Investment. (laughter) [LB626]

THOR SCHROCK: Why do you got some extra money laying around? [LB626]

SENATOR SMITH: There's been a little discussion around the Legislature. But thank you for being here today, appreciate your free market mindset. You've given us a perspective of your business and how your business differs from some of the others. How many other businesses do you believe there are similar to yours in Nebraska? [LB626]

THOR SCHROCK: Okay. Obviously, the majority of your new computer sales are going to come from mail order companies like Dell or box stores like Best Buy. Schrock Innovations, we sell computers at a higher expense, a higher cost to consumers, but we provide extra service behind it and we're still barely competitive on the price of the computer. If you eliminated...imagine if you wanted to buy a computer, the only place you could go is Best Buy. If you eliminated all the independent sellers in Lincoln, I don't think there's another retailer in Lincoln that sells computers. That's it. And in Omaha you'd be talking about Best Buy and Nebraska Furniture Mart. You're talking about causing significant damage to, at a minimum, dozens of businesses, if not scores. [LB626]

SENATOR SMITH: Thank you. [LB626]

SENATOR LANGEMEIER: Are there any other questions? I only have one. So you're thinking a good...electronics Goodwill store, huh? [LB626]

THOR SCHROCK: "Kinda sorta." Yeah. Like I said, I didn't come here to...I didn't come here in VC mode, you know, to pitch a deal, but the bottom line is, there are solutions to this problem. There are companies across the nation right now doing exactly what I talked about. We recycle things for free. Best Buy, actually, just launched a technology buy-back program where when you buy a new electronic device, you pay them a pittance, it's like \$10 or \$20, which is about what this tax would equate to per electronic device, and at the end of that device's lifetime Best Buy will buy it back from you for an in-store credit against your new device. It's great for them because they retain you as a customer, makes it harder for independents like me to pull people away from Best Buy. They retain the customer and the profits from that customer and then Best Buy recycles...they have the volume of recyclables that are functional they can actually remarket and resell them in a different environment. [LB626]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for your testimony. [LB626]

THOR SCHROCK: Thank you. [LB626]

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SENATOR LANGEMEIER: Appreciate it. Further testimony in opposition. Welcome.
[LB626]

NICK BOCK: Thank you. My name is Nick Bock, spelled N-i-c-k B-o-c-k; one of the cofounders and the CEO of Five Nines Technology Group, a local company here in town that provides technology services primarily focused towards businesses. I do have some significant concerns, quite honestly both for my industry, as well as some other small businesses in Nebraska. I echo some of the concerns that Thor Schrock mentioned, specifically regarding as the bill currently sits, it would probably eliminate jobs for both him and a number of other companies that do similar services, build their own computers here in Nebraska. The way the bill is worded, specifically targets them the same way it would target a large manufacturer based in Asia. And I don't believe that that was the intention, certainly for a job creation bill. But as it sits right now, it would eliminate significant jobs from Nebraska. There are, as I said, there are numerous companies that build their own computers. We don't happen to be one of them, but there are a lot that do that and it would probably eliminate that business within Nebraska, so I'm very concerned about that. There also is some very gray language in regards to who is considered a manufacturer that I would strongly advise be changed. If the goal is to target the large manufacturers that are shipping things into the state, but allegedly not doing anything about helping clean them up. The language could be construed to also apply to a business like mine that is simply reselling those manufactured devices. So we resell Dell, HP, IBM, a large number of manufacturers to our business clients locally, Lincoln, Omaha, surrounding areas in Nebraska. This would put a significant impact on us if we were...I mean, we sell well over a thousand devices a year. We don't manufacture any of the them, however the verbiage is very gray from a standpoint of trying to differentiate based on whether there's a label on the device or not. And that language really needs to be clarified. If that's going to impact me and take jobs from my business I'd like to know that as well to know how many other people I need to tell about it. So I mean that is very concerning. I also would certainly encourage this committee to be willing to evaluate some of the other programs that are out there that would not put significant burden on the state of Nebraska and the businesses and people in the state. I think while well intentioned to try and put the load...the financial burden on the manufacturers, I'm afraid that we would find ourselves in a scenario where that wouldn't take place. I'd be interested to see what has happened in other states regarding companies like Dell, HP, IBM, significant other resellers as to whether or not they've be willing to actually acquiesce, pay those fees. It would be interesting to know whether that's happening or not. I don't know the answer to that. I'd be a little afraid that they aren't and some of the verbiage in the bill does, basically, say we're going to figure out how we're going to collect this regardless of somewhat who we collect that from. I would be concerned that local businesses would end up being on the brunt end of that. We've created 40 jobs over the last four years as a company and I would hate to start losing some of those jobs because of what this legislation wants to

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do. That's my concern. Thank you for hearing me. [LB626]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB626]

SENATOR HAAR: Well, you know, I'd really like to see an entrepreneurial solution to this problem. But one of my responsibilities is the health of the citizens and I see just dumping e-waste in the landfill as not just a space problem, because a lot of those things could get compacted way down. But we're talking about a health problem if not for this generation immediately, eventually those landfills are going to leak and e-devices contain a lot of heavy metals, those kinds of things, so if there are other solutions, I hope people will step forward and help us with those because I think it is a health issue as well. [LB626]

NICK BOCK: I can respond to that, right? [LB626]

SENATOR HAAR: Sure, please. [LB626]

NICK BOCK: I agree. I don't disagree at all. I plan on living in Nebraska for a long time and I have children and I hope they stay here for a long time. I don't...I'd be hard-pressed to come here and say that we shouldn't have something done regarding the e-waste that's being introduced into the system. What I...one, I want to make very clear that I don't feel like this is certainly a job creation bill because it's not. Two, we do have to acknowledge that if enacted it is going to cut jobs in Lincoln, in Omaha, in Nebraska. Three, I believe that there are some alternatives that are not being properly explored. A lot of the larger vendors, such as Dell, such as HP, have large programs in place, because when you can take and aggregate those recyclables they can be resold on the secondary market. I don't know whether we've adequately explored that. There are also programs even through places like the Goodwill that, again, do the same thing, aggregate those recyclables regardless of what vendor they are and are able to actually almost make that an entrepreneurial thing. So I'm very challenged to say that we should jump to figuring out how to pull \$1 million to \$1.5 million out of Nebraska because I think that's ultimately who is going to pay for it if we haven't adequately explored other opportunities. I'm ignoring, obviously, all the tire verbiage and everything else that's in there, I'm speaking specifically for the e-waste. [LB626]

SENATOR HAAR: Gotcha. Thank you. [LB626]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB626]

NICK BOCK: Thank you. [LB626]

SENATOR LANGEMEIER: (Exhibits 5, 6, and 7) Well done. Further testimony in

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opposition of LB626. I do have a number of letters. I have one from Walter Alcorn from the Consumer Electronics Association, Arlington, Virginia. I have one from Jeremy McNeal with PC Recycling, from Omaha. And I have one from Ed Longanecker from TechAmerica in opposition to LB626. Now we move to neutral testimony; those that would like to testify in a neutral capacity. Welcome. [LB626]

JIM OTTO: Thank you. Senator Langemeier, members of the committee, my name is Jim Otto, O-t-t-o. I am president and a registered lobbyist for the Nebraska Retail Federation. I'm here today to testify in a neutral capacity on LB626. First of all I'd like to explain why I'm here in a neutral capacity. It is because we view LB626 as the lesser of two evils. The last thing that we want to do is collect a point-of-sale fee for recycling at the point-of-sale and that has been introduced in the past. And so while we aren't just enthusiastically supportive, we would prefer this over the point-of-sale fee. As Mr. Schrock testified earlier, we have members all the way from his level, I mean he's already doing things in recycling and taking things back, but members all the way from his level to Best Buy who are already doing quite a bit when it comes to recycling. He mentioned a little bit about Best Buy, but you can recycle practically anything at Best Buy. For example, an old television, whatever you have, if you go in, they will charge you \$10, but also give you a \$10 gift card and then you can...so I guess you could call that not free, but it's practically free. So retailers are stepping up and recognizing the problem, and would prefer a national solution and are working for a national solution because major retailers, the last thing they like when they're in multi-states is to have a different requirements to meet for every state separately. So I know that solutions like the Best Buy solution or Mr. Schrock, he's available here in Lincoln and the surrounding area of Lincoln, but when you get to rural communities we do have a problem because there probably isn't someone that does that in many of the rural communities. As I said, we would prefer a national solution. We also would be very supportive of an exemption for small business like the small businesses that have testified here in opposition. I don't know what level that would be. It would have to be...talk to them as to whether or not they would be comfortable with that. Maybe that's not something they would accept, but it seems reasonable to have some kind of an exemption for small business more than is presently stated in the bill. With that, if you have any questions. [LB626]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB626]

SENATOR HAAR: A national solution, what would that look like if you had your druthers? [LB626]

JIM OTTO: Well actually...if you take all of the bills that...one thing...California is the only state that has a point-of-sale fee. Every other state that has enacted it has done it this way and put it on the manufacturers. But it would look...it would actually look similar to the language that is in this bill, but taking those all together...I think it actually has been introduced, but isn't getting as much attention as we would like it to right now with

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the other problems nationally. But I could get you a copy of what has been introduced. [LB626]

SENATOR HAAR: That would be interesting because, again, I see this as a health problem and at some point we're going to have to solve the health problem. [LB626]

JIM OTTO: I think everybody recognizes that it is a problem, but what is the best way to solve it? [LB626]

SENATOR HAAR: Sure. Thank you. [LB626]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB626]

JIM OTTO: Thank you. [LB626]

SENATOR LANGEMEIER: Further testimony in a neutral capacity? Seeing none, Senator Mello, would you like to close? [LB626]

SENATOR MELLO: Thank you, Chairman Langemeier and members of the committee. I think just for point of clarification, and I always appreciate getting feedback in all legislation, I do, whether they support it, oppose it, or neutral. I would remind the committee though in the green copy of the legislation there is provision put in place for take-back programs whether they're a small business and/or large multinational corporations. So if a small business recycles the products that they manufacture locally, that counts against any fees that they would pay which was a critical component of the bill in regards to trying to encourage those manufacturers to be a part of the solution when it comes to recycling and not just pay money for someone else to deal with the problem. So I think that's the first component. The second component, I think, as I mentioned in my opening, the Retail Federation came to us and expressed that there were some concerns and challenges they wanted to see us look to address. By all means, that's something that I, as I stated earlier, I'm more than willing to sit down and work with the committee and the Retail Federation and other business organizations who would like to see a solution to this problem. But to classify, I think, to classify this as not creating jobs with creating a new market is a misunderstanding of economics. Right now there is no real market for electronics recycling, thus there's very few businesses in Nebraska that actually does this. So the opportunity that comes with LB626 is to create a new market; and it's to create new jobs through a new industry right now statewide. The hope is though, and I think with both those who testified in opposition, and neutral and support, understand that it's going to have to be, I think, a comprehensive solution that brings in the manufacturers, as well as the consumers to find the solution. The last component I just want to make sure I clarified, and it was mentioned in some of the opposition testimony is that this doesn't impact the retailers. And I think that was a

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critical component. The Retail Federation just to reiterate to you, this does not have a point-of-sale component so that if a company, small or large, is selling a product that they did not manufacture and do not take liability for that manufacturing that product, they are not the ones paying the manufacturing fee. So I think that's very...while there could be some opportunities, I think, to always clarify language in legislation, I would like to reiterate that that was never the intention in our understanding of the legislation; that does not impact retailers at all, it's still based on manufacturers. But as I've said before, I'm more than willing to work with the committee and other interested parties to find the solution to ensure that that language is clarified to make sure it only impacts manufacturers and we can look to explore as well, I think, the opportunity to maybe exempt, completely exempt while in the bill we do exempt mostly smaller businesses who have not manufactured more than 250 products, we're more than willing to look to expand that to a higher number if we can come to some compromise. One last issue, and I think it's just more regarding the fiscal component of this legislation beyond the job creation opportunity that comes with creating a new industry, new markets in the state with electronics recycling. Senator Carlson asked about the fiscal note in regards...and this is purely cash funded, so the point being, as in any cash funded programs in our state, if the cash is not there, the program does not go forward. So this does not have an implication, so to speak, on the state's budget at all, like if other states had chosen to incorporate General Fund tax dollars in their program, that's the other state's choice. LB626 does not take that same tact. We ensure that it is a cash funded program that if the cash funding is not available for the program, the program reduces its services. We do this on a wholesale level with other programs in state government because that's the way we've created a lot of our state government agencies and programs to ensure when we have the money available we spend it on the programs; if the money is not available, we don't spend the money. So just as a point of clarification, I know that was mentioned in other testimony that this would be a potential liability to the state in budgetary issues where as the bill is drafted and as you can see the fiscal note, that has no ramifications whatsoever. With that I'd be happy to answer any questions the committee may have. [LB626]

SENATOR LANGEMEIER: Senator Haar. [LB626]

SENATOR HAAR: Well, the question I asked somebody earlier, in your mind, Senator Mello, is this...what's your main concerns, space in landfills or health? [LB626]

SENATOR MELLO: I think it's more than just those two, Senator Haar. I wouldn't limit it just to those two. I think space in landfills is a component that the League mentioned as well. I think the other component regarding space in landfill is the property taxes that are currently being paid to take care of it. That was something the opposition testimony did not mention today is that right now property taxpayers in various counties are paying for the disposal of manufacturers' products. So while there are some responsible manufacturers who do go out of their way to bring back products whether it's a HP or it's

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a small business, at the end of the day property taxpayers are subsidizing this electronic waste in our landfills. So I think it's not just the land, it's also the property taxes that are currently being financed through property taxpayers to help take care of that. The health component, I would agree is as much of a concern, I think, as the fiscal and economic impacts. As multiple research has shown, the components that are just in a computer alone, the materials that come with a computer when it is demanufactured, the pollution that it can cause to water, for example, let alone soil is dramatic and it has a dramatic impact in public health and public safety in the sense of having these chemicals in landfills and/or polluting waters or streams being thrown in ditches so to speak that has possibly unmeasurable impact on Nebraska citizens because we might never know how many citizens could contract cancer or any other kind of life-threatening disease because of polluted, contaminated water due to electronic waste. So I think that's a critical component, Senator Haar, but I think, once again, it's tough to sometimes always measure the environmental health impact, but it is fairly easy for us to impact the space and the property taxes that are going currently to take care of this problem. [LB626]

SENATOR LANGEMEIER: Senator Carlson. [LB626]

SENATOR CARLSON: Thank you, Senator Langemeier. Well, Senator Mello, I'll go back to what I'm looking here because you referred to it as cash-funded program and my understanding of a cash-funded program is that fees or whatever provide the dollars and we're not looking at General Fund dollars, but we're still looking at a \$55,000 a year deficit, so how does that deficit get handled? [LB626]

SENATOR MELLO: Senator Carlson, maybe I wasn't as clear in regards to discussing my interpretation of that fiscal note. The Department of Environmental Quality stated, and the Legislative Fiscal Office, I think, confirmed that they estimated that the department would spend up to \$1.2 million a year in providing grants to public entities whether it's city/county governments, private for-profit businesses, or non-profits for that matter. But it was not a set dollar amount that they have to give out. So I think that's the wiggle room in the fiscal note and it's...I think it's laid out in the fiscal note that they may give up to and they estimate that \$1.2 million or \$1.25 million where they estimate the revenue at \$1.2 million with the understanding that they can adjust the fees which we've given the department the ability to do to adjust the fees to meet kind of that threshold to ensure that we have a suitable amount of money to build statewide infrastructure to take care of electronic waste. So I think there is some give and take on that. It might not be the \$50,000 cash funded deficit every year. It could run a surplus depending upon whether or not the department chooses to give out only a million dollars in grants or maybe they give out \$1.5 million in grants. The discretion is generally left up to the department to make these decisions, not so much the legislation. [LB626]

SENATOR CARLSON: Well, if you don't even pay any attention to the testimony that was given, and there was some, I think, concerning testimony given by those that are

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opponents of the bill, and you know better than I do being on Appropriations, you put something up on the floor that's going to look like a \$55,000 per year deficit, I don't think that's going any place. So you need to solve that, an explanation. [LB626]

SENATOR MELLO: And in all honesty, Senator Carlson, this is an ongoing issue. I have been discussing this issue with Senator Langemeier and some of the other committee members. It's not a priority bill. I'm not anticipating this bill coming to the legislative floor this year as it's currently drafted. I think we've heard some positive testimony today in regards to looking at some potential changes from both the opposition and the neutral testimony of trying to find a way to make this economically feasible for Nebraska, but also understanding that this is a serious problem that has not been solved through, I would say, purely entrepreneurial avenues. Something that was an idea that was mentioned in a sense of a buy-back program and take-back programs, once again, as Senator Langemeier mentioned, Goodwill as a nonprofit organization does exactly that. It takes in electronic waste and tries to rehab it and sell it back and/or provide it at low to no cost. The problem is, we do not have a Goodwill, I'd say, in 93 counties that can do this programming for free for Nebraskans. And the hope would be is that we could utilize LB626 or the concepts behind LB626 to build an infrastructure to do exactly that. It's not necessary, I would say, that you might not need to have the fees at the level they are and you might not need to provide that funding every year at that level once the appropriate infrastructure is put in place. So to that extent I think there is some latitude given in the fiscal note that says exactly that, that it might not be exactly \$1.25 million; it might not be \$1.2 million in revenues. It's purely left up to estimates in regards to businesses; in regards to the numbers that they sell or the numbers that they manufacture and sell in Nebraska. [LB626]

SENATOR CARLSON: Now I'll give you a little hard time with one more comment; we do have goodwill in all 93 counties, but just not the Goodwill organization. [LB626]

SENATOR MELLO: I apologize, I should say Goodwill Industries and not goodwill, that is correct, Senator Carlson. [LB626]

SENATOR CARLSON: Thank you. [LB626]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB626]

SENATOR MELLO: Thank you. [LB626]

SENATOR LANGEMEIER: Appreciate it. You've heard the closing on LB626. That concludes the hearing for LB626 for the day. We will now move, Senator Nordquist is here, to LB587. Welcome. [LB626]

SENATOR NORDQUIST: Thank you, Chairman Langemeier, members of the

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committee, I'm Jeremy Nordquist, I represent District 7 in downtown and south Omaha in the Legislature. LB587 seeks to foster the growth and development of Nebraska's natural gas infrastructure, compressed natural gas infrastructure along the I-80 corridor. LB587 would create the Compressed Natural Gas Innovation Fund from which grants would be made to support CNG infrastructure projects along the I-80 corridor. The innovation grants made from this fund are capped at \$200,000 and eligible entities must pay 80 percent of the costs of the project. As written, LB587 requires that no more than one grant may be approved per county in the first five years of the fund's existence. The Compressed Natural Gas Innovation Fund is created by transferring \$500,000 annually from the Petroleum Release Remediation Action Cash Fund which currently has an unencumbered balance, according to the fiscal office, of around \$5 million to \$5.5 million... [LB587]

SENATOR LANGEMEIER: I'm going to stop you a second. Can you lift the mike up a little bit? [LB587]

SENATOR NORDQUIST: Sorry. Too much echo? [LB587]

SENATOR LANGEMEIER: Yes. It's not taping very well. [LB587]

SENATOR NORDQUIST: All right, okay, great. [LB587]

SENATOR LANGEMEIER: Thanks. [LB587]

SENATOR NORDQUIST: Yeah, no problem. Of unencumbered balance, the fund has about \$5 million to \$5.5 million. I introduced LB587 because I believe now more than ever we need to provide a realistic alternative to our reliance on petroleum fuel for our transportation system. This bill will help us offset the significant up-front costs of building CNG infrastructure in our state to pave the way for consumers and businesses to take advantage of the significant benefits that natural gas vehicles have to offer. I'm even more resolved now than ever as we all drive by gas stations every day seeing prices getting closer to \$3.50 a gallon if not higher. According to MUD in their most recent newsletter, the price at the pump for CNG gallon equivalent would be \$1.30 per gallon. Consumers and businesses running high mileage fleets should have a choice in transportation options and incentivizing CNG infrastructure along I-80 will give them that choice. Other than the lower and more stable prices, vehicles fueled by CNG offer lower emissions, lower greenhouse gases, lower refueling costs than their gas-powered counterparts. Additionally, natural gas is an abundant, domestically available fuel resource; in recent years 80 percent to 90 percent of natural gas used in the United States was produced at home. CNG is also readily available right here in Nebraska. We have intra- and interstate pipelines of natural gas and CNG refueling stations can be built anywhere along those lines. There is no one...I don't believe there's one technology or one fuel that will ultimately solve our state or nation's energy shortfalls,

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but what we do have available to us is options between natural gas, ethanol, propane, gas hybrids, electric power, they all need to be part of the solution in the long run. Other states are moving forward with the development of CNG. To our west, Colorado has 11 public stations; Wyoming has 3. And recently there was news that MUD teamed up in Omaha with Happy Cab. They're going to open two public filling stations in June. And in Lincoln the Airport Authority is in the process of developing a public station, hopefully by this summer. But unfortunately west of there, there are no options available. I know that MUD has had conversations, and I have as well, with people that manage fleets both inside the Omaha metro area and people who do long-haul trucking down I-80 that would be interested in doing some fleet conversions to compressed natural gas should the infrastructure, the filling stations, be in place. This bill is the third I've introduced in my time in the Legislature. The first year we looked at exempting a portion of natural gas from the excise tax. That bill was advanced from the Revenue Committee at that time, but no action was taken. Then we looked at the issue a little more in-depth and really came to the conclusion that infrastructure was the first key before we try to incentivize the demand. So last year I introduced a bill that also got out of Revenue, but it was too late in the session to move on it. And that did a similar piece that earmarked a piece of sales tax from natural gas that would have created a fund similar to what we're talking about in this bill. And I think that's all I have right now, so I'd be happy to take any questions. [LB587]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Nordquist? [LB587]

SENATOR NORDQUIST: (Exhibits 8 and 9) Oh, I do have some handouts. Sorry. [LB587]

SENATOR LANGEMEIER: Senator Haar. [LB587]

SENATOR HAAR: I want to know why gas is 10 cents cheaper in Omaha? (Laughter) No, that's a long story. But, again, I noticed you've already picked a priority bill, Senator Nordquist. [LB587]

SENATOR NORDQUIST: Yeah. [LB587]

SENATOR HAAR: So is this something you'd like to see held over until next year or a possible action next year, because it's probably not going to... [LB587]

SENATOR NORDQUIST: Yeah, I'd like...I know you guys are working hard to get bills that are prioritized out first. As the session winds on here, should you have time to look at it and I'd be happy to work with you on any concerns that the committee may have, if it's possible to get it out and there's a vehicle available to look at amending it onto, otherwise be happy to hold it till next year and potentially consider prioritizing it at that

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time. [LB587]

SENATOR HAAR: Okay, thanks. [LB587]

SENATOR LANGEMEIER: Are there any other questions? Seeing none right now, thank you very much for your opening. [LB587]

SENATOR NORDQUIST: Yeah. Thanks. [LB587]

SENATOR LANGEMEIER: You have heard the opening on LB587. We will now take those that would like to testify as proponents or in support. Welcome. [LB587]

JOHN WOOD: Mr. Chairman, members of the committee, my name is John Wood. I'm the executive director for the Lincoln Airport Authority. [LB587]

SENATOR LANGEMEIER: I need you to spell it. [LB587]

JOHN WOOD: Down? [LB587]

SENATOR LANGEMEIER: No, state and spell your name, please, first. [LB587]

JOHN WOOD: Oh, John Wood, J-o-h-n W-o-o-d. [LB587]

SENATOR LANGEMEIER: Thanks. [LB587]

JOHN WOOD: I'm just here to give you an example of a project. As the senator mentioned, we're going to have a station. We got interested in natural gas in 2008; began to research it and joined with MUD as partners with a group in Kansas City called the Kansas City Clean Cities Coalition to apply for a stimulus grant through the Department of Energy for this project. We were successful in getting the grant. The grant covers 50 percent of the cost of the filling station and the conversion cost of the first seven vehicles we're going to replace in our own fleet. We will continue to replace vehicles throughout our maintenance fleet at the airport in their normal course and just replace them with natural gas vehicles. So we're about five or six years we'll end up having the whole fleet natural gas. The station we're installing is on the west side of the airport in our industrial park; it's three miles from the interstate, not one mile. So that would be something a little different from what the bill states and it will be available to the public. We expect to have...we just awarded the bids for that; we expect that station to be operational in July time frame. We undertook the project for several reasons. First off was security. We operate a vital 24-hour facility in the community. My concern was the day would come where it wasn't the price of gasoline, it was the fact that you couldn't get a delivery for two weeks because they just didn't have it. Natural gas is here; it's in America; it's available at the end of the pipe. We understand from people

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that operate that the equipment lasts longer, the engine life of the vehicles is longer because the gas burns cleaner. So hopefully it will lengthen our long-term replacement of vehicles somewhat and save us some money. It's green; it's cleaner air, cleaner emissions. And while we do not currently exist in a nonattainment area as far as air quality is concerned for the EPA, this helps keep it that way. We have the infrastructure necessary; our fleet comes home every night. Our fleet rarely leaves home actually. Most of it stays on the airport all day long. So it made a perfect opportunity for us to take the lead in the community and be one of the first out there to do this. And we understand as we've moved through that there are other, both private and public parties in Lincoln now that are looking at buying natural gas vehicles now that they will have at least one place to fuel up. And then, of course, as was mentioned is the price, the difference in that price keeps changing daily and it looks like it was a good idea. If we had not had the access to the DOE money which was a one-time thing through the stimulus program, the project probably would not be financially feasible for us, because, as I said, it paid for about half of the fueling station costs itself. Under the bill the way it is written, public entities are not eligible. I would urge you to consider that. Sometimes in communities, whether it's Lincoln or whether it's a smaller community elsewhere in Nebraska, it may be the local public entity that has the fleet and has the wherewithal to get this kind of thing started in the community. And the other was, I would ask you to consider a little bit farther from the interstate. As I said, our station will end up being three miles, which the natural gas people consider very reasonable for anybody transiting the interstate to pull off and go get natural gas. I'll be glad to answer any questions. [LB587]

SENATOR LANGEMEIER: Very good. Senator Haar. [LB587]

SENATOR HAAR: I'm just curious. First of all, when it says \$1.30 for a gallon, gasoline gallon equivalent, so that...we're talking about heat energy and so one, similar mileage for \$1.30 or? [LB587]

JOHN WOOD: I can't give you the calculations. It's so many therms and decatherms and then you bring all that back to figure out the gallon equivalent. [LB587]

SENATOR HAAR: Yeah. [LB587]

JOHN WOOD: But the gas companies have done that and actually the price to us, I think, here in Lincoln will be about \$1.55 through Black Hills, of course. My understanding is gas mileage, if you will, on that gasoline gallon equivalent is about the same; and it all comes down to BTUs. [LB587]

SENATOR HAAR: Sure, sure. [LB587]

JOHN WOOD: And, you know, high school chemistry, if you remember any of that, so a

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20-gallon tank on a car versus equivalent of 20 gallons of natural gas, the car is going to get about the same distance. [LB587]

SENATOR HAAR: Okay. I taught high school chemistry so I... [LB587]

JOHN WOOD: Okay. You're way ahead of me. I fell asleep in my chemistry class. [LB587]

SENATOR HAAR: Oh, that's too bad. I had explosions that would happen every so often that would wake the kids up. But is it more...you simply take natural gas out of the pipelines and do you compress it further or is it just merely a transfer of that natural gas to a tank in a vehicle? [LB587]

JOHN WOOD: No, it's compression. The gas...and I'm sure you're going to have people here from the gas companies to testify to you later. [LB587]

SENATOR HAAR: Okay. [LB587]

JOHN WOOD: They're going to be more knowledgeable than I am. But the gas that is in the gas lines, whether it's a business or a house, is fairly low pressure. The gas that the...you got to really pressurize it to several thousand or more PSI in the tank that's in the vehicle so that it moves out. [LB587]

SENATOR HAAR: Gotcha. [LB587]

JOHN WOOD: So it's the compression of that gas and the storage of some compressed gas that you can quickly refill a vehicle is what the fueling station is all about. [LB587]

SENATOR HAAR: Okay. [LB587]

JOHN WOOD: But we are pulling it out of the same pipeline you might pull it out of for your home heating. I mean it's the same gas. [LB587]

SENATOR HAAR: Okay. Thanks. [LB587]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for your testimony. [LB587]

JOHN WOOD: Thank you. [LB587]

SENATOR LANGEMEIER: Further testimony in support of LB587. Welcome. [LB587]

DAN CROUCHLEY: Senator Langemeier, members of the committee, my name is Dan

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Crouchley, D-a-n C-r-o-u-c-h-l-e-y. I'm senior vice president and general counsel at Metropolitan Utilities District which is the water and gas utility for the Omaha area. We currently have 210,000 gas customers and we're hoping that we will obtain more customers who are driving natural gas vehicles. We thank Senator Nordquist for introducing this bill because it recognizes a need for infrastructure. And basically as he described that, we're talking about fueling stations along the interstate. As he referred to, the recent events emphasize some concerns about petroleum and the national average on Monday for a gallon of gas was \$3.52. One of the alternatives is natural gas and natural gas vehicles and of course we need fueling stations. On a local basis, MUD is doing its part. We're opening two fueling stations in Omaha to the public. We do have, as the senator referred to, an agreement with Happy Cab to convert 50 cabs to natural gas. We have our own fleet of about 70 vehicles and we're increasing that usage. We're talking with others. Now you can move trucks and etcetera around the larger Omaha area and even from Omaha to Lincoln but what you do need is, I think, to get from one end of the state to the other and that requires fueling stations along the interstate and this bill allows for a funding mechanism to do that. We do recognize that it does take funds away from the Petroleum Release Remedial Action Cash Fund and I think that may create some opposition. We do recognize that and we look to Senator Nordquist and your wisdom and if that's a great problem we'd like to see that resolved. But we're here because there is a need for this and it's a need to break this out of being a local thing that we can develop to a circumstance that allows us to be moving natural gas vehicles throughout the state and then interstate. And that's my presentation and I'd be glad to take questions. [LB587]

SENATOR LANGEMEIER: Senator Haar. [LB587]

SENATOR HAAR: Again, just how this all works; can a typical gasoline engine burn natural gas or is the engine itself have to be...I understand the storage mechanism is certainly different, but... [LB587]

DAN CROUCHLEY: It has to be converted. It is an internal combustion engine, but it requires a conversion to utilize natural gas. I'm not sure I understand the science, but it does require that. And it costs in terms of trucks and stuff that we have, it costs about \$10,000. It doesn't cost that much to buy a natural gas vehicle that was built as a natural gas vehicle, but it does require conversion. [LB587]

SENATOR HAAR: So I can't just have a car that I switch a little valve. [LB587]

DAN CROUCHLEY: No. [LB587]

SENATOR HAAR: Damn. [LB587]

DAN CROUCHLEY: There are, by the way, there are liquid natural gas vehicles. And

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liquid natural gas is...starts out at 246 degrees below zero, but you can actually move that if you've got a pressurized container and there is some potential there for fleets to use those. So there's more than one way to do it, but the most regular way is compressed natural gas. [LB587]

SENATOR HAAR: Okay. [LB587]

SENATOR LANGEMEIER: I do have one question. [LB587]

DAN CROUCHLEY: Uh-huh. [LB587]

SENATOR LANGEMEIER: In the funding of roads, we fund it through a gas tax and we don't currently tax natural gas in a similar type manner for roads. We tax it for other things, yes, I know. But if we convert this on a regular basis to automobiles and that's our sole funding source for roads, we need to look at some method to do that. [LB587]

DAN CROUCHLEY: Oh, yeah. [LB587]

SENATOR LANGEMEIER: Then with that said, we then...so it's at a disproportional relationship to gas because right now it's not being taxed for road purposes to maintain roads. And then we want our petroleum fees that are paid to help also pay for this program, I think that is, you talked about and you brought it up as the opponent side, I think it's a pretty major discrepancy. [LB587]

DAN CROUCHLEY: Yeah. We recognize that aspect of it. It appears that that money was for petroleum remedial uses and we would hope that that might be addressed in terms of...I'm not sure where the funding would come from, but we're hoping the senator and this committee would address that. [LB587]

SENATOR LANGEMEIER: So your support is more for the idea than... [LB587]

DAN CROUCHLEY: Well... [LB587]

SENATOR LANGEMEIER: ...would take whatever kind of funding is out there, but you support the idea. [LB587]

DAN CROUCHLEY: We're very much for the idea. Yeah. [LB587]

SENATOR LANGEMEIER: Okay. Very good. Are there any other questions? Seeing none, well done. [LB587]

DAN CROUCHLEY: Thank you. [LB587]

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SENATOR LANGEMEIER: Further testimony as proponents. Welcome. [LB587]

JILL BECKER: Good afternoon, Senator Langemeier and members of the committee. My name is Jill Becker, B-e-c-k-e-r and I'm here today representing Black Hills Energy as a registered lobbyist testifying in support, generally of the concepts found in LB587. I would not say that we are tied to the funding source that is in the bill, nor are we tied to the distance limitation and the types of projects that might be eligible. But certainly we would encourage the committee's support of taking a harder look at the natural gas vehicle industry and what it could do for Nebraska. I know that this year many of you are hearing from your communities that are facing budgetary situations, that we as a state are too. Natural gas vehicles provide a tremendous opportunity for entities to cut their fuel costs and to run vehicles in a much similar way as they are performing now, but have better...I guess less maintenance cost and have cleaner burning fuel systems on them too. But in talking with one of these entities, infrastructure and where they can fill those vehicles up is the issue. And we think that you as the committee can provide a lot of guidance as far as what we as a state can do and what businesses such as ours that are involved in the natural gas industry can do to move this industry along. Clearly we are seeing some of our states do a lot more in this industry than we are so far, but there are a lot of opportunities here too. You've heard a little bit about what applications are available for natural gas vehicles and fleet applications are some of the best. You heard that a little bit from John Wood, but there are a lot of opportunities out there and could provide some economic benefits to our state certainly, and in an area that we really don't have a whole lot going on yet in this industry. So with that I'd be happy to answer any questions. [LB587]

SENATOR LANGEMEIER: Are there any questions? I do have one. [LB587]

JILL BECKER: Yes. [LB587]

SENATOR LANGEMEIER: I have Black Hills Energy at my house. [LB587]

JILL BECKER: Yes. [LB587]

SENATOR LANGEMEIER: And you talk about promoting this industry and you want to promote it. Can I go get...I drive a Ford pickup; can I go buy a new one that has this engine in it that's ready to go? [LB587]

JILL BECKER: You know, I'm not sure off the top of my head what types of vehicles come straight out of the factory already converted. I can't tell you which trucks off the top of my head. I know some of the vans you can. And we're seeing more every year. What I think is interesting is that we actually see a greater variety in these types of vehicles overseas than we do in the United States. And why that is, I'm not really quite sure, but there are a significant number of these types of vehicles that you can

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purchase straight out of the factory already converted. [LB587]

SENATOR LANGEMEIER: And then my other question would be, is there...since I have your energy already at my house, is there a kit that I can buy that would pump this right into my car in my own garage and I could just...well, might not want to do it in my garage, but outside my house. I could pump at home. [LB587]

JILL BECKER: Yes, it's more than a kit, but it is a individualized fuel pump that you can put in your garage as your own personal fueling station and when you come home at night you can refuel your vehicle overnight and then in the morning you will unhook it and take off. So you can have your own. [LB587]

SENATOR LANGEMEIER: Do you have any idea what that costs? [LB587]

JILL BECKER: I believe it's between about \$4,000 and \$6,000. I'm not sure if that number takes into account the tax credits that might be applicable to it. [LB587]

SENATOR LANGEMEIER: Okay. [LB587]

JILL BECKER: And we do actually...I should mention too, we do have some people in Nebraska who have those. [LB587]

SENATOR LANGEMEIER: Senator Smith. [LB587]

SENATOR SMITH: Thank you, Senator Langemeier. Is that CNG or LNG? [LB587]

JILL BECKER: That's CNG. [LB587]

SENATOR SMITH: Okay. Now I know there are some LNG vehicles out there, all right, so which way is this going to go? Is it going to go LNG, CNG? When you're looking at having stations to fill, is one going to dominate over the other? Are you going to have duplicate stations? [LB587]

JILL BECKER: Yeah, I don't know, Senator. I mean I would have to believe that probably for many of the fleet applications, depending on the distances that they drive and the types of vehicles would probably be the best determinant of whether they're CNG or LNG. That would be my guess. [LB587]

SENATOR SMITH: So the... [LB587]

JILL BECKER: We see a significant amount of CNG in fleets that come home every night. And that is a different scenario than vehicles that are on the road, you know, they're gone for a week before they come back to that primary location. [LB587]

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SENATOR SMITH: And CNG capacity requirements are much larger for regular gasoline engines. Is it the same of LNG, or do you know? [LB587]

JILL BECKER: That I don't know. [LB587]

SENATOR SMITH: Okay. It's probably going to depend on the use of the vehicles as to... [LB587]

JILL BECKER: Yeah. [LB587]

SENATOR SMITH: ...that's probably going to depend on it as well. [LB587]

JILL BECKER: Yep. [LB587]

SENATOR SMITH: Okay. Thank you. [LB587]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB587]

JILL BECKER: Thank you. [LB587]

SENATOR LANGEMEIER: Good job. Further testimony in support of LB587. Seeing none. Now those that would like to testify in opposition. Opponents. Welcome. [LB587]

TIM KEIGHER: Good afternoon, Chairman Langemeier and members of the committee. My name is Tim Keigher, that's K-e-i-g-h-e-r. I appear before you today in opposition to LB587 on behalf of the Petroleum Marketers and Convenience Stores Association in Nebraska, surprise, surprise. I guess...just to go back a little bit of history as to why the LUST Fund was created. Back in the late '80s the federal government came out and said that you had to provide financial responsibility for underground storage tanks; you had to do upgrading of your underground storage tanks to prevent future releases, etcetera. At that time the insurance industry would not provide insurance to the petroleum industry, so just about every state out there created a Leaking Underground Storage Tank Fund. In the case of Nebraska, ours is funded by nine-tenths of a cent on gasoline and three-tenths of a cent on diesel. I guess we feel that that money is being put aside to clean up underground storage tank releases, not to fund other projects. I guess, you know, they're trying to...we're not against the concept of the CNG, just the funding aspect of it. And I think that if the CNG industry would go to some of my members, I think they would find some of them that would put in some of these facilities. Obviously they're going to want some type of grants or something to do it too, and maybe those individual members want to take out of the LUST Fund, but I think we can convince them not to do that. You know, I know they have done some projects in Illinois

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where they've put a few in and it's been petroleum retailers that have put these facilities in. So I guess we're not against the concept of the CNG, just simply we don't feel it should be taking the money out of the Leaking Underground Storage Tank Fund. And with that I'd be...try to...happy to answer any questions. [LB587]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB587]

SENATOR CARLSON: Thank you, Senator Langemeier. Tim, I was interested in your opposition and I understand you're really saying the LUST Fund is not an appropriate source of these dollars. However, if that wasn't the problem, then your people could end up profiting some by this if they had the...what do we call it...the pump, is it a pump or what is it? [LB587]

TIM KEIGHER: The dispensing capability, I guess. [LB587]

SENATOR CARLSON: The dispensing capability to sell natural gas, so it's not an enemy to your group in that regard? [LB587]

TIM KEIGHER: No. [LB587]

SENATOR CARLSON: Yeah. Okay, thank you. [LB587]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB587]

TIM KEIGHER: Thank you. [LB587]

SENATOR LANGEMEIER: Is there any other testimony in opposition? Seeing none. Is there any testimony in a neutral capacity? Welcome. [LB587]

LYNNE SCHULLER: Thank you, Chairman Langemeier and members of the committee. My name is Lynne Schuller, L-y-n-n-e S-c-h-u-l-l-e-r. I'm the executive director for the Nebraska Propane Gas Association here to testify in a neutral capacity on this bill. Our reservations about the bill is that we're not in it. We are a direct derivative of natural gas. We have very similar properties and we currently have fleets out on the road that use propane. Propane is a portable fuel by its very nature. Any of you who have a grill at home already use propane and know about its portability. As the senator had indicated, 80 percent to 90 percent of propane is produced domestically and there is such an abundance of natural gas and propane in the country right now that they are actually thinking about starting to export it to other countries. Also mentioned previously is that propane is used extensively in vehicles in other countries, most notably India and parts of the Middle East ironically. We feel that if you are going to put this bill onto the floor that propane is a logical choice to include for grants, especially considering the grant

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required to implement a propane fueling station is much more inexpensive than to implement a natural gas fueling station. We have 140 members in our organization and we have several hundred retailers across the state who have the capability now of providing refueling options if you had a propane vehicle. Roush is a company in the upper Midwest that produces a line of Ford trucks that use propane and they come off the line that way. They have F-250s, F-350s. Bluebird produces a fleet of school buses that use exclusively propane and those fleets are being used across the country very inexpensively. I would like to mention, Senator Langemeier, that I do have experience with...one of my board members purchased a propane vehicle at a dealership in Colorado last summer and he filled it up at that station and Colorado has a law that any fuel sold, regardless of whether it's propane, gasoline, anything else, pays the highway tax. So they pay the exact same amount of tax that you would pay if you put gasoline in your car. And I think that's only fair. I mean, otherwise you'd have no incentive to use alternative methods to fuel your car because you would deplete the Highway Trust Fund. If anyone has any questions, I'd be happy to answer them. [LB587]

SENATOR LANGEMEIER: Very good. No questions? Thank you very much. [LB587]

LYNNE SCHULLER: Thank you. [LB587]

SENATOR LANGEMEIER: Well done. Other testimony in a neutral capacity. Seeing none. Senator Nordquist, would you like to close? [LB587]

SENATOR NORDQUIST: Thank you again. Members of the committee, just a few quick points here to wrap up. I understand the concern over the LUST Fund of the Petroleum Release Remediation Fund. I will say, though, that we do have a few authorizations in statute right now to use that money for other purposes. We do have as authorized by the Legislature for the Water Policy Task Force and then we have, I believe, since '04 transferred \$1.5 million annually to the EPIC Fund for ethanol production incentive credits. So we have already earmarked that money in the LUST Fund and it has about a \$5 million unencumbered balance. On the tax, I will say, that was my first bill, LB421 back in '09. We do charge a 26 cent per gallon fuel tax on compressed natural gas. We only have 55,000 gallons of consumption of it right now, so it only generates at that time only about 50...it was actually less than that. The estimate...the bill that I introduced would have reduced that tax by 10 cents for a period of five years to help get this off the ground and the bill, it was estimated to cost the Highway Trust Fund \$50,000 the first year and then \$90,000 every year after that. So consumption is not very high, but there is an equivalent 26 cents fuel tax on that. I'm open to a lot of the other suggestions announced today. I will say that we talked as far as what is available for vehicles, the only off-the-line one right now for compressed natural gas is a Honda Civic, but there are a lot of other EPA certified conversion kits. On Senator Haar's question about...there are conversion kits with some vehicles where the engine is all the same, it's just mainly the injection system that changes. Some conversion kits even allow you now to just

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make modifications in the computer where you can run both gasoline and compressed natural gas and it...if it's a switch that you flip, the computer recognizes and changes the injection flow into the engine. But the one dealer in Omaha that has been selling them, O'Daniel Honda, in the last year without any public stations has sold over a dozen vehicles so far and they said in both...recently when the governor announced the two public stations coming on board in Omaha and certainly with gas prices the last month or so here, their calls have skyrocketed. So I think there's a lot of interest in the state on this and I look forward to working with the committee on any solutions. [LB587]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Nordquist? Seeing none. Thank you very much. [LB587]

SENATOR NORDQUIST: Thank you. [LB587]

SENATOR LANGEMEIER: You have heard the closing on LB587 and that concludes the hearing on LB587. Now we will move to LB653. Senator Christensen, welcome. [LB587]

SENATOR CHRISTENSEN: Are we ready? [LB587]

SENATOR LANGEMEIER: We're ready. [LB587]

SENATOR CHRISTENSEN: (Exhibits 10 and 11) Thank you, Mr. Chairman, members of the Natural Resources Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n, I represent the 44th Legislative District. LB653 would amend the definition of interbasin transfers in Section 46-288 to include interbasin transfers during times of flood pursuant to a new section within the bill to allow an agreement between applicable districts. It is the intent and purpose of LB653 to provide tools for prudent management of Nebraska's water resources, specifically the diversion of unappropriated water during times of flood to mitigate public and private property damage while also putting unappropriated water to potential use in another basin instead of letting it leave the state unused. Currently, interbasin transfers are legal under Nebraska law through the Department of Natural Resources' permit process. However, the process is a fairly involved permit process which makes the likelihood of a basin to basin transfer of unappropriated flood waters very unlikely. Because of the permit process, it is the intent of LB653 to provide the authority of the natural resources districts, irrigation districts, along with the Department of Natural Resources to enter into an agreement that sets up the guidelines to move water from one basin to another during times of flood. Unfortunately, I did not make my intent clear in the bill that DNR was included in such an agreement. I wanted these transfers outside the normal permitting process, but part of the flood water transfer agreement. In addition, in meeting with DNR, they suggested using the term "unappropriated surface water" instead of "flood stage" because "unappropriated" is easier to identify. That's why I have

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handed out previously some amendments. I have some additional amendment I'll hand out again that talks about unappropriated flood waters to make sure that people understand I'm not going after an appropriation; I'm not going after a right. To address these issues, I'm handing out AM523 suggested to LB653. I have also handed out some suggested language found on the NOAA Web site defining flood stage and other terms. The agreement between basins would need to be done prior to any diversion of unappropriated flood water. In addition, the basin of destination would be second in time, second in right, to all internal water resource projects or appropriations within the basin of origin. The agreement would also require notification to affected parties when a transfer occurs. This seeks to prevent any harm to the basin of origin while lowering the risk of property damage due to flooding. As most of you know, I am always looking for ways to better manage our water in this state. I think this is a commonsense approach to reduce public and private water property damage by flood waters. Why continue to take on the cost of flood damage to property and at the same time lose the benefit of most of the water when it leaves the state? Potential amendments, I have met with NPPD and agreed to address their concerns that they will mention in their testimony later to this committee. You know, being it from public input, being it appropriations and projects, I read it right into it, because I got used to that, because it talks about being projects in the bill and I would just...and appropriated water to make sure it's clear that we're not taking someone else's water. I did receive a letter from the city of Lincoln today in opposition to LB653 and I believe some of their concerns may be addressed with AM523 by defining flood stage. It seems like they are using the term flood waters to include scouring scourges within the banks of rivers and streams. My idea of flood stage is when water is outside the banks and causing property damage. And I would...if they come up and testify, I would encourage them to see if this addresses it or what the concern is, because I'm looking at water outside the banks and I would say the same thing to Central Platte NRD, Central Public Power and Irrigation, if we're taking water that's not appropriated and that is damaging homes, farm ground, and the areas, how can you be opposed to taking this water and putting it to a good use? And so I guess I'm...I'll be interested to listen to their response to this, if it's just terminology because they've been gracious to share their concerns up front, or I have seen...heard of their testimony so I would like to have that explained. And hopefully I have addressed that with the definitions that I've given you and the corrections that I'm talking about. And I don't think the people of Lincoln would mind the option of migrating property damage by diverting water out of Antelope Creek, which they've beautifully done here in town, Salt Creek, if it was going out of its banks. Prime example, same thing happens across the Platte River and we're likely to see a lot of these flows. I was told this morning it's flooding on the Platte in North Platte, Nebraska, already, just because of the flows. And if I understand correctly, the flood...the inflows are still greater to Lake McConaughy than what they're releasing now. Maybe somebody following can correct me. But you know we're looking at a year right now, and we've also had one previous that there's been flood water that could have been put to beneficial use that has ended up going through the state and on out to the Missouri and on out. And many of you here on this

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committee seen the flood damage up in the Norfolk area and stuff this morning at that meeting. That's the type of thing that we could reduce a little of it. You would never take all that water that was up there, but anytime we could lessen the damage to our state and put it to beneficial use, it's got to be a win-win situation. And that's why I've tried to work on this bill very hard, get a lot of safeguards in here, make sure I'm never jumping ahead of another right within districts where the water would be moved out of, even if it comes after one of these transfers started. That's why second in time, second in right. As always, I'd be glad to address any concerns that are brought up today by others and the committee. I'd be glad to answer any questions and urge the advancement to General File. [LB653]

SENATOR LANGEMEIER: Senator Carlson. [LB653]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Christensen, I'm going to ask you just one question, because I want to save some others until after I hear what other testifiers say, and this thought hit me as you started to speak. Appropriation, there's a limit to appropriations on streamflow and that has to be based on something. Is it based on normal streamflow? What are appropriations based on? [LB653]

SENATOR CHRISTENSEN: Well since surface water is done first in time, first in right, you can have more appropriations than there is flow in the stream. And that is the reason why they can shut off junior rights. But they'll never appropriate more water...they could appropriate more than what could flow, but see any of these current uses would be ahead of me. I'm second in time, second in right and I'm taking waters outside the banks. I will never touch the appropriated waters. And that's why in my visiting with DNR they said let's use the term "unappropriated waters" because they know how to measure that, they understand that, so I'd like to say well there's never more appropriated than what would fit in a river bank, but potentially there is because not everybody uses them at the same time. But we would never touch another appropriated water because we'd be looking at what's going outside and causing damage. [LB653]

SENATOR CARLSON: But a general principle I would think would be that you start taking appropriations or allowing appropriations, there's got to be some limit to it and that limit is that historical, normal flow and we both know that the flow in the Republican has declined over the years so the flow that was there 50 years ago isn't there today. And yet at times we have excess flow anyway. But what I'm driving at is, whatever the appropriation is, there are flows that are above that appropriation between that level and flood level. [LB653]

SENATOR CHRISTENSEN: Yes. [LB653]

SENATOR CARLSON: And certainly I don't understand any kind of an argument that

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when you're at flood level you shouldn't be able to take that...divert that water. But somewhere between flood stage and appropriated level, whatever that is, there ought to be room there as well where we're trying to make the best use of the water that we have flowing through the state of Nebraska. Does that make any sense? [LB653]

SENATOR CHRISTENSEN: Yes. I agree totally with you and I believe the statute, the way it reads on appropriated water because they do quit appropriating water when it hits a certain stage. And what they do is they take the junior rights when they only have water on the basis of a certain amount of time, or certain percent of the time then that's when they quit allowing new appropriations. And I can't quote it exactly, I didn't come prepared with that, but I'd be glad to get that for you. [LB653]

SENATOR CARLSON: Okay. Thank you. [LB653]

SENATOR LANGEMEIER: Senator Dubas. [LB653]

SENATOR DUBAS: Thank you, Senator Langemeier. Senator Christensen, I'm just being real slow on the uptake on this and I apologize for that, but I guess...especially after viewing the pictures that we did this morning on the Elkhorn River and you're talking about the water that is outside of the banks, is that correct? Is that what you're...? [LB653]

SENATOR CHRISTENSEN: Well, if we just use the language DNR suggested, it would be when we're above any appropriated water. I suggested flood waters because I wanted to make sure people knew I wasn't trying to take their appropriated water. And I wanted to make sure there was maybe even a little cushion in there. But, yes, my main intent is when there is flooding going on, whether it's livestock damage, personal homes being damaged, whatever, that's the type of water we're trying to get out. [LB653]

SENATOR DUBAS: Okay. So knowing how fast that water moves and the velocity and the amount, help me understand how we capture that and make the transfer. [LB653]

SENATOR CHRISTENSEN: Well, depending upon where you're doing this, there are areas, if you're looking at the Platte to the Republican, if you had an agreement worked with Central Public Power and Irrigation to use like E-65 Canal that would just take an outlet and they already have a gate and you could drain it into Spring Creek near Bertrand. There's other areas that are like South and North Platte of the lake there that will only take about three miles to where the water would gravity flow into the Republican District in what is called Medicine Creek. South of Sutherland Reservoir, Gerald Gentleman Power Plant, it's only about two miles south of there to where it flows into the Red Willow which is the McCook dam. There is...so we would basically have to pump uphill or pump it up a little bit before it went or take it into a pipe for a ways or cut a ditch that had a diversion gate in it. Either one could be done, I really believe, because

no more elevation we're looking at, but I'm not positive you could do it without a pump, but you might get real close. But at that point in time you would be going through a number of farmers' ground, it would be easier to pump it, take it a ways till you hit a...something that would run into a creek and not damage personal property by moving it or having to cut a ditch through their property, something that direction. So I would look at this being a pumping station rather than a diversion out, unless you're doing something like I mentioned off of Central Public Power and Irrigation's E-65 Canal where they already have a pipe buried down through the creek and it would just take an outlet and they could measure with their meter and it would be simple to do. But in that particular case, there's about two county roads that would need a tube put in it. I mean that's how simple that one would be to put in. But then you run into the time of year when you can send the water because they don't run their canal when it's icy, but they're still...like this year, we're going to have plenty of times now because I was talking to a couple of people out back here before this hearing that were saying the frost is out of the ground, they really believe they could start surface projects now and start some recharge, just the natural recharging from filling the canals. So I think there is opportunities where we could do this, where there would be very minimal costs, but I don't know of any that would have zero costs. [LB653]

SENATOR DUBAS: Okay. That was going to be my next question. So this would take a certain degree of planning, of looking at what needed to be done within the NRDs, within the basin, so there would be costs somewhere along the line whether it be to the NRDs or...but because we don't really know for sure what it is or how it would be accomplished, we don't know what those costs are right now. [LB653]

SENATOR CHRISTENSEN: Correct. And see that would be beared by the people wanting to receive the water, you know. There could be a possibility that people would catch the vision, you know what, we don't want to see the damage on our folks, we'll give you the water during flood times. But I'm saying we could even pay for it. There is some agreements been worked out now when they fill...an example, Elwood Reservoir, that because some of it soaks into the Republican, some of it stays into the Platte region and is filled out of the Platte, that there is an agreement between Central now and Tri-Basin for a charge per acre foot of what seeps over. Them type of agreements could be worked out. That's why the agreement is done up front between the two different districts with DNR so that everything is spelled out ahead of time and since there has to be an agreement, if Central Public Power don't like it, they just would never make an agreement. If...wherever else are doing it, Central Platte NRD didn't like it, they just never do an agreement. But I would...that's why my question in my opening would be why would they want to refuse this and damage their own constituents? I know we couldn't take all the water in the projects that I would see getting developed to reduce all the flooding at times its going to happen on the Platte. But anything you can lessen to reduce is a win-win situation. [LB653]

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SENATOR DUBAS: But going back to there would have to be some planning done and definitely would have to be some infrastructures. [LB653]

SENATOR CHRISTENSEN: Yes. [LB653]

SENATOR DUBAS: So what kind of a time line are you looking at and what it would take to make...? [LB653]

SENATOR CHRISTENSEN: Once this was passed, then there still has to be two willing parties. So would one of the NRDs in the Republican step up and say, you know what, we would like to build this project; so they would have an engineer figure out what they think it would cost and they would take that to...say it was the Lower one to do it. Maybe they wanted to do something bigger than what I described on E-65 Canal. They could get a proposal of what it would cost; they could take it to Central Public Power and Irrigation, discuss it with them, and they would find out then, is this water going to cost us anything or not going to cost us? Is it this...what's it going to take to do it? And it could be everybody is going to say, no, we just don't want to work with nobody in the Republican or maybe it's a different basin we just don't want to work with, and that's fine. This is a willing parties on both sides. That's why I have struggled with any opposition. [LB653]

SENATOR DUBAS: Thank you, Senator Christensen. [LB653]

SENATOR LANGEMEIER: I don't see other questions. I have a couple. To start with, the majority of the time we're going to see flooding is summer, typically, if you're not doing ice induced. I mean, the majority of our rainfall we'll have summer flooding. The majority of those canals are already full of water for irrigation during the summer months. [LB653]

SENATOR CHRISTENSEN: Correct. [LB653]

SENATOR LANGEMEIER: How do you put more water in when it's already full? [LB653]

SENATOR CHRISTENSEN: Well, in the case of E-65 Canal, if you were using that example, if we're having flooding, we probably had rain. So they're not having to use it at that point in time. But you're never going to jump ahead of them. [LB653]

SENATOR LANGEMEIER: But it's still full. [LB653]

SENATOR CHRISTENSEN: Oh, they drain them. [LB653]

SENATOR LANGEMEIER: I know, but the canal has still got water in it. [LB653]

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SENATOR CHRISTENSEN: Oh, they shut off their water coming out of Lake McConaughy or can cut it out of the river and totally dry it. I live on a canal they fill, drain, fill, there is a number of them managed that way. [LB653]

SENATOR LANGEMEIER: Okay. My next question is, is at what point do you divert? If the water is coming down, let's take the Elkhorn, for example, I don't know where you divert it, but where do you decide to divert...I mean if it's going to flood Norfolk like it did, do you divert it five miles up, two miles up, three miles up, in town? Do you divert when the water comes out of the bank, then you get to start diverting? How are you going to determine...I mean, do you just go back and say, oops, this is the closest place to go to another stream...another creek so we're going to put our diversion canal in here for Norfolk? See what I'm saying. [LB653]

SENATOR CHRISTENSEN: Yes. [LB653]

SENATOR LANGEMEIER: Or you get like Schuyler that flooded three days before Norfolk did. We flooded Friday and it was gone Sunday, but it did a heck of a lot of damage in that amount of time. We would have had to hundred foot diameter pipe-pumps to pump it out to do any good. [LB653]

SENATOR CHRISTENSEN: Correct. And that why I'm saying, you're not going to be able to eliminate the flooding or all the damage, but anytime you can divert anything, you're lessening it. And it's a win-win because there's resources being used in the state. And take, for example, maybe you set up three, four different locations across...going, from what I understand, the Platte River to the Republican that I know very well. You could send water down three, four different locations. You would lessen that effect, but you're also winning with compliance with Kansas, because since it's measured in, it counts at the point of transfer because it's not being pumped or generated within the basin. If it comes from the outside it's a 100 percent count from the point that it's measured in. If you don't have a measuring point, then it will go to the first stream gauge. If you measure it in like you would with a pump or something this way, then you could get 100 percent credit. It's a win-win. You're never going to be able to take care of a 100- to 500-year flood like Schuyler, Norfolk, these places had. That's not the intent. But anytime you can reduce it and benefit the state of Nebraska and it doesn't cost the basin where it's coming from anything, I would think it would be favorable. But maybe I'll find out there's a hundred opposition and no in favor here, I don't know. [LB653]

SENATOR LANGEMEIER: Well unless a crowd comes in a hurry, you won't quite get to that level, but...okay. Seeing no other questions, thank you very much. [LB653]

SENATOR CHRISTENSEN: Thank you. [LB653]

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SENATOR LANGEMEIER: Well done. We will now move to proponents of LB653. Welcome. [LB653]

MIKE DOBESH: (Exhibit 12) Thank you. Thank you, Senator Langemeier, and all the rest of the people here on the committee. My name is Mike Dobesh, M-i-k-e D-o-b-e-s-h. Thank you for this opportunity to testify in support of LB653. My name is Mike Dobesh. I farm 2,100 acres in Hall County and I serve on the board of directors on the Central Plate NRD. I am testifying on behalf of myself, but much of my knowledge on the subject matter is because of my involvement with the NRD. NRDs commonly take on flood control projects for the public's benefit. Just west of Grand Island we will spend close to \$16 million on a 900 acre site to move 5 million cubic yards of dirt to protect the northwest part of Grand Island and rural areas in the event of a 100-acre flood. LB653 would take a portion of flood water in an annual or semiannual flood, transfer it to the Republican Basin where they need it to stay in compliance with Kansas, as well as decrease the need to take out of production thousand of acres as in what is called the quick response area, killing two birds with one stone, all for the approximate cost of \$3 million, plus the Republican will pay for the unneeded flood water. It's a win-win for all involved. Residents could avoid evacuation, reduce damage to public roads, tens of thousands of acres of farmland by the Platte could have flood water pressure lessened, another basin could benefit, plus the water would be paid for. But some NRDs are against this as their concern for the Platte River Program and LB962. Everyone is more worried about protecting their own little neighborhood than looking at the big picture. Also there is reluctance from transferring water from an overappropriated basin. None of these arguments hold water and should be discounted. How is it that the Upper Republican has a 60-foot decline in its water table and is fully appropriated, yet the NRD districts of Twin Platte, Tri-Basin, and Central Platte do not have declining water tables and are over and fully appropriated. In Grand Island it has been estimated it would \$12 million to dewater the city because of water seeping into basements, yet we can't develop one new acre. There is an area by Cozad in the overappropriated part of Central Platte where we are going to pay several farmers to pump their wells prior to the season to lower the water table so they can plant. In that same area during the drought, areas that were alkali that previously couldn't produce much were now greatly improved since the water table had dropped. In Senator Dubas' district on Highway 14, there are places you can see water oozing out of the ground into small streams. Recently the DNR suggested we start allowing some development east of Chapman because of the high water table, yet there are those who are against basin transfers; why? This makes no sense. There is no language in LB962 or the Platte River Program that addresses transferring flood water. Jerry Kenny, who works for the Platte River Program, stated that he couldn't support it because in his opinion the cost did not equal the benefit. Let me see, the cost of \$3 million, reduced flooding and property damage, helping another basin, plus get paid for it, it sounds like a no brainer. As a public servant like you, elected to serve the public, not an overreaching government program that is self serving, we have an obligation to do our very best to those who

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elected us and those who it directly affects. We have more water leaving the state than entering it, yet we are forced to reduce irrigated acres. And every acre we take out of production means less taxes paid, job loss and reduced income to those agribusinesses. Jesus commanded us to love thy neighbor. Aren't those we serve our neighbor and not a government program that puts roadblocks in our ag economy? The DNR controls the surface water and NRDs control groundwater. And if all water belongs to the state, then flood water is surface water, and any negative input from the NRDs today should have of little impact. Off and on since mid-December, the Platte River from Clarks to west of Kearney have experienced substantial flooding due to ice jams. The result has been evacuations, as well as damage to public roads, farmland, and private property. And because all upstream dams have no room for storage, they have to release water at the current rate, especially considering the large snowpack that will soon melt. In fact, the state climatologist has been quoted saying that for those who farm by the Platte River to have your crop insurance paid up. If LB653 were already in place, imagine how much benefit could have come from those destructive flood waters and those coming in a short time. Every farmer I have spoken to about this has been in favor of transferring flood waters to the Republican, so let's listen to those who elected us and make this happen. Any questions? [LB653]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. [LB653]

MIKE DOBESH: (Exhibit 13) Okay. I also have some testimony from Casey Sherlock who is the Hall County roads director. He couldn't make it today because he had an important meeting he had to attend and he's got some stuff. [LB653]

SENATOR LANGEMEIER: Very good. [LB653]

MIKE DOBESH: Thank you. [LB653]

SENATOR LANGEMEIER: Further testimony in support of LB653. Welcome, Don. [LB653]

DON ADAMS: Good afternoon, Senator Langemeier and senators of the Natural Resources Committee. My name is Don Adams, D-o-n A-d-a-m-s. I'm executive director of Nebraskans First, statewide groundwater irrigators coalition, here to support LB653 today and my testimony will be short, as is the bill. LB653 is a simple two-page bill that to us just makes sense. The primary purpose of the bill is to mitigate property damage due to flooding in one NRD and the secondary huge benefit is that of supplementing water supplies an NRD which are in dire need of more water for compact compliance. Nebraska is a water-rich state except for the west and the southwest. The Central and Lower Platte basins are flush with water. The Republican River Basin needs help. LB653 would and could provide this assistance. LB653 creates a mechanism that would

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allow us to manage our most valuable resource wisely and in a manner that benefits the state overall. LB653 involves voluntary agreements between NRDs and irrigation districts. Unfortunately, it appears that the Platte NRDs are lined up to oppose this bill. And I'm pretty sure their opposition will be because of the Platte River habitat program. This is a good early example of the Platte River Program and the U.S. Fish and Wildlife Service adversely affecting our ability to manage our water resources wisely and in a manner that benefits local communities, producers, and the state as a whole. LB653 would provide a means to address a real world undeniable need and that's in the Republican River. But because of a federal program, the Platte River Recovery Program, which then Congressman Tom Osborne called "a boondoggle" and said was based on "a false premise," we shy away from doing what can and should be done. Real problems and solutions should not be trumped by false ones. Along with Congressman Osborne, Nebraskans First fought hard against the Platte River Program and Senator Schilz, I think, can vouch for that. I once to the media called it a Jurassic Park-like, build it and they will come environmentalist pipe dream. And the World-Herald whipped me for that, but I stand by it. In 2006, unfortunately, Governor Heineman signed Nebraska onto it and when phase 2 of the program kicks in, he will not be Governor, someone else will have to deal with it. Phase 2 and 3 of the program which will kick in in 2019 will be a disaster to our economy. According to a study performed by HDR Engineering, the subsequent phases of the cooperative agreement will result in the retirement of an additional 340,000 groundwater irrigated acres and have a combined impact...adverse impact to the state of \$557 million, but "likely higher." Congressman Osborne summed it up this way: "phase 2 of the program requires 417,000 acre feet of water which is practically all of the irrigation water used in the Platte system. Farmers and ranchers are rightly concerned that at some point the ESA, the Endangered Species Act, could be used in a way that could cut off all irrigation up and down the Platte River." Today we ask that you don't let the Platte program discourage you from addressing a real problem and a problem that requires real solutions and solutions that we can solve with LB653. And it may need some technical flushing out and so forth, but the concept is very commendable and for a state like ours where we are flush with water the latest statistics we have...you always hear 2 million in, 8 million out; the latest I got is 1 million in, 12 million out. That was in '08 and I'm sure '09 and '10 are similar to that. It's a travesty of the water that we mismanage and allow to leave our state. One quick comment, Senator Carlson, you asked why...about the streamflows diminishing in the Republican; well, in the 1970s northwest Kansas ramped up putting terraces in and they're holding back roughly half a million acre feet of our water from flowing into Harlan. So that system has been compromised by the terracing that Kansas has done leading into the state. We are a downstream state for all intents and purposes, as it relates to Harlan. That concludes my testimony. Thank you. [LB653]

SENATOR LANGEMEIER: Very good. Are there questions? Senator Carlson. [LB653]

SENATOR CARLSON: Thank you, Senator Langemeier. Now, our discussion naturally

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is between the Platte and the Republican because that's what we're concerned about and that's what we are interested in, but of course, this bill could apply to other basins as well. Where do you see the most important points along the Platte to be able to divert water south? Do you think that there are some that benefit...let's put it this way, are there places that water can be diverted that benefit the entire basin more so than others? [LB653]

DON ADAMS: Well I think the closer we can get the water east and into Kansas the better. But the primary concern, you know, relates to the flooding problem. I mean where the flooding occurs, then we need to address the problem. And again, you need some engineers to figure this out and hydrologists to figure out how to get it down there, but to allow tens of millions of acre feet to flow out of the state is to me crazy. And our water policy in the state still has not addressed wasting that much water and yet we're mired in this unsolvable mess with Kansas that I'm convinced could be solved with a little bit of engineering expertise. [LB653]

SENATOR CARLSON: Well, you brought up and you've said toward the east end and that would be if the concern is compliance and a portion of the concern has to be compliance. I think the farther west that it can be diverted the better over the long haul in terms of recharge to the aquifer and the benefit of additional surface water for recharge. So I think...and of course I'm not against it being diverted any place along the way, but I think that the further west it can be, that benefits them, benefits recharge; the further east it is, it's closer to Kansas and so we take care of the band-aid. But in terms of long term sustainability and recharge, we've got to have it further west as well. It's important all the way along. [LB653]

DON ADAMS: Sure, I wouldn't argue with that. Naturally we do have a recharge problem farther west and those counties in the Upper and if we could help address that at the same time while getting water into the river and delivering it to Kansas, that would make perfect sense. But we need a starting point. We need to get the concept out there and like Senator Christensen said, this is voluntary, it's between the NRDs and the boards and it just seems to me to make so much sense to not allow it to be discussed further and seriously considered I think is a mistake going forward. [LB653]

SENATOR CARLSON: Okay. I want to make one other comment. It comes as a question as to whether or not you agree with it that you can talk about flood stage and when the streams are full then nobody wants it, but for whatever it could be diverted and stored, or the best thing would be if we had some way that we could intentionally store underground would be a wonderful thing. And yet all that's got to be planned and engineered and it costs money, but in the long haul that's worthwhile. We've got to figure out a way to do those kinds of things I believe. [LB653]

DON ADAMS: Absolutely. [LB653]

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SENATOR CARLSON: Okay. [LB653]

DON ADAMS: And I'm convinced it can be done. We just have to set our sights on it and make that a goal rather than having a water policy of shutting down wells every time there is a drought or a water-short year. There's a better way because we have the water to deal with it; we just got to move it and time it. [LB653]

SENATOR CARLSON: Okay. Yeah, thank you. [LB653]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. [LB653]

DON ADAMS: Thank you. [LB653]

SENATOR LANGEMEIER: Good job, Don. Further testimony in proponents. [LB653]

MIKE CLEMENTS: (Exhibit 14) Chairman Langemeier and members of the committee, my name is Mike Clements, that's M-i-k-e C-l-e-m-e-n-t-s. I'm the general manager of the Lower Republican NRD and I'm here to testify for our board in support of LB653. I heard Mr. Adams mention 2 million acre feet in, 8 million out, this year it's going to be a lot more than that. And I think that as a state we need to make sure that we're doing the best possible job that we can to manage the available surface water supplies that are leaving this state that could maybe have been utilized better. I think that obviously, as some of the other speakers mentioned, this...and again, we're talking about Platte and Republican here as far as the Lower Republican NRD is concerned. But I think it could be a win-win situation for both the Platte and the Republican. As we mentioned, eliminating...helping to alleviate millions of dollars of property damage in the Platte, even possible loss of life, yet at the same time having the state of Nebraska help meet their obligations to Kansas on the Republican River, I think it's a no-brainer from that standpoint. I think one of the opportune things of the legislation of the bill is the fact that it is a willing buyer/willing seller if you will. So if for whatever reason both parties can't come to an agreement, the deal is not going to happen. I think that's very, very important. And it...you know, obviously it's...there has to be some type of a written agreement, whether it's with an irrigation district or a natural resources district. With that said, I think anything else that I was going to say is already been covered by other speakers. So I would like to thank Senator Christensen for introducing the bill and we would encourage the committee to advance this bill. [LB653]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none...oh, Senator Carlson. [LB653]

SENATOR CARLSON: Thank you, Senator Langemeier. Mike, just a comment and you

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can agree or disagree. I think that with the need for having water in the right position in future years, it's more a matter of whether we have the will to do something rather than looking for reasons why we can't do it. I think...I'm hoping that as time goes along more and more people understand that we've got to do things differently than we've done in the past and we've got to have the will to find a solution. [LB653]

MIKE CLEMENTS: Yeah, I couldn't agree with you more. The need is always going to be there in the Republican Basin. We've been very fortunate the last few years because Mother Nature has been very kind to us, but the will...we need to be able to continue to, obviously, do the good things that we've been doing, but to look outside the box a little bit and try and come up with other ways to make sure that we're utilizing the system to the best ability that we can. [LB653]

SENATOR CARLSON: Thank you. [LB653]

MIKE CLEMENTS: Thank you. [LB653]

SENATOR LANGEMEIER: Very good. Thank you very much for your testimony. Further testimony in support. [LB653]

JASPER FANNING: Senator Langemeier and members of the committee, thank you for the opportunity to testify. My name is Jasper Fanning, J-a-s-p-e-r F-a-n-n-i-n-g, general manger of the Upper Republican Natural Resources District. I won't repeat the comments from the previous testifiers. Obviously we have many challenges with respect to water in the state and we have some choices to make and we can choose to manage water or we can choose to eliminate uses and economic activity to manage water. And this is an opportunity, I think, as Senator Christensen highlighted, you're not going to be able to take all the flood water from any river basin and transfer that at the time of the flooding to another river basin. But if you look at it in the context of being able to take some water and manage it really and put it into maybe even existing infrastructure to increase groundwater recharge in the basin that's flooding as you transport water potentially to another basin, there could be benefits for managing it even within the basin without transferring it to another basin as this bill proposes. But this, coupled with things like even within basin management concepts that are very similar that I think other laws restrict new appropriations. But for instance, right now in the Republican Basin, Harlan County Reservoir for all practical purposes can't hold any additional water this year than what's coming down. But all spring long the Frenchman is going to run a significant amount of water that will go to Kansas in a year that we don't need to provide Kansas any additional water. Existing infrastructures already in place with the Frenchman-Cambridge Irrigation District for instance, you could install a few very small pumps and pump the water back up their canal system. Their manager, Brad Edgerton was talking to me about this not too long ago. But there are things like that that you can do to use existing infrastructure to move water in ways that we haven't moved it before

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even within the basins, the Platte and the Republican, and the transferring from one basin to the other is just the next step in that and maybe, you know, if there is any use within the Platte Basin for a small amount of water, it was mentioned earlier, the Elwood Reservoir, I mean when Tri-Basin NRD enters into an agreement with Central to fill that up, that benefits both the Republican and the Platte Basin portion of their district in terms of groundwater recharge. Central's projects, obviously, run along the divide so we benefit from that. Even if you didn't necessarily transfer water to another basin, by building additional infrastructure, because it's been pointed out you've kind of got to be able to predict where you're going to be able to take the water out. Obviously, it's going to be a sizable infrastructure investment. But you don't have to necessarily let the water run to the Republican. The groundwater recharge component is huge. There is a project, as Senator Carlson pointed out, on the western end of the basin that was looked at a long time ago called the Perkins County Canal in the South Platte. There was a right that Nebraska reserved under that compact that has never really been explored for all practical purposes. Trying to get additional water out of Colorado might be kind of difficult given their water management scheme, but the canal there at Julesburg was actually the very initial stages of the construction of that which would have recharged an area in our district quite significantly. That project was started and never completed, but I know that our board tried to get that project maybe in the early '80s up and going, but Congressman Smith at the time was unable to secure some federal funds to assist us in that endeavor. But I think there are opportunities that this bill tries to address that are opportunities for us in Nebraska. With that, thank you. [LB653]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB653]

SENATOR CARLSON: Thank you, Senator Langemeier. Jasper, I was trying to find it, I couldn't get my eye on it, but there is some concern that diverting water into the Republican Basin simply gives an additional excuse to pump more groundwater. And I don't think that that's the way it would be handled. Encouraging people to surface water irrigate whenever they can instead of pumping groundwater, that's easier said than done because it's not as convenient. But how do you respond to that criticism? And it isn't just you; it could be the Middle or the Lower. [LB653]

JASPER FANNING: Well to start with, I think that that whole series of questions starts with the assumption that we pump too much groundwater in the basin as a whole to begin with. And while we have compliance challenges and certainly we know that we need to cut back groundwater irrigation for...which we already have for the long term component of compliance, I don't see how importing water given, you know, the...especially if you were to put it in the context of taking water from the Platte to the Republican, how often does that occur? I can't reply upon any volume of water necessarily coming from the Platte in a frequency that allows me to pump additional

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groundwater in our district or the other districts likewise. It would be something that would be of value to us. I see it as being maybe providing more surface water and giving the surface water infrastructure more water to work with to manage within the Republican if there were more water there than something that would necessarily allow us to pump more groundwater. I think the things that we have in place prohibit that already. So I guess I don't see where they draw the conclusion that we would be able to pump more water into the Republican. [LB653]

SENATOR CARLSON: Well I think a good concise response to that potential criticism would help people like me to understand how to respond too. So work on it. [LB653]

JASPER FANNING: I'll do that. [LB653]

SENATOR CARLSON: Okay. Thanks. [LB653]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB653]

JASPER FANNING: Thank you. [LB653]

SENATOR LANGEMEIER: Further testimony in support. Seeing none, now we'll move to opponents, those that would like to testify in opposition to LB653. [LB653]

DEAN EDSON: (Exhibit 15) Senator Langemeier and members of the Natural Resources Committee, my name is Dean Edson spelled D-e-a-n E-d-s-o-n. I'm here today to submit a letter to you on behalf of the Twin Platte NRD and Central Platte NRD and Nebraska Association of Resources Districts. Both Kent Miller from the Twin Platte NRD and Ron Bishop from the Central Platte NRD intended to be here today, but due to some schedule conflicts they could not attend. So they...the two of them wrote this joint letter and I signed on to it for them. And first of all I'll go through a couple things with it, I won't read it verbatim. But I would like to commend Senator Christensen for coming up with ideas how to address flood control issues and manage the water. And we visited with Senator...I visited several times with Senator Christensen over the past few years about possibly doing this. One of the major problems for us in the Platte River Basin is the overappropriated label as designated by the state. And what we need to do is figure out a way to get the Platte Basin back to fully appropriated before we start using this flood flow concept. What we're looking at right now in the Platte River Basin for some of these flood flows and high flows and even in some of the normal flows, as taking a look at all the canal structures we have in the Platte River Basin all the way from the Panhandle all the way down to the Central Platte Reach. I'm working with the irrigation districts and the state of Nebraska and the NRDs to see if we could utilize those structures in times of high flows to recharge the groundwater table and then let that recharge seep back into the Platte River and meet the flow needs later in the year. And what we're looking at right now is doing those early spring and late fall prior to when the

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canals operate. And so just wanted to point that out to you. There's also some flood control structures and impalement structures we're looking on, on the Platte to build to store water to release to the Central Reaches to meet the streamflow needs for the Platte River Recovery Program. With that I'll try to answer any questions you may have. Thank you for your time. [LB653]

SENATOR LANGEMEIER: Very good. Senator Christensen. [LB653]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Dean. How does flood waters affect the overappropriated status? [LB653]

DEAN EDSON: Well right now the flood waters don't do anything to the overappropriated status, to my knowledge. What we've got to figure out is a way to capture those in that Platte Basin. And as Jasper...and I guess, first of all, let's capture those in the Platte River Basin; figure out how to maximize their use; try to get us back to the fully appropriated status. But there's also the situation where some of these captures and some of these flows and runoff through the canals may help you without you having to pay and without you having to transfer. If we get those waters running to the Central system, for example, through an agreement with them that that might occur, you might get some incidental benefit out of that down the road. [LB653]

SENATOR CHRISTENSEN: Well I totally agree with you that our natural resource districts need to put in some timing ponds like Colorado has done where we're pumping out of the Republican right now because it's full, over and filling some pivot corners, different things that could be developed that would retime water. [LB653]

DEAN EDSON: Correct. [LB653]

SENATOR CHRISTENSEN: I agree they could do that. But I think you answered my question very appropriately. Moving flood waters would have zero impact on your overappropriated status. That argument holds no water because you're overappropriated for a normal state of time; when we're in flood stage has nothing to do with being overappropriated. Am I correct? [LB653]

DEAN EDSON: Well unless somewhere down the line we would find some use, some structure to store that water in. If we could reach an agreement prior to that, prior to us developing a structure, that's where it would create a problem. [LB653]

SENATOR CHRISTENSEN: Okay. Where I put in second in time, second in right, Ron Bishop is one that asked me to do that, I visited with him. And if I'm second in time, second in right to anything that you do in the future in the Platte, can it harm you? [LB653]

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DEAN EDSON: I'm not familiar enough with that legal term on the second in time, second in right. [LB653]

SENATOR CHRISTENSEN: Well it's just taken...you're first in time, first in right. Surface water is done first in time, first in right. All I'm doing is saying we don't want to be first in time. If we build a project, you build a project, you jump ahead of us in priority, very simple. And maybe I need to define that term in my bill, but I can't affect you. If I can't develop a right, I can't develop a priority or an appropriation, I cannot affect you. You can develop something and I can waste my dollars of development, and that's okay. So that's where I struggle with...and that's why I visited with Ron Bishop. I visited with Central Public Power and Irrigation; I visited with you; I visited with multiple people because I don't want to affect the whole basin. And I think I got the protections in there for that and if I don't, I'm willing to put them there. [LB653]

DEAN EDSON: Well I think that's the discussion you and I have had about how to put those adequate protections in there. And again, I'm not familiar enough with the legal term--second in time, second in right to discuss that. But maybe we can carry on that discussion at a more appropriate time. [LB653]

SENATOR CHRISTENSEN: Thank you. [LB653]

SENATOR LANGEMEIER: My fault, you don't get to ask questions. Senator Carlson. It's your bill. [LB653]

SENATOR CARLSON: Thank you, Senator Langemeier. Dean, I understand when you say on overappropriated that there has to be every effort made to use the water that is there for the benefit of the Platte Basin. There's no argument with that. I understand if additional structures were put in, then those structures ought to be filled before anybody else could have access to that water. I don't understand why until that happens we can just still be satisfied with running millions of acre feet to the Missouri River. [LB653]

DEAN EDSON: I'm not all that thrilled about that part either, Senator Carlson. But it would...part of the Platte River Recovery Program requires some scouring flows. I'm not the expert on that. I think there's a couple other folks in here that are more involved with that. I don't know how heavy the scouring flows have to be for sure and how often. If we can figure out a way for structures that benefit both the Platte and Republican River Basin to store...to create those structures in the right place, I'm all for that. I'd like to sit down and start thinking about the planning part that you're talking about and planning the water use before we start changing the laws to start diverting water. [LB653]

SENATOR CARLSON: Well, and I don't think I can agree with you there because...because in the meantime, we're just wasting water and we're not utilizing the possibilities that we have to put that water in a spot where somebody else could use it

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for a positive beneficial use. But we just continue to run it through and into the Missouri River. And I don't think there's any argument whatever that would say that when somebody is overappropriated or even fully appropriated, it's inappropriate to steal their water. [LB653]

DEAN EDSON: Uh-huh. [LB653]

SENATOR CARLSON: But flood water...flood water is damaging water and I don't even understand why it can't be below flood stage because when it gets near flood stage, everybody is afraid that bad things are going to happen. And our window in there is pretty short. [LB653]

DEAN EDSON: Correct. [LB653]

SENATOR CARLSON: But we're smart enough, or we should be smart enough that we can put things in place that when we have that window, let's get rid of as much of that excess as we can, which isn't going to help the Platte anyway, and let's put it into a position where it could help somebody else. [LB653]

DEAN EDSON: I don't disagree with you. [LB653]

SENATOR CARLSON: Good. [LB653]

DEAN EDSON: But I think we need to have the structures in place; I think you need to have all the agreements in place; and I think you need to get all the parties to agree before you start doing that. [LB653]

SENATOR CARLSON: Well, we can't do that if it isn't even possible. All this is doing is making it possible. [LB653]

DEAN EDSON: I think there's a few pieces of the puzzle that still need to be plugged in to Senator Christensen's bill. [LB653]

SENATOR CARLSON: Well, we pass all kinds of resolutions and statutes and laws that don't have 100 percent of the answers, but we're headed in the right direction. [LB653]

DEAN EDSON: Sure. [LB653]

SENATOR CARLSON: And then if we've missed something, we come back the next year or two years later and we try and correct that. We do that all the time. So I don't see that this is any different. And you and I aren't that far apart on what we're thinking here, but man alive, when it comes to a point where you take a step of faith because you think this is the right thing to do, let's do it and if we've made a misstep, we'll correct

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it. But we don't want to hurt anybody that's in a position now where they've got to fulfill some obligations and we understand that about the Platte. Of course the Platte is part of my district too. [LB653]

DEAN EDSON: Exactly. [LB653]

SENATOR CARLSON: Exactly. Thank you. [LB653]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB653]

DEAN EDSON: Thank you. [LB653]

SENATOR LANGEMEIER: (Exhibits 16, 17, 18, 19, 20, and 21) Further testimony in opposition. Seeing...I got some letters. I have one from Greg MacLean from the city of Lincoln. I have one from Lee Orton with the Nebraska Water Coalition. I have one from Steven Smith from North Platte NRD and the North Platte Valley Irrigators Protective Association. And I have one from Greg Heiden from Bertrand in opposition to LB653. Is there anyone that would like to testify in a neutral capacity? While he's coming up, I have two letters, one is from the board of directors from the Frenchman Cambridge Irrigation District in a neutral capacity and one from Dan Smith from the Middle Republican NRD in neutral capacity. Welcome. [LB653]

BRIAN BARELS: (Exhibit 22) Thank you, Senator Langemeier. Good afternoon, Mr. Chairman and members of the committee. My name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I'm the water resources manager for Nebraska Public Power District and I'm testifying today in a neutral position as you are aware. I'm going to offer some modifications to the bill and I hope the committee would give serious consideration to incorporating them into a bill that may move forward. Nebraska Public Power District has over 50 percent of its generating facilities located and require water from the Platte River Basin. We also store water for irrigation, for hydropower, for power plant cooling in Lake McConaughy, Sutherland Reservoir and Lake Maloney, so we are directly in operation in the areas that are of interest and have been discussed today. We also deliver storage water and natural flow to approximately 80,000 acres in the Central Platte River. We have had some discussions regarding LB653 with Senator Christensen and appreciate his willingness to work with us on those items. NPPD believes that there are...that the existing statutes allow for the development of a temporary transfer permit that could also be a mechanism to provide for these transfers that this bill would allow. NPPD has the following administrative clarification and procedural concerns with LB653. It appears that the bill would amend 46-288; 46-288 is a definition section within the statutes. And as such, we would recommend that the enabling legislation be moved into Section 46-289. I think that might be a more appropriate location than within the definition section of the statutes. Also, NPPD asks the committee to amend LB653 with

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the following clarification. On page 3, line 19 in the bill, following the word "projects" as Senator Christensen mentioned during his introduction, we would ask that the words "and appropriations" be inserted. So we're not just talking about appropriations...projects, we're talking about projects and appropriations. This is important from a perspective that I would like to point out to the committee. The department has recommended, apparently, that the terminology of unappropriated water be included. I would point out that in Section 46-241(1) of the statutes that existing reservoirs in a basin can store unappropriated water and/or appropriated water not needed at that time. So I think that is another one of those planning things that needs to occur prior to the implementation of an agreement or diversion of water from the basin. And again, I would also point out that I think there needs to be cooperation up front. And it not just need to be between the DNR and irrigation district and an NRD or two other districts, whatever the case might be. I really think there needs to be a public input process incorporated where all the stakeholders in the basin have the opportunity to have input into the decisions that are made. So I would recommend the committee give consideration to that as well. Another item that's been discussed some by the committee and Senator Christensen is how you determine what a flood event is and when you would kick this into effect. In some cases, you could have snow melt and rainfall at North Platte and have the North Platte River in the flood situation, but when you get down to Columbus or North Bend, it's not a flood situation and somebody's appropriation may be dependent on that water. Another example of that occurring, and Senator Schilz can probably relate directly to this, was a significant rainfall event that occurred near Ogallala in the South Platte River Basin that put about...if my memory serves me right, 14,000 CFS in the South Platte River. By the time it got to Grand Island it had attenuated and it wasn't a flood. So as you can see, as you're trying to define a flood in one part of the basin, it may not be a flooding situation in the other part of the basin. That's why it's important that stakeholders have input into this process because how you make those decisions to implement this could be detrimental. Bottom line, NPPD supports projects that allow transfers to the other basins after the needs of the basin from which the water is to be transferred are taken into full consideration. With that, I'd be glad to answer any questions members of the committee may have. [LB653]

SENATOR LANGEMEIER: Are there any questions? Senator Carlson. [LB653]

SENATOR CARLSON: Thank you, Senator Langemeier. Brian, on your last concern there about times of flood, well that occurrence in North Platte, North Platte flooded. So there was water that ran out of the banks and did damage. Now, and once it's out, it's not going to return. So what stayed in the stream and continued downstream, that wasn't a flood by the time it got to Columbus, but that excess water was gone and it did damage. That excess water could just as well have been diverted, the water that flooded out of the bank. [LB653]

BRIAN BARELS: What you need to determine, I think, Senator, is whether there is

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somebody downstream who has the need for that water. Unfortunately, in the surf of the water system, one man's waste is the next man's supply. And I don't know whether it might have been the city of Lincoln or someone downstream that still had a shortage, but when you take those flood waters...and while you're talking about waters that go out of the bank, they generally return to the river, and so they do become a supply to the river basin, not necessarily the day they're out of the bank, but they do return through groundwater seepage or return over time to that river basin. All those things just need to be considered when you consider projects like this and when you open the valve and take the water. And that's why you need to have a public input process and a stakeholder process. And very honestly, I think the committee should give consideration to who is responsible for the impacts if somebody is impacted by opening that valve. [LB653]

SENATOR CARLSON: I don't argue with the public input phase of it. The other is a little bit to me like if I've got a million dollars in the bank and you're starving then I'm not going to give you anything because I'm afraid that tomorrow or the next day I may have some of my million disappear and I may need some more, so you're out of luck. And I think that's a little bit the way this is with excess...I'm just going to say excess flow. If it turns out that it's a negative impact downstream, that diversion has got to stop. But I think in the place that we're in, in the state of Nebraska in water and our need for management and our need for planning ahead, we've got to take some chances and walk out on the limb a little bit sometimes or we can be so afraid of making a mistake and so afraid of hurting somebody downstream that we're not doing what we're capable of. I understand your argument. I'm not even trying to change your mind, but sometimes we got to do things that have some risk in them. [LB653]

BRIAN BARELS: And yes, Senator, I support what you're saying. In fact, my testimony was NPPD supports this type of activity after the needs of the basin are taken into consideration. All I was trying to point out was that you've got to look maybe broader than where the flood happens to be occurring today. That might be somebody's water supply to fill their reservoir downstream. That's all I was saying. And that's what you're saying, I think, as well. So I think we're on the same page there. [LB653]

SENATOR CARLSON: Yeah. Whoever's crops that flooded out for that year because we refused to divert any of it, they're going to have a little different feeling. It's a balance; it's a tough balance, I understand that. Thank you. [LB653]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB653]

BRIAN BARELS: Thank you. [LB653]

SENATOR LANGEMEIER: Further testimony in a neutral capacity. Seeing none.

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Senator Christensen, would you like to close? Senator Christensen waives closing. That concludes the hearings for LB653 and hearings for the day. I thank you all for your participation. (See also Exhibits 23, 24, and 25.) [LB653]