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Natural Resources Committee
February 22, 2012

[LB756 LB1044]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 22, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1044 and LB756. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; and Beau McCoy. Senators absent: Jim Smith.

SENATOR LANGEMEIER: Good afternoon, everyone, and welcome to the Natural Resources Committee. I'd like to thank everybody that's here in the audience participating, as well as those that are watching online, and those that are watching us on close-captioned television. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to start off by introducing my committee members we have here; we have some that will be joining us that are introducing bills in other committees. But for those watching on the video, sitting already in spot for his bill is Senator Ken Haar from Malcolm; he's a member of the committee. To my immediate left is Laurie Lage, is the legal counsel for the committee. To my immediate right or your immediate left, we have Senator Annette Dubas from Fullerton, then we have Senator Tom Carlson from Holdrege. And we have Senator McCoy, who will be joining us in a little bit, as well as the rest of the committee. So with that, if you care to testify today, we need you...in the corners of the room is a green sheet. We need you to fill that out in its entirety and as you come forward to testify, if you would give that to Barb Koehlmoos, she is the committee clerk, at the...to my far right. She will be taking that and helping us keep an accurate record of today's events. If you'd like to be on the record of being here but not...don't plan to testify, there's another form in the corner that looks kind of like a spreadsheet and we ask that you fill that out. That way we make a record that you were here, but you didn't choose to testify. We do have two pages that are helping the Natural Resources Committee this year. We have Alex Wunrow from Los Angeles, California, who is a student at Southeast Community College; and then we have Brian Eulie, who is from Omaha and is a student at University of Nebraska-Lincoln, who is helping our committee this year. If you have something to hand out, we ask that you have 12 copies. If you know now you're short some, let us know and the pages will help you make those copies. We also advise you that if you have something you're going to show us, if you give it to the committee, we are going to keep it for the record. So if it's something you would actually like to show us, but yet take home with you, we ask that you just show it to us from the table. Otherwise, we will take it and make it part of the permanent record. In the Natural Resources Committee we do use the lights system. You'll see the lights in front of Senator Haar there. You get five minutes to testify. The green light will come on when you start. It will remain on for four minutes. The yellow light will come on; that's your one-minute warning and it will remain on for a minute. And then you get the red light, we ask you to stop your testimony and open yourself up for questions. At this time we have two bills before the Natural Resources Committee today. We have LB1044 and LB756 and we are going to take Senator Haar's bill, as

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posted on the doors, we're going to take LB1044 first. So with that, Senator Haar, welcome and you're recognized to open on LB1044.

SENATOR HAAR: Thank you, Chairman Langemeier and members of the committee, important members of the committee. (Laugh) As I get started, I would like to say as we got closer and closer to the hearing date and priorities were selected and so on, we know this wouldn't be a priority bill and we do plan to submit this as an interim study. And the further we got into it, and I'll explain in a minute why, but we believe there might be some opportunities for Nebraska. LB1044 as it stands would allow...the Public Service Commission would join with federal-state partnership, as allowed under federal law, to give Nebraska the authority to conduct state safety inspections of hazardous liquid pipelines. There are 14 other states that do this, including Alabama, Arizona, California, Minnesota, New York, Oklahoma, New Mexico, Texas, and so on. And we've looked at it from several standpoints, and again, I think an interim study will probably give us some...see if this is an opportunity or not. But first of all, it would put Nebraskans in charge of safety inspection; the second potential benefit is more inspectors; and the third one might be some savings in money. One of the things we discovered just very recently is even though we defined this for hazardous liquids, under federal law, that covers also natural gas pipelines. And right now natural gas pipelines are covered, the safety inspection is done through the Fire Marshal's office, and you'll hear more about that in a few minutes. That's potentially, I think, where we might see some savings, because on this kind of program the federal government comes in with 80 percent, the state pays 20 percent. The fiscal note shows the PSC would hire three inspectors, but again, the federal government would cover 80 percent of that, so the cost to the state would be about \$58,000. So once again, this is something that sounded really good when we started; it might still be really good, but we need an interim study really to look into the potential benefits for the state. [LB1044]

SENATOR LANGEMEIER: Okay, you have heard the opening on LB1044. Are there any questions? Senator Carlson. [LB1044]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Haar, on one of your statements where you saw some savings, then you said the federal would pay 80 percent and the state pays 20. How is that a savings? [LB1044]

SENATOR HAAR: Well, and this is something we'll have to look into. But if right now the Fire Marshal's office is doing the inspecting of the natural gas pipelines, you know potentially, some of that current money being spent for that could be covered by the federal government. [LB1044]

SENATOR CARLSON: So currently we'd be paying 100 percent of that cost of the Fire Marshal and potentially we might pay 20 instead of 100? [LB1044]

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SENATOR HAAR: Yeah, that's what I'm suspecting. Again, this thing of the Fire Marshal being involved is something that we've just learned about recently because according to federal law, hazardous liquids includes natural gas pipelines. So I can't answer really in depth if that would work until we look at this further. And I think it's just going to be a matter of information gathering and who does what and how many people do we employ, see if there's some benefits for the state. [LB1044]

SENATOR CARLSON: Okay, thank you. [LB1044]

SENATOR HAAR: Yeah. [LB1044]

SENATOR LANGEMEIER: Senator Schilz? [LB1044]

SENATOR SCHILZ: Thank you, Senator Langemeier. Senator Haar, thank you. Can you...I guess, just as reading through this, you say pipeline facilities. Do you have a definition for pipeline facilities? Is it...? [LB1044]

SENATOR HAAR: Let me go back and say that the further we got into this and the closer we got to this, we realized that this is really the stuff for an interim study. I will not push this, you know, to come out of committee. But we found out that according to federal law, that when we talk about hazardous liquids, it also includes natural gas, which is currently inspected by the State Fire Marshal's office. [LB1044]

SENATOR SCHILZ: Okay, thank you. [LB1044]

SENATOR HAAR: Yeah, yeah. [LB1044]

SENATOR LANGEMEIER: Seeing no other questions, well done. [LB1044]

SENATOR HAAR: Thank you. [LB1044]

SENATOR LANGEMEIER: You have heard the opening on LB1044. We'll now go to those who would like to testify as proponents, those in support. Come on up. No lines, no waiting. Come on up. Welcome. [LB1044]

KEN WINSTON: Well, I really didn't want to be the first person, but here I am. Good afternoon, Mr. Chairman. For the record, my name is Ken Winston, last name is spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club. And I hope someday to get rid of this cold so that I'll have my normal voice back, but you've got to deal with what I've got today. Just briefly, just supporting, basically, the concept that Senator Haar talked about, which is the idea of more local oversight over the process and just believing that there's benefits in having people...the closer you get to a circumstance, generally the better you know it. And I'm sure that, well, that you all have

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a much better idea about what's happening in your districts than, for example, the folks in Washington, D.C. do, and so...and that you're more responsive to your constituents than...well, I won't...than a lot of the folks on the national level. So I just think it's better to have local oversight as opposed to having...depending upon the federal government to be in charge of the oversight. [LB1044]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Winston? Seeing none, well done. [LB1044]

KEN WINSTON: Thank you. [LB1044]

SENATOR LANGEMEIER: Good afternoon. [LB1044]

BRUCE KENNEDY: Good afternoon, and I'm not touching that. (Laugh) [LB1044]

SENATOR LANGEMEIER: You've been here before. [LB1044]

BRUCE KENNEDY: Right. Mr. Chairman, members of the Natural Resources Committee, my name is Bruce Kennedy, that's B-r-u-c-e K-e-n-n-e-d-y. I'm here this afternoon representing the Nebraska Wildlife Federation and Friends of the Niobrara. First thing I'd like to do is to thank the committee for all of the work that you have previously done on the Keystone XL. We feel much safer that this committee is looking at these issues. And while I'm about it, I would say, I would tell you that safety inspections, safety standards done by the state have got to be good, and so we would very much support this legislation. [LB1044]

SENATOR LANGEMEIER: Okay. Are there any questions? Seeing none, well done. [LB1044]

BRUCE KENNEDY: Thank you. [LB1044]

SENATOR LANGEMEIER: Further testimony in support of LB1044? Welcome. [LB1044]

BEN GOTSCHALL: Thank you, good afternoon. My name is Ben Gotschall, B-e-n G-o-t-s-c-h-a-l-l. I'm the energy director for Bold Nebraska and the Lancaster County and District 5 president of Nebraska Farmers Union and I am representing those organizations today and we support this bill. And I won't repeat what others have said; I agree with a lot of what Ken just said. We just believe that, you know, the state...more state oversight into safety is a good thing. You know, the people that are...the more the state participates in the process, the better it's going to be for our state, and so we support this type of legislation and we support the interim study. So that's about all I have to say for that today. [LB1044]

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SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, well done. [LB1044]

BEN GOTSCHALL: Thank you. [LB1044]

SENATOR LANGEMEIER: (Exhibit 1) Is there anyone else who wants to testify in support? I do have one letter of support from Britton Bailey, from Lincoln, in support of LB1044. Is there anyone that would like to testify in opposition? Welcome. [LB1044]

JILL BECKER: Good afternoon, Chairman Langemeier and members of the committee. My name is Jill Becker and I am here today as a registered lobbyist of Black Hills Energy, but testifying on behalf of the Nebraska Natural Gas Association, and I just want to make a couple of comments. As Senator Haar stated, there is a reference in this legislation to a federal definition, and that definition pulls in the natural gas industry, and for that reason, we're opposed to this legislation. The natural gas industry is heavily regulated at both the federal and the state level, and in addition, this bill would also create responsibilities for two state agencies to be responsible for inspections under the bill. Currently, the State Fire Marshal does pipeline inspections which include our facilities, but the bill would also then give this authority to the Public Service Commission. I would also mention to you that in January, President Obama signed into law a pipeline safety measure and there will be several rule makings going on within the next two years, perhaps longer, and there might be some things coming out of that rule making that might have implications for our state. I think it's certainly too early to tell, but that might have an impact on efforts like this as well. And finally, we'd be more than happy to participate with Senator Haar in an interim study to look at all these issues being raised today. [LB1044]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Becker? Seeing none, thank you very much. [LB1044]

JILL BECKER: Thank you. [LB1044]

SENATOR LANGEMEIER: Further testimony in opposition to LB1044? Seeing none, is there anyone who wants to testify in a neutral capacity? Mr. Johnson (sic), welcome. [LB1044]

JERRY VAP: (Exhibit 2) Thank you, Senator, good afternoon. My name is Jerry Vap. I'm the Public Service Commissioner for most of western Nebraska, 47 counties west of Hall County; that's the 5th District. I'm here to testify in a neutral position regarding LB1044. LB1044 assigns significant responsibilities to the commission related to the regulation and inspection of hazardous liquid pipelines and facilities. Such responsibilities are beyond the current scope of the commissions's expertise. Although

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the commission is familiar with the regulation of natural gas pipeline facilities, it does not currently conduct any inspections of those facilities. Undertaking this task will require the addition of a minimum of three inspectors and the resources to enable them to carry out their work, including vehicles and other equipment. We have conservatively estimated the initial cost at \$292,000. Should you choose to pass LB1044, we would only ask that you ensure we have sufficient resources to properly fulfill the responsibilities. That concludes my comments today and I would happily answer any questions. [LB1044]

SENATOR LANGEMEIER: Very good. Are...Senator Dubas. [LB1044]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Commissioner Vap. Do you currently do any inspections of any other kind of pipelines or anything at all, through the capacity of the PSC? [LB1044]

JERRY VAP: We...the only inspections we do are safety inspections for the motor transportation department... [LB1044]

SENATOR DUBAS: What... [LB1044]

JERRY VAP: ...and we do some inspections for the railway division, track safety and locomotives. [LB1044]

SENATOR DUBAS: But you have no inspections of any kind of pipelines. [LB1044]

JERRY VAP: No pipeline inspection duties at all. [LB1044]

SENATOR DUBAS: All right, thank you. [LB1044]

JERRY VAP: Um-hum. [LB1044]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, Mr. Vap, thank you very much. [LB1044]

JERRY VAP: Thank you. [LB1044]

SENATOR LANGEMEIER: Further testimony in a neutral capacity? Seeing none, Senator Haar, you're recognized to close. [LB1044]

SENATOR HAAR: Well, again, thanks for the time. This looks like something worth exploring and we'll submit a resolution to do a study committee--or interim study--on this. So thank you very much. [LB1044]

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SENATOR LANGEMEIER: Very good. Are there any further questions? Seeing none, well done. [LB1044]

SENATOR HAAR: Thank you. [LB1044]

SENATOR LANGEMEIER: With that, you've heard the closing on LB1044. That concludes the hearing for LB1044. Now we will move to LB756 and we'll stand in ease here a moment until Senator Avery gets here. [LB1044]

BREAK

SENATOR LANGEMEIER: (Recorder malfunction)...committee. [LB756]

SENATOR AVERY: I got stopped in the hall. I was...I would have been here. [LB756]

SENATOR LANGEMEIER: I can relate, many occasions. With that we will open the hearing on LB756. Senator Avery has made it and that's great and you are recognized to open on it. [LB756]

SENATOR AVERY: Thank you, Mr. Chair. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y. I am bringing to you today LB756. This was a by-product of the Keystone pipeline special session. You may remember that I had originally offered this as an amendment to Senator Dubas' LB1, and at the request of the Speaker, I withdrew it because I agreed that we didn't yet understand all the parameters of the permitting process and that I didn't want to delay action on LB1. We were in the thick of debate and I believed that this concept needed some more discussion, and I agreed to reintroduce it during the regular session and the Speaker agreed to prioritize it if I would do that and he has done so. Last fall as we began to understand more fully the magnitude and the complexity of the pipeline issue, it wasn't evident right away, but it became apparent that we were unaware of what we were dealing with. We had a company that was, in the minds of many people, not playing by the rules, certainly not playing by rules of fairness, and largely because we didn't have any real rules for them to follow, and that we have corrected. At the time I offered the amendment and the reason I'm bringing this bill today is because Nebraska has a pretty mature set of public records laws that are a critical part of the transparency that we value in our government. I think a lot of landowners in the pipeline dispute last year were terrified, and a lot of that was because of the appearance that Keystone or TransCanada was not operating above the table on that issue. We have laws that alleviate some of that anxiety and there are transparency laws. I want to be clear that this bill is in...is only designed to further the transparency and to be true to our tradition of transparency here. Under Chapter 84, Nebraska statute outlines the expectations citizens should have with respect to examination of public documents related to activities of a public purpose. We allow citizens to examine records, to make copies during business hours, they're free

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and the...or perhaps the actual cost to copy them. In this case, the Public Service Commission will be processing pipeline applications and will be such custodians of the records and I can imagine that there will be volumes and volumes of documents. It is clear that we are going to put Keystone through the permitting process based on the route chosen in consultation with DEQ and its supplemental study. This will generate a lot of information, a lot of public hearings, environmental assessments, and a lot of paperwork. I think it's imperative that we have a clear and unambiguous directive to pipeline entities under this new law. These companies will be coming into Nebraska, dealing with our laws for the first time. They will go to the law on the permitting process. They may not, without this language in that section of law, they may not be aware of our public documents, our open documents process and requirements. I think it's important that they know about this and that's what this would do. It would put in the language of LB1 a clear statement of our public meetings...our public documents expectations. There are 18 areas in which our statutes protect documents that are not subject to open records laws; this would not in any way change any of that. We protect from public inspection trade secrets already. We protect the work product of attorneys relating to litigation, labor negotiations claims. This would not change; the current exceptions would remain. All we would do is put a clear statement in law that this process, the permitting process for pipelines, will involve public records. It's not a burdensome thing. It is an important--I believe an important--thing for us to do. It is a notice to a new industry about to enter our state in a very big way. It just provides clear and unambiguous notice to the pipeline companies that if you're going to do business in Nebraska, then you're going to do it according to our current open records law. With that, I will take any questions. [LB756]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Avery? Seeing none, well done. [LB756]

SENATOR AVERY: I will not be able to stay because I've got to get back to my committee. [LB756]

SENATOR LANGEMEIER: Oh, okay. [LB756]

SENATOR AVERY: Thank you. [LB756]

SENATOR LANGEMEIER: You have heard the opening on LB756. We will now go to proponents, or supporters. Welcome. [LB756]

ALAN PETERSON: Hello, Chairman Langemeier and members of the Natural Resources Committee. I'm Alan Peterson, A-I-a-n P-e-t-e-r-s-o-n. I represent ACLU of Nebraska today. I don't represent anybody on either side of the pipeline controversy today. I'm here because ACLU, both nationally and the local affiliate, always support open, transparent government. This bill basically, as I understand the opening and as I

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understand the bill, is kind of a belt and suspenders. We already have the public records law and this bill says...and yes, it does count with respect to examination of applications for a pipeline permit under LB1 from the special session. I had the good fortune many years ago to have been asked to draft our public records law back in 1978 and I did and have been involved with most of the amendments. Most amendments of...have been with respect to adding new exceptions to public records and there are, I think Senator Avery said, about 18 of those now. Those aren't changed. I suppose if I were to ask, well, what does this bill do then, I would say number one, it does bring open records--public records--into the context of the permitting for major oil pipelines under LB1. I raise the question whether if, in fact, this committee would decide to move the examination of a pipeline...a new pipeline application under the supplemental study of DEQ, under a bill you heard earlier, I raise the question whether it would be intended by the introducer to have the open records issue also put in that context of LB4 from the special session. But, to be honest, I don't think this bill does very much except draw close attention. From a very technical and legalistic standpoint, I'd say it does one other thing. There is a doctrine of statutory interpretation in Nebraska and most states that a more recent bill--and especially if it's more specific--can trump an older law. Because LB1 and LB4 and the whole context of pipeline applications is pretty new, I suppose there could have been, in the absence of this bill, some argument that well, this is new, this is more specific, it's more recent, and we shouldn't be guided entirely by the preexisting public records law. I really don't think that would hold a lot of water, but it could...it is an argument that could have been made in the absence of a bill such as this, so this bill may have that salutary or healthful effect of making very clear, yes, public records will apply. I also believe that an application for a pipeline to either of those agencies of Nebraska would be ultimately a contested case hearing and only the really good evidence or evidence that meets some criteria would be allowed in. And then whoever didn't like the results from the agency may well have a right to appeal to district court in Nebraska, both in the agency and in district court, with the exception, perhaps, of proprietary information that's usually taken care of by a stipulation and a very limited order to protect it. Except for that, just being in court or being in a session like this already makes things a public record. So while I think this is a good law, I think it has only a very modest effect, but it does certainly call attention in very current terms that the transparency and openness and the interests of Nebraska's citizens in all these matters on oil pipelines to know what's going on will be respected. So in that regard, I think it's a good bill, we support it, would ask that this committee move it on for consideration by the whole Legislature. Thank you. [LB756]

SENATOR LANGEMEIER: Well, very good. Are there any questions? I'm going to ask you one. [LB756]

ALAN PETERSON: Yes. [LB756]

SENATOR LANGEMEIER: I want you to restate that statutory doctrine... [LB756]

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ALAN PETERSON: Yes. [LB756]

SENATOR LANGEMEIER: You used a little phrase, there. Say it again. [LB756]

ALAN PETERSON: I hope it wasn't Latin; I don't remember. But the specific governs the general. [LB756]

SENATOR LANGEMEIER: Um-hum. [LB756]

ALAN PETERSON: In other words, a new and more specific law will sometimes trump a more general law. [LB756]

SENATOR LANGEMEIER: Right. [LB756]

ALAN PETERSON: And secondly, just a more recent law sometimes is considered that it might trump an older law. [LB756]

SENATOR LANGEMEIER: Okay. [LB756]

ALAN PETERSON: That's really two rules, but they're pretty similar to each other, all right? [LB756]

SENATOR LANGEMEIER: Sure. Seeing no questions, well done. [LB756]

ALAN PETERSON: Thank you. [LB756]

SENATOR LANGEMEIER: Further testimony in support of LB756? Welcome back, Ben. [LB756]

BEN GOTSCHALL: Thank you. My name is Ben Gotschall, B-e-n G-o-t-s-c-h-a-l-l. I'm the energy director for Bold Nebraska and the Lancaster County and District 5 president of Nebraska Farmers Union. I'm in support of this bill. Like Senator Avery said earlier, part of the whole point of the special session was to get some legislation in place to deal with major oil pipelines. And, you know, whether...even though we may or may not disagree about the necessity of such pipelines or how quickly or slowly the process should go, I think we can all agree that transparency is important, especially in a public process, and so that's...from the standpoint of that transparency, I support this bill. [LB756]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. [LB756]

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BEN GOTTSCHALL: Thank you. [LB756]

SENATOR LANGEMEIER: Well done. Further testimony in support? Welcome back... [LB756]

BRUCE KENNEDY: Mr. Chairman, members of the Natural Resources Committee, my name is Bruce Kennedy, B-r-u-c-e K-e-n-n-e-d-y. I am representing the Nebraska Wildlife Federation and Friends of the Niobrara. This bill is pretty short, only one page, so my testimony is going to be equally short. But we agree with the things that Senator Avery said. Keystone, in its previous dealings, has not always been up-front with us and as it's been said over and over, disclosure/transparency are very good things, something that we want to hold Keystone liable for at this point, and so we very much support this measure. [LB756]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Kennedy? Seeing none, thank you very much. Well done. [LB756]

BRUCE KENNEDY: Thank you. [LB756]

SENATOR LANGEMEIER: Further testimony in support? [LB756]

KEN WINSTON: Good afternoon again. [LB756]

SENATOR LANGEMEIER: Welcome. [LB756]

KEN WINSTON: My name is Ken Winston, last name is spelled W-i-n-s-t-o-n, appearing on behalf of the Nebraska Sierra Club. I believe that LB756 is a commonsense bill. There were many concerns by members of the public about the pipeline routing process and that ensuring public access to documents is, well, is something that improves public confidence in the process and basically would also echo the comments that Alan Peterson made. [LB756]

SENATOR LANGEMEIER: (Exhibits 3 and 4) Very good. Are there any questions for Mr. Winston? Seeing none, thank you very much. Well done. Further testimony in support? I do have one from Britton Bailey, from Lincoln, in support of LB756. Is there anyone that would like to testify in opposition? Seeing none, is there anyone that would like to testify in a neutral capacity? Seeing none, I do have one letter from Rod Johnson, the chairman of the Nebraska Public Service Commission, in neutral testimony for LB756. Senator Avery has waived his closing, so that concludes the hearings today for LB756 and the hearings for the day. Thank you all for participating and have a great and safe day. Thank you, we're done. (See also Exhibit 5) [LB756]