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Government, Military and Veterans Affairs Committee
February 20, 2013

[LB278 LB303 LB504 LB637]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 20, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB278, LB504, LB303, and LB637. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; Scott Lautenbaugh; John Murante; Jim Scheer; and Norm Wallman. Senators absent: None.

SENATOR AVERY: Welcome all of you to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I represent District 28 here in south-central Lincoln, and I am Chair of this committee. Before we start, let me point out to you that this is the order that we will be following in this hearing today. We have four bills, LB278, LB504, LB303, and LB637. This is the order posted outside the door, and that will be the order we will follow here today. Before I start, let me introduce the members of the committee who are here and those who are not here but we hope will be later. I'm going to start this time on the left with Senator Jim Scheer from Norfolk. Seated next to him is Senator Norm Wallman from Cortland. And soon to arrive will be Senator Russ Karpisek from Wilber. And on my immediate right is the committee legal counsel, Christy Abraham. And next to her is the Vice Chair of the committee, Senator Scott Price from Bellevue. Next to him will be joining us later, Senator Scott Lautenbaugh of Omaha. I think he may be...is he here today?

SENATOR BLOOMFIELD: He wasn't in the Chamber this morning.

SENATOR AVERY: He wasn't? So he may not be joining us today. Next to him is Senator Dave Bloomfield from Hoskins. And soon to join us we hope is Senator John Murante of Gretna. On my far left over here is Sherry Shaffer who is the committee clerk. If you plan to testify for or against any of these bills, we have some forms that we'd like for you to fill out. They are available at each entrance to the room. This green form, we ask you if you are appearing for or against any bill to provide the requested information; print it clearly. When you arrive at the table to testify, we want you to say your name clearly for the record and spell it so that we can have a good transcript. If you do not wish to testify but you have an opinion you'd like to express for or against any of these bills, this is the form to fill out. This also is available at each entrance to the room. Also, we'll have to ask you to silence all of your electronic equipment, particularly telephones, so as not to disrupt the proceedings. Introducers will be given the opportunity to make initial statements, followed by proponents. They will be followed by opponents and neutral testifiers. Closing remarks are reserved for the testifier or for the introducing senators only. We will be using the light system. The light system...it consists of three lights. The green light means you have four minutes in your testimony; the amber light, you have one more minute to complete your testimony--five total minutes; and when the red light comes on your five minutes are up, and we hope that

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you will be finished by then. If you have any documents you want us to look at, you will need 12 copies. If you do not have 12 copies, we have two very capable pages here who will help you. Will Rahjes is one page, from Elwood, and next to him is Cicely Batie who is from Lexington, and they will assist you. Okay. We need 12 copies, by the way, of all exhibits that you want to share with us. So let's get started with the first bill. The first bill is Senator Pete Pirsch, LB278. Welcome, Senator Pirsch.

SENATOR PIRSCH: Well, thank you, Chairman Avery and members of the Government, Military and Veterans Committee. I am State Senator Pete Pirsch. For the record, that's spelled P-i-r-s-c-h, and I am the sponsor of LB278. LB278 is to update provisions of law relating to on-line services offered by the Secretary of State's office. The Secretary of State's office offers many on-line services relating to business and Uniform Commercial Code records. LB278 simply allows the Secretary of State to provide an electronically transmitted certificate indicating whether a business is properly registered with the Secretary of State. Currently the law provides for an electronically transmitted letter. So there will be a testifier from the Secretary of State's office, Colleen Byelick, who will follow me and give more detail. Also LB278 clarifies language regarding pricing for the contents and images stored in the corporations and Uniform Commercial Code databases, so primarily a cleanup bill from the Secretary of State's office. I do have two other matters, bills that I will be introducing in the Revenue Committee and so I anticipate just waiving in advance my closing. So thank you very much. [LB278]

SENATOR AVERY: Will you take questions? [LB278]

SENATOR PIRSCH: I will. [LB278]

SENATOR AVERY: Okay. [LB278]

SENATOR PIRSCH: Sure. [LB278]

SENATOR AVERY: Senator Price. [LB278]

SENATOR PRICE: Thank you, Chairman Avery. Senator Pirsch, and in advance of those who would testify after you, my question is, when we talk about the "For images of records accessed over the Internet or by other electronic means" and then they talk about the cost, are these for records that are only in...that are currently only in a hard-copy form or is this inclusive of digital records that already exist? [LB278]

SENATOR PIRSCH: Okay, and I can certainly take a stab at what my understanding is, but it's probably more properly that question reserved for someone who has 100 percent certainty of knowledge of all records in their office who will testify next. [LB278]

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SENATOR PRICE: Thank you. [LB278]

SENATOR AVERY: Let me ask you, currently letters are used to certify these filings or the applications? [LB278]

SENATOR PIRSCH: Yeah, that's right. [LB278]

SENATOR AVERY: And so the certificate is...what is the purpose of a certificate? Does that lend a greater authenticity to the certification? [LB278]

SENATOR PIRSCH: And I probably would defer to that. But yeah, I don't think that substantively you're making a great change here in terms...I think that there are situations where the very semantic--which is odd--but the semantics of what...of how you phrase this in statute matters to outside interested, you know, stakeholders. So I don't think substantively it's a great change, but I think that it is...it matters what you call it in terms of... [LB278]

SENATOR AVERY: So you go from a letter of certification to a certificate of certification. [LB278]

SENATOR PIRSCH: Yeah, that's my understanding. [LB278]

SENATOR AVERY: We deal with weighty matters in this body here. Any other questions from the committee? Thank you, Senator Pirsch. [LB278]

SENATOR PIRSCH: Yeah. Thank you, again. [LB278]

SENATOR AVERY: All right. We will now accept proponent testimony on LB278. Welcome. [LB278]

COLLEEN BYELICK: Thank you for having me. My name is Colleen Byelick, C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the general counsel for the Secretary of State's office. First, I would like to thank Senator Pirsch for introducing this bill on behalf of our office. Senator Pirsch has helped us with other on-line filing services and so we're appreciative of his help. Basically this bill emanates out of an internal review that we did regarding our on-line filing services. And in just looking at our services and all of our agreements, we realized that we probably needed to request some updates to 33-101. Basically there's three changes that we're looking at. The first one is going from the electronic letter to an electronic certificate of good standing. And this is anytime, say, a business is obtaining a loan, they may be doing some sort of sale, merger, acquisition. They may want to obtain a certificate or letter from the Secretary of State's office indicating that they're in good standing. And we have a service that allows them to do that electronically; currently we call it a letter. We have kind of heard feedback that some

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banks really will only accept a certificate. And so what we're looking at doing is sort of updating the form of this. We're not changing the substance but just updating the form making it look more like a certificate, and then also having a certificate number so that a bank or other individual requesting this could get back on our site and verify that, yes, we issued this certificate, could see, you know, the time and date that it was issued, and verify that it's a valid certificate. So that's what we're looking at doing on that front. The second change is dealing with the contents of our corporation and UCC databases. We currently have two separate databases. One is UCC records and one is corporation records, and we just want to clarify that there is a separate price for each database. And right now the way the law reads, it sort of implies that you can pay one price for both databases. We've always charged for these services separately, so we're just really trying to update the law to reflect what we've always done. And then the third change that we're looking at is relating to prices for our images. Our images...to answer Senator Price, these are electronic images. Some of them are hard-copy documents that have been scanned into our system, and I believe we go back to 1996. We still have some records that are only in hard-copy form, but the majority of our records are electronic and can be accessed electronically. And so we're just kind of clarifying here that this is...the services that we offer are a monthly update of those images--we don't offer all of our images for the price indicated in the current statute--and that we don't offer sort of batch image requests. So those just aren't services that we currently offer, though the way the language is written it sort of makes it sound like we do. So we're just trying to kind of clean this up and really reflect our current systems and practices. And I can try and answer any questions you have. [LB278]

SENATOR AVERY: Thank you. Senator Price. [LB278]

SENATOR PRICE: Thank you, Chairman Avery. Thank you very much for coming and testifying. [LB278]

COLLEEN BYELICK: Sure. [LB278]

SENATOR PRICE: It piqued my curiosity because we're trying to drag Nebraska forward and to use the electronic mediums. [LB278]

COLLEEN BYELICK: Sure. [LB278]

SENATOR PRICE: And if we already own the image data, my question is what are the cost factors that drive...when I see thousands of dollars, even hundreds of dollars for a point-and-click type of running a query and put it in an e-mail, I'm wondering how do we measure this and how...are we trying to amortize a long-term hardware investment, software investment? I'm trying to understand, because if I already have it on digital form and it takes someone five minutes to go and get it, that's not \$300. And if I'm running a batch file every month for an updated subscription, that's not \$300. So I'm

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trying to understand what the cost drivers are for this, and then how does that resolve if you walk up in person? [LB278]

COLLEEN BYELICK: Sure. [LB278]

SENATOR PRICE: So if I walk up in person...so if you could take a stab at that. [LB278]

COLLEEN BYELICK: Yeah. In person for copies of our records, we charge \$1 per page. So the 45 cents that we charge on-line is actually less than what we charge in the office. And the...let's see...my history on it, I believe originally in 2000 we started that service of providing those images and we charged 50 cents, and then in 2003 we lowered it to 45 cents. So our price has stayed consistent since 2003 on that. We don't have, in terms of sort of the batch request of the data, we don't have a large number of requesters, but the requesters that we do have are companies that are sort of repackaging this information and reselling it. And so I don't think the price is cost prohibitive to them. So I'm not sure if there is a need to lower the cost, but if that's a concern, we can look at that too. [LB278]

SENATOR PRICE: Again, the cost to me...I would like to see that we move to what does it cost government to produce it. You know, we don't pick winners and losers. I can't...we're not differentiating between a citizen who makes a request and a company that makes a request. We're just saying anybody who makes a request, you're going to pay this amount of dollars. So I was...again, my curiosity was piqued because I don't understand the cost drivers, 45 cents per record that you're sending out digitally. If we're saying measuring on the megabytes of a request because we can measure the impact of our network and our throughput. [LB278]

COLLEEN BYELICK: Sure. And I don't...yeah. [LB278]

SENATOR PRICE: And that's where I'm kind of going. I don't know if maybe that's a Brenda Decker CIO issue. [LB278]

COLLEEN BYELICK: Yeah. I'm going...I probably don't have the technical expertise to answer that. But, I mean, we do have to maintain our applications, we do have to maintain our servers, we do have to, you know, maintain all of these databases that all of this information is stored on. So, you know, we really have a lot of technology costs even though systems have improved where we're not noting things in a file cabinet anymore. I mean, that's the system that we used to have. Everything was sort of these card index file systems, and so we've modernized all of that. But with that, there are costs. And so... [LB278]

SENATOR PRICE: Great. And that's the exact answer I was hoping to hear that we're transferring those costs to the users. So thank you very much for your explanation.

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[LB278]

COLLEEN BYELICK: You're welcome. [LB278]

SENATOR AVERY: May I ask, you appear to be exempt from the public records law. [LB278]

COLLEEN BYELICK: Exempt in what way? [LB278]

SENATOR AVERY: Well, you're charging the \$1 a page for some hard-copy records. [LB278]

COLLEEN BYELICK: Right. And that's a statutory fee. [LB278]

SENATOR AVERY: Then you are either...you have your own statute allowing you to establish these fees... [LB278]

COLLEEN BYELICK: We do. We do. [LB278]

SENATOR AVERY: ...which means you are technically exempt from the general public records law. [LB278]

COLLEEN BYELICK: Because your thought is that the dollar is more than the actual cost? [LB278]

SENATOR AVERY: Oh, yes. [LB278]

COLLEEN BYELICK: Okay. Yeah. Yeah, we have a separate statute that allows us to charge for that. [LB278]

SENATOR AVERY: So do you find it strange or perhaps a little irregular to be able to use public records for fund-raising? [LB278]

COLLEEN BYELICK: For our office? [LB278]

SENATOR AVERY: Yeah. [LB278]

COLLEEN BYELICK: Well, you know... [LB278]

SENATOR AVERY: I mean, public records are for...to provide transparency and accountability to the public. [LB278]

COLLEEN BYELICK: Sure. And I think... [LB278]

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SENATOR AVERY: If you are able to charge a great deal more than what the record costs, then you are, in fact, using the public record to make money. [LB278]

COLLEEN BYELICK: Uh-huh. Well, I think a little bit of the difference is, is that it's not like these are sort of our Secretary of State internal public records. You know, we're statutorily given these duties of maintaining these public records. And so that's sort of our business, I mean, that's our statutory duty. So we're, you know, required to file these documents, maintain them, maintain these records. So I guess that's where I see a little bit of the difference, but that's my interpretation. So... [LB278]

SENATOR AVERY: Well, we'll be hearing more about this when Senator Chambers finishes with his filibuster because I have a bill on public records coming up. [LB278]

COLLEEN BYELICK: Uh-huh. [LB278]

SENATOR AVERY: Any questions from the committee? This committee, by the way, approved that bill almost unanimously. I don't see any questions. Thank you for your testimony. [LB278]

COLLEEN BYELICK: Yes, thank you. [LB278]

SENATOR AVERY: Any other proponent testimony? No other proponent? Any opponent testimony? Any neutral testimony? Senator Pirsch has left the room and does not wish to close, so that ends the hearing on LB278. And we will now invite Senator Coash to join us for introduction of LB504. Welcome, Senator. [LB278]

SENATOR COASH: (Exhibit 1) Thank you, Chairman Avery, members of the Government Committee. Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent District 27 right here in Lincoln, and I'm here to introduce LB504. So before I get into what LB504 does, I want to take some of us back three years to 2010 where we--this Legislature--passed the bill which I cosponsored and Senator Karpisek cosponsored, as well as some of my other colleagues, and that was LB1002; primary introducer was Senator Loudon. And here's what LB1002 did, and I think it's important that you understand what LB1002 did because LB504 changes what it will do in the future if enacted. In LB1002 of 2010, the Legislature took \$25,000 in a General Fund appropriation, created a fund to be administrated by the Indian Affairs Commission and distributed to applicants which are political subdivisions, including tribal governments, within 30 miles of an Indian reservation. Such subdivisions must have a municipal government and must have less than 6,400 inhabitants. And what happened here was those parameters ensured that only the small town of Whiteclay, Nebraska, could apply for such funds, and that was by design. And those funds could be used for healthcare, economic development, and law enforcement activities. So this Legislature, through this

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bill and the main budget, put \$25,000 into a fund and said if you meet these certain requirements--which were so narrow that only Whiteclay would meet them--somebody could apply to the commission for those funds, be awarded a grant, and do things related to healthcare, economic development or law enforcement. Somebody from the Indian Affairs Commission is going to come up here after me and tell you what's happened to that money since then, and is the reason that I brought LB504. Probably the best way to describe LB504 is in the fiscal note, if you want to find that. The fiscal note describes it fairly well. The bill itself removes sections that you can't see what we're removing, so it's a little bit more complicated than that. But what LB504 does is it seeks to expand the eligible applicant pool for state assistance from the commission. And as stated, currently eligible applicants include political subdivisions within a 30-mile radius of an Indian reservation that lacks a municipal government in a county of less than 6,400 people. LB504 simplifies the applicant pool to a political subdivision within 60 miles of an Indian reservation or a tribal government within 60 miles. As I mentioned, currently such subdivisions may spend the funds on healthcare, economic development, and law enforcement. LB504 expands it to education. Finally, LB504 repeals the statute which states that the commission needs to have a public hearing for each applicant. So here's what we're doing. We have this money that went in--since we did that in 2010 we have not appropriated any more money; so we have a fund that started out with \$25,000. Some of those funds have been drawn down but nobody is asking for any more of this money. And we don't expect that anyone will because there's only one little group in the state that will qualify for doing it, and they're not interested in it. So this bill says any subdivision surrounding a reservation can do that, adds education to it, and allows the commission to waive the public hearing which didn't sound like it was really happening anyway. So unless the Legislature decides to reappropriate money for this program, I would guess we'll spend this money down. The commission will give out its grants, we'll be able to let communities within and around any reservation apply for them, and maybe do some good with the money that's there. I'm not asking for more money, that's why it's coming here. I'm just asking for broader authority so that the money that's leftover can be spent on Indian issues within our own state, which is a little different than the original bill, but I felt we needed to do this. So with that, I'll answer any questions. [LB504]

SENATOR AVERY: Is it true that you chair the State-Tribal Relations Committee?
[LB504]

SENATOR COASH: It is true. [LB504]

SENATOR AVERY: I thought that you might want to let the committee know that, that you had an interest in... [LB504]

SENATOR COASH: Yes. Yeah, I do chair that. And my interest in this...it was brought to me by the commission when...and they said they have this fund but nobody is asking

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for this money. And they can answer that, but the answer that was given to me was, well, we did appropriate some money but there's no...nobody else is asking. And they'd like to be able to do some good with this, so that's what LB504 is intended to do. [LB504]

SENATOR AVERY: Thank you, Senator. Senator Scheer. [LB504]

SENATOR SCHEER: Thank you, Senator Avery. Sir, a question. How many dollars are we talking about in the fund? [LB504]

SENATOR COASH: Well, it's less than \$25,000. I think the commission is going to give you an update and say how much money we've got. And the mechanism is still there for a couple of reasons. The Legislature may decide to appropriate more money. This original bill has a seven-year sunset on it, so we're three years into that. But it also allows the commission to apply for grants, federal grants, nonprofit grants, that can also be put into this fund in addition to the state appropriation. So the intent of the Legislature was never to just have \$25,000 and spend that and be done. The intent was kind of \$25,000 seed money, allow the commission to receive grants to supplement those funds; and the original bill actually that we passed had a grant facilitator position in it which the commission did not fill. And it's my understanding they did not fill it because of such narrow parameters, there just are so many grants that will fit those narrow parameters of the law that we passed in 2010. [LB504]

SENATOR AVERY: But I'm reading the committee statement on LB1002, and it sounds to me like the funding would be available for economic development, healthcare, and law enforcement. [LB504]

SENATOR COASH: That's true, and that stays. My bill adds education as a fourth outcome that this can be used for. [LB504]

SENATOR AVERY: And that... [LB504]

SENATOR COASH: So hopefully by expanding it, that gives some more opportunities to do some things. [LB504]

SENATOR AVERY: Yeah, I get it. Questions from the committee? Don't see any. Thank you. Are you going to waive? Are you going to stay around for a closing or... [LB504]

SENATOR COASH: I'm going to watch what you do... [LB504]

SENATOR AVERY: Are you going across the hall? [LB504]

SENATOR COASH: ...since I follow you in the HHS Committee. But yeah, I'll stick

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around. [LB504]

SENATOR AVERY: All right, thank you. Proponent testimony? Good afternoon. [LB504]

JUDI GAIASHKIBOS: Good afternoon, Senator Avery and members of the committee. I am Judi gaiashkibos, J-u-d-i, gaiashkibos, g-a-i-a-s-h-k-i-b-o-s. I'm the executive director of the Nebraska Commission on Indian Affairs; this is my eighteenth year for the new senators. And I am also a member of the Ponca Tribe of Nebraska. I have two other hearings to go testify at, so I'm going to just say a few words in support of this bill that Senator Coash has introduced for us. And then my assistant, Scott Shafer, will answer more detailed questions and talk about the budgeting of the remaining funds that we have which are around 22,500-and-some-odd dollars. But basically, historically going back, we were tasked with administering this money to address matters at Whiteclay. And for new senators, Whiteclay has been around for a long time. And it was kind of, in my opinion--I don't want to be too radical today--asking us to take a Band-Aid to put on someone who's bleeding to death. And it's been a real difficult challenge for the Indian Commission to administer this money with the intent, so we would like to support what has been put before you today so that it will allow us to have more latitude to utilize the remaining funds. We have had a granting process; Scott will explain all of that to you. What we'd like to use the monies for is what we do with our other tribes in Nebraska, and that's why education was added. And Senator Price, as former chair of the State-Tribal Committee and some of you we've met with, with our Youth Leadership Program. So what we would like to use that money for specifically to conduct a similar program out at Whiteclay to help the kids that are most affected in the area to keep them off the streets of Whiteclay. And we believe that that is how we can achieve that through education that you can level the playing field for our kids that are at such a high risk. So we have a few additions that we'd like to add to this in the committee to amend it to make it a little bit more...to accomplish what we hope it will. And Scott is going to speak to that. And briefly I would be happy to answer questions before I go to my other hearings. [LB504]

SENATOR AVERY: All right, questions? You convinced us to save them for Scott. [LB504]

JUDI GAIASHKIBOS: Yes. This is his first time of testifying so be really nice to him. Thank you. [LB504]

SENATOR AVERY: Thank you. All right, additional proponent testimony? Welcome, sir. [LB504]

SCOTT SHAFER: Thank you. My name is Scott Shafer, spelled S-h-a-f-e-r. I'm a staff assistant with the Nebraska Commission on Indian Affairs. And as my director, Judi gaiashkibos, indicated, I'll do my best to maybe clarify a little bit of what our thoughts

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were in regards to this bill. I'll just jump over a couple of little spots again. The law enforcement, economic development, healthcare would be retained, and as Senator Coash indicated, we'd like to add educational programming to that verbiage. As Judi had mentioned, one of our ideas was--that we found successful in other areas--is to do a youth leadership camp somewhere in that Whiteclay area. We think really working with the youth gives us the most bang for our buck to speak of, to begin to make a difference with the understanding that to really change things in Whiteclay is going to be a generational change, and that starts with the kids. And our experience has shown that is what works with the other reservations that we've worked with. So in a somewhat technical note, what we would like to see then, some slight revisions to the bill. We would ideally like to see that authority changed or broadened to allow our agency to directly spend the existing appropriations for programming such as like for a youth leadership camp as we already talked about, or also we'd also like to have the authority to work directly with nonprofit entities in the area if we deem that to be necessary. As one of our challenges is, is the way LB1002 was originally spelled out, it spelled out a very strict structure for how the funding process had to take place. None of the cities or counties that fell within that narrow area were really inclined to take on any programming in that area. So what was necessary was area nonprofits would have to find a city or county to partner with them. And in essence, the city...like in one example is the city of Rushville was acting merely as a fiscal agent or as a money pass-through for the funding to go to the nonprofit, which is an extremely inefficient method of taking care of this, as really the city had no real active involvement in the project. And so the question to be asked is what's in it for them other than the responsibility of handling the money? So we'd just like to simplify that so our agency could work directly with programming in that area or work directly with the nonprofit that we feel is doing good work in the area. To move on then, also that we believe would be necessary in the bill is, number one, is we would like to see verbiage to grant the authority to the Nebraska Commission on Indian Affairs to spend remaining funds from an existing designated collection fund in fiscal years 2013 through 2015 to address Whiteclay-area problems. This is the money that was left over from that original \$25,000 appropriation. There is approximately \$15,000 was awarded to...it was formerly the ABOUT Group, it's now known by Lakota Hope in Whiteclay. It was funded to them and a portion of that was also funded to Sheridan County Sheriff. Unfortunately, they were unable to provide documentation that they had used the money in order to be reimbursed for it. So there is approximately \$7,700 left over from that \$25,000. I believe somebody asked that question. Additionally, we would like to...another piece of history was Senator Loudon managed to add onto an appropriation for our agency, I believe it was two years ago, an additional \$15,000 for our agency to use in a similar fashion. And again, it was defined in those same parameters, and we would like to have the authority to have that \$15,000 reappropriated to our General Fund for fiscal year 2013 to 2015. I don't know if that's something that can be addressed in this revision or if that becomes an appropriations issue, but we wanted to have that out there for discussion. So if there's any other questions that you would like to have me answer, I'm... [LB504]

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SENATOR AVERY: Thank you, Mr. Shafer. You're just about out of time anyway. Questions from the committee? Senator Bloomfield. [LB504]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Mr. Shafer, it's no big secret the problem at Whiteclay stems from its proximity to the South Dakota border and the reservation across the border. Is any of this money finding its way into South Dakota or does it all stay in the Nebraska side or how is that handled? [LB504]

SCOTT SHAFER: Well, that is one of our challenges, as I call it, the perfect jurisdictional storm of the Sheridan County, I think it's Shannon County in South Dakota, state of Nebraska, state of South Dakota. Obviously, the Sheridan County Sheriff's money--what part of it he did collect--went to Sheridan County. The other award went to a collaboration between Bruce BonFleur's ABOUT Group and a group called First Tee of the Lakotas. It was a collaboration between the two groups. I believe the executive director is the mayor. Chris Heiser is the mayor of Rushville. So the majority of the money went to Bruce's group in Whiteclay and then part of it went to the First Tee of the Lakotas group--which is a youth golf association--which was used to run developmental assets to the kids who participated in that. So technically, perhaps a degree of that went to the First Tee group which is located in South Dakota but its executive director is located in Rushville, Nebraska. So I don't know if that's... [LB504]

SENATOR BLOOMFIELD: Okay. Thank you. [LB504]

SENATOR AVERY: Any other questions? I don't see any. Thank you, Mr. Shafer. [LB504]

SCOTT SHAFER: Thank you. [LB504]

SENATOR AVERY: Any additional proponent testimony? All right, we'll now accept opponent testimony on LB504. Opponent testimony. Seeing none, neutral testimony? Okay. Senator Coash. [LB504]

SENATOR COASH: Okay. Well, thank you, committee, for listening about this bill and to the commission. We put this bill together fairly quickly towards the last couple of days of bill introduction, so I wanted...I had to, obviously, get it in. Since then the commission has recommended some of those changes to make it a little bit easier to administer these funds. I asked them to come to the committee and share that with the committee; so that should the committee's will be to move this forward, which I hope it is, that they will take those things into consideration. It's not...just in closing, it's not lost on me that we do have a challenge in Whiteclay. What's going on up there is a black mark on our state. It's not good. And not to be territorial here, but the majority of that tribe is in South Dakota, and we've got our own tribes and our own Native Americans right here in our

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own state and I'd like to be able to help them as well. Not to diminish what's going on, but as you heard from Mr. Shafer, we don't have people banging on the door to access this money. And, in fact, Sheridan County law enforcement couldn't even see fit to put forth the...they asked for the money, they got some, could have gotten more but didn't even bother to submit their documentation so they could get the rest. And that's unfortunate but that's what we get and that's where we are, so I'd like to see us broaden this so that Indian children in our own state can benefit as well. This doesn't prohibit...this doesn't exclude that area of our state. It just is more inclusive to the other tribes that we represent. And that's my intent here. So with that, thank you for your time. [LB504]

SENATOR AVERY: Okay. Any other questions? Senator Bloomfield. [LB504]

SENATOR BLOOMFIELD: Thank you. Senator Coash, I know we don't like to send money into other states, but is there any way we could possibly amend this a little bit to allow some money to go in and possibly help that organization at Whiteclay? [LB504]

SENATOR COASH: Well, we did. We did, Senator Bloomfield. And that's the ABOUT Group--and they've changed their name--and I've worked with that group before. They are based out of Rushville so they do run it through Nebraska, but kind of the end result of their work happens on the other side of the border. So they followed the law and they got the money and they used that money as narrowly as they could to go and help children on that side of the border. But there's still money left and we're still not... [LB504]

SENATOR BLOOMFIELD: And they're not reapplying? [LB504]

SENATOR COASH: They haven't. And they could still reapply, they could do it today. And if we change this bill, they can apply after we enact this bill as well. This doesn't preclude them. I just... [LB504]

SENATOR BLOOMFIELD: But we diminish their possibilities. [LB504]

SENATOR COASH: Not necessarily. I mean, they just are going to go up in front of the Winnebago...I mean, there's only so much money to go around, but this allows the Winnebago Tribe to apply or communities around the Winnebago or the Omaha or the Macy. So this allows a broader brush and it's my hope that we can help those tribes and those children as well. [LB504]

SENATOR BLOOMFIELD: Okay. Thank you. [LB504]

SENATOR AVERY: Senator Price. [LB504]

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SENATOR PRICE: Thank you, Chairman Avery. Senator Coash, this bill also would take a little bit of oversight away because here they wanted to be able to directly act as an agent on their own with no other government political subdivision working with them. Did I hear that correctly? [LB504]

SENATOR COASH: No, Senator Price. I think the intent here right now is there's a pretty narrow process which, in and of itself, has deterred people from applying. There's a public hearing, there's a requirement that, in addition, that they publish these things in the newspapers. But it's still up to the commission whether or not they're going to grant the money based on the criteria that's already in the law. That criteria is still there. The commission still has final say over whether they'll let that money out to that political subdivision. What Mr. Shafer I think was saying is, they'd like to, in addition, to be able to let that money out to spend it themselves. And that's... [LB504]

SENATOR PRICE: Right. That's what I'm saying. I think it takes a little...I think good public policy is served by having open meetings and having a notification. And if we're going to make this apply to a broader area of the state, then that's even, I believe, more cause to follow the precedent we've already set and then to take away that to...also said...and you can go VFR direct. I mean, excuse me, you can directly too, to award things is somewhat problematic if we're going to widen it. I think when you had it narrow and if it would have stayed there, we could understand that. But if we were going to widen it, I think we're problematic. [LB504]

SENATOR COASH: I understand that, Senator Price. Being so close to Whiteclay in the original LB1002 is probably the biggest barrier, but I think the second biggest barrier was the process by which the grantees had to go through. And I think that bears...your comments are well taken, but I think it bears the committee taking a look at do we kind of price ourselves out of the market by making groups who only want \$5,000 to go through \$500 worth of expense just to get that? And that's...and we're talking about a small amount of money, so I hope you'll take that into consideration. [LB504]

SENATOR PRICE: Thank you. [LB504]

SENATOR AVERY: You mentioned some amendments. Could I have you or have your LA communicate with the committee counsel on that amendment? [LB504]

SENATOR COASH: We will do so. [LB504]

SENATOR AVERY: We would love to do that. I don't see any more questions. Thank you. [LB504]

SENATOR COASH: Thank you, Senator. [LB504]

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SENATOR AVERY: That closes the hearing on LB504, and we will now go to LB303. Senator Wallman. Welcome, sir. [LB504]

SENATOR WALLMAN: Hello, members of the Government Committee. Good afternoon, members of the Government, Military and Veterans Affairs Committee. For the record, my name is Norm Wallman, W-a-l-l-m-a-n, and I represent the 30th Legislative District. I'm here today to introduce LB303. This bill was brought to me by a member of the State Board of Examiners for Land Surveyors as a cleanup bill. Basically, land surveyors are required to take a licensing examination that is currently administered in a written test. Soon they will be switching to a computerized testing and they will need to clean up statute language to delete references to "written tests" to simply "tests." And thank you, and I'll have people right behind me can attest to what this is really. Do you have any questions? [LB303]

SENATOR AVERY: Questions from the committee? I don't see any. Thank you. Proponent testimony? Welcome, sir. [LB303]

STEVEN COBB: Yes, good afternoon. Senator Avery, committee, my name is Steven Cobb, S-t-e-v-e-n C-o-b-b. I'm the secretary for the Board of Examiners for Land Surveyors, and I appear before you on behalf of the board for LB303. LB303 will modify Sections 81-8,114, 81-8,115, 81-8,117, and 81-8,120 of the Nebraska Revised Statutes. The modifications will simply replace three occurrences of the words "a written examination" with the words "an examination" and eliminate the existing examination application filing deadline of 90 days prior to the examination. The board has identified the changes as necessary to adapt to the examination transition from the former paper-and-pencil format to the new computer-based format. The change to remove the word "written" in describing the examination will hopefully prevent misunderstanding and misrepresentation regarding the computer-based examination format. And the elimination of the application deadline will expedite the application review process and allow the approved applicants to maximize the benefit of the new examination schedule. The examination schedule for the computer-based examination will allow multiple examination opportunities per year, and those examinations will be held at additional locations both within the state of Nebraska and nationally. In closing, the Board of Examiners for Land Surveyors thanks the committee for your consideration of LB303, and I thank you for the opportunity to appear. May I answer any questions? [LB303]

SENATOR AVERY: Thank you, Mr. Cobb. Questions from the committee? It's a pretty straightforward bill. I think we had one like this last year and ran out of time before we could debate it. Any other comments? None? Thank you, sir. [LB303]

STEVEN COBB: Thank you. [LB303]

SENATOR AVERY: Any other proponent testimony on LB303? Proponent testimony?

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Any opposition testimony? Neutral testimony? Seeing none, Senator Wallman, are you waiving closing? [LB303]

SENATOR WALLMAN: Yes. [LB303]

SENATOR AVERY: Okay. That ends the hearing on LB303, and we'll now move to LB637, Senator Wallman again. [LB303]

SENATOR WALLMAN: Good afternoon again. For the record, my name is Norm Wallman, W-a-l-l-m-a-n, and I represent the 30th Legislative District. I'm here today to introduce LB637. LB637 is about accountability. LB637 has really four simple principles. First, the bill would require the Nebraska Department of Environmental Quality, NDEQ, to prepare a statement describing the annual economic impact that the proposed rules and regulations will have on all affected businesses when considering the adoption of rules or regulations imposing requirements different than the federal regulations or increased cost on regulated persons or other entities. As with any business in considering capital improvement or expansion, government agencies should be held to a similar standard, accurately describing what the real cost of new or amended rules and regulations would have on affected stakeholders. Under the bill, NDEQ would also solicit, receive, and consider applicable information from the regulated persons or other entities in preparation of the annual economic impact statement prior to the drafting of any proposed rules or regulations. It only makes sense that the agency should reach out to the proposed regulated industry in designing rules and regulations that are not only practical, but also take into consideration the experience and expertise of the regulated entities to achieve the goals of the proposed regulation in an affordable and commonsense manner. In other words, regulators should be encouraged to work with industry to succeed by understanding and adopting regulations that are cost efficient. By working with the stakeholders, NDEQ would also be required to file a regulatory flexibility analysis that would consider less intrusive or costly alternative methods for achieving the proposed rules or regulations on regulated persons and other entities, including less stringent schedules or deadlines for compliance, simplification of reporting, and the establishment of performance for standards in place of design or operational standards. However, if NDEQ determines not to implement an alternative method for achieving compliance rather than imposing new rules and regulations on the affected businesses, the agency would be required to issue a statement explaining their reason and including reference to any data used in their determination. Finally, LB637 establishes an additional check on the practicality and cost analysis done by the NDEQ on any proposed rule or regulation, including alternatives to reduce a regulatory burden by the Governor's Policy Research Office called PRO. PRO would receive and review any proposed NDEQ rule or regulation having a total estimated economic impact greater than \$500,000 on all regulated persons or other entities and imposes new requirements or cost on regulated persons and other entities and consider applicable information from the regulated businesses. PRO may suggest alternatives to reduce the

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regulatory burden any proposed new NDEQ rule or regulation may impose on regulated persons and other entities. Regulators within the department may suggest that LB637 adds additional cost and added bureaucracy in the drafting of proposed rules or regulations on regulated persons or other entities, especially as they relate to their interpretation of federal rules or regulations. However, I would argue just the opposite as in many instances the adoption of federal rules and regs affect an industry verbatim would have the opposite and more cost-efficient effect. Thank you for consideration of LB637. And I want people to be... [LB637]

SENATOR PRICE: Thank you, Senator Wallman. Are there questions from the committee? I would have just one. Senator Wallman, did you have a chance to look at that fiscal note yet? [LB637]

SENATOR WALLMAN: Yep. [LB637]

SENATOR PRICE: And so I noticed from one area a commentary said that there would only be the requirement for one FTE and later on it said two FTEs, so I was just wondering how you resolve that. [LB637]

SENATOR WALLMAN: I'll have people behind me addressing that issue, so thank you, Senator Price. [LB637]

SENATOR PRICE: Okay. Thank you very much, Senator Wallman. Seeing no other questions, we'll move on to proponent testimony. Good afternoon, sir. Welcome. [LB637]

PAT PTACEK: (Exhibit 1) Good morning or good afternoon, Senator and members of the committee. My name is Pat Ptacek, that's P-t-a-c-e-k, representing the Association of Nebraska Ethanol Producers. First of all, I want to thank Senator Wallman and the 14 cosponsors for introducing LB637, and I appreciate the opportunity to testify in support of the legislation. Simply, LB637 would require the Department of Environmental Quality, when considering the adoption of rules and regulations imposing requirements different than federal regulations or increased costs on regulated persons and other entities, to prepare a statement describing the annual economic impact of the proposed rules or regulations on all affected businesses. LB637 would also require the NDEQ to solicit, receive, and consider applicable information from the regulated persons and other entities in preparation of the statement. There are several other provisions of the bill that I will touch upon, but I thought perhaps we should provide the committee with some specific examples of past efforts our association has made to present our point of view to NDEQ, and those examples will be followed by me from my colleague, Loran Schmit. During the most recent election cycle, candidates for every elected position for election or reelection supported encouraging business through restricting or eliminating unnecessary or overlapping technical regulations for business, industry, and agriculture.

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I believe most elected officials at the state level would insist that the state rules and requirements should not be more stringent or be extraordinarily different than accepted federal requirements. It has been our association's experience, and in particular dealing with NDEQ, that they attempt to clarify vague federal regulatory language, often adding detail to the proposed rule to aid in their interpretation which, in fact, complicates and makes the state rule more inconsistent and stringent than the federal requirements. As an intensely regulated industry, we would like to be at the table offering our input and suggestions before any rule or regulation is even drafted. Currently, the Attorney General has taken the position that any amendment adopted to a proposed rule would not properly meet the requirement of a 30-day public note and, therefore, cannot be approved by his office. This reinforces our belief that the agency should meet with stakeholders and thoroughly review and agree upon any new rule prior to a final drafting. It is also our association's experience and belief that rather than being prescriptive in the reinterpretation of its own rules, NDEQ regulators should establish the basic requirements and leave some flexibility for industry to choose a compliance option that works best for that particular facility. I believe that this is a basic difference of opinion between the ethanol industry and NDEQ, which brings me to several other provisions under LB637. Under LB637, NDEQ would also be required to file a regulatory flexibility analysis that would consider less intrusive or costly alternative methods on industry for achieving the proposed rule or regulation on regulated persons and other entities, including less stringent schedules or deadlines for compliance, simplification of reporting, and the establishment of performance standards in place of design or operational standards. If NDEQ chooses not to implement an alternative method for achieving compliance rather than imposing new rules and regulations on the affected business, they would be required to issue a statement explaining their reason, including reference to any data used in the determination. Furthermore, if NDEQ proceeds to implement new regulations on regulated persons and other entities, the agency will determine the total annual economic impact the proposal will have over the first 12-month period after the rule is fully implemented, including actual or forecasted data and assumptions made to determine the annual economic impact. Copies of the determination would be forwarded to the Governor's Policy Research Office for review. Finally, LB637 would require the PRO to review any proposed NDEQ rule or regulation having a total estimated economic impact greater than \$500,000 on all regulated persons or entities and imposes new requirements or costs on regulated persons or other entities and considerable applicable information from the regulated businesses. PRO may also suggest alternatives to reduce the regulatory burden any proposed rule...new NDEQ rule or regulation may impose on regulated persons and other entities. Twenty-one days after receiving a fiscal impact statement from NDEQ, PRO will prepare an impact statement concerning the effect compliance with the proposed rule or regulation will have on the state and all other persons and would again take into account alternatives. The fiscal impact statement must include the extent any proposed rule or regulation would create an unfunded mandate on the state or local political subdivisions, and the agency must also give written notice to PRO 60 days in advance

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of the preliminary adoption of any proposed rule or regulation. That concludes my testimony today. If there's anything I can do to answer any of your questions, as I've said we have my colleague, Loran Schmit, to follow with some examples as well. [LB637]

SENATOR PRICE: Well, thank you very much. Your timing was excellent. Are there any questions from the committee? Seeing none, thank you for your testimony. [LB637]

PAT PTACEK: Thank you. [LB637]

SENATOR PRICE: Can we have the next testifier as a proponent, please? Good afternoon, Senator. [LB637]

LORAN SCHMIT: (Exhibit 2) Good afternoon, Vice Chairman Price. It's good to be back before the committee again. And my name is Loran Schmit, and that is spelled L-o-r-a-n S-c-h-m-i-t. I'm the executive director of the Association of the Nebraska Ethanol Producers. I'm here today in support of LB637. We appreciate very much that Senator Wallman introduced the bill, which we hope will call the attention of the Legislature to a problem which we believe exists within regulatory bodies. We have heard many comments by individuals for reelection about the burden placed on business, industry, and agriculture by excessive regulation. Only last week, Senator Johanns introduced legislation in the Senate designed to limit excessive regulatory activity by the federal government. Senator Johanns described that agency as being out of control. More than 20 years ago, Senator Bob Kerrey described the agency in the same words to me. I'm sure that the Environmental Protection Agency has issued 308,000 pages of new rules in the Federal Register in the last four years with the best of intentions. I'm not sure that the results were positive. I recognize the responsibility of the state agency to enforce rules and regulations proposed by the federal government. Our association has no argument and we do not object to the adoption of their rules and regulations. We do object to the state agency's policy of clarifying vague federal regulations. It is our belief that the federal regulations are deliberately drawn in a broad context in order to give regulated persons some flexibility under those regulations. Since we know that the state agency cannot adopt a rule less stringent than the federal rule, the only possible result of the "clarification action" is to make the state rule more stringent than the federal rule. I would like to provide the committee an example of a proposed rule to be adopted by the Environmental Quality Council to which the association objected. On June 23, 2011, at a hearing before the EQC at Fort Robinson, Nebraska, the agency proposed to adopt a new rule which we were told had been promulgated by the federal agency, and must therefore be adopted. The rule, as proposed by the federal government, provided an exemption for any source which had been permitted prior to January 1, 2011. The state rule as proposed for adoption removed that exemption. Time does not allow me to provide the committee with all the details of the subsequent action except to say that the Environmental Quality Council agreed with our testimony and did not adopt the rule as

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proposed by the agency. I have in the packet a copy of our testimony at that hearing, which I think you might find interesting to read. On December 1, 2011, the agency again proposed rules which we found unacceptable. During the presentation by the Nebraska Department of Environmental Quality, the Environmental Quality Council members questioned the agency staff and expressed concern about the rule. At the conclusion of the association testimony, the agency requested permission from the Environmental Quality Council to withdraw the rule. As of now, to my knowledge, a revised version has not been submitted to the council. On September 20, 2012, the agency again proposed a rule which the association explained in testimony was more restrictive than the federal regulation. We again testified before the EQC. We explained our concern with the proposed rule and that, again, it was more restrictive than the federal rule. Since it was not a major impediment to our industry, we did not ask the Environmental Quality Council to oppose the adoption of the rule. Even so, the majority of the council voted not to adopt the rule. I want to call attention to the committee that on three occasions when we objected to the rule based upon our belief that it was more stringent than the federal rule, the Environmental Quality Council agreed with us and refused to adopt the rule. I will provide to the committee, for the record, copies of our testimony which will explain in detail the experiences I have just summarized. I want to say at this time, I am sure that you will be advised that the adoption of this bill will increase the workload of the agency and will increase the financial burden on the agency. I want to point out that if the agency does not change the language proposed by the federal government, there should be no increase in their workload nor expense to the agency. If the agency proposes adoption of the language different than the federal requirements, they should be willing to defend their reasons for doing so. I know it's a \$212,000 fiscal note; I guess I would dispute that. The Legislature only last year reduced the number of meetings of the Environmental Quality Council from four to two. I would hope that at least not at both of those hearings that there would be a contentious rule proposed by the agency. I do not understand why you would need two full-time people to assume that you're going to in some way or other propose a rule which is more stringent than the feds and have to do this kind of work. I want the committee to know that neither the Association of the Nebraska Ethanol Producers nor I are opposed to the agency's doing their work. I am a strong supporter of the Nebraska Department of Environmental Quality and the Environmental Quality Council. For the record it may come as a surprise, but I introduced the legislation in 1971 which created this agency. I have followed the work of the agency since that time. They have dedicated employees who have made Nebraska a better place in which to live. It is not uncommon for regulators and the regulated source to disagree from time to time. It is, however, the responsibility of the Legislature to provide guidance and direction to all agencies of government. It is our opinion that unnecessary regulation increases the cost of doing business in this state, makes the state less attractive to new businesses, and results in an overall deterioration of the business climate of the state. I would ask the committee to advance LB637 to General File. I'd be glad to answer any questions. Thank you. [LB637]

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SENATOR PRICE: Thank you, Senator. Are there any questions from the committee? Seeing no questions, thank you for your testimony today, sir. [LB637]

LORAN SCHMIT: Thank you, Senator. [LB637]

SENATOR PRICE: Could we have the next proponent testifier for LB637? Welcome. [LB637]

JESSICA KOLTERMAN: Hello. Senator Price, members of the committee, for the record, my name is Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. I come before you today on behalf of Nebraska Farm Bureau Federation where I serve as a director of state governmental relations. We are in support of the legislation mainly because of the concern that was brought to us by our members, and they adopted policy on this specific topic at our convention last December. I'll read you our specific policy as it relates specifically to this bill: Environmental control laws should not be so restrictive as to prevent industrial and business development or flexibility in alteration of agricultural enterprise. The burden of proof for all regulations should be the responsibility of the agency implementing the program. This proof should include scientific evidence and a risk-benefit analysis assessing the economic impact of the proposed regulation. Any agency proposing a regulation should discuss the proposed rule with stakeholders prior to drafting the final rule. So as you can see, our members have actually taken the time to think through this specific topic and wanted me to weigh in with our policy. I'd be happy to answer any questions. [LB637]

SENATOR PRICE: Well, thank you very much, ma'am. Are there any questions from the committee? Seeing none, thank you for your testimony today. [LB637]

JESSICA KOLTERMAN: Thank you. [LB637]

SENATOR PRICE: Do we have any further proponents for LB637? Proponents? Seeing none, we'll now move to opponents. Afternoon. [LB637]

MIKE LINDER: (Exhibits 3, 4, 5) Good afternoon, Senator Price, members of the Government, Military and Veteran Affairs Committee. My name is Mike Linder. I'm director of Nebraska Department of Environmental Quality, last name is spelled L-i-n-d-e-r. I'm here today to testify in opposition to LB637. LB637 deals with a topic that is critical to the Nebraska Department of Environmental Quality. The adoption and promulgation of regulations is critical to the purpose and mission of the agency. The NDEQ administers environmental programs in the state of Nebraska. I don't appear here often, so you may not be as familiar with our agency as the Natural Resources Committee. Most of those programs in air quality, water quality, and end-waste management are delegated to the state from the federal government and, in particular, the U.S. Environmental Protection Agency. In order to receive delegation, the state

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must have programs equivalent to the federal counterpart. And as most everyone knows and has been testified already this afternoon, many of these extremely complicated federal programs are laid out in regulations. In Nebraska, as has been pointed out, the framework for programs is created in statute, the Nebraska Environmental Protection Act. The detail of that framework is filled in by regulation. The original structure of the Nebraska system is largely unchanged since Senator Schmit worked on this agency's creation back in 1971. All regulations that the NDEQ proposes follow the Administrative Procedure Act, as other agencies do, for publication and process, but the actual public hearing is conducted by the Environmental Quality Council. This is a 17-member body which must vote to approve all regulatory proposals before those rules move forward. The members of the EQC are appointed by the Governor and confirmed by the Legislature. One of the handouts is a list of the current members of the EQC. The makeup of the EQC is a cross section of conservation, industry, agriculture, and the sciences. The system has worked very well in Nebraska for more than 40 years. By and large, Nebraska's federal program equivalent tracks the minimum requirements needed to maintain delegation or the primary operating governance at the state level. Knowing the complexity and the significance of environmental regulations, the department has tried over the last several years to do as much up-front outreach as is possible before a regulatory proposal is up for hearing before the EQC. For example, the next EQC hearing is on April 4 this year. The EQC or the DEQ has conducted a series of stakeholder meetings across the state on the proposed regulations of that hearing, has sent the proposal to an e-mail listing, as well as posted the proposal on our Web page. All of this is before the public notice has been published. In 2007, the DEQ drafted and has maintained a regulations manual--that's another one of the handouts I provided--that lays out the internal process that we do try to adhere to. The manual uses state rule-making process as its basis. The manual sets out minimum time lines for rule preparation for EQC meetings, and I would refer you to page 4 which talks about our stakeholder outreach goals. As technology has progressed, we have used electronic and other means to try to get the word out. DEQ tries to push for a longer lead time prior to the hearings in order to get maximum input, but we're not always as successful in that regard as we would like, usually due to time constraints in drafting versus the public-notice time period. The department's goal is to present a product to the council that is well understood and has been vetted by those it impacts. In its role as a state agency that has been delegated a federal program, DEQ has the additional task of ensuring that the federal rule works for our state. Many times we are able to simply adopt federal rules by reference, which makes the task easier and has been suggested earlier this afternoon. However, when we must tailor complicated federal rule to a situation that exists in our state, that job can get more difficult. We never strive to be more stringent than the federal rule would require unless there's a good reason to do so. This doesn't happen often, but I think a good example is Nebraska's CAFO or livestock regulation program. Since the mid '70s, Nebraska has required construction of livestock waste control facilities based on risk to impact water quality. EPA's focus is more on size and potential to discharge to surface waters. A

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more expansive program that we have working with stakeholders expanded...and I see I'm not going to have time to read all my testimony, but I would ask you to look at some of the examples in there. But the fiscal impact is due to the economic analysis. It's a full-blown economic analysis that's called for in LB637, would put an additional layer of process on us above the Administrative Procedure Act, and we believe that the trigger mechanisms in LB637 are any regulation that's different from the federal regulation. And as I mentioned, many times we have to change the regulation in some regard to get to the same end. And also, any new regulation has potential to impact cost to industry. And by virtue of regulations, most of our proposals have that potential. I mentioned in my testimony some conflicts we think that exist with the current Administrative Procedure Act, and that's another issue we have concern about. With that, I'd be happy to respond to any questions. [LB637]

SENATOR AVERY: Senator Price. [LB637]

SENATOR PRICE: Thank you very much, Chairman Avery, and the question I'd have just alludes to what we'd heard in earlier testimony, that there was some type of regulations challenged in 2011... [LB637]

MIKE LINDER: Right. [LB637]

SENATOR PRICE: ...and we're now in 2013, and it hasn't been addressed yet. Why does it take...what is the process that allows for it to take more than a calendar year to address something? [LB637]

MIKE LINDER: Well, first of all, just a kind of a picture of the Environmental Quality Council's...how many proposals we take. Before the hearing today, I just looked at the last five years. We've taken 45 regulatory proposals to the council and there have been, I believe, three that have been denied of the 45, and two of those were citizens' petitions. One was withdrawn, as was testified to earlier. We believe that the proposal that was put before the council in that specific instance was getting at what I alluded to in here, was trying to craft...we have existing state regulations and a new federal requirement, and we sometimes have to take that new federal requirement and try to make it fit with what we've got. And that's a situation that was mentioned, that we felt like we were being...we changed the federal language but we felt it fit Nebraska's situation better and was more clear for those that were regulated. Obviously when we got to the hearing there was disagreement there. And as I mentioned in my testimony, I think that is evidence that the Environmental Quality Council serves a vital function. If there's still disagreement when we get to that stage, we still have an opportunity to try to work it out. We did try another iteration of that, in I believe it would have been June to September, and again didn't agree on the language. So it's something we need to keep, you know, keep working on with the industry and make sure it fits so we continue to try and make that work. [LB637]

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SENATOR PRICE: Thank you. [LB637]

SENATOR AVERY: Any other...Senator Scheer. [LB637]

SENATOR SCHEER: Thank you, Senator. Director Linder, can you give me a ballpark the percentage of time of the rules and regs where you just simply adopt the federal regulation versus creating your own based on that? [LB637]

MIKE LINDER: A percentage would be difficult. There are two programs that we have that lend themselves well to adopting federal programs by reference: that's air quality, which has a lot of...the way the federal regs work is they will have an industry-specific control technology or control standard that we can adopt wholesale by reference. We just refer to the Federal Code of Regulations and those just get implemented in Nebraska. But there are parts of running the federal program that in air quality, for example, you have to issue permits in a certain way and regulate the ambient air standards in a certain manner. And the states are given some discretion over the years in how they set their programs up, so no state permitting program looks exactly like another one. But when there's a modification to the federal approach, we have to try to figure out how that best implements in Nebraska. So probably percentagewise, if you looked at the whole in the Clean Air Act, the whole gamut of federal regulations, if you stacked them all up, they'd be much...we probably adopted maybe three-fourths of those pages by reference. But the implementation piece, how you roll that out in your state in terms of public notice, how do you do public notice, how do you issue permits, how your construction-permit program works, that is more of a...more difficult...that's the more difficult language to adopt. And actually that's the reference I believe it was Loran Schmit had in his testimony was trying to get some of those implementation pieces into our state regulations. The other area that works to adopt by reference is the hazardous waste management area. We're able to adopt a lot of hazardous waste regulation by reference. It doesn't work so well in the clean water program, but...so it kind of varies by program. [LB637]

SENATOR SCHEER: And just out of fairness, because five minutes isn't a lot of time, is there anything else in your comments that you wanted to share that you didn't have time to do? [LB637]

MIKE LINDER: Well, I tried to give...towards the end I tried to kind of put some themes out there in terms of conflict by adding this additional process for our agency above the Nebraska Administrative Procedure Act that applies to all agencies, and by having this piece on top of that act, how exactly that works. We think there are some conflicts like on...two years ago in 2011, LB617 was passed by the Legislature which requires hearings to be held within a year of legislation being passed. So if you passed something this year that required DEQ to do regulations, we would have to have that

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hearing held within a year. I think that this process would add a significant amount of time to our process. And I don't know that that year...it sounds like a long time, but by the time you fit in public notice and if we would have to do the type of cost analysis required here, I think that would be difficult. And there are some other kind of conflict areas like that. The other one I think the incentive would be for...in all instances when there's a federal regulation--not that we'd do this--but the natural incentive would be let's just adopt the federal regulation. But there are significant instances in Nebraska where we have modified the federal program and it's made a big difference for our state. I mentioned one of them, the CAFO program; much more protective, in my opinion, than the federal process. We've had it since the mid-'70s and it's worked extremely well. In fact, when it came time to adjust to the new federal EPA's interest in livestock regulation, pretty much everybody, industry, and our agency agreed that more expansive program made sense for us, it works for us, it sets us up well for the federal program. Another one in the air quality arena is that we a number of years ago, probably a dozen years or so ago by now, adopted a state-specific total reduced sulfur standard because of a specific situation that was going on in northeast Nebraska. We were able to adopt a state standard that was well beyond what the Clean Air Act calls for; but everybody, state, citizens, and Legislature, viewed it was a good way to go. So I'm not saying those things wouldn't or couldn't happen in the future, but the incentive would be whatever the feds do is good enough for us, and I don't think that's always a good policy choice to make. [LB637]

SENATOR SCHEER: Thank you. Thank you, Senator. [LB637]

SENATOR AVERY: Any other questions? I don't see any. Thank you, Mr. Linder. [LB637]

MIKE LINDER: Thank you. [LB637]

SENATOR AVERY: Additional opposition testimony? Opposition testimony on LB637? Any neutral testimony? All right, Senator Wallman, you may close. [LB637]

SENATOR WALLMAN: Thank you, Chairman Avery, members of the committee. I think we can all appreciate now what the director just went through, what we go through as bottom-of-the-liners, so-called, if we want rules and regulations. I don't see why it should take any extra people to promulgate this because if you follow the fed's rules, you know, why should we modify that to make it tougher or longer, string it out for business? And so I think this is a good bill and it should be good for business. If business wants this--ethanol is in our area--it's helped the farmers--and this is all agencies. Indiana, Wisconsin, Colorado have something like this in place. So if other states have this in place, what would be wrong with it having here? And any questions? [LB637]

SENATOR AVERY: (Exhibits 6, 7) Any more questions from the committee? Thank you.

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Let me read into the record two letters of support on LB637: one from the Federation of Independent Businesses, Robert Hallstrom; and another one from the Nebraska Cooperative Council, Robert Andersen, both in support. Thank you. That ends the hearing on LB637 and the hearings for today. Thank you very much for attending.
[LB637]