

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 28, 2013

[LB454 LB635 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 28, 2013, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB454, LB635, and a gubernatorial appointment. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Ken Schilz; and Jim Smith. Senators absent: Rick Kolowski.

SENATOR CARLSON: Welcome to the Natural Resources Committee. I am Tom Carlson, District 38, Chair of the committee. And members on the committee: to my far left in the empty chair will be Senator Rick Kolowski from Omaha, District 31. But next to him in the chair is Senator Ken Haar from Malcolm, District 21; and then next to him, Senator Jim Smith from Papillion, District 14; then "Kenator" Senator (laugh) "Kenator" Ken...

SENATOR SCHILZ: Kintner, there you go. That's all that needs to be said.

SENATOR CARLSON: ...now Senator Ken Schilz from Ogallala, District 47. And to my immediate left is Laurie Lage, our legal counsel; and then to my far right is Barb Koehlmoos, the committee clerk. Next to her is Lydia Brasch, Senator Brasch from Bancroft, District 16. And then Senator Jerry Johnson from Wahoo, District 23; and Senator Annette Dubas from Fullerton, District 34. Our pages today are Tobias Grant from Lincoln and David Postier from York. They'll be serving us today. If you are going to testify today, we will use the lights. And the lights operate this way. When you are ready to begin, the green light will come on, and that will be on for four minutes. And then at the end of four minutes the yellow light comes on, which means you've got a minute left. And then the red light comes on at five minutes and that means wind it up. And I know that some of you come from a long distance and we don't want to shortchange you, but we're going to have a lot of testifiers today. And in order to keep things moving, this is what we need to do. Then when you're done testifying, the committee will be available to ask you questions. And, of course, the time limit does not apply to the questions that the committee brings forth. So that's the way we operate. If you...you should have the green sheet that is by either door and fill that out if you're going to testify. Have it completed before you testify and hand it...put it in the box over here by Barb, our committee clerk. And then if you have handouts, hopefully you've got 12 of them. And if you don't, the pages can help you with that. If you don't wish to testify, but want your name entered in the official record, there are white sheets back at either door and you can sign those white sheets and then you are a part of the permanent record. If you don't wish to testify but want to submit something in writing, you can do that and that would be read into the record as well. Now when you come to the front to testify, you don't need to touch that microphone because it's sensitive enough that even if you sit back in the chair and whisper something, it will pick that up.

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So there's no need to touch the microphone. Just move up to the chair and begin your testimony. Speak clearly, and right away give your name and spell it so we have accuracy in the records. If you don't do that, I'll stop you and ask you to do it so we can keep accurate records. None of the committee operates any electronic devices during the hearing and so if you've got cell phones, either turn them off or put them on vibrate or silence so it doesn't disturb the testimony. And in our hearings we allow no displays, emotional displays of support or opposition to somebody that testifies, and that keeps everything in civil arrangement. And that's really one of the things that we're proud of in the Legislature. We try to do things in an orderly fashion and give you the opportunity to testify and not be distracted. With that, any questions before we begin? All right. Our first part of the hearing is a confirmation hearing for Dr. Kent Forney for the Game and Parks Commission. And so, Dr. Forney, if you'd come forward. And did you have the green sheet? Okay. Welcome. And just tell us a little bit about yourself.

KENT FORNEY: (Exhibit 1) I'm Kent Forney, K-e-n-t F-o-r-n-e-y. I reside in Lincoln, Nebraska. I'm a veterinarian there. I want to clarify that Senator Campbell is my state senator. I think I mis-entered that in my notes that you guys...that you have. I grew up in western Nebraska, south of a town called Rushville, and grew up on a ranch and love livestock, and went to the University of Nebraska and went to Iowa State. Had some instructors that were very influential in my life and taught me on a large animal and got me involved in small animal. I went to the third busiest clinic in the nation in Las Vegas and realized that I love Nebraska and wanted to get back to Nebraska and returned to my home state, married my bride from North Platte and we've raised our kids in Lincoln. I've practiced veterinary medicine, it will be 30 years next year. And I've been blessed that I love to hunt and fish, and I'm on the Game and Parks Commission and enjoy it and think we've got a lot done. So with that, if you have questions. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions of the committee? Senator Haar. [CONFIRMATION]

SENATOR HAAR: Yes. Well, thank you. Very impressive list of awards. And I would just be curious how your perspective as a veterinarian fits into your place on the board. You mentioned hunting and fishing, but how does...what does that bring to the board? [CONFIRMATION]

KENT FORNEY: Oh. I mean every meeting, like this next meeting we're having a deer, elk, and antelope meeting and chronic wasting disease and brucellosis for cattle and there's just a lot of things that I monitor. And it may be as simple as what pound weight of bow you use, but, you know, we want to be humane and enjoy what we're doing and respect the animals that we're out there with. And so I think veterinary medicine has helped me with this position. [CONFIRMATION]

SENATOR HAAR: Good. Thank you. [CONFIRMATION]

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SENATOR CARLSON: Okay. Other questions of the committee? I'm going to ask you a question. On your references you have Mike Yaney, John Gottschalk, and Walter Scott. Tell us a little bit about each one of those individuals. [CONFIRMATION]

KENT FORNEY: Growing up on the ranch, my dad always tried to bridge western with eastern Nebraska. And he became acquainted with...he was on a bank board and became acquainted with Mike Yaney. And Mike became one of my father's best friends and they come out every year hunting. And to this day, even though my dad has passed, they still come to the ranch hunting. And it's just very interesting to get their perspectives. They're avid outdoors people. They love the outdoors and they've been very supportive of the Game and Parks. [CONFIRMATION]

SENATOR CARLSON: Okay. [CONFIRMATION]

KENT FORNEY: John Gottschalk grew up in Rushville, Nebraska. His parents ran the paper, and he worked at our ranch as a child in the summer. And so John always says that Don Forney taught him labor relations (laugh) because Dad was a mentor all through there. As a matter of fact, I just talked to John day before yesterday about Pheasants Forever. He's on their national board and doing a wonderful job. [CONFIRMATION]

SENATOR CARLSON: Okay. [CONFIRMATION]

KENT FORNEY: Walter Scott loves to come out and hunt and has done a lot for this state. [CONFIRMATION]

SENATOR CARLSON: What do you see as the biggest challenges for the Game and Parks Commission? [CONFIRMATION]

KENT FORNEY: Financial, unquestionably. We have got to have everybody participate. Tourism is the third biggest industry and it shouldn't be just on the backs of the hunters and the fishermen. Everybody that watches the cranes or whatever and enjoys our great outdoors and goes to our historic parks should participate in funding them. And hence, if I may be a little bit political, I hope you consider the bill that's before you. It's not just based on per car because right now it's on cars also, the park permit. But it spreads it out over everybody and it would greatly help the budget and greatly help what we can do. It's interesting that...I talk to my kids about this a lot and I said, look, you know, we don't have funds for all these historic parks out there. I mean, what do we do, close them down? And all three of my kids all stepped up and said, you know, this is one time that you do something for the community and we need to protect these (crying) sorry... [CONFIRMATION]

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SENATOR CARLSON: That's all right. That's all right. [CONFIRMATION]

KENT FORNEY: So I hope you consider funding that. [CONFIRMATION]

SENATOR CARLSON: Do you have any ideas other than the vehicle registration fee for funding? [CONFIRMATION]

KENT FORNEY: It's worked so successful. I mean you go to...you look at Montana, you look at Missouri, you look at wherever you've had that it works. And that's what we need. And it's not for us, it's for the next generations. [CONFIRMATION]

SENATOR CARLSON: Okay. All right. [CONFIRMATION]

KENT FORNEY: Sorry. I didn't mean to get choked up on that. [CONFIRMATION]

SENATOR CARLSON: That's all right. That's all right. You're kind of passionate about what you do. [CONFIRMATION]

KENT FORNEY: But that's a big deal. [CONFIRMATION]

SENATOR CARLSON: All right. Any further questions? Yes, Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: I would just like to say I appreciate your passion... [CONFIRMATION]

KENT FORNEY: Oh, thank you. [CONFIRMATION]

SENATOR DUBAS: ...because you can't serve on these kinds of boards without having that passion. And so I mean I certainly understand what we need to do to find ways to support our park systems. [CONFIRMATION]

KENT FORNEY: Look at the Buffalo Bill Ranch, what that could do. If we can turn that into a shooting park, the tourism that's going to come to the state, I mean that's just one example. If we put one in Crawford, we put one in Scottsbluff, this is a big deal and we can't fund it. We can't do it on these little \$25 permits. [CONFIRMATION]

SENATOR DUBAS: Well, again, I...never apologize for being passionate about things that you believe in. [CONFIRMATION]

KENT FORNEY: All right. Thank you. [CONFIRMATION]

SENATOR DUBAS: I think that's a great sign of your character. [CONFIRMATION]

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KENT FORNEY: Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Any further questions? Yes, Senator Schilz.
[CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Carlson. Mr. Forney, thanks for coming in today. I think you're exactly the type of people that need to be on these types of commissions. [CONFIRMATION]

KENT FORNEY: Thank you. [CONFIRMATION]

SENATOR SCHILZ: And I apologize up-front but I was just wanting to, you know, talk to you a little bit. You...the promotion of Nebraska's state parks is huge, I mean for all sorts of reasons, whether it's hunting or fishing and recreation and all of that. And as that paradigm changes and you've said it, you know, hunters and fishermen are no longer providing the types of revenue that you guys need. Are there other areas that you think Game and Parks can look at to start to bring in other revenues that could be possible out there? And if there are, have you thought about that and what do you see?
[CONFIRMATION]

KENT FORNEY: We think about it all the time. These shooting parks I think will be a big deal for revenue. More cabins at Mahoney, boy, I was glad to see that in the budget. Same with McConaughy, we're all glad to see that. You know, every little bit helps. We look at every opportunity that we can. I mean if we can look at one other thing, giving more opportunity to the outdoors people, getting kids outside. And it's not just about hunting and fishing. They're doing some great things. You asked me about Mike Yaney and the kids that come out in the summertime that maybe come from bad areas and don't have jobs and getting them working. But I'm trying to answer your question. Honestly, Senator, if we don't grow these areas, then we're going to have to think about closing them. And it's the Fort Atkinsons and it's the Buffalo Bill Ranches. They don't cash flow. And the hunters and fishermen can't pay for it all. And that \$25 park permit is not paying for it either. And so somehow...and I know it's tough out there. I realize that. We're in the middle of a drought and we're not wanting to raise taxes and things like that. But somehow we've got to have equal funding. How many million people come to our wildlife management areas that, you know, they come to a WMA, and I don't mean to use acronyms, but that's a wildlife management area, that's not a park. And they come absolutely free and they watch the cranes. Why can't they at least pay something to help sustain us on the Game and Parks and help us out? [CONFIRMATION]

SENATOR SCHILZ: Right. Do you...and just a couple more questions. Do you believe that Game and Parks, while being both a regulatory agency, should also promote tourism... [CONFIRMATION]

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KENT FORNEY: Absolutely. [CONFIRMATION]

SENATOR SCHILZ: ...and other things within the state... [CONFIRMATION]

KENT FORNEY: Absolutely, absolutely. [CONFIRMATION]

SENATOR SCHILZ: ...even if that means companies that may be looking towards helping Nebraska make things work? [CONFIRMATION]

KENT FORNEY: Um-hum. I don't mean to pat myself on the back, but I just went out to Cabela's. One of our neighbors asked us to come, a neighbor of your parents and mine asked us to come talk to Cabela's. And Cabela's was very generous and helped fund our youth fun thing. And we were just talking about, you know, trying to go with them and do it. I think in your budget you've dropped...we were supposed to have \$100,000 for promotion and it was dropped to \$50,000 or something. I don't think it's in the Natural Resources thing but I hope that you can...that's in Appropriations, but I hope that you consider giving us some dollars to promote it. I mean when we advertise in the Denver Post we definitely see it. I mean that's all graphed out and cause and effect. Now I know you're going to say, well, I don't know if we want all those Colorado people at McConaughy. I know what you're thinking. [CONFIRMATION]

SENATOR SCHILZ: No, we do. [CONFIRMATION]

KENT FORNEY: But they spend money and it helps us. And so, yeah, don't cut that in half. Give us some...if you don't want to give it to the Game and Parks, somehow give us some money to advertise what we've got. The one thing I quickly learned when I came on here is how proud we should be of our Game and Parks. I mean we've got a Game and Parks second to none. Arizona is closing their's, Michigan, New York. They're closing their's down. Here we are sitting with Mahoney and Fort Robinson and top ten parks in the nation and great hunting and fishing. [CONFIRMATION]

SENATOR SCHILZ: Great. Thank you, Mr. Forney, appreciate it. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. Any further questions? Okay, seeing none, thank you for your testimony. [CONFIRMATION]

KENT FORNEY: Thank you very much. [CONFIRMATION]

SENATOR CARLSON: Do we have any proponents for Dr. Forney? Welcome, Joe. [CONFIRMATION]

JOE HERROD: Thank you, Senator Carlson, members of the committee. My name is

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Joe Herrod, J-o-e H-e-r-r-o-d, and I'm here representing the Nebraska Council of Sportsmen's Clubs. I've known Kent for many, many years. I know his wife Shelley. She was a Hansen of the Sixth Street Markets in North Platte. My family was in the grocery business. My wife...just going through some things on the family and looked back and saw things about my grandfather in 1895 winning a shoot at the North Platte Sportsmen's Club. And I'm sure the Hansens were probably around then too. The last time I was here testifying on Kent's first appointment, I said something about he was my veterinarian and got quite a laugh out of the committee. And I still don't know how I mis-phrased it, but something about--but that the dog died, which they all do, you know (laugh). Kent has tremendous passion for the job. I'm glad he has it. I'm glad he's getting reappointed. He just doesn't serve the city of Lincoln. In Lincoln he's very accessible as long as you don't hit him on days when he's doing surgeries. You can stop into his clinic and talk to him about what you want. Everybody answers his...he answers his phone calls, he answers his e-mails. He's great for Lincoln. But also, his father served on the Game and Parks Commission. And with all of the contacts with the gaming commission that that family has had over the years--with Kent going back to Alliance area, Rushville--it's just like having another commissioner out there in the northwest because he knows that area and he works well and he works with the other commissioner, Mark Spurgin, out there very well. And it really helps because you have to have these commissioners to understand the resources. They just...they can't all come on the basis of a one man, one vote situation that comes from an urban area. And as you know, there's a likelihood that that thing could arise again in the future around here. So with that, like I say, I really like Kent; and I'm so glad he's on the commission and really happy that he's being asked to be reappointed. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. Any questions of Mr. Herrod? Seeing none, thank you, Joe. Any other proponents? Anyone in opposition to the reappointment? Anyone in the neutral position? Okay. With that, we'll close the confirmation hearing on Dr. Kent Forney and thank you for coming. [CONFIRMATION]

KENT FORNEY: Thank you. [CONFIRMATION]

SENATOR CARLSON: We're ready to open the hearing on LB454. And if there's some misunderstanding in the people that came to the committee today about what order we were going to do these bills, we're sorry. But this gets set quite a bit in advance and this is the order that we had these bills down to be heard and we're going to stick with that order. So, Senator Haar, you're recognized to open. [CONFIRMATION]

SENATOR HAAR: (Exhibits 2, 3, 4 and 5) Chairman Carlson and members of the committee, I want to start out today with Benjamin Franklin, just briefly. Born in 1706, died in 1790, and just some of the things he said and there are hundreds of them, so I'm going to limit this to just a few. Time is money. I like this one, rather go to bed without dinner than to rise in debt. A penny saved is a penny earned. Wine is constant proof

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that God loves us and loves to see us happy--Benjamin Franklin. And the one that he's probably most famous for is, waste not, want not. And today we're going to talk about wasting and wanting, and I have another handout. It's very interesting that yesterday we talked about the recycled tire program because today we're talking about recycling electronics. There's a page that was handed out. It's got a little graph on the front and if you get time to read this, it's really interesting, but I just show you a couple things. Nebraskans sent 7,550 tons of e-waste to landfills at a cost of \$286,000 in 2010. I was on the Lincoln City Council, I think it was the point where we had to find a new landfill and it was expensive and it was contentious. So you don't just throw away stuff. It goes somewhere and we pay for it. Uh...\$2.8 million worth of copper, gold, palladium and silver can be found in the 102 tons that we throw away in Nebraska every year. And this one, more gold can be recovered from one metric ton of used PC's than from 17 tons of gold ore. So, you know, we're throwing stuff away, but you can't just throw things away. You have to pay for it, you have to find a place for it. And then if you look...going on in this little handout here, talk about jobs. Electronics reuse and recycling can create up to 20 jobs per thousand tons processed and manufactured. A little farther down, \$455.4 million is stored in Nebraska basements in the form of valuable metals in used electronics. And then way at the bottom, Milwaukee, Wisconsin used to pay \$100,000 to properly dispose of e-waste and now earns a net \$40,000 through their take-back program. So, today we're talking about not just recycling, but a way to save money on that. The sheet I handed out is one of my favorites. Reuse, reduce, and recycle, and it has an earth in the middle. And I think one thing we're starting to recognize as a society, that not only are we throwing away money, but we just run out of space for dumping stuff. You may have recalled that New York City for a while would just take its garbage out on huge barges and dump it in the ocean and it all came back to shore, eventually. So, all these things are connected, reuse, reduce, recycle. Then this is a fairly complex bill, so I handed you out my comments and I'd like to go through those briefly. Nebraskans have a strong environmental ethic and want to be good stewards. And when it comes to electronic recycling, if you live in Lincoln, there are places you can take it, no problem. Goodwill here in Lincoln has a center where you can just take used computers and TVs and all that kind of stuff and they sell it, they resell it. Best Buy will take used televisions. You don't have to have bought it there, they'll just take a used television. Omaha has recycling of electronic waste, no problem. Where you start to run into problem is when you get outside the big urban areas. And from the woman who was here yesterday from Kearney, I assume, at least, that they do some of the same kind of recycling with electronics as they do with tires, although I'm not sure of that. So the second bullet, the intent of the Electronic Extended Producer Responsibility and Job Creation Act is to maximize the recycling of electronic equipment and create new jobs for the collection, handling, and recycling of electronic equipment. This legislation will provide households in Nebraska with convenient--underline that--convenient, and free programs to recycle selected electronic equipment when they have reached their end of life. There are many environmental and economic reasons why we should maximize recycling, and I'll let people comment on these as part of the hearing. And you'll hear

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from some private, partner...private, public, nonprofit sorts of things in the people who will come up to talk, but nationally the U.S. Electronics Recycling Industry produces \$5.2 billion in revenue and supports 30,000 jobs. And is...the next little bullet point there, it only requires...I'm sorry, let me start again. That if you compare how much, how many jobs are created by just throwing stuff out, is very small to compared to the number of jobs of reusing and recycling. Now, the challenge in developing recycling programs is how to finance it, just like we talked about yesterday in the used tire program. General fund taxes, state grants through the Environmental Trust, advanced recycling fees that consumers pay, and extended producer responsibility or take it back programs. And really the national...the national trend is towards these take it back programs. And what it boils down to is that the producers of the electronics pay for the recycling. So, advanced electronic recycling fees and extended producer responsibility, there are 24 states that have some kind of financing like this and it's a growing...it's a growing trend. Oh, let's see, what else would I point out on here. The legislation is very similar to legislation that was passed way back in 2008. It was passed through the Legislature. The governor vetoed it and there was no override of the veto. And then, I think, in 2011, Senator Mello proposed a bill and this bill takes off of that. Now, there has been four years of actually national movement since Senator Preister introduced his bill, so you'll see that reflected in this. Now, we have gotten feedback, we're getting feedback, and that's good. You may have gotten letters from various entities, and we're talking about here the toy industry, talked to us about toys. We don't, at this point, include cell phones because cell phones are relatively very small, although there's still all those kinds of things. The Advanced Medical Technology Association has talked to us, making it clear that this would not include certain medical devices. And then you'll hear later from CEA, Consumer Electronic Association, and they will talk to oppose the bill, but they have talked to us about working with us on a model because nationally, models are being worked on. So, you'll find an amendment in your folder. We believe...one of the really important amendments has to do with, in the bill, it talks about the money that would come from the fees would go to the Waste Reduction and Recycling Incentive Fund; that's not constitutional. So it would simply go as fines and so on into the school funds. That's where any excess money would go. So with that, and again the details of this in talking to people who are actually making this work right now who are actually recycling electronics and making a profit and so on, they will follow me. Much like tire recycling, electronics are things that aren't going to go away and they have real value if we will just recapture them and reuse them. [LB454]

SENATOR DUBAS: Very good. Thank you, Senator Haar. Are there questions? Senator Smith. [LB454]

SENATOR SMITH: Thank you, Senator Dubas. Senator Haar, take...step me through a little bit the...how this is funded. You say there's a takeback funding. Explain that, if you can. If you want to have an example or scenario and how that funding would work. [LB454]

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SENATOR HAAR: Right. Okay. And there are a couple of pieces...moving pieces here. One of them is a phased-in disposal ban on electronic waste. So, for example, in the year 2015, no manufacturer, retailer, or recycler could dispose of electronic waste in a landfill, just the way we can't do it with tires now; 2016, no business or institution; and 2017, no individual or household can dispose of electronic waste. So, the first thing is that this would be a phased-in program, Senator Smith, and that by 2017, just as we do with tires now, we'd say, you can't put electronic waste into the garbage. So, here's the way the system would work. And it is a complex system, national models are being worked on, and the people that follow me will explain it in more detail. It would establish recycling goals for manufacturers based on state sales. And two pounds per capita of market share for 2015 and so on. So there are recycling goals for the manufacturers based on how much they sell in the state. So if Dell sells so much, then they have recycling goals. Eventually, it would be based on the weight of product that had to be recycled instead of put into the landfill. Okay. Manufacturers...the main thing about this really is that the manufacturers are the ones who pay for this recycling and, of course, unlike the tire system when you recycle tires you pay what was \$1.25 or \$1 a tire, and this one the manufacturers pay for it, based on how much they sell in the state. [LB454]

SENATOR SMITH: So the state of Nebraska would collect money from a manufacturer that's outside of its borders? Is that what... [LB454]

SENATOR HAAR: That's my understanding, yes. Well, the way it works is that to sell your product in this state, you'd have to pay an introductory fee, yes. [LB454]

SENATOR SMITH: Okay. How many other states are doing this? [LB454]

SENATOR HAAR: Right now according...and this...to give you the absolute best information would be to ask one of the people that were coming after me, but 24 states have some sort of electronics recycling financing laws. And they may vary a little bit, but this is the way the national model is moving. [LB454]

SENATOR SMITH: Are you familiar with the streamline sales tax effort? [LB454]

SENATOR HAAR: Yes, and that's a question that needs to be asked of somebody following me, what if somebody buys stuff on line, and I can't answer that one. [LB454]

SENATOR SMITH: Yes, and also if you don't have all the states participating yet, let's say Iowa is not participating, then perhaps, you know, I could go over to a...you know, there could be a manufacturer would prefer to sell to retailers in a state where they're not going to have these taxes levied upon them. [LB454]

SENATOR HAAR: And that's a really good question to ask of those that come after me.

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I would look at that a little bit like the people who go gambling in Council Bluffs, take their money. [LB454]

SENATOR SMITH: And then those taxes would be passed along to the consumer. [LB454]

SENATOR HAAR: Yeah, obviously. I mean if a company charges for it, the consumer will eventually pay for it. And this is one part of...kind of a recycling movement that's going on where manufacturers up-front will be asked to think of the recycling. It's a whole life process. Not only do you make it, but how do you dispose of it. The states are doing this with paint, for example, recycling paint, etcetera, etcetera. And the whole goal here again really is to get the manufacturer to think about, how is that product finally going to be recycled and abandoned. [LB454]

SENATOR SMITH: And the last question is, it doesn't seem as if this has been thought out to the point where we would have consistency across states, full participation, and make this even work. Are you trying to just start the discussion on this, or is this a legitimate goal you're trying to have enacted? [LB454]

SENATOR HAAR: No, I think this is something that can be put in place. But as I've said, we've heard from a lot of people and we know that we need to...we need to be working with people in the industry and so on, to come up...to fine tune the details. And eventually it will have to be across the board, state by state. [LB454]

SENATOR SMITH: All right. Thank you. [LB454]

SENATOR DUBAS: Senator Schilz, did you have a question? [LB454]

SENATOR SCHILZ: Yes, thank you, Senator Dubas; and, Senator Haar, thanks for the bill today. You had mentioned, and just for my clarification, you had mentioned that you had found one part of this to be unconstitutional and so it's changed. Can you...is that the recycling, or Waste Reduction and Recycling Incentive Fund? [LB454]

SENATOR HAAR: Yes. [LB454]

SENATOR SCHILZ: Is that right? [LB454]

SENATOR HAAR: Yeah, you know, we can't set that up, so this would go into...and I'm not quite sure of the name of that, but it's basically where school fines and so on go. [LB454]

SENATOR SCHILZ: Right. Okay. So then my next question is, when you have this hearing and you talk about the tire program and things such as that, that has a fund that

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that money is going to. How will you offset the grants and things that you're looking at doing? Because if you say you want to have something where you're going to preclude it from going into the landfill... [LB454]

SENATOR HAAR: Uh-huh. [LB454]

SENATOR SCHILZ: ...but then you don't have the programs behind it to pay for it, does that run into a problem of where, even if you are paying what you need to pay, do you have the programs that actually have these places in rural areas to get rid of this stuff? [LB454]

SENATOR HAAR: Right. And that question, please ask that of one of the people that follow me... [LB454]

SENATOR SCHILZ: Okay. [LB454]

SENATOR HAAR: ...because it's a good one and that was kind of a surprise to me, too, when I (inaudible) today. [LB454]

SENATOR SCHILZ: Okay. [LB454]

SENATOR HAAR: We can't establish a special fund. [LB454]

SENATOR SCHILZ: Thank you. [LB454]

SENATOR DUBAS: Other questions? Seeing none, thank you, Senator Haar. [LB454]

SENATOR HAAR: Thank you. [LB454]

SENATOR DUBAS: We'll have our first proponent for LB454. [LB454]

CARRIE HAKENKAMP: Thank you for having me today. My name is Carrie Hakenkamp, and it's spelled C-a-r-r-i-e. My last name is H-a-k-e-n-k-a-m-p. I'm here as the executive director of WasteCap Nebraska and also representing the Nebraska Product Stewardship Coalition. The flyer that Senator Haar passed around is the result of two or three years of research of this organization working at the national level gathering data, spending hours upon hours going through grant reports at NDEQ to find out where we are setting a baseline for Nebraska, trying to find out what kinds of products stewardship actions are happening here in Nebraska. We've, at WasteCap been heavily involved in the infrastructure development, education, and setting performance standards for electronics recycling in Nebraska for well over a decade now. In that time we have worked on collection events and seen hundred and hundreds of cars go through these collection events, bringing all their old electronics hoping to

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have them handled in a responsible manner but at no cost to them. And most of the collection events have been run on grant dollars from the Nebraska Department of Environmental Quality, from the Nebraska Environmental Trust. WasteCap has had several of those grants where we have given money to communities to host these events and be able to pay for the recycling fees and the costs associated with that. However, these are kind of short-term management strategies. We don't know that those grant funds are always going to be around. The last couple of years we've seen both the Environmental Trust and the Department of Environmental Quality have money taken for other areas of the state use. So it's not a long-term management strategy, and many of the communities are also fearful of applying for these grants because there is a match requirement. And if they do not meet their match or if they've taken more electronics than what they've been granted for, they're responsible for covering the cost of that recycling because our recyclers have to get paid. We're providing service through those recyclers and they have to get paid for the services, but if their grant doesn't cover it, then the community is left holding the bill. The Nebraska Product Stewardship Coalition is a cooperative effort between a number of nonprofit organizations, municipalities, and solid waste agencies that are all listed on the left of your sheet that Senator Haar handed out. We developed this as a means to build product stewardship capacity and infrastructure in the state and avoid the need for grant funding and improper management of consumer waste. The initiative has been funded by grants from the Department of Environmental Quality since 2010. The fact sheet, as Senator Haar had mentioned, uses per capita estimates from the U.S. EPA showing that Nebraskans likely have about 30,000 tons of electronics sitting in storage waiting for either disposal or recycling. The recycling value, which is also in this sheet, is about \$7.70 a pound or \$455.4 million. What would we do with \$455.4 million in Nebraska if we could sell all of that scrap? So many of those materials are rare earth metals that are becoming increasingly scarce throughout the world. You find that in third world countries and even some cities on the East Coast are now mining their landfills to recapture the metals that are in the landfills for use in manufacturing new products. And also, in particular on the East Coast, to increase their landfill space. They just don't have the kind of space that we are blessed with here in Nebraska. It also creates jobs. It's a very labor-intensive process to demanufacture a computer, so it can create up to 750 jobs here in Nebraska. So, it does follow a long list of other bills that have been passed here in the state. One bill had been passed that Senator Preister introduced and was vetoed. You'll hear some testimony today from folks who actually supported that bill which was more stringent and more costly to the manufacturer than what is being proposed today. So, I'd like you to take that into account. And could I answer some of the questions that you had? The unconstitutionality that showed up on there was being able to place the fines into the Waste Reduction and Recycling Fund, but the registration fees associated with the program would still go into the Waste Reduction and Recycling Fund for the management of the program. So that money would go to DEQ for administrative costs, and then anything remaining would go into grants for infrastructure development.

[LB454]

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SENATOR DUBAS: Very good. Thank you, Ms. Hakenkamp. Are there questions? Seeing none, thank you very much for...sorry. Senator Johnson. [LB454]

SENATOR JOHNSON: Well, I...when I was involved with city administration, we had quite a few recycling programs and it seemed like we had an awful lot of old TVs and I don't know how...if we'll every get rid of those. (Laugh) But I know our citizens had to pay for the TV and this program would be where they would bring back the electronics and not have to pay, is that correct? [LB454]

CARRIE HAKENKAMP: Correct. [LB454]

SENATOR JOHNSON: Okay. For us to dispose of all those electronic devices that are out there now where...this going to start the fund or the manufacturers' fund, how long will it take us to recycle what's already been sold and not covered by this funding? Are we going to...I don't know how to explain it. We've got a lot of electronics out there right now that we don't have a fee on. How do we...going to make sure we get all those recycled properly? [LB454]

CARRIE HAKENKAMP: All of those materials would have to be accepted under the manufacturers' recycling programs that they would be developing. That's the difference between this bill and the last bill. The last bill actually paid for the recycling of the equipment. [LB454]

SENATOR JOHNSON: Okay. [LB454]

CARRIE HAKENKAMP: This particular bill only requires the manufacturer to pay a registration fee and then meet certain standards with the recycling program of their own where they have to collect a certain percentage of what they've sold in the state and recycle that at no cost. They can still charge businesses for that, but households would not have to pay. And so, it wouldn't be a government expense, it wouldn't be the consumer expense, it would be part of that manufacturer's expense and they recover that funding by increasing the cost of the product that they're selling. It's less than 1 percent of the cost of developing the product. [LB454]

SENATOR JOHNSON: So it's all going to come into the manufacturer program. [LB454]

CARRIE HAKENKAMP: Right. The manufacturer will have all that responsibility. [LB454]

SENATOR JOHNSON: All of that. Okay. Thank you. [LB454]

SENATOR DUBAS: Senator Schilz. [LB454]

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SENATOR SCHILZ: Thank you, Senator Dubas. In speaking with that, and we've heard about this, we don't have many manufacturers here within the state, do we? [LB454]

CARRIE HAKENKAMP: No. [LB454]

SENATOR SCHILZ: Where's the hook? How do we make sure? And I'm just asking out of curiosity, how do we make sure that those companies that are manufacturing the stuff pay for the recycling that we're demanding? [LB454]

CARRIE HAKENKAMP: Well, we set those minimum performance standards on what they have to do, but those manufacturers are already doing this in 24 other states which are covering over 75 percent of the U.S. population. So, this program is nothing new for those manufacturers, it's just one more state that they have to comply with. [LB454]

SENATOR SCHILZ: Do we know...and then that leads me to my next question. Do we know, and we heard, we heard that the feds are working on some nationwide standards, is that correct? [LB454]

CARRIE HAKENKAMP: They've been working on it for 15 years. [LB454]

SENATOR SCHILZ: Uh-huh. Are they getting closer to what...(Laughter) [LB454]

CARRIE HAKENKAMP: Not much. There are some new initiatives that have come out, but I don't think that they're any closer than they were. [LB454]

SENATOR SCHILZ: Do you know some of the challenges as to why they're having a difficulty getting there? [LB454]

CARRIE HAKENKAMP: I think that the main challenges are just trying to meet all of the different needs, which is why we have so many different states with rules, because the states may want more stringent. And so, working with the states and the manufacturers in trying to come up with a program has just been... [LB454]

SENATOR SCHILZ: What is...and if you can tell me and I'm not meaning to put you on the spot, but it is the feds intention to come up with the standard, is that correct? [LB454]

CARRIE HAKENKAMP: I don't know if it's their intention or not. I know that they have been facilitating the conversation. [LB454]

SENATOR SCHILZ: Amongst the states themselves. [LB454]

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CARRIE HAKENKAMP: Amongst the states and the manufacturing organizations. [LB454]

SENATOR SCHILZ: I see. And so half of the states do it, half of the states don't... [LB454]

CARRIE HAKENKAMP: Correct. [LB454]

SENATOR SCHILZ: ...where we're at today. [LB454]

CARRIE HAKENKAMP: Uh-huh. [LB454]

SENATOR SCHILZ: Okay. And you had mentioned that there was \$454 million or something like that in recyclable materials that is in that. And to Senator Johnson's question, have you figured out how much it would cost to recover that out of that \$454 million? [LB454]

CARRIE HAKENKAMP: Based on the 30 cents a pound... [LB454]

SENATOR SCHILZ: But that's for...okay. [LB454]

CARRIE HAKENKAMP: I mean, that 30 cents, 15, 20, 30, the price has been changing for a while, is what most recyclers will charge for the demanufacturing of the equipment to take it down to all of its component parts. And so, if we just figured out what that cost is, that 30,000 tons, you know... [LB454]

SENATOR SCHILZ: Times 30 cents. [LB454]

CARRIE HAKENKAMP: Thirty cents on the high side, maybe ten cents is what it actually cost and the rest might be profit towards... [LB454]

SENATOR SCHILZ: But the cost is still 30 cents, I mean... [LB454]

CARRIE HAKENKAMP: Right. [LB454]

SENATOR SCHILZ: ...if you're going to get it done, because as you said, the recyclers are going to get their money, right? [LB454]

CARRIE HAKENKAMP: Yes. [LB454]

SENATOR SCHILZ: Okay. Thank you very much. [LB454]

SENATOR DUBAS: Other questions? I would have one for you along that line. As these

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electronic equipment are deconstructed, is the market growing and the price increasing for those components that come out of those electronics? [LB454]

CARRIE HAKENKAMP: It is. The markets for plastics have improved greatly over the past few years. The value of those plastics has increased as technology has allowed us to make new products with those plastics, but the metals are extremely valuable. As I mentioned, the rare earth metals, we are having to mine gold ore to recover that and there's gold, there's lead, there's silver, there's cadmium, there's a lot of heavy metals and rare earth metals that we're not going to have access to that are going to become very, very valuable. [LB454]

SENATOR DUBAS: So in the past when we've heard bills like this, we've heard, well, there's just really not a market once we deconstruct these electronics. But you're telling me now that that market is on the upswing. [LB454]

CARRIE HAKENKAMP: Yeah, and we have some recyclers here that could talk more to that, answer for you. [LB454]

SENATOR DUBAS: Very good. Thank you so much. Senator Smith. [LB454]

SENATOR SMITH: Thank you, Senator Dubas. Thank you for your testimony. I'm going to follow up on that a bit. So, from what I'm hearing, a great deal of the recyclable material is considered valuable enough that the recyclers will actually make money. And...but they're also collecting money from the manufacturers, which the manufacturers are going to then effect an increase on the consumer, and what the consumer is going to be paying for the product they're purchasing. So, it sounds a little bit like the recycler is going to make off pretty well in this and with that as well, I mean, that's one of my points that I'd like for you to clarify for me how that...how do we minimize the impact on the consumer because they're the ones I think are going to get the short end of the stick here because the manufacturers will pass along their costs. [LB454]

CARRIE HAKENKAMP: Uh-huh. [LB454]

SENATOR SMITH: But then you have the potential of reshipping, so a manufacturer in Michigan ships to a middleman that then ships to the individual states for retail. How do you...that's going to be a nightmare in tracking how to recover the cost from the manufacturer, where that end product ends up. [LB454]

CARRIE HAKENKAMP: Well, and I haven't been well involved in how specifically that is being tracked in other states, but it's being tracked successfully. And in question to the recyclers making the money, there's actually some components of computers such as the cathode ray tubes, which are a cost to the recycler to dispose of. They're charged

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per pound for any of the leaded glass that they have to recycle because there is very little market for the leaded glass. Now, the other components that are in the PC and those types of things, tend to help offset that cost. And so, they're not making out like bandits, but they're at least covering some of their costs of managing that leaded glass, the new plasma screen televisions, some of the backlit televisions that are using mercury-based lamps. Those types of things all cost money to the recycler to manage. [LB454]

SENATOR SMITH: Thank you. [LB454]

SENATOR CARLSON: Any further questions? Yes, Senator Johnson. [LB454]

SENATOR JOHNSON: Thank you. Again, back at the ones, the old TVs, they will still be in the new program, there will still be a cost to the consumer for those or is that going to be eaten up, that's gone? [LB454]

CARRIE HAKENKAMP: Yeah, that's gone. That would be part of the manufacturers' responsibility. [LB454]

SENATOR JOHNSON: Okay. Thank you. [LB454]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you for your testimony. [LB454]

CARRIE HAKENKAMP: Thank you. [LB454]

SENATOR CARLSON: Next proponent. How many more individuals do we have as proponents? Okay. All right. Thank you. Welcome. [LB454]

GENE HANLON: Good afternoon, Mr. Chairman and members of the committee. My name is Gene Hanlon. I work as recycling coordinator for the city of Lincoln and the city supports moving towards a comprehensive... [LB454]

SENATOR CARLSON: Gene, we'll ask you to say and spell your name. [LB454]

GENE HANLON: My last name is spelled H-a-n-l-o-n, and the city of Lincoln supports moving towards a comprehensive recycling strategy regarding electronics. And we'd like to thank Senator Haar for bringing this issue to the Legislature's attention. There seems to be three core issues related to this legislation. One is, do we want to maximize or increase the amount of recycling of electronics in the state? Second, how do we finance it? And third, can we create jobs related to this legislation? The city of Lincoln would like to see increased recycling across the board in electronics. There are businesses here in town that do recycle electronics. According to our data, we have...there's nine locations

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here in town that collect the electronics for recycling. That represents one recycler for every 13,000 households, and many of the recyclers locally will have a fee for the CRT or the television ranging from \$15 to \$25 per unit for that material. Now, as a result of those fees, as a result of inconvenience, many people or a lot of people just don't recycle that equipment and it ends up in the landfill. Based on the 2009 waste characterization study that DEQ conducted, we estimate roughly 1,100 tons of electronics went to our landfill here in the city, and based on national estimates, another 5,700 tons are stored in people's closets and basements. In order for...I think people want to do the right thing. They want to recycle it, but in order to do that, it's got to be convenient and it needs to be free to the public to recycle that. The...it's difficult for local governments to provide a comprehensive electronic recycling programs because it's difficult to find sources of new money to provide that service, especially in today's environment where federal and state assistance is being cut. Rather than relying on local and state governments to set up recycling programs for electronics, it seems to me that manufacturers have the greatest ability to provide that service in a cost-effective manner. Simply put, the private sector can do it better than the public sector. Why? Well, manufacturers design that product for consumers to use, they're well aware of what the component parts are, they can design their products to make it easier to recycle. They can use products that are less toxic in it to protect the health and safety of consumers and workers. Manufacturers set up the distribution and transportation networks for their products, which can also be used for recycling. Manufacturers can fold the cost of recycling into the cost of that product, so it becomes just another part of doing business in their sale of their product. In my opinion, local governments like Lincoln just don't have the resources or the financing to provide comprehensive electronic recycling services to residents, and there's also the economic benefits associated with electronics recycling. In 2010, the Institute of Scrap Recycler Industries did a nationwide economic analysis on the economic impact of the recycling industries in the country and they also looked at each state. In Nebraska they estimated that there are 1,620 recycling-related jobs and those people in those jobs received a payment of \$74.5 million in wages each year and they had a total economic impact of about \$275 million. Electronics recycling creates jobs because you have to collect it, handle it, process it, and recycle it, and that helps the state's economy. LB454 provides an alternative to local level financing and offers a statewide solution for the development of statewide electronics recycling program. And it increases...it will increase the recycling opportunities for the public, conserve much needed resources, and save landfill space. So thank you, Senator Haar, for bringing this forward and bringing the opportunity to discuss this important comprehensive recycling legislation. [LB454]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions of Mr. Hanlon? Early in your testimony, we talk about these nine businesses that are in Lincoln. Now, tell me again what happens if I bring a piece of electronics to one of them, what do I do? [LB454]

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GENE HANLON: Well, it varies from recycler to recycler. Some have collection events that you drop it off. Some have an extra fee if you have a CRT or a television and you have to pay that fee when you drop it off. Other locations that do have some manufacturer responsibility, for example, Best Buy, has agreements with manufacturers and they'll take that electronics at no cost. So you can drop it off to that...the guy at the front of the store and he'll take it and they recycle it and there's no cost. Other recyclers will have a fee because they have some expenses related to that. [LB454]

SENATOR CARLSON: Okay. So of these nine, some of them may charge to leave a piece of electronics off, some may not, and Best Buy happened to be an example that they would not charge. And what did you say the highest amount charged that you're aware of? [LB454]

GENE HANLON: Well, it varies on the size of TV. You know, some recyclers will have a per pound fee and if you've got one of these old TVs that are about three foot deep and weigh 200 pounds, it's quite costly. It can be over \$25 to do that. [LB454]

SENATOR CARLSON: Another question that I have is if you have a bill such as this or similar to it that becomes law, and the manufacturer has the responsibility, we have in electronics some manufacturers that build a piece that's intended to last five years and some that would be intended to last 15 years. How would this work? The one that's intended to last 15 years shouldn't have as much responsibility as the one that's only intended to last five. [LB454]

GENE HANLON: Well, the purpose of the legislation is to ask that manufacturer, and we want to encourage durable use of products, when that product reaches the end of its life, we want the manufacturer to be responsible for recycling it. So whenever that happens, they have a system or infrastructure in place to recycle it, whether that's five years or 15 years. [LB454]

SENATOR CARLSON: Okay. Okay. All right. Any other questions? Yes, Senator Johnson. [LB454]

SENATOR JOHNSON: Thank you, Senator Carlson. Thank you, Mr. Hanlon. The five companies that are your collectors here in Lincoln, do any of them have the container out there that you can put your recyclables in and get a reward or get money back? [LB454]

GENE HANLON: No, not that I know of. [LB454]

SENATOR JOHNSON: Okay. [LB454]

GENE HANLON: My feeling is that recyclers are able to make some revenue from the

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component parts of the material, but other parts they have expense related to properly disposing or recycling that. [LB454]

SENATOR JOHNSON: Okay. Well, I'm aware of one company that does that and the experience that I've seen, there's not very many people that are even using that service so it's hard to get some consumers to dispose of them properly or conveniently, and they tend to put it in the other trash container and hide it and it goes into the landfill anyway. How do we educate or how do we get around that? [LB454]

GENE HANLON: Well, I think part of this legislation is asking the manufacturers to provide education to the residents of the state how to properly handle and dispose of that product. That would be another responsibility that they would have. [LB454]

SENATOR JOHNSON: Okay. Thank you. [LB454]

SENATOR CARLSON: Okay. If I take something to the landfill in Lincoln, am I going to pay by weight? [LB454]

GENE HANLON: As...commercial users do. However, households that might have a pickup or car with waste would pay just a flat fee based on the type of vehicle they have. And then there's extra charges if they have different types of waste, appliances, or other products. [LB454]

SENATOR CARLSON: Okay. In our rural community we pay by the weight even if I take my pickup in, but in Lincoln, it's just a flat fee. [LB454]

GENE HANLON: Yes. [LB454]

SENATOR CARLSON: What would that flat fee be? [LB454]

GENE HANLON: For a pickup it's \$11 and then if that vehicle has an appliance in it, then it's another \$5 to that, or tires another \$2. So it depends on what's on the specific load. [LB454]

SENATOR CARLSON: So if it was \$11 plus \$5, that's \$16. You'd think there would eventually be an incentive to take it someplace where they didn't have to pay, although then they couldn't get rid of all the other junk that's in there to. [LB454]

GENE HANLON: Yeah. [LB454]

SENATOR CARLSON: That's the part of it. Okay. All right. Any other questions? Thank you for your testimony. [LB454]

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GENE HANLON: Thank you. [LB454]

SENATOR CARLSON: Next proponent. Welcome. [LB454]

LINDA DUCKWORTH: Good afternoon, Chairman Carlson and senators. I'm Linda Duckworth, L-i-n-d-a D-u-c-k-w-o-r-t-h. I'm president of the League of Women Voters of Nebraska and I'm here not as an expert by any means on this particular bill, but I do want to let you know that the League of Women Voters for many years has been in favor of whatever it takes to decrease any kind of toxins, any kind of problems with the environment. And so that would include recycling. I want to talk just a little bit about the good old days back when I was a kid in the '60s. Picture me, this little kid going down the hill to the river below our house and on my way down seeing items in the creek near there. There was a big old rusty car, there was a washer and, you know, other...there was other stuff. And I remember thinking at the time, this stuff does not belong here. And probably at the very same time that I was thinking that, there were people all over the United States, all over Nebraska, Missouri, wherever, working on this very issue because they were realizing that those items in the creeks that were just thrown away like that, were actually affecting the soil and affecting the water. And so we're concerned about some of the components in these electronics such as mercury and lead. That's not good for the soil, it's not good for the water. And so it needs to be carefully disposed of and if it can be recycled, if we can work in...if we can get some money from some of this...from some of the components in there, then that just makes a lot of sense. I wanted to say that it appears to me there are several different stakeholders in this issue. They are the consumer and you've talked about the consumers and the manufacturers. Recyclers, who it sounds like they're going to get rich or not. The governments, and then our descendants need to be considered in the stakeholders too and, therefore, our environment. And so, I think the point that I would like to make is that we...I think that this committee, this Legislature can work on this issue, can have a good conversation, and can consider the needs of all these different entities, all these different stakeholders and can find a way to make this be a positive outcome. And so, of course, I ask you to advance the bill. [LB454]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of the committee? Seeing none, thank you. Next proponent. Welcome. [LB454]

DAG ADAMSON: Good afternoon. My name is Dag Adamson. I'm president of LifeSpan Technology Recycling. We've operated our facility here in... [LB454]

SENATOR CARLSON: Say and spell your name. [LB454]

DAG ADAMSON: I'm sorry, Dag, D-a-g, last name Adamson. We have operated our facility here in Nebraska for about...since 2004. We actually are a national company. Even though we're relatively small on the national scene, we have operations in San

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Diego, Denver, Tampa, and in Boston and we do have experience working in a variety of different programs. I'd be happy to answer some of those questions at the end as well as the financial models that work. You know, one of the things that I wanted to start out with is, this is an industry. I mean, as far as some of the statistics that you heard earlier, U.S. recycling, all recycling is about a \$200 billion industry. It employs about two and a half million people nationwide. It's about 2 percent of our GDP. I have testified in Washington, D.C. and also have worked on the national agenda as it relates to some federal legislation that's being currently considered. The electronics recycling component, as was stated earlier, is about \$5.2 billion. It's estimated to be...grow into a \$15.7 billion industry. It is a high-growth industry, largely out of consumer demand. It's...some of the investment folks that we work with have looked at the industry growing at about 20 percent compounded annual growth rate. The United States, there's estimates between 15 and 20 million computers are discarded nationally. There is value in it, but there's also negative stuff in it as far as the economics, things like lead, mercury, PCBs, things of that nature we want to try to keep out of the waste stream. Our industry is broken up really into three segments. There are those that demanufacture all the materials. There's folks that refurbish the electronics, and there's a hybrid and LifeSpan falls into that hybrid category. It's also called as IT asset disposition. We...so that's a little bit about the industry. You know, why is legislation needed? Doing the right thing costs money, is the problem. The economics of it are...it's not like paper, plastic, that you put in a bin, get's collected, you bale it, you take it to a mill. You've got things that have a positive economic component to it like metals, precious metals, things of that sort, but then you have things like the glass component, florescent tubes that have mercury or lead in it. The complex issue is, who is going to pay? You know, unfunded mandates, it doesn't work. Government handouts, you know we've seen on the federal side, that's pretty much been a disaster and frankly, it's against my political beliefs. Taxes, while it's been very successful in California for the recycling industry, they're probably the highest fees, it's a form of a tax. What we're proposing in this piece of legislation is not a tax. And the funding flows directly to the recyclers and I can tell you a little bit, if you want to ask questions, how it's working currently without legislation in Nebraska. This isn't new. It's been on the national agenda for more than ten years. I've been both on the federal side and I've worked...while we have a facility here in Nebraska, I live in rural Colorado. I live on the western side of the state, land of fracking, and definitely very conservative part of the state. We also have some of the highest diversion waste sites of the state. We need a market-driven solution and this is an instance where using a piece of legislation can create a market-driven solution where both recyclers and manufacturers work together. CEA, as well as manufacturers, especially the manufacturers are paying us today across the United States. We need to do this in a responsible manner. One of the issues is without a piece of legislation that has certifications backing about how we handle the materials, you can end up with some problems where the materials inadvertently end up in the wrong places. Just as recent as this week, the Solid Waste Association of North America actually on a national level has backed and it continues to encourage landfill diversion

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as well as preventing exports. That was just recently published. Small manufacturers, we can set up laws where we set thresholds so that it doesn't discourage small manufacturers in the state of Nebraska to continue to build. And I would submit that it's an opportunity for them to participate, you know, which is what we see in many other parts of the United States. So I would consider...would ask you to consider this bill. It's good for industry. It creates jobs and I think it's going to be good for Nebraska. [LB454]

SENATOR CARLSON: Okay. Thank you for your testimony. And it's Adamson? [LB454]

DAG ADAMSON: A-d-a-m-s-o-n, yes. [LB454]

SENATOR CARLSON: Okay. Thank you. Any questions of Mr. Adamson? Yes, Senator Dubas. [LB454]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Mr. Adamson. You know, this is my seventh year on the committee and we've talked about this issue multiple times and early on, there seemed to be a lot of resistance from the manufacturers. This wasn't their responsibility, this wasn't something that they wanted to get involved in, but I think what I'm hearing from you is, there might be a change in attitude on the part of the manufacturers as far as...I think there's multiple responsibilities here from the consumer all the way up. But am I hearing that there's more of a willingness on the part of the manufacturers? [LB454]

DAG ADAMSON: Both manufacturers and retailers for that fact, the very fact that Best Buy will start with them on the retailers' side is...they're using the free recycling. Even though they're paying folks like us to do the recycling on the back end, they're bringing in consumers into their store out of convenience. On the manufacturing side, companies like Sun Microsystems, which is now part of Oracle, have actually found that because of...you know, they want to reduce the number of toxins largely because of some international pressures as far as how they manufacturer equipment, they're actually making greener devices that are consuming less power. As far as, you know, building their corporate brands, many of them are adopting some of the standards that I had alluded to before. One is EPA has sponsored certification called R2. It's not a pay-to-play thing. It's actually audited. Independent auditors come in. There's another one called e-Stewards which is backed by the Basel Action Network. Many manufacturers in OEMs, even defense contractors who have gotten back, have adopted that. So I would say, you know, uniformly there's backing, just even out of the mere fact that there's 25 states that the manufacturers participate willingly and pay willingly for electronic, proper electronics recycling. [LB454]

SENATOR DUBAS: So they've seen this as a way because consumers are becoming much more in tune to hopefully being responsible with their purchases, they've seen this as a way to capitalize and actually attract more customers into the...? [LB454]

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DAG ADAMSON: There's Goodwill even on their...Office Max, Office Depot, have run promotions in conjunction with AP where they...HP where they've actually driven more retail traffic because you come in with your old printer while you're buying a new printer. There's even attributes of data, security as far as, hey, I want to make sure that this computer with a hard drive is handled properly. I would note that in the programs that we participate in other states, there are some states where it's voluntary prior to the recent passage of legislation in Colorado, some of the manufacturers were paying in a voluntary program, it was around 10 cents. In California, where it's a tax, it's not manufacturer driven, they pay recyclers as much as 38 cents a pound. I've got news for you. In Nebraska, it's zero. There's no participation at all. And having come from...and currently live in rural Colorado, population of about 40,000 people in Grand Junction, Colorado, it was that funding that afforded us to make the investment. It's much like, you know, the whole U.S. economy. And a business owner perspective has said, you know, we've got no guarantees with grants, are we really going to step up, you know, and make that investment to put an infrastructure in place to service the rural part of the state? Nebraska is the same way. You've got Lincoln. In Omaha, you've got the rest of the state that is underserved. I can tell you that the manufacturers, as soon as that bill is passed, they're going to be coming with checks. I'm anxious to take advantage of that, as well as many of the other recyclers would be as well. [LB454]

SENATOR DUBAS: Very good. Thank you. [LB454]

SENATOR CARLSON: Senator Johnson. [LB454]

SENATOR JOHNSON: Thank you, Senator Carlson. Thank you, Mr. Adamson, for coming in. I'd like to look or talk briefly about the entire recycling industry. We recycle paper and we have cardboard and glass and tin, metal, aluminum. It seems like there's so much volatility in the value that there's times that there's no market for it. People collect it and get discouraged because nobody will take it, so what do they do? What's the stability in the metals, precious metals, or the electronic recycling that this is going to be able to maintain itself? [LB454]

DAG ADAMSON: Absolutely, and that's a very...the issue with...in the paper shredding or the paper, some of the largest paper recyclers in the United States have gone bankrupt in 2008 as due to that volatility. Electronics recycling is not a net zero from a raw commodity perspective and that's one of the problems with our industry is that, hey, I've got a truck, I've got a place to go store the stuff, I'll take some of the good stuff, and I'll just kind of accumulate speculatively some of that stuff and maybe I'll find a way to get rid of it. That...this model is what's typically called in the industry sham recycling. The issue at hand is that you can't bank on the back end; that's why it costs money. And the reason why it costs money, as I alluded to before, is that some of the raw materials is a net positive, some of it is a net negative. You've got labor and transportation in the

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middle. I'm not generating paper every day. I get rid of my TV, maybe the new ones every five years. I still have a CRT-based TV so I've got it for 15. So the issues are, is that banking on that back end commodity stream, you know, isn't going to work. And in 2008 all the commodity markets when China shut down, you know, suffered from that, and several went out of business, some very, very large ones. So that's why it does take some industry certification's best practices. So not a government mandate in terms of how, you know, I should run my business, but there are industry standards that are audited like R2 or R2/RIOS or e-Stewards that have a framework of not only how or where we send the material, but they also look at closure plans. They look at, are you properly insured? They want to make sure that you're handling the stuff, that you're not speculatively accumulating. So that's one of the very important components to the bill. And again, those certifications are very inexpensive for the smaller entity. It's not just for the larger companies. So you're circling back to your point about, you know, banking on the back end, you can't do it on electronics recycling. It just won't work. [LB454]

SENATOR JOHNSON: Okay. Thank you. [LB454]

SENATOR CARLSON: Okay. Thank you. Senator Smith. [LB454]

SENATOR SMITH: Thank you, Senator Carlson; and, Mr. Adamson, thank you for your coming and your testimony. Tell me about your business again. You own a recycling company and is it single location, multiple locations? [LB454]

DAG ADAMSON: It is multiple locations. LifeSpan was founded in 2002 in Boston. We expanded based on where there was no other competition, quite honestly. So that's how we ended up in Nebraska and, frankly, in a Tier II market like Denver. We also operate a facility in San Diego and in Tampa. We employ about 80 employees. We have been on the forefront of certifications and "doing the right thing" because admittedly our industry has got a colorful past. It's...you may have seen the 60 Minutes exposes or the PBS FRONTLINE exposes of showing where materials end up in the wrong place. As far as, you know, the success of our company, we've been recognized as a Top 20 company by the Omaha Chamber of Commerce. We've made it to Inc. magazine. This is our third year in a row. I'd say we're a pretty successful company, largely because I've got great employees. But it's an exciting industry. [LB454]

SENATOR SMITH: So what kind of government funding do you currently receive for your company? [LB454]

DAG ADAMSON: None. [LB454]

SENATOR SMITH: None. And what's your gross profit margin, generally speaking? [LB454]

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DAG ADAMSON: Well, on a net income, most profitable business, we're a private one but I'll share with you that, you know, our target is 10 percent bottom line. We're less than that because we reinvest all of our capital in it. There's quite a bit of consolidation that's going on in the industry, both small and large. [LB454]

SENATOR SMITH: And I love free market and it's great to see a profitable business. Ten percent gross profit margin is amazing, particularly in this economy, without any type of government funding. So I've got to believe that the private market model is working. And what I'm hearing here today is that we're going...and you say it's not a tax. [LB454]

DAG ADAMSON: Correct. [LB454]

SENATOR SMITH: But I'm suggesting that it is a tax on consumer spending because manufacturers will not absorb that and they will pass that along to consumer. And so somehow that's going to come back in to ensuring that you maintain or improve that 10 percent gross profit margin. [LB454]

DAG ADAMSON: Yeah. [LB454]

SENATOR SMITH: So, I'm from...I think recycling is great. [LB454]

DAG ADAMSON: Right. [LB454]

SENATOR SMITH: And from what I'm hearing, there's a business model out there that works pretty well without increasing the tax on consumer spending. [LB454]

DAG ADAMSON: There...and I agree that there shouldn't, and there isn't as far as a direct cost to the consumer. Part of the rationale I believe that was in that white paper in terms of product stewardship, hey, let's create some pressure on the manufacturers to make greener products. Europe has done that with...inherently, we benefit from that in terms of manufacturers have to take heavy metals out of their material in order to sell it in Europe and the United States benefits from that. However, from an infrastructure perspective, you know, that doesn't really help us from the standpoint of the western side of the state. So what we have seen in other states, and when you look at the amount of money that it takes in terms of in comparison of the revenues and profit that are made on making the products, it's a miniscule component to that. [LB454]

SENATOR SMITH: All right. Thank you. [LB454]

SENATOR CARLSON: Thank you. Any further questions? Senator Schilz. [LB454]

SENATOR SCHILZ: Thank you, Senator Carlson. Good afternoon. Thanks for coming

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in today. And I was just wanting to piggyback off of what Senator Smith was talking about. We heard earlier from the woman that was up here that if you look at what's out there right now in Nebraska with 30,000 tons of old electronics, whatever that might be, and she gave us a number of \$454 million worth of materials. Is that...I mean, obviously, that will ebb and flow, but is that kind of what you...? [LB454]

DAG ADAMSON: I'm not sure...you know, I'm not sure where the statistics originated from, but I can tell you that there are precious metals that are inherent in electronics. There are more so in computers, less so, or virtually nil on consumer electronics. I think also as a component of that, the reuse side of the equipment, there's substantial and typically with the enterprise clients that we primarily serve as...their programs, even with transportation, multiple people working that account, it turns into either a net zero or even a net positive return for the commercial clients. On the municipal side, most of the materials is those console TVs and things that actually in that negative material value, so there is a negative component to that financial equation. [LB454]

SENATOR SCHILZ: Right. And I guess that brings me to my next question. If you have...and I'm just...let's say you've got a computer console sitting there, how much good do you have in that necessarily as compared to how much...? [LB454]

DAG ADAMSON: It's in that negative. It's in that negative. So looking at that, you know, the highest value assets either on a reuse or a commodity side of things, or computers, and computer...LCD computer displays provided that they're working, even on the cellular phone and device and tablet, there's a net positive. The things that are negative are CRT or cathode ray tube type based, the RIOS televisions. Printers, it's largely plastic, it's a little metal, very little on the precious metals side of things, keyboards, things of that sort. [LB454]

SENATOR SCHILZ: Sure. Thank you. [LB454]

SENATOR CARLSON: Thank you. Any further questions? Okay, thank you for your testimony. Next proponent. Welcome, Duane. [LB454]

DUANE HOVORKA: Good afternoon. My name is Duane, D-u-a-n-e, Hovorka, H-o-v-o-r-k-a. I'm here on behalf of the Nebraska Wildlife Federation. Pleased to be here to support the bill. Back, I guess it's a couple decades now, when the scrap tire fund was set up, one of the supporters of that was a guy named T. O. Haas, and you might have seen his name on some of the tire stores around town. T. O. was also a Nebraska Wildlife Federation board member for a number of years. He's a very interesting guy and he recognized that there was a problem. At the time we had piles, actually mountains of scrap tires in places around the state, breeding mosquitoes, occasionally they'd catch on fire. It was a real problem that we needed a solution to, and he was one of the forward-looking people in the tire industry who supported a solution.

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And the two things, I had a number of conversations with him over the years about that, that concept, and he said, you know, the things he really wanted were things like transparency and accountability. He wanted to make sure if we were going to collect a scrap tire fee that, you know, we knew where the money went and that the money was spent on solutions so that, you know, the money, there was that accountability and transparency. You were putting the money toward the problem. And so I think if he were here today, he would tell you the same thing, to make sure that accountability and transparency is built into the bill and I think it is. I think you have a similar situation here that you have a product that has some special risks, some special disposal challenges that it creates, a series of products. And so, as, you know, conceptually, this is a similar solution to say, let's find some ways that we can fund the solutions to try to take this kind of special waste out of the regular waste stream, treat it as it needs to be treated separately, and find ways to fund that. So I appreciate the time and attention and thank you. [LB454]

SENATOR CARLSON: Okay. Thank you. Any questions of Mr. Hovorka? Seeing none, thank you. Next proponent. How many more proponents do we have? Okay. Welcome, Ken. [LB454]

KEN WINSTON: Good afternoon, Chairman Carlson and members of the Natural Resources Committee. My name is Ken Winston, K-e-n W-i-n-s-t-o-n, appearing on behalf of the Nebraska Sierra Club in support of LB454. I just wanted to...when Duane talked a little bit about the historical aspects of recycling issues, it brought to mind the fact that the Legislature did pass a recycling...electronics recycling bill in 2008. It was vetoed by the governor, but the subject has been around for a while and has been discussed and the Legislature has approved it before. So we...and then, I guess, I just wanted to run through a few things that...a few reasons why we support LB454. We support electronics recycling for the reasons that people have talked about already, keeping toxic substances out of landfills. Also, rare metals rather than having to refind them or get them from elsewhere, if you can obtain them out of these items it makes a lot of sense. And one of the things about recycling programs, as a couple of senators have mentioned, is that you really need to change consumer behavior. And you need to get people to do things that change the way...I mean, I think most people think of recycling programs as being fairly natural, that you just take the papers out to the...you know, you recycle your newspapers, you recycle your plastic bottles, and I think a lot of people just do them as a matter of habit because it's something that they've learned to do. And some of these things that come about because of various programs and I guess whatever reasons, it just make sense to us is that having the person who is profiting from creating it, they ought to also be responsible for its end of life as well. And the hallmarks of a good recycling program, the kinds of things that get people to change their behavior, generally there's several things that will get people to do things. First of all, it has to be simple, has to be easy, and it has to be cheap. And this would assist in creating programs that would allow those things to happen. And so, we would like to

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see LB454 advanced by the committee. [LB454]

SENATOR CARLSON: Okay. Thank you. Any questions of Ken? Seeing none, thank you. [LB454]

KEN WINSTON: I guess my testimony must have been simple, easy, and cheap, so. [LB454]

SENATOR CARLSON: (Exhibits 6, 7, and 8) It was good. (Laughter) All right. Any more proponents? We do have three letters that came in in support of LB454 from Jim Thompson, Nebraska State Recycling Association, Dale Gubbels, Nebraska League of Conservation Voters, and Scott Cassel from Product Stewardship Institute. Okay. Do we have any opponents? And let me ask, how many opponents do we have? Okay. All right. Welcome, Joe. [LB454]

JOE KOHOUT: (Exhibit 9) Senator Carlson...Chairman Carlson, members of the Natural Resources Committee, Joe Kohout, K-o-h-o-u-t, appearing today on behalf of Heartland Strategy Group and their client, the Consumer Energy Alliance. I am passing out to the members of the committee a copy of the letter that Senator Haar referred to in his opening. We want to begin...the letter is from Walter Alcorn, vice president for Environmental Affairs and Industry Sustainability at CEA. We want to begin by thanking Senator Haar for introducing LB454 and beginning the...and having the conversation that we're having about electronics recycling. CEA represents more than 2,000 companies involved in the design, development, and manufacturing, distribution and integration of audio, video, in-vehicle electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumers channels. CEA shares the goal of wanting to increase electronic recycling and provide consumers the opportunity to recycle their used electronic devices. CEA is actually working in several states with a pilot program. And what we are specifically asking the committee to consider today is to hold LB454 for the purpose of seeing how those programs work in those individual states. And we would like to work with Senator Haar and we would...and, thereby, this committee, to try to come to some consensus on a program that would work for the state of Nebraska. And so with that, Mr. Chairman, I'll end my comments and try to entertain any questions, the understanding that I can barely get my iPhone to work, so. (Laughter) [LB454]

SENATOR CARLSON: All right. Thank you. Questions? Senator Smith. [LB454]

SENATOR SMITH: Thank you, Senator Carlson. Mr. Kohout, first time I think I've ever seen you testify in front of me in a committee. Always in a different committee, I suppose. (Laughter) [LB454]

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JOE KOHOUT: Sorry, Senator Smith. (Laugh) [LB454]

SENATOR SMITH: But what is CEA? It says Consumer Electronics Association. Is this an association of manufacturers? [LB454]

JOE KOHOUT: It's manufacturers, it's designers, it's really many, many components of the electronics industry. [LB454]

SENATOR SMITH: So, I don't see anything in this letter that talks about the increase of cost and maybe that's a point that I brought up and maybe I'm missing something there, maybe that's not really an issue. Can you tell me? [LB454]

JOE KOHOUT: Well, and I think from CEA's perspective, I think what we're doing is we're working with individual states and with individual programs because at the end of the day, I think we want to develop a program that works. And so I don't think we're going to say, that's off the table from our perspective at all costs. We're just...we want to make sure that we have an open line of communication about the best projects that work and the best programs that work. [LB454]

SENATOR SMITH: But your feeling from this association's position is that this may be taking place in other states, but you're seeing this piece of legislation is one that they're concerned with the complexity of it? [LB454]

JOE KOHOUT: Correct, correct. We're concerned that this specific bill does not...that it isn't the best option for CEA with regards to implementation of an electronics recycling program. [LB454]

SENATOR SMITH: All right. Thank you. [LB454]

SENATOR CARLSON: Okay. Yes, Senator Johnson. [LB454]

SENATOR JOHNSON: Thank you, Senator Carlson. Thank you, Mr. Kohout. The pilot that's out there right now, what's the timetable to have some data that...how long are we going to have to hold this bill? [LB454]

JOE KOHOUT: Oh, yeah, no, no, no, that's a very fair question, Senator. Based on the information Mr. Alcorn provided to me, was that they are hopeful that we can get...that this is something that we could look at probably over the interim. I mean, to be frank. I mean, it's...we're working...as I said, we're working multiple states so it's...the idea is, what's the best outcomes from those other locations and what can we do to make it work in Nebraska. And so, we're hopeful that we can get something pulled together, I mean, in terms of and see what that looks like. Probably, I mean, to be realistic, that's probably the time line. [LB454]

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SENATOR JOHNSON: Thank you. [LB454]

SENATOR CARLSON: Yes, Senator Smith. [LB454]

SENATOR SMITH: Thank you, Senator Carlson. And this may not be something you can answer, but do you have a general sense as to...pick out any type of an electronic product that is manufactured and shipped, what kind of an impact would this have on the cost? Do you... [LB454]

JOE KOHOUT: You know, Senator, I didn't ask that question, but I'd be happy to get back to you and to find that answer out and get it back to you. [LB454]

SENATOR SMITH: All right. Thank you. [LB454]

SENATOR CARLSON: Okay. Other questions? Thank you for your testimony. [LB454]

JOE KOHOUT: Thank you. [LB454]

SENATOR CARLSON: Next opponent. Welcome. [LB454]

JEREMY McNEAL: Good afternoon, committee. My name is Jeremy McNeal, J-e-r-e-m-y, McNeal is spelled M-c-N-e-a-l. I'm the owner of a recycling business in Omaha, PC Recycling. We exclusively do electronics recycling. I'm here today in opposition to this bill. There are a few things that I have issues with. One, primarily being the infrastructure that is not included in this bill. They ask manufacturers to take back electronics, but there's no way to enforce them to go out into the rural areas. So any business would simply want to take from the easiest parts of the state, that is Omaha and Lincoln. My company is based out of Omaha. I would see that as a threat, obviously, as being in business because once they start taking from households, they could also take from businesses. I know that there was an infrastructure component to this bill originally that was removed. I understood why it would be difficult to try and create something for everyone to conveniently dispose of their electronics, but there needs to be some kind of component to that to create infrastructure so that those rural communities can recycle their materials in a convenient fashion. And with going on with that, if there's a landfill ban placed in four years, where do those rural communities get rid of their electronics? There won't be any convenient places to get rid of them in my opinion and I'm only one of many. Manufacturers also send in their own recyclers from out of state. They do not use local recyclers. That does not occur. They have nationwide recyclers. One of the other recyclers here, he may be one of them and that is great for him business wise. I can appreciate that and I would love to be in his shoes, but they will not use a small company like myself. They'll bring in their own recycler that they've used in 24 other states to go forward with their plans for the 25th state. Also, there is the

other issue of it sets the market at zero. There are costs associated with recycling electronics as you've heard from other people speaking today. If you set the market at zero, which is they have to take it for free, what does a recycler like myself do? Where does my income come from? I take it in for free where I have a minimal charge now but I do have a charge that helps to rent the space, keep the lights on, pay for labor. When that goes to zero, where does that money come from? It does not come from anywhere on the back end on selling it. It's not going to cover everything, so once something like that would be in place, my business would be a break-even proposition at best. Yes, this bill would create jobs. It would increase recycling. That is a fact because you would have manufacturers coming in and creating education which is a large part in getting things going. It would create some jobs. It would increase some recycling. But how many...once it increased those new jobs, how many jobs are taken away by current recyclers in Omaha and Lincoln. So where's your net jobs increase? I think there may be some, but not that much. I don't know what numbers are, I just...from my personal business experience. And no matter what, if producers have to cover the costs, that means they need to recoup that expense somewhere else. That's when you purchase it. That's simply a fact. They have to cover the cost. They're going to do it by increasing your cost when you buy the new computer, the new television, the new printer, whatever it is. That's basically what I have for today and I'd be more than happy to answer any of your questions. [LB454]

SENATOR CARLSON: Okay. Thank you. Questions of the committee? I would ask, how do you get your materials? [LB454]

JEREMY McNEAL: I deal with mostly businesses. I do collect from households as well. And so I'm in Omaha, so there are households that do bring their electronics to me for me to process and recycle. [LB454]

SENATOR CARLSON: Do the businesses bring it to you or do you go to them? [LB454]

JEREMY McNEAL: I go to them. [LB454]

SENATOR CARLSON: And then you charge by weight? [LB454]

JEREMY McNEAL: I charge typically by weight, depending on the customer, depending on the volume that they have, things of that nature. [LB454]

SENATOR CARLSON: If you had a...if you picked up something that might equate to a half a pickup load, what would you charge? [LB454]

JEREMY McNEAL: From a business? [LB454]

SENATOR CARLSON: Well, or... [LB454]

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JEREMY McNEAL: There's different rates. If it was half a pickup load, you know, if we're talking 500 pounds, something...just throwing a number out, you'd be looking at \$100, 20 cents a pound. I'm throwing a number out there for you, but if it was 500 pounds. And 500 pounds would equal maybe ten full computer systems, at most, just the monitor and the tower. [LB454]

SENATOR CARLSON: Okay. And if an individual comes to you with a couple of computers, what do you charge? [LB454]

JEREMY McNEAL: Usually it's right around the same thing. If they're coming to me that cuts my costs, so a household that has the old-fashioned CRT monitor would be approximately \$5 to \$6. The tower would be \$5. That would be the cost. [LB454]

SENATOR CARLSON: Okay. All right. How many employees do you have? [LB454]

JEREMY McNEAL: There are currently two of us, we're co-owners, and then we bring in temporary help because there are different seasons that moves back and forth. Wintertime is extremely slow. The spring and summer come along, it picks up, we bring in help as needed and then slow back down over the winter. [LB454]

SENATOR CARLSON: Okay. All right. Thank you. Any other questions? Thank you for your testimony. [LB454]

JEREMY McNEAL: Thank you. [LB454]

SENATOR CARLSON: Next opponent. Welcome, Amy. [LB454]

AMY PRENDA: Thank you. Good afternoon, Senator Carlson and members of the Natural Resources Committee. My name is Amy Prenda, it's A-m-y P-r-e-n-d-a, and I'm here on behalf of the Nebraska Cable Communications Association. First, I'd like to say the cable companies don't oppose recycling, and I do want to extend an apology to Senator Haar. I didn't get a chance to talk to him ahead of time about our opposition. I just was receiving feedback here over the last couple days on the bill and just wanted to share that with the Natural Resources Committee. First off, we're in a little bit different situation. Most of our businesses lease equipment from manufacturers and then those are passed on to the customers or the consumers. So the cable...the NCCA is concerned that the bill will create an entirely new e-waste recycling regimen in Nebraska with the tracking and reporting requirements that are in this bill. Right now our member companies have a very robust recycling program in place and we're unsure how LB454 will affect those current programs in place, especially for our companies like Cox and Time Warner and Charter who do business in a number of states and not just here in Nebraska. We're also trying to determine at this time how the regulation and

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requirements in LB454 will impact how the companies comply in other states. Finally, and I think you've heard this before, we're...also we're very cognizant of fact that any cost to the manufacturer, of course, is going to be handed down to our consumers. So with that, I'd like to extend that we would be happy to work with the committee and with Senator Haar on any legislation, but we just wanted to make sure you understood that our circumstances as leased equipment that goes through, we're in a little bit different predicament than possibly a business that purchases technology, and just wanted to let you know of a few concerns that we had as related to that. So I'd be happy to answer any questions you might have. [LB454]

SENATOR CARLSON: Okay. Thank you. Any questions of the committee? Okay, Amy, thank you for your testimony. Welcome. [LB454]

NICK BOCK: Thank you. My name is Nick Bock, N-i-c-k B-o-c-k. I'm the CEO of Five Nines Technology Group, which is a local IT services company in Lincoln and Omaha. We have about 60 employees. We are certainly on kind of the outskirts of this issue, but it would have some significant impact on us. A couple of the things. So we already are heavily involved with recycling with our clients. We resell technology that would be impacted by this, particularly computers and small servers, as they were classified in this bill. We have a number of recyclers that love our business and come pick up all of the recycling that we can give them for free. So anything from the businesses that are our clients to their individual stuff that they bring in, because in general the private business is alive and well in recycling. And like somebody mentioned that was opposed to this bill, their business was doing just fine because in general, the parts that are in a lot of the technology devices are bringing good prices right now. And so recycling has gone from something that in general we paid for, to now something that they'll come to us, pick it up as often as we want them to, and it's an industry that's alive and well. We're concerned about the definition of "importer" in this bill. We called for clarification from Mr. Haar's office and he defines an importer or a manufacturer as somebody who imports technology. So for us, we resell Dell, for example, computers and servers. And we would be classified as a manufacturer under this bill, which I'm very disappointed and I believe that's a very incorrect way of looking at things. So we would be saddled with the same things, even though we are not manufacturing, but we would have the same impact as if we were manufacturing. So, Dell already has a very established program for recycling. What are we supposed to do at that point when they're already taking responsibility for it, but now we're like the double manufacturer of the device? So we certainly don't think that that's a correct interpretation of a manufacturer, but in the bill it very clearly says that a manufacturer is somebody that imports items. And when we called for clarification, the clarification was that that would include somebody that imports from another place within the United States. You know, we certainly...as I mentioned, almost all manufacturers of technology in general have very robust programs in place to facilitate recycling. Dell, for example, has a program where, one, you can recycle any item or any other computer. If you buy a Dell computer, you can

stick it back in the box and send it back to them. Additionally, if you have any old Dell item, even if you're not buying a new one, you can box it up, they'll prepay for shipping, and you can send it back to them. Most of the technology vendors become very good at being stewards of the technology they're putting into the marketplace, and a one-for-one, or even a more than one-for-one perspective. So, from a standpoint of this being aimed at technology, I think it's misaimed. I think, ultimately, the burden is going to fall to local companies. It seems like a lot of this is really to put money into the pockets of recyclers or to create programs that don't need to be created to create fake jobs that aren't going to get really created. It will be...I mean, I think they will be taken from other industries. This would have a negative impact on my business. We've created 57 jobs over the last six years in Lincoln and Omaha and this would have a negative impact on my business. I think the real challenge that we're not addressing is people don't, in general, recycle. Not because of the cost, because availability is here. They don't recycle because they don't want to take their device out of their house and they don't want to take it to a place that recycles. Any of us could take our technology to the Goodwill, they'll take it for free. It's the people that simply choose to dump it in their trash can and hide it with other stuff that don't recycle and this program does nothing to address that and won't. That's the problem. It's the people with the big TVs that can't load them and carry them anywhere and this program is not addressing a truck that's going to go to residences and fix that problem. So in general, I feel like it's addressing something negatively that doesn't need to be addressed and is not addressing the real problem. So that's how I feel about this and appreciate you listening. [LB454]

SENATOR CARLSON: Okay. Thank you. Any questions? Yes, Senator Smith. [LB454]

SENATOR SMITH: Thank you, Mr. Chairman. And it's Bock? [LB454]

NICK BOCK: Uh-huh. [LB454]

SENATOR SMITH: Thank you, Mr. Bock, for coming in and testifying. So are you a reseller and you deal products? [LB454]

NICK BOCK: Correct. [LB454]

SENATOR SMITH: And then do you repurpose old products or used products? [LB454]

NICK BOCK: No. We don't repurpose old products. We only resell new ones. [LB454]

SENATOR SMITH: Okay. And so...and did I misunderstand you, then, that you say there are recyclers that pick up from your establishment? [LB454]

NICK BOCK: Yes. [LB454]

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SENATOR SMITH: What are they picking up? [LB454]

NICK BOCK: They'll pick up old CRTs, they'll pick up old desktops, old laptops, any old technology that our clients or people bring into us. [LB454]

SENATOR SMITH: Okay, so someone, they're buying a new one so they bring their old one to you... [LB454]

NICK BOCK: Sure. [LB454]

SENATOR SMITH: ...and then you get rid of the old one. [LB454]

NICK BOCK: Yeah. [LB454]

SENATOR SMITH: Okay, I see. All right. Thank you. [LB454]

SENATOR CARLSON: Okay. Other questions? Now, I think I've heard two different numbers on employees. How many employees do you have? [LB454]

NICK BOCK: We have 60. [LB454]

SENATOR CARLSON: Okay. I thought you said 57 then later. [LB454]

NICK BOCK: Yeah, we started with three, so I'm saying we added 57 jobs over the last six years. [LB454]

SENATOR CARLSON: Okay. All right. Okay. Good. (Laughter) But you get your material as people bring in what they've got, to buy something new. [LB454]

NICK BOCK: Sure, in general. [LB454]

SENATOR CARLSON: Okay. That's generally how it happens. [LB454]

NICK BOCK: Yeah, although we'll get...you know, we'll receive things from, you know, people that are individuals that are working at businesses that we support that just say, hey, I don't know what to do with this, and they'll just bring it in because they know we know how to get rid of it. They don't want to throw it in their trash so they're being responsible, which is great. [LB454]

SENATOR CARLSON: All right. Thank you. Any other questions? Thank you for your testimony. [LB454]

NICK BOCK: Thank you. [LB454]

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SENATOR CARLSON: Welcome. [LB454]

ANN POST: Hello. My name is Ann Post. That's A-n-n P-o-s-t, and I'm here today on behalf of the Lincoln Independent Business Association. And I am going to echo a little bit of what...and clarify a little bit of what Mr. Bock said, so I'll try to keep this more brief. LIBA is very opposed to LB454. And I know that today we've been talking, you've been hearing about manufacturers. Cisco Systems was mentioned. HP was mentioned. Dell has been mentioned a lot. And so you're probably wondering why a local policy organization is here. I'll admit I'm much more comfortable in city council or county board meetings than here at the state Legislature. And why that is, is when we looked...combed through the language of this act, we stopped at the definition of "manufacturers." And while HP, Dell, those are your more traditional idea of manufacturers, when you get into the minutia of the definition for this act, it talks about manufacturers including any person that imports more than a thousand covered electronic products for sale in the state of Nebraska. And so imports like Mr. Bock said, means imported from another state, it means imported from another country. So under this definition of "manufacturers," you're going to have local retailers, for example, like one of our members, Schaefer's Electronics here in Lincoln. That would be considered a manufacturer. Schaefer's is a lot like a Best Buy. They sell washing machines, they sell refrigerators, which are not covered under this act, but they're also going to sell TVs, Blu-ray players, DVD players and audio equipment that would be covered under this act. Schaefer's employs more than 70 people and sells well over 1,000 units each year that they obtain from out-of-state distributors. So, not only are they covered under this act, but they're treated the same as an HP or a Dell or Cisco Systems. So what this would require of them would be to accept a minimum amount of electronics each year that's determined statutorily, that they have to weigh the electronics to determine how much, and if they don't reach that weight of recyclable electronics, they'd have to pay a penalty. They would be forced to provide public education programs about recycling, including a Web site, a toll-free number, and even public service announcements. They would pay a registration...initial registration fee to the state of Nebraska or to the department that would oversee this program of up to \$5,000 initially, and after that a yearly fee of \$2,750. And on top of that, they would have to keep detailed records, including their sales of electronics by weight, the quantity of electronics collected, and electronics collected for recycling from both Nebraska consumers and from consumers out of Nebraska. And all these costs are not even to mention the actual cost of recycling the product that they would be responsible for. Now, these high costs are going to force local retailers to change the way they do business. It could cause them to have to cut employees, or to limit their sales of electronics. These high costs could encourage local manufacturers to relocate, or even potential manufacturers or retailers that are going to move, or were considering moving to Nebraska, to reconsider. And this is all to deal with the problem, as Mr. Bock alluded to, the industry seems to be making great strides in dealing with themselves. Many businesses, including Schaefer's, including Schrock

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Innovations and Level Seven Computers, those are all local LIBA members that deal in electronics and do have recycling programs already in place. They will recycle any brand of electronics brought to them by their customers. And on the national level, there are large manufacturers that have partnered with local brick and mortar stores like, as mentioned, the Goodwill, Staples, Office Depot, other places like that. And where they don't have a partner store, many have mail-back programs. So, for example, I know if I were to want to recycle my iPad, I could send it to Apple and they would actually send me a gift card for the fair market value of that. So in the end, this act aspires to high ideals but it falls short. The act will cost our local retailers thousands of dollars yearly, it may cause retailers to cut jobs, and to alter the mix of products that they are able to sell. And this is all to fund a program that is largely unnecessary. And for these reasons, we would ask this committee to indefinitely postpone this bill. [LB454]

SENATOR CARLSON: All right. Thank you for your testimony. Any questions of Ms. Post? Senator Smith. [LB454]

SENATOR SMITH: Thank you, Mr. Chairman. Ms. Post, thanks for coming in for your testimony. So the point you're making is, the example you gave is Schaefer's Electronics. They would be an importer, you have a manufacturer that is being assessed these costs, turning costs, then each importer would be assessed costs. So you begin to pancake these costs on top of each other so that by the time it eventually gets to the consumer, it has passed through maybe one, two, maybe more than two points where these fees have been assessed and the consumer is paying for that. Is that what your point is? [LB454]

ANN POST: Yeah, definitely. That there are these layers of costs, they're huge costs, and though the bill restricts them from being directly charged to the consumer, the consumer will bear it. [LB454]

SENATOR SMITH: All right. Thank you. [LB454]

SENATOR CARLSON: (Exhibit 10, 11 and 12) Okay. Any other questions? Okay, thank you for your testimony. Any further opponent? We do have three letters written in opposition: one from Jennifer Gibbons of the Toy Industry Association, one from Jeff Wattier of the Solid Waste Association of North America, and one from Thor Schrock of Schrock Innovations. Do we have anyone in a neutral position? Welcome, Jim. [LB454]

JIM OTTO: (Exhibit 13) Thank you, Senator. Senator Carlson and members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I'm president of the Nebraska Retail Federation and here to testify in a neutral position on LB454. First of all, national electronic retailers and retailers in general that sell electronics would prefer a national solution and not a state-by-state solution. And the...it gets complicated when you have a different solution in each state. So that is the preference, but as we all know, things

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happening in Washington don't happen as fast as maybe people would like. So if...I also want to point out that has been brought out before and has been said here about other retailers, Schaefer's, Best Buy, they do recycle. The retail industry is taking a very aggressive step doing recycling. That pretty much happens in probably the larger communities, Omaha, Grand Island, Lincoln, but you can pretty much recycle for free in the larger communities. And...but as Senator Haar said, this bill addresses...helps address the rural communities. I am a little...I know that it was not the intent of Senator Haar in the drafting of the bill to include Schaefer's, and as I read the bill I didn't understand it to say that. Now, I may be incorrect, but I know that I can totally understand Schrock Innovations because they would be a manufacturer. Best Buy would also be a manufacturer because Best Buy has a store brand. If you buy an Insignia anything, that's actually Best Buy's store brand. But the way I read the bill, I did not think it would include Schaefer's and retailers like that, only major retailers that actually have store brands. Now, maybe I read that wrong. At least when I was talking to the drafters of the bill, I don't think that was the intent, but just a little point I wanted to make. If you are going to have an electronic recycling bill, we do favor the producer responsibility bill. But then the question becomes, how small a producer. You know, Schrock Innovations is a great local business, hate to impact them negatively. Maybe the bar needs to be raised so it doesn't impact them. I did pass out a little chart for you to look at so that you would know what's going on nationally and which states have electronic recycling bills, and to point out that only one, that's California, has a point-of-sale fee. So the reason that retailers prefer this is because this does not...this is actually a producer responsibility and they do not have a point-of-sale fee that is collected at the point of sale. California is the only state that does that. And once again, that does not just exempt retailers because, for example, as I said, Best Buy would also be a manufacturer. Any store that has a store brand would also be a manufacturer so they would take part in it from that way. But with that, I just wanted to express our feelings. [LB454]

SENATOR CARLSON: Okay. Thank you. Any questions of Mr. Otto? Senator Smith. [LB454]

SENATOR SMITH: Thank you, Senator Carlson. Mr. Otto, thank you for your testimony. So, in the case you're talking about Best Buy having a private label and being a manufacturer itself, is your interpretation of the law...the bill that's introduced being that a consumer would be impacted by a layered tax, there would be a manufacturer and then there would be another, the same on top of Best Buy? Would it be layered or...? [LB454]

JIM OTTO: That's not my interpretation. [LB454]

SENATOR SMITH: It's not. It would just be a single point? [LB454]

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JIM OTTO: Best Buy would pay a fee based on how many pounds they sold annually to register and be able to sell their product in Nebraska or... [LB454]

SENATOR SMITH: But would Best Buy have...would the original manufacturer of that product prior to the private label being placed on it, would they have incurred that cost as well? [LB454]

JIM OTTO: Not the way I understand it. [LB454]

SENATOR SMITH: Okay. I'll get some clarification on that. And then the map that you handed out, which model from a retailer standpoint, a consumer standpoint to protect the consumer, that is if there's going to be a fee there, a recycling fee, to make certain that it's as fair as possible to the consumer, which approach do you feel is the best, the consumer fee law or the producer responsibility law? [LB454]

JIM OTTO: The producer responsibility law. That encourages producers to design green, to be responsible for their own product, to make sure maybe even in packaging they do less because of the recycling involved, and eventually the consumer is going to pay it because if the manufacturer is having to pay the fee up-front, well, then I guess that would come down to the product. But the producer responsibility fee is by far, like I say, I think there's 23 states that have enacted that one, California being the only one that has not. [LB454]

SENATOR SMITH: So, although you're kind of...you're in a neutral capacity here, you tend to think that that's a better model, there's just some specific concerns you have on the bill. [LB454]

JIM OTTO: Yes. [LB454]

SENATOR SMITH: Okay. All right. Thank you. [LB454]

SENATOR CARLSON: (Exhibit 14) Okay. Further questions? Seeing none, thank you, Jim, for your testimony. Anyone else in a neutral position? We do have a letter in a neutral position from Lisa Disbrow of Waste Management. And with that, Senator Haar. [LB454]

SENATOR HAAR: Good. Well, thank you very much. I think we've had a good discussion. And I think the question was answered, Senator Schilz, about the money going into the fund versus...I didn't quite understand that part. It's just, I guess, in the state law all...or constitution, all fines go to the schools. So we're talking about fines. Well, the reality of the situation is a lot of electronics gets thrown away. And if I recycle mine as I did, I took a whole van load of stuff down to Goodwill a couple of months ago. I took care of that. Now, for other people that just throw it in their garbage, we all pay for

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that. Some people have looked at Nebraska and say, wow, we've got all this land, you know, we can just pitch our stuff. We don't. And if...I visited a number of landfills around Nebraska and even in small towns you can't just pile junk out and burn it anymore the way it used to be. Land is really valuable in Nebraska. And so, you don't just throw anything away anymore. So, we all pay when you throw something away. I mean, that's the truth of it. In this case, and obviously if we have a producer responsibility, yes, consumers pay an extra cost. But we all pay the cost if we just throw it in the landfill. We also heard, and it's an important part of this, this triangle that every school kid knows now about reduce, reuse and recycle, that the reuse part in the case of electronics, there are things that need to be disposed of properly and that's another angle here that just throwing it in the landfill, for example, when you have a CRT tube that has some mercury in it, is not proper disposal. But if we properly recycle things, some things will still be disposed of, but there are things especially in electronics like the rare earths--China has a hold on that right now--that can be recycled. So, all in all, I think, obviously, we have work to do on this and we will get together probably this summer with everyone who would like to clarify some definitions for example. Our intent...although if, you know, if there's question that needs to be clarified as well, our intent is not that a reseller of Dell products would pay this fee to Nebraska and so on. The mother company, or however we say that, of Dell would be paying that fee. Again, I think we've...in terms of tires, going back to where we were yesterday, tires don't just go away and now we've found good ways to recycle them. And you cannot throw them in the landfill. And I suppose there's still some people who throw them in the landfill, but it's against the law. And an important feature of this concept is that at some point you may no longer put these in the landfill. And in Lincoln and Omaha, no problem. There's a place to take them, but if you live somewhere in a smaller town, especially if, you know, you get way out to western Nebraska, it's difficult to find somewhere to do this kind of recycling. So, we would see that at some point...and again, this will need to be clarified as we work on the bill, that an infrastructure be developed so that people in all of Nebraska can recycle with convenience and they can recycle free. And those who buy the electronics, yes, will pay some additional money to the companies that produce them. And I think Jim Otto made a really important point. As we see this kind of program, product...producer responsibility go into effect around the country, the producers start to think about what's going to happen to that product eventually. And this may mean in terms of packaging, it may also mean ways to make a product easier to demanufacture so that we can get the good parts out of it and so on. But, you know, this is a trend, reduce, reuse and recycle and I think it's an important concept. We will work on it some more this summer to try to work some of these bugs out of it. [LB454]

SENATOR CARLSON: Okay. Thank you, Senator Haar. Any questions of the committee? Seeing none, thank you. And with that, we close the hearing on LB454 and we are going to take a 10-minute break and we'll resume on LB635, according to the clock back here, at 5 minutes until 4:00. [LB454]

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BREAK

SENATOR CARLSON: Okay. Thank you. It is 5 minutes to 4:00, and we'll start when we said we would. And so...bear with me, Senator Wallman. We will open the hearing on LB635. Welcome. [LB635]

SENATOR WALLMAN: (Exhibits 15 and 16) Thank you, Senator Carlson. Good afternoon, members of the Natural Resources Committee. For the record, my name is Norm Wallman, W-a-l-l-m-a-n, and the pages have handed out two handouts for you to look at. And so, my first handout came directly from the Nebraska Oil and Gas Commission's Web site. It is their own proposed rules and regulations. My understanding is, this past summer correct procedures were not followed in going through the state's rule and regulations changes. This bill would merely codify the changes that the Oil and Gas Commission proposed and put it on their Web site. The only difference between the bill and their proposed changes in the bill was an additional sentence on page 10, lines 11 through 13, "including the amount and source of water used for the stimulation and the amount of fracturing fluid recovered." The reason I added that line is because, water, water. That is Nebraska's number one resource. And I think it's prudent that we know how much is being used. I don't know anyone who could argue with this, especially with our state could be facing another drought again this year. In fact, water is so important to the state of Nebraska, we have an entire chapter in the Nebraska Revised Statutes devoted to it. I completely disagree with the commission on their fiscal note. I don't believe a new Web site would have to be created. My second handout comes directly from the Web site, FracFocus. So I went to the frequently asked questions section. Next to the highlighted X it states, "The following is a list of elements contained in the hydraulic fracturing records viewable on this site and an explanation of what each element means." Now, if you go to the second page, and look at number 11, it states, "Total Water Volume: This is the total amount of water in gallons used as the carrier fluid for the hydraulic fracturing job. It may include recycled water and newly acquired water." If the verbiage in the bill is not acceptable to FracFocus, we'd be happy to amend the bill to make some slight changes. I'm not making any claims to you if I feel fracking is safe or not. I just want to assist the Oil and Gas Commission in making the process more transparent. Also for the good of the state. I want to know the amount and source of water used. So under Nebraska Revised Statute 46-702, it starts out, "The Legislature finds that ownership of water is held by the state for the benefit of its citizens, that ground water is one of the most valuable natural resources in the state, and that an adequate supply of ground water is essential to the general welfare of the citizens...and to agriculture, and to the present and future development of agriculture in the state." Thank you, Chairman. [LB635]

SENATOR CARLSON: Okay. Thank you, Senator Wallman. Any questions of the committee? Okay, seeing none, will you be here to close? [LB635]

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SENATOR WALLMAN: Yes. [LB635]

SENATOR CARLSON: Okay. Thank you. [LB635]

SENATOR WALLMAN: Thank you. [LB635]

SENATOR CARLSON: You've heard the introduction, so we're ready to listen to proponents for LB635. Welcome back, Duane. [LB635]

DUANE HOVORKA: Good afternoon, Senator Carlson and members of the committee. Duane, D-u-a-n-e, Hovorka, H-o-v-o-r-k-a. I'm here on behalf of the Nebraska Wildlife Federation. I want to thank Senator Wallman for introducing the bill and bringing the issue back to the Legislature. Whenever you have bills like this, I think there's kind of two questions. One is, do we have a problem, and the other is, is this bill the right solution? I'm going to focus--because this is not really my area of expertise--a little more on just the nature of the problems that are out there so you get a sense of that. One of our mantras is bringing the best science, objective science to natural resources decisions, and the National Academy of Sciences is really kind of the supreme court of science in the country. It was created in 1863 by Congress to provide objective information on science to Congress, the President, and the nation. I found at least two studies that the National Academy of Sciences has published on the fracking question. One of them was in May 2011, and that study reported that fracking has contaminated groundwater wells in some areas, and they found, basically, harmful levels of methane in wells in Pennsylvania and New Jersey. When they went out and actually did the study, the levels there were about 17 times higher in some of the shallow wells in those active fracking areas than they were in nonactive areas. So that's one of the concerns that's been raised about the practice is the impact on groundwater quality. In Maryland, there was also instance where a well blew out and then the fracking fluids that were used leaked into a nearby creek and then into a river. So again, this kind of stuff can impact our natural resources, our groundwater, and our surface water. In June 2012, the National Academy also released a study where they looked more at the question of whether hydraulic fracking was causing earthquakes. That was the question: Is there a causation there? And if...I think I'm capturing their conclusions were that hydraulic fracturing has raised concerns that fracking presents a low risk in terms of causing earthquakes, but the wastewater injection wells present a higher risk. And being a political science guy, I hate to wade into geology, but my reading of what they were saying is there's a balance of fluids in the earth and if you're pumping oil out and pumping water in, you're kind of protecting that balance. If you're just pumping a lot of oil out without replacing it, or pumping a lot of fluids in, then that's where the risks to those earthquakes can present themselves. So again, this is not really my area of expertise, but I think it's clear that if you look at the science there certainly are some important issues that are presented for our natural resources. And I think this is, you know, a good attempt to try to address those issues by having the Oil and Gas

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Commission take a look at the problem and put in place rules and regulations that hopefully will go a long ways towards getting ahead of what is I think a potential problem in Nebraska. I understand it's not in widespread use here, but I think we have the potential out in the western part of the state where we've got some shale gas deposits where the practice certainly could be used. So I'll conclude there and hope you don't have any hard questions. [LB635]

SENATOR CARLSON: Okay. Thank you. Any questions? Yes, Senator Haar. [LB635]

SENATOR HAAR: Yes, thank you. You live close to Lincoln, don't you, Duane? [LB635]

DUANE HOVORKA: Elmwood, Nebraska. It's about 20 miles east of here. [LB635]

SENATOR HAAR: Okay. So why do you care about what's going on in western Nebraska? [LB635]

DUANE HOVORKA: Well, the Nebraska Wildlife Federation is a statewide organization, and we have members all across the state and so we care about what happens in western Nebraska as much as we do in my own neighborhood. [LB635]

SENATOR HAAR: Thank you. [LB635]

SENATOR CARLSON: Any other questions? One of your statements, Duane, unless I took it wrong, came across to me that when we pump oil out of the ground we should be replacing it with something or we're not in balance? [LB635]

DUANE HOVORKA: That, that's my reading of the National Academy, the summary of their report is that the earthquake risks happen when you're either...when you're changing the fluid balance. And I think the oil and gas folks could tell you a lot more than I would ever know about how that's done in Nebraska. But that was my understanding of their conclusion is when you're pumping a lot of fluid out and not replacing it, then depending on, you know, what the geology of the area is, that's when the earthquake risks can increase. [LB635]

SENATOR CARLSON: Now there's no question in 2012, we pumped a lot of water out of the ground. Should we be replacing that water with something? [LB635]

DUANE HOVORKA: I'm not sure what we'd replace it with, but I think that's a great question. And I don't know that anyone has looked at that issue of, you know, as we deplete the aquifer in some areas, I have no idea of whether that presents a risk or not. I think it's an interesting question, though. [LB635]

SENATOR CARLSON: Okay. And the same thing could be said for pumping oil out of

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the ground. You don't know whether that needs to be replaced or not. You're just saying it's not in balance any longer and that creates a concern. [LB635]

DUANE HOVORKA: Well, that's what the National Academy of Sciences' report was looking at. And what their conclusion was, that the practices that maintain the balance by pumping something else in to replace the oil seemed to be the ones where you had the least risk of additional earthquakes. And the ones where there was a higher risk were the ones where you were either pushing more high pressure liquids into the ground than were coming out, or where you were pumping a lot more out. So I don't know if...it seems like maybe the same thing would apply to water, but again, I don't know, and that's not what the report looked at. [LB635]

SENATOR CARLSON: Okay. And I think we want to be very, very cautious. I believe we have the best water supply in the United States and we want to be real careful before we try and replace what we pumped with something else, I would believe. [LB635]

DUANE HOVORKA: I completely agree with you. [LB635]

SENATOR CARLSON: Okay. All right. Any further questions? Thank you. [LB635]

DUANE HOVORKA: Sure. [LB635]

SENATOR CARLSON: Next proponent. Welcome back, Ken. [LB635]

KEN WINSTON: Thank you. I'm a little bit out of breath. I just was watching this in my office while I was participating on a conference call and suddenly realized I needed to get here, so. Good afternoon. My name is Ken Winston, K-e-n W-i-n-s-t-o-n, appearing on behalf of the Nebraska Sierra Club in support of LB635. Just briefly, the reasons that we're supporting it would be exactly the reason that Senator Carlson just stated. We have a tremendously valuable water supply in the state of Nebraska and we need to make sure that we handle anything that's involved with water with great care and concern, and that we know everything that is being put into the areas underneath the surface of the ground. There are a couple of things that we would suggest with regard to LB635. One of the things that we would like to know is, all of the ingredients that are being used in these kinds of operations, we think there ought to be full disclosure of all those kinds of things. If something is going to go in the ground, we ought to know what that is. There have been some representations that all those ingredients are benign. If that's the case, there should be no problem with disclosing all of those items. And so we think that that would be something that should be added to the bill. And so with that, I guess I would close my testimony. [LB635]

SENATOR CARLSON: Okay. Thank you. Questions of Mr. Winston? Seeing none,

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thank you. [LB635]

KEN WINSTON: Thank you. [LB635]

SENATOR CARLSON: Next proponent. All right, now we'll go to opponents. How many opponents do we have? Okay. About nine or ten. Okay. Welcome, Mr. Sydow. Welcome. [LB635]

BILL SYDOW: (Exhibit 17) Thank you, Mr. Chairman. For the record, my name is Bill Sydow, B-i-l-l S-y-d-o-w. I live in Sidney, Nebraska, and I serve as the director of our Nebraska Oil and Gas Conservation Commission. I'll say one thing here this afternoon: I'm proud to be from Rushville, Nebraska, because Kent Forney was from Rushville, Nebraska, and Ken Winston is from Rushville, Nebraska, so that makes three of us. I'm appearing today on behalf of our commission in opposition to LB635. I have in my handout a copy of a letter that Senator Carlson's office has the original of; that letter was signed by our commissioners in opposition to LB635. And I would like to just take a few moments to walk through some of that opposition. First, our Oil and Gas Conservation Commission currently has statutory authority to regulate and collect data for the chemical treatment and disposal of oil field waste in Revised Statute 57-905, Section 4(b) and (e). Very simple and short. The rule making that we are in the process of finalizing now involved water hauling, which is a part of LB635, as well as the chemical reporting of fracture treatments. That was initiated in March of 2012. LB635 effectively copies much of our proposed new rules in Section 3.022.16 and 3.042, as well as adds on, we believe, several facets that will be costly. And what it also does, it codifies, in a statutory sense, very technical reporting. LB635 negates the use of the FracFocus Web site by mandating additional reporting requirements. And it's not just the volumes. It's where the water came from and the amount of flowback, or produced water, that's recovered within 60 days. FracFocus won't handle those latter two. So a new Web site would be required to be developed. We used an estimate from a company in Tulsa, Oklahoma, who was a developer of FracFocus for the Groundwater Protection Council. They generated this estimate. It is actually higher than what I've shown: \$709,000. That project like that is not budgeted; funds are not appropriated. In fact, that's about 85 percent of our annual budget right there. And taxes would have to be increased on somebody, whoever would be chosen to pay for that. I'd just like to go through now some of the exhibits and speak to you a little bit about hydraulic fracturing, and we'll see how time goes. I have a map there that's taken off our Web site. All of those gray dots that merge together are wells. We've drilled over 20,600 wells in Nebraska. We have 800 oil and gas fields. We produced in western Nebraska and southwestern Nebraska, in the McCook area, of Red Willow, Hitchcock, and Dundy Counties, nearly 500 million barrels of oil and 300 BCF of gas since really 1949 in that particular area. And I'll say that hundreds, if not thousands, of those wells have been fracture stimulated without any water contamination. I have an inset right there that shows you the number of wells that were fracture treated in the state of Nebraska in the

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oil and gas arena from 2008. In 2008, we did 112 jobs. Those were all for natural gas wells, particularly in southwest Nebraska, and some where I live in Cheyenne County. The price of gas collapsed. We haven't even drilled a well for gas since 2008. In 2009, '10 and '11, we fracked seven, nine, and three wells. And last year, I'm estimating, we fracture-stimulated 12. I'm not going to say a lot about it, but I have something in my pocket that I want to pull out here. There's a health food store product. It's called guar gum. It's a major component of fracture fluids. It's...we can eat it. Another one that I have, that sometimes has been used, is potassium chloride. That product, if someone is on a low sodium diet, they can take potassium chloride. I will tell you that most of the ingredients, if not all of them, can be found in our kitchens, under our sinks for cleansers, or in our kitchen pantries. We are eating them. The last fracture job that we did in Nebraska was done about 20 miles east... [LB635]

SENATOR CARLSON: I'm going to stop you a minute so you don't get nervous about the red light, but I'm a little nervous about the...I haven't gone through all these pages, but what kind of time are we talking about to...you've come a long way, so I'm not going to... [LB635]

BILL SYDOW: Now, Senator Carlson, I really made this really for the committee. I wanted to talk a little bit about geology. I don't know, five minutes. I'll go for it. [LB635]

SENATOR CARLSON: Okay. All right. That's all right. [LB635]

BILL SYDOW: Thank you. The cross section there is in the Denver-Julesburg Basin. That's in the Panhandle. It's an asymmetric basin; and where we have performed most of our fracture stimulation jobs are in those rocks that are color coded with green or red. Red denotes Niobrara gas production. We have no Niobrara oil production in Nebraska and we may never, but they are attempting to establish some decent production in Colorado and in Wyoming. So I don't know if we'll get it. Our gas fields that we have, all of those wells are required to be fracture stimulated. We've been fracture stimulating wells since the 1950s in Nebraska. Every well is permitted...that we look at several things. And there's a couple of forms there. The top form on that handout, they have to tell us how they're going to design and cement the casing, and we always look at that. We always assume that there might be some kind of a treatment required but we don't require it, and LB635 would require that. When that well is completed, those operators have to report back to us. And that form on the bottom where I have the red arrow is the stimulation record for this well. They tell us...and we have collected since 1959, the volumes, the fluid types, and the proppant amounts. We never collected the components but they're very benign. The next page is from our Web site. We have a Web site that now has over half a million hits every month and we've titled it as Scout Ticket. That information from the completion form is captured by three individuals in my office. We type it in and it's displayed and that is available 24 hours a day anyplace in the world. Most of our wells are straight holes, and that's a typical well bore diagram.

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We make sure that the surface casing is there to prevent contamination of the groundwater and the bottom part will have enough cement to hydraulically isolate any fluids from moving behind the casing. When we fracture stimulate a well, what we're trying to accomplish is to extend that well bore with some wings, if you will, and that's shown on that next page. A well bore is only a 4- or 5-inch casing with some perforation tunnels that are maybe 20 or 30 inches. By extending the fracture out, we can connect more rock that is low permeability to allow the ease of oil and gas flowing into the fracture zone and then to the well bore. If we looked at a top down view, that's a pretty gross view, but the drainage would be elliptical. The fractures are probably in the tenths of inch propped open by individual sand grains, but it allows the oil and gas to flow. If we were to look at a completion of the surface operations, we would have set up the well with a completion rig originally, pressure tested the casing, perforated it perhaps with Schlumberger, and then have stimulation companies like Halliburton or Maverick Stimulation which is now purchased, and its basic industries. And the location would be set up. The colors of trucks: red is Halliburton; BJ Hughes is blue. The surface operations that we recently conducted in... [LB635]

SENATOR CARLSON: I'm going to ask you, where are we now on pictures so we can stay with you? [LB635]

BILL SYDOW: Oh, I'm sorry. It's a large one: Surface Operations in Cheyenne County, Nebraska. That's where I live. I personally was on that location for parts of two days. What you see being vented off, we used carbon dioxide, the operator did, Chama Oil and Minerals. This was a fracture stimulation in a horizontal well. And the fluid was 100 percent water with guar gum. We killed any bacteria with ultraviolet lights. That's all that was in that particular fluid besides sand, and so what's being vented off is some excess carbon dioxide in the lines in between stages. So that was an operation recently conducted. It was about a million...actually it's confidential, but I'm going to say it's about a million gallons of water is what we pumped into that well bore. It's a horizontal well bore. It extends for 4,000 feet to the south in that section. So this was the first stimulation that we ever tried in Nebraska. Hydraulic fracturing is not a new technique. It was developed by Stanolind Oil and Gas in 1947. They pumped the first job in southwestern Kansas. They patented that, and then they paid a man by the name of Erle Halliburton, who had cementing trucks in Duncan, Oklahoma, to pump the first job. I put down hundreds of thousands of stimulations have been pumped in the past 64 years. IHS, a public data source company, would say it numbers about 1.2 million wells in the United States have been fracture stimulated since 1949. The components of fracturing fluids are shown there. That was in a publication by the Groundwater Protection Council. Ninety-nine and a half percent of this particular job, which was in Arkansas, was sand and water. The other half of a percent have varying components of additives that do very specific things. Those names are probably intimidating and the purposes and so I'm talking about the fracture fluids there. But if you turn to the next page, I've broken out that half of a percent into some things that are literally in our

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household. If we start at nine o'clock position, if we have lime rings in our toilet, we can use Lime Away or CLR. That's an acid product, just as we had pumped maybe ahead of a stimulation. A friction reducer is there because these are produced at high rates. Sometimes people actually use mineral oil that we can take as a laxative for a friction reducer, if I'd say that. We may use something called acrylamide. If you ate any toasted bread today or roasted vegetables, you ate some acrylamide. The surfactant will break the water...the surface tension. We can use alcohols. In fact, isopropyl alcohol, like rubbing alcohol, is used. Those two products right there, guar and the potassium chloride can be used. If we adjust pH, it's an...it's Super Washing Soda. It's an Arm and Hammer product can be used. If we need a stiffer gel, which we didn't pump in this last one, it's actually cross linked with a borate, that's a boron hydroxide, and it's in Borax 20 Mule Team cleansers. To break that then, we'll use ammonium persulfate, and so the lady with the blonde hair there, ammonium persulfate will bleach hair out. So it's used there. If we need to protect our casing with an iron control so we don't precipitate iron, we use basically ascorbic acid, vitamin C, a product there, lemon juice. We can treat biocides. We don't want to introduce bacteria into our reservoirs because they will be detrimental. We don't use Clorox, but chlorine is a biocide, and the other product there is bromine. And we've used bromine in a lot of our wells in the southwest Nebraska. So I just wanted to point that out to you that these products that go in are very common. They're packaged in a different way but they're very low...low, low concentrations. We're about 2 percent and so I did include an actual Niobrara Chalk stimulation that was pumped in Dundy County, southwest Nebraska. And you can see those products by name. I'll tell you there's one in there, it's the nonemulsifier so that water won't tie up with any oil. It's a patented trade secret. Our rules and regulations would allow whoever is the director of the Oil and Gas Commission to go to that company, and upon request I could get that. I have to keep it confidential or the director would have to keep it confidential, but that is not a big thing. I actually would tell you, I think it's some kind of a fancy soap. But trade secrets are allowed in the United States of America. Much has been made out of it in hydraulic fracturing situations, but we...as we sit here today, we can't know what's in Coca-Cola because that's a trade secret, but there's some pretty nasty stuff in Coca Cola if you had it just by itself. So I guess just to finish--and thank you for the time, committee--we have the full ability right now to collect any and all information that we deem necessary. We currently collect treatment data and have for over 50 years. We're conducting rule making. We've had...and Stan Belieu is here to talk to you about that. It's in the process and rule making is not fast and that's probably a good thing. But there are certain situations...or not situations. Any rule has to go through four passes in state government: our Attorney General's Office, the Secretary of State, the Executive Board of this Legislature, and the Governor. So we're going to be in that process. I'll say this for the record: We've never had an incident of a fracturing fluid ever contaminating groundwater in Nebraska. And I'll go on record and say as a regulator, and I have 29 other peers in the United States, there's not one case of a fracture fluid ever contaminating groundwater in the United States. So, I'd just ask you not to advance this bill. [LB635]

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SENATOR CARLSON: Okay. Thank you, Mr. Sydow. Questions of the committee?
Senator Schilz. [LB635]

SENATOR SCHILZ: Thank you, Senator Carlson. Mr. Sydow, thanks for coming in today. Just a couple questions here as I look at some of the information we got. We've heard a little bit about...from Senator Wallman and other readings that...was there an issue with the rule-making process that happened as you guys were bringing that? What's the situation there? [LB635]

BILL SYDOW: No, sir. The only issue is when we looked up...and we used actually a model program that I got from Mike Linder at the Department of Environmental Quality. And so it had to do with the final way we were going to get the rule processed. And so what will be required is that we need to send our rules, which our commission has voted that we could adopt those. We don't really have adoption, we vote...we have an order that will require that to be out there, Senator Schilz. But we have to go through the process with the Governor, with all the offices as required under the administrative law code, I believe that is. So we have to do that. And actually I...we'll have to have one more public hearing as a result of that. [LB635]

SENATOR SCHILZ: Okay. And how long have you been working on this set of rules? I suppose these rules don't just address the fracking issue itself, do they? [LB635]

BILL SYDOW: No, sir. They are very broad. And so Stan is here, and another gentleman that can speak later, but there's our amended application, it's 13 pages. This was an absolute comprehensive look at our rules and regulations that had not really been reworked since about 1993 and 1994, that vintage. There are all kind of changes in there. We assembled, basically, a technical and a legal committee, legal being we had one oil and gas practicing attorney, in Sidney, that sat on our committee, and we looked at all the chapters in our rules and regulations. [LB635]

SENATOR SCHILZ: All right. And how long have you been involved in the process to date? [LB635]

BILL SYDOW: That process started in March of 2012. It took several months, of course, to go through the rules, then write some, get a consensus on how it would say. I'll tell you that the hydraulic fracturing rule was in there. We had no push back, and no one in the industry is saying that they don't want to report this, because they agreed to it. They want as much transparency on this issue as anybody else. So there's no push back on that, and our intention was to use FracFocus Web site, of which Stan Belieu has been working on that for about three years now. So that was a big part of it. [LB635]

SENATOR SCHILZ: Sure. And how much...just my last...or one of my last questions.

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How much longer do you suspect that this will take to get in place, if you had to make a guess? [LB635]

BILL SYDOW: You know, I think we could have these rules in place by June or July. That's what I'm thinking. [LB635]

SENATOR SCHILZ: So a little over a year. [LB635]

BILL SYDOW: Yeah, from the start to a year. [LB635]

SENATOR SCHILZ: And then you said that there will be a gentleman later on that can explain more about the FracFocus and how that all came about, correct? [LB635]

BILL SYDOW: Yes. Yes. [LB635]

SENATOR SCHILZ: Okay. Thank you, sir. [LB635]

SENATOR CARLSON: Senator Smith. [LB635]

SENATOR SMITH: Thank you, Chairman Carlson. Mr. Sydow, thank you for being here and for testifying, and I do appreciate the thoroughness of your presentation. And maybe in the exchange you had with Senator Schilz, you may have said this and I missed it, but the rules and regulations have been drafted but not enacted at this point, and you started the process around March. You think it will be finished sometime around June or July. Was there originally a deadline of when these were supposed to be completed? [LB635]

BILL SYDOW: No, sir. [LB635]

SENATOR SMITH: No established deadline. [LB635]

BILL SYDOW: No. This was on our own motion. And I will tell you this, the discussion this morning, but my commissioners who I report to, I work for them, asked me in the fall of 2011 to specifically begin to work on a rule to have our companies be required to disclose, if you will, the chemical components of fracturing fluids. That was the main agenda, but rule making takes a long time and we had some things we really needed to clean up in our rules, like how many days' notice, five days or ten days. Well, is that a calendar day or is that a business day? And we went through it that thoroughly. So we have no mandate to perform on a timetable. We continue to collect all of the data. And the bottom line is, as far as what we're maybe perhaps not collecting is...I mean, we're not talking about that many wells a year. [LB635]

SENATOR SMITH: Okay. So has there been an intended or unintended delay in

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meeting any established committed time to have the rules and regulations completed, that you know of? [LB635]

BILL SYDOW: Well, to be quite honest, when Senator Wallman introduced this bill...and I'll just say it's sometime in January, I don't know the date, it's like...at that point it was like we stopped because it would be...the language is different, the requirements for reporting are different. We could not use FracFocus for that part, and so we haven't...I mean, we have not gone to the Governor's Office, the Executive Board of the Legislature yet. I mean, that's our intention. I can say that we've had two public hearings. We've taken oral comment. We've taken written comment. We've incorporated those comments, and we came back out in September, I'm going to say around the 25th, and that was a final hearing, and our commission voted to approve the rules that we had at that time. [LB635]

SENATOR SMITH: Okay. [LB635]

BILL SYDOW: But I can't enforce them because it's not the rule yet. [LB635]

SENATOR SMITH: Okay. And I understand that API has some concerns about the issue of forced pooling in this legislation. Can you explain that a bit to me? [LB635]

BILL SYDOW: Yes, sir. I just saw that API letter this afternoon...or at about noon. And Senator Wallman, your bill doesn't even address pooling. But Nebraska allows for forced pooling if someone...an unleased mineral interest owner, who has the right to drill their own well, by the way, if they did not want to lease, or if there were competing companies that had owned or leased part of the minerals, that they couldn't get along, we have the ability. We're a quasi-judicial agency. We issue orders and they are binding by law. Legally, we can allow a well to be drilled under the forced pooling provisions of the statute in our rules so that that well could be drilled. Normally, we're on 40-acre spacing, just one well per every 40 acres. But some of these new wells, if they were successful, we could be at 640-acre spacing. So it just allows the operators who desire to drill a well to know where they stand before they drill the well. And if they're unsuccessful, it's like, sorry. They paid somebody else's costs and there's no cost recoupment. If it's a successful well, then there are statutes that we actually supported the amendment that Senator Schilz had two years ago to have some cost recovery provisions increased so that the people who take the risk can reap some of the reward, if they're successful. So I don't know about what API really was doing there, Senator Smith. I'll tell you this: API is a national organization. I don't know if we have any API member companies that even operate in Nebraska. [LB635]

SENATOR SMITH: All right. Thank you. [LB635]

SENATOR CARLSON: Okay. Thank you. Senator Dubas. [LB635]

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SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Mr. Sydow, for your information. I really appreciate that. You have this sample of the Scout Ticket. Is that something that's available on a...could be or is currently available on any kind of a Web site? [LB635]

BILL SYDOW: Yes, it is, Senator Dubas. Thank you for asking. That is an information data set that we actually designed the format in our commission. And so when you go to our Web site, you can click on any well that you want and it will format the information for the well you clicked on exactly as that Scout Ticket has. Or...and that comes from what we have in our electronic database, which is pretty substantial. The formation tops that you have there, we pick all of our own tops now because we don't really have a lot of support from Geological Survey right now. So we pick our own tops. But in our historic database, we brought over all of the tops from the Geological Survey. We brought over all of the core data and all of the drill stem test information. And so that is available. You can print it on a clean sheet. It actually would fit on a 8.5 X 11, and so...I mean, I want to say a little bit more about that, but I won't. Okay. [LB635]

SENATOR DUBAS: Okay. I haven't had a chance to do like a side-by-side comparison between what this bill says and what it looks like is in your proposed rules and regs, but from what I understand there's a lot of similarities. Are there...is that...but then I thought I heard you say, no, that there's not. [LB635]

BILL SYDOW: Well, there are some changes, some wording changes that made LB635...they're additive to our proposed language. [LB635]

SENATOR DUBAS: Okay. So the bill goes farther than what...? [LB635]

BILL SYDOW: Farther beyond. And it's on the reporting, like...I'll just tell you, FracFocus cannot handle where the water came from. They'll never do that. And they'll never...they don't have a reporting capability for the amount of produced water back. So I know there's a gentleman here, Mr. Dana Wreath, that can talk about this, but we have reporting requirements that have to be conducted every month; so the operators have to tell us how much oil, gas, and water they produced, and where that oil, gas, and water went. They have to tell us that. And so we report that. We have a lot of our produced water is injected in the Underground Injection Control Program wells. That's an EPA delegated program that we manage directly from EPA. We receive it...we apply for and have received, until two days from now, money to run that program. So we already maintain the volumes that come back and the volumes of produced water. As far as this bill, and now this is geological, but in western Nebraska due to the U-shape of the Denver-Julesburg Basin, we are very underpressured. And so right here in Lincoln, Nebraska, with Salt Creek, Salt Creek is there because the Dakota sands are emanating salt water that is coming out of the Dakota and actually being forced by

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hydrostatic head, beginning clear out at the mountain front in the Rocky Mountains in Wyoming. And that's why it's there. It's flowing out. And our reservoir pressures are exceptionally low, half of what...or less than half of what I normally would have expected in other places I worked. And so we don't have wells that flow for us. A gas well, if you can get it dried up from the water, it will flow back. But if it's water or liquid, we have to pump every barrel back out of the ground, artificial lifts. So somebody has got to pay for electricity or some propane to run an engine. So we...and some of that we keep track of and the production is also available on our Web site. So people can look at the production of produced fluids and actually we have it so they can plot it out. I can tell you that our Web site that we have, we developed it on a shoestring. And I'm going to tell you, I believe it's the best Web site in the whole United States. It's the most accurate, I'll guarantee. We give a lot of data away, and so if I...a part of our mission, which there was a discussion I saw this morning, a part of our mission is to promote the development of the state's oil and gas resources. And the way you do that is you put data out there for the general public to see, or for oil and gas companies to access, free, and just provide a low-cost or no-cost database. You can go on our Web site and you can download the electronic shape formats that we got from the Department of Roads for the state of Nebraska, the county shapes, the township shapes, the section shapes, and their exact corners. We will give you all of our well data with latitude, longitudes, and all of those well tops so that can easily be brought into a geographic information system mapping program. I'd say we give away \$150,000 worth of data if somebody wants to get it. That's the way to promote the development of your resources is you hand people low-cost or no-cost data. And so we regulate and we have to...we require certain things to be done. We watch it. Every well has to be logged. That's valuable information. Maybe a typical logging job, a cheap one, is \$15,000, \$20,000. But we require every well to be logged. We keep that log. It's scanned. It's available on the Web site. A copy of it goes to our Geological Survey because it can be used in mapping, not only for the deeper formations, but for groundwater evaluation as well. And it has been. It's a very valuable data set. So we require that to be done. We require reporting on every well and we literally are cradle to grave. We have field inspectors, I have two; and we cover the whole state. One lives in McCook, one lives in Sidney. And so we broke up those areas. They witness a lot of different operations. They get phone calls during the day. And I'll tell you, our agency, we're on call. Somebody is on call seven days a week, 24 hours a day, because the oil field doesn't stop. It goes on and on. And so we sleep with a cell phone, and we share it around. But things go on and decisions have to be made and that's a part of our job. [LB635]

SENATOR DUBAS: In regards to what you talked about just now as far as your Web site and the amount of information that's on your Web site, is that something that you've included in your rules and regs process, what you want on those Web...is that something you put into rules and regs, or...? [LB635]

BILL SYDOW: No, Senator Dubas, we just did it. [LB635]

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SENATOR DUBAS: Okay. There's nothing in your proposed rules and regs that further builds on that, or...? [LB635]

BILL SYDOW: Oh, no. We built our Web site. I have a wonderful man I work with. He's a master of ag engineering. He's great on mapping and computers, and his name is Chuck Borchert. And Chuck basically took the basic part of this Web site and expanded it, so that we can put out a lot of information. And it's very quick. I'll just tell you, people are...they're very impressed with our Web site. You can access it all over the world if you want to. We actually have some Australian companies, two of them, that are interested in coming. One is drilling a well right now in Banner County--Australian company. They got their information off the Web site. So it is something that we did as an agency. We support our own Web site, so all of our hardware and software is in our back room, so to speak. And anyway, we host it, we maintain it. We're able to put a lot of information out there and updates, and so we use it for that. [LB635]

SENATOR DUBAS: Just one more question, then, along that line. You said the difference between the legislation and the rules is in the reporting and that the legislation is requiring a lot more reporting. So is that even more...the reporting requirements in the bill is even more than you're already providing on your Web site? [LB635]

BILL SYDOW: It's more, Senator Dubas, in just two facets that really make it critical on the Web site. It's like, we can report volumes to FracFocus, but we can't tell...we can't report in FracFocus where the water came from. It's impossible. You know, in certain instances I can tell you exactly where the water came from, and I will, real quickly. This well that Chama Oil and Minerals fractured stimulated, they went to a gentleman, a friend of mine who passed away this last fall, his name was Virgil Nelson. They bought the water from him. They bought 20 acre-feet or something like that off of a metered, registered irrigation well. Virgil agreed to sell them the water and I don't know how much he got for it, but he got something because he's not going to be able to irrigate with it next year...his son is not going to be able to irrigate with it next year. But that's where the water came from. And when that was done, that left Virgil Nelson's property and it went down to another person's property. And so there was a water transfer that was conducted, a public notice in the newspaper, in our Sidney newspaper. So that was made a public record. We have...you know, our NRDs have to do a lot of work now and they have meters probably on every NRD, certainly on the big irrigation wells. So they...it's metered. They know how much goes out. That particular fracture job did that. I'll tell you, down in southwest Nebraska, the water actually came from Wray, Colorado, from the town of Wray, Colorado. It wasn't very far away. They hauled it over. A company called Fidelity Exploration and Production is drilling a well right now, a horizontal exploratory well in Sioux County, which is our very northwesterly county in Nebraska. When they drilled the two straight holes, I've been told they got their water

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from Torrington. Hauled it. So anyway, that...it's like we can't handle that in the current Web site and we don't...we're not going to develop our own Web site. We're going to use FracFocus because it's already there and we've got a substantial time investment in FracFocus with Stan Belieu's work and Chuck Borcher's work. I mean, these men were technical people on that project and we worked on it for three years. Other states are using it. In fact...well, I don't want to steal what Stan might say, but... [LB635]

SENATOR DUBAS: Thank you, Mr. Sydow. I appreciate the information. [LB635]

SENATOR CARLSON: Okay. Thank you. Senator Haar. [LB635]

SENATOR HAAR: Yes, thank you. First of all, in your handout you say that Senator Wallman has effectively plagiarized your new rules. That's a pretty strong term. [LB635]

BILL SYDOW: I said when I handed that out, I believe I said that he effectively copied it. But in the 3.022, I mean, it is. It's almost word for word. [LB635]

SENATOR HAAR: So is that plagiarizing our... [LB635]

BILL SYDOW: Well, it's copying. I mean, I don't know how we want to make that term, Senator. I don't... [LB635]

SENATOR HAAR: Okay. And then according to your testimony, Senator Wallman has actually stood in the way by presenting this bill. [LB635]

BILL SYDOW: This is...no. Senator Wallman personally has not stood in the way, but this bill lets...I...you never know, I don't know your decision. I can't make your decision. But if this were to pass, we cannot...we're back to the drawing board on how we're going to be able to report our components on fracture stimulation. We don't have a Web site that can do it and FracFocus cannot do it. So now, it's like, if we have to come...if this became a statute, we cannot report through FracFocus where the water came from and how much water was produced back. Can't do it. FracFocus is not going to change their Web site, so we're going to have to be developing a Web site that will be able to handle that. And actually there's a lot of security on the Web site back and forth. Because the way this would actually happen, Senator Haar, is...let's say, Maverick Stimulation pumped this job for you, you're the operator, you would have to ask Maverick to give you the actual volumes and the chemical numbers that would be required for FracFocus, and they would upload that to you. And then you have the responsibility to look at that and make sure that's done; and then in a secure environment, you upload your data in a format to FracFocus. So it's a secure...so nobody can change your data. They can't take something out, they can't put something in. When you're satisfied with it, then you have to do that. But if we had to have a whole new Web site, we're going to be required to have something with some security, and

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actually password it on who has the ability from a certain company to even put data in, so. [LB635]

SENATOR HAAR: Okay. Well, I have sort of a time line of your regulations and I'd like to go through that and see if it's accurate. Last year in January 2012, Senator Wallman had a bill that was basically patterned, plagiarized after Texas. [LB635]

BILL SYDOW: Yes. [LB635]

SENATOR HAAR: Okay. And that he introduced. And at that hearing, and I'm sorry I couldn't have been at that hearing, I was sick that day. But at the hearing it was said that the commission would propose rules and regulations, so don't pass the bill; trust us, we'll get the bill passed. Then as of August 2012, actually the proposed rules and regs were on your Web site, but because they didn't follow the legal procedures for adoption, there's nothing out there now. [LB635]

BILL SYDOW: Yes, sir, there is something out there. Because what we had to do, we had to put a first...a copy of our proposed rules and regulations out there, and we put that on our Web site. We sent e-mails to every operator or hard copies or interested individuals, and from our database, and they had an opportunity to make verbal comments, they had an opportunity to make written comments, and those were considered. But we had a public hearing, I don't know, June or July, and then we modified that document, our amended rules and regulations. And people can correct me if I'm wrong, but I think that was in September. That was in September. So if we want to talk time lines, I'll just tell you personally what happened to me. My little sister died in southeast Texas two days after that hearing. She was a widow lady. She had no children and I had to go take care of her, as well as her household and everything she had. So that kind of set me personally back, I'll tell you on that. And then, just even with some sicknesses that I had after that, so I think maybe it wasn't on the time line that I wanted to have, but we've made great progress. Senator Haar, we've gone through all of our rules and regulations. There are changes in that document in our Chapter 2, our Chapter 3. Chapter 4 concerns the injection wells. We...I mean, we went through it. It was not a short time period. And I'll assure you, we're not trying to hide anything. Our disclosure that we're proposing is to use the national FracFocus, which is exactly what the state of Texas used. We just would rather do it by a rule, and we...because we have the ability. We have the ability, Senator Haar, in 57-905, Section 4, to regulate to prevent waste. But we can collect information on the...it says the shooting and chemical treatment of all wells. And that's what we're doing here, the chemical treatment. We have at the very tail end of that in the (e) section, that we have the right to regulate oil field wastes. That includes produced waters, that includes tank bottoms or heavy oily products, that includes drilling of muds, and that includes flowback or produced fluids back from hydraulic stimulations. We have that authority. That's what I'm saying today. And we are proceeding down that road. We have collected, since 1959, information.

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We're making it available on our Web site so that when someone gives us our form 5, that's our completion form, that thing is scanned. As soon as we go through the well file, people can actually see what they filed, and then we ten-key in, or type in, that stimulation data along with all of the other information off of that and that goes into our electronic system, which is called the Risk-Based Data Management System. That was developed by GWPC as well. And then we package it up so that the Scout Ticket that Senator Dubas asked me about, we put it all together for people. So we provide them as a...a one time...they can generate it anytime, but it's a complete summary of that well at least for what we felt was the pertinent data. So we're putting the volumes out there. We don't have any problem. I'm just going to tell you, we don't have any problems of asking, because we are. And the industry does not have any problems on reporting what's in those fracture fluids. Nobody is ashamed of it, nobody is embarrassed. [LB635]

SENATOR HAAR: But, I guess, I just have to say, I'm impatient because a year ago we were told the rules and regs, and I understand, I'm sorry about the personal losses, but part of the purpose of this bill, as I understand it, to mandate it because it's not being done. And if it's not done this year, then we have to wait until 2014. [LB635]

BILL SYDOW: No, I think we can get it done. I mean, the administrative code that is Section 84, and I don't remember the numbers. But that's even a fairly lengthy process to have the Attorney General look at all of those rules, to have the Governor look at all of the rules, to have the legislative Executive Board look at the whole package, as well as the Secretary of State, and then we have to have another hearing. And you know what? There may be some public comments that we're going to have to now include into that, and then it will go on. The rule making...and I think it's a good thing. You just don't slam dunk rule making. It takes a long, long time, and it's hard work. [LB635]

SENATOR HAAR: And I understand that. Did fracking just come up as an issue last year, January, with Senator Wallman's bill? Or, you know, why aren't there fracking rules in place? And I agree, I've read 57-905 which gives you your powers and duties. [LB635]

BILL SYDOW: Right. [LB635]

SENATOR HAAR: And how come those...fracking has been an issue for a long time now and nothing is in place in your rules and regulations; so this law would say, maybe we have to mandate it. [LB635]

BILL SYDOW: No, sir. I absolutely disagree with that, Senator Haar, and this is why. We effectively regulate well stimulations right now in a number of ways. We look at how that well...when we permit that well, we evaluate the casing and the cement. We evaluate every well so that we look at how deep we're asking, or in fact, telling the operators

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they're going to set their surface casing. We'll do that. We don't want them to set anymore than they have to, but we want it to cover up the groundwater. So that well gets looked at in that permitting process. When the cement is pumped, they want to have a hydraulic seal so that their stimulation goes into the zone that they're paying a lot of money to have it go into. [LB635]

SENATOR HAAR: Yes, and I understand that. But that's been...you've been doing that for some time. [LB635]

BILL SYDOW: Yes, but so the issue is, we don't have any groundwater contamination. We don't have any constituents in our hydraulic fracture fluids that are not...they are normal constituents and I've shown that. It's like, I don't have any outcry, sir, in Sidney, Nebraska, from any landowner--from any landowner. And I have done outreaches as where I could. There's not a lot of Rotary clubs in western Nebraska. I mean, there's probably...but I've spoken at Rotary club in Scottsbluff, Senator Harms's hometown. I have spoken at Rotary club in Sidney, Nebraska. I've spoken at Rotary club in Ogallala. I mean, that's my travel. And I talked about a new potential play that maybe the industry would develop. I talked about how you drill and complete horizontal wells. I talked about the role of our commission. I was asked in, I'll say November, I can't remember, Ms. Lage would know, I put on a presentation with Mr. Steve Mattoon, who is an oil and gas attorney, at the Nebraska State Bar Association annual meeting in Omaha, and I drove down there at our expense and we put on a school for continuing education. So I'm not trying to hide things at all, Senator Haar. [LB635]

SENATOR HAAR: No, and I'm not saying hiding. It just seems to be taking so long. For example, and I've gone out now to FracFocus because I've read all the testimony from last year. How long has FracFocus been? [LB635]

BILL SYDOW: FracFocus has probably been available to operators for three years. [LB635]

SENATOR HAAR: And we haven't mandated that? [LB635]

BILL SYDOW: No. [LB635]

SENATOR HAAR: Because other states like Texas, North Dakota, Colorado, Oklahoma, all mandate that use of FracFocus. Why haven't we mandated that? [LB635]

BILL SYDOW: We're in the process. We're in the process. I can...I'll tell you, we, through our appropriations committee a couple of years ago, they gave me an appropriation to create one additional position in our agency. And I've been there...this is my 19th year. We were one person short on a technical basis, an engineer or a geologist, ever since before I went to work. And while I was the director...I'm a hand.

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That's what I am. I do a lot of different kind of work and there wasn't anybody on my staff that was able to do it, with the exception of Mr. Stan Belieu, who was our staff petroleum engineer. He was our underground injection control person. And Stan was dedicated 100 percent on our grant through U.S. EPA to injection wells. So I couldn't turn him loose. I had nobody. So... [LB635]

SENATOR HAAR: So are we underfunding? This is really an important issue for the whole state. Water is our most important resource and if we're not supplying enough money to do things on a timely basis and we have to get a mandate from the Legislature, then something's wrong on our end. [LB635]

BILL SYDOW: No, it's not. I think it operates very effectively and very efficiently. But in 2011, we created the position of deputy director; and we searched, if you will, but Stan accepted that position and that was in December of 2011. We had the bill from Senator Wallman last year, which we spoke against, obviously. And when we went back, Stan began to assemble a technical work group of...it was actually four people, Stan and myself, and we went all the way through the rules. We went all...and I'm not going to say the time frame, but I'm going to say it took several months to go through those rules. [LB635]

SENATOR HAAR: Then why were the other states on FracFocus so much earlier? [LB635]

BILL SYDOW: I don't know. I mean, I don't know. I don't really understand why it's an issue. The FracFocus was designed to have the chemical constituents be put out in a national database. That was a decision by states. And I think that Texas...see, I'll just...Texas is a state that everything is bigger there and they can do no wrong and it's better in Texas. I believe that they have myriads more wells, so they were...may in fact, and I don't know this, have been working on a reporting right there in Texas and somebody introduced the legislation on FracFocus. No one has anything to hide. We have only... [LB635]

SENATOR HAAR: I'm really not talking about hiding anything, but... [LB635]

BILL SYDOW: But we have no issue. I'm just saying, we have no issue in Nebraska. I don't think that we are getting a lot of water. I mean, some of these jobs, the 112 or whatever it was in 2008, they were about 35,000 gallons apiece, 35,000 gallons; about 35 percent of it was carbon dioxide or nitrogen. So we're not talking about tremendous volumes of water. And where we drilled a lot of these little gas wells were in the Sandhills, in Chase County and in Dundy County. There was not any production...it was production agriculture, it was cow-calf operations. So it's not like we were taking a lot of water from them, Senator. [LB635]

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SENATOR HAAR: Okay. Well, you said at one point that nowhere in the United States has there been contamination of groundwater from fracking. [LB635]

BILL SYDOW: From a fracture fluid. [LB635]

SENATOR HAAR: So the National Academy of Sciences in their May 2011 report is wrong. And we probably both need to get that and look at it because they're saying there has been...there has been pollution of aquifers by fracking fluids. [LB635]

BILL SYDOW: Okay. Just to...I'm going to tell you this. In about 2002 and 2003, there was the allegation that was made that hydraulic fracturing was contaminating areas of groundwater with the development of coal bed methane. Methane is attached to coals. I mean, if we have mine explosions and it was being exploited for a natural gas source in the Powder River Basin, the San Juan Basin, the Appalachian Basin, but...and also, not in the Appalachian but in Alabama. The EPA took two years and they looked at every one of those areas and they made calls to people's homes where there were allegations, and they published a report in 2004; and they said, we find no...no hydraulic stimulation has caused any groundwater contamination. And now, as recently as probably last year, the administrator of U.S. EPA, when she was before the House Committee on Energy, said, and I don't think she was under oath, we have no evidence at U.S. EPA that there's been any groundwater contamination caused by hydraulic fracturing. The administrator said that and... [LB635]

SENATOR HAAR: Well, we'll get a copy of the National Academy and look at that. But I'd like to go to something else you said. You said that the stuff that's in the fracking fluid is pretty much what you'd find under your sink. And I want to tell you what I found on FracFocus. This is about a well in Colorado and this is on FracFocus. It's called Halverson, number 20-11. And here are the ingredients. Of course, as you said, water is a big one and they have guar. But one of the ingredients has xylene in it. And I went out...chemistry was my major, so I'm just curious. I went out and looked at xylene. And xylene is a chemical you don't have under your, you know, dishwasher, whatever, and it's not something that you would want to drink. In fact, there's a whole list out on the EPA site about the dangers of xylene and how you have to treat it and so on. So in this liquid used on Halverson, number 20-11, there's xylene; there's trimethylbenzene 1, 2, 3; trimethylbenzene 1, 2, 5; trimethylbenzene, etcetera, etcetera; methanol, so if you have these under your sink, you'd better remove them because your sink is going to blow up. [LB635]

BILL SYDOW: Well, the data that I showed you was in the Groundwater Protection Council publication on fracture stimulation in the new type of gas reservoirs. That was one that was taken from Arkansas. I don't know about that, but I'll tell you in Nebraska we don't use xylene, we don't use benzene, the BTEXs. [LB635]

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SENATOR HAAR: But if it's not reported, I mean that's the kind of concern that I have living in eastern Nebraska. I look at this kind of stuff and this is what's out on FracFocus. And to say that these are the kinds of things that we'd have under our, you know, under our sink, I certainly wouldn't have trimethylbenzene 1, 2, 3 and xylene in a bottle under my sink. They're both very volatile, they're both explosive. [LB635]

BILL SYDOW: Okay. And that wasn't...those are not in what I showed you right here on those major components of those right there. They're... [LB635]

SENATOR HAAR: But this is on FracFocus, and this is a well reporting. [LB635]

BILL SYDOW: Okay. It's there. So now someone can go and look and see what they reported. And it could very well be that all of the produced fluid on that was captured back in a tank and injected into an underground disposal well, a class 2 well in the oil field under the auspices of the Colorado Oil and Gas Conservation Commission. So that when we produce fluids back, in Nebraska typically they go to a tank, they go to a tank. And then it's hauled off typically to an injection well. But when the fact of the matter is that the rock mechanics will not allow a fracture to grow hundreds or thousands of feet into the air because the rock mechanics are plastic. You can't do it. So it stays in the zone. On the...so, I don't know, Senator Haar. I mean, that's...it's reported so people know and that's the purpose of FracFocus, so that people will know. And it can be the neighbors right there. But I will tell you, sir, I don't have anybody beating down my door out...we have...we have about... [LB635]

SENATOR HAAR: They are beating your door down for what? [LB635]

BILL SYDOW: For information on...the people are wanting to know what's in that fracture fluid. I don't have it. We fracture those very few wells, very few wells in the Denver-Julesburg Basin. And there are people here today, they're here from Kimball, Nebraska. They can tell you about certain things. I don't have...I don't have people who are concerned. I guess if I did, you know, would I...I'm still going to try to educate them and we are going to put that out there, but I don't think that LB635 should be...this technical reporting should be put in a law. I mean, I assure you, sir, we are going to get that rule passed and it will be done. But we're...we...less than 12 wells? [LB635]

SENATOR HAAR: And if it's not done by next year, will we hear the same testimony to wait because you're working on it? I guess, that's my impatience, that's my concern. [LB635]

BILL SYDOW: Well, I'll be disappointed if we can't be done by June or July of this year. [LB635]

SENATOR HAAR: Thank you. [LB635]

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SENATOR CARLSON: Okay. Senator Brasch. [LB635]

SENATOR BRASCH: Thank you, Chairman, and thank you, Mr. Sydow, for coming here to testify and you do have a very good Web site. This morning on the floor, I did venture to your Web site and I did really enjoy geology during college and you're a geologist and you worked in here, you said, 19 years, but before that Wyoming, is that correct? Or... [LB635]

BILL SYDOW: I worked...I was an oil field transient, Wyoming, Colorado, Oklahoma, and Texas. [LB635]

SENATOR BRASCH: Okay. So, and your background as a geologist and scientist in your field is quite impressive, so what I'm looking at...or is the fiscal note here...and I'm very curious, your Web site is very good, but to initiate additions that Senator Wallman is proposing, does the university or someone else can host this that secure? I mean, are these costs...? [LB635]

BILL SYDOW: We could host it, Senator Brasch. We could host it, but we'd have to develop it and we have to develop the security that goes with that reporting, and we can't just use FracFocus because it doesn't...and that's sophisticated. There's upload and download capability there that we would have to develop. And that cost, we would have to develop a new Web site to be able to get the data specifically, not on the chemical constituents, but on the volume of water or fluids produced back, and where the water came from. FracFocus cannot handle it. So we'd have to generate, basically, a new Web site. Now, it could be a part of ours, but it's still going to cost a lot of money. [LB635]

SENATOR BRASCH: And because some of this is a duplication, correct? [LB635]

BILL SYDOW: The vast majority of it, I think, would be a duplication of FracFocus. Now we just have those two pieces that we can't report to FracFocus. And, I mean, I don't know how you feel about water volumes and being used, but the water that's been used in that recent one, I mean, I have personal knowledge it's going to be metered. It was metered. It's going to be less water the Nelson family has to irrigate with next year, but they receive some compensation. I mean, they...that's the only way they were going to get the volume of water. And we were able to...they fracture stimulated several wells. We've actually, maybe tonight, going to cement the liner in the horizontal on the second well in that section. And then they will begin...and this is all experimental on that, the big fracture stimulation. We've never pumped one that big in Nebraska. And while I'm...I have to say, you know, you never give up hope. It didn't look too good. [LB635]

SENATOR BRASCH: Okay. I have no other questions. Thank you. [LB635]

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SENATOR CARLSON: Senator Smith. [LB635]

SENATOR SMITH: Thank you, Senator Carlson. Mr. Sydow, I just wanted to kind of wrap up here a little bit and just make sure I recap a couple of things that were said during your exchange back and forth with Senator Haar, and then I do want to follow up on the fiscal note as well. I appreciate your expert testimony. I think we're very fortunate to have someone in our state with your kind of background and your knowledge in this industry, and then, no question, this is a fossil fuel industry and that's who you represent. And I understand that and you represent them very well with your background, your experience. And I appreciate your efforts to help us provide a safe, clean, and abundant supply of energy that we need desperately in our state and our country. All citizens, all businesses depend on that and I appreciate your efforts in that. The comment about plagiarism...and Senator Wallman is a good friend so I don't want...I want to make certain he doesn't misunderstand what was said in your testimony. I'm going to read it so we can make certain it's very clear what you stated, and I don't want him to feel in any sort of way that you're calling him a copier or a plagiarist. But it says, LB635 effectively plagiarizes our proposed new rules and codifies technical reporting. You're making a comparison between LB635 and your proposed rules and regulations. [LB635]

BILL SYDOW: Our proposed rule on our amended application. [LB635]

SENATOR SMITH: So that's what was intended to be communicated in that... [LB635]

BILL SYDOW: Yes. So, I'm...Senator Wallman, I mean, I apologize if I...I didn't mean that disparagingly, but it's like they're duplicates of... [LB635]

SENATOR SMITH: And I appreciate it. I didn't take it as such and hopefully Senator Wallman didn't take it as that either. You're just trying to make a comparison between the two. Also, rule making involving water hauling and chemical reporting was initiated in March, 2012 and is in the final processes and process of being developed and completed. And from what I heard in the exchange, we're hopefully looking at midrange of this year to get that completed. And I heard Senator Haar say that he would be disappointed if the rules and regulations are not completed and he's going to be very disappointed if we're back here next year talking about it, and I don't really expect that to happen. And I'll go so far as to say to Senator Haar, I would be disappointed as well, but I don't think I'm going to be. I don't think I will be. I think you're on this and I think you're trying to get it done. So with that, let me get to the fiscal note. And I know we've drug this on a long time, so hopefully you can make it fairly short. Seven hundred and nine thousand dollars for a Web site does sound a bit high, but I know how developers of Web sites will throw numbers out there. So, you know, let's say it's half of that. Nonetheless, it's going to be quite expensive to have the capabilities of what you need

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in having a Web site that is readily available to the general public for upload and download and everything else. Would you consider your efforts to provide information on fiscal note, do you consider that to be disingenuous? [LB635]

BILL SYDOW: No. I'll tell you, Senator Smith, what we did is, my workmate, Chuck Borchert, went to ALL--Arthur, Langhus, and Layne in Tulsa--and they actually...now, this was my type up. They actually went on the Legislature's legislative Web site and they got that fiscal note and they put exactly what they thought it would take. And I actually cut it by a couple hundred thousand dollars. But they...no, sir, I could provide that. That was the number they gave us and... [LB635]

SENATOR SMITH: And that's what you have to work with. [LB635]

BILL SYDOW: That was it. And it comes down to those two things--two things, the two reporting requirements. [LB635]

SENATOR SMITH: Thank you very much. I appreciate it. [LB635]

SENATOR CARLSON: Senator Haar. [LB635]

SENATOR HAAR: Yeah, I'm sorry to keep us here too, but you've driven a long way and I can wait for supper, so. Senator Schilz pointed out something really interesting this morning and I had read that already because I've printed out the whole section of the law, 57-901 through, I think it goes 57-921. And the intent for the commission...an intent is not the law. That's where the Legislature was in 1959. It talks about...it's in the public interest to foster, to encourage, and to promote the development, production, and utilization of oil and gas in the state as will prevent waste. The greatest possible economic recovery...and it talks about landowners, which is really good. It doesn't say anything in there about protecting the environment. Do you think that maybe we need to update the intent of this? [LB635]

BILL SYDOW: Well, I don't know if it would take a legislative attempt, Senator Haar. But the fact is that in our mission statement on our Web site we speak to protecting the environment. And I think that's foremost on everybody's minds. We are there to protect the groundwater of our residents. We are...we have...require bonds. I think we make every effort. We have restoration requirements that...before a bond would be released. Most of our wells, of course, are drilled in pastures or fields, and so...and I grew up on a farm. We...and you could check with any number of people, we don't have a lot of complaints. We have those companies; they follow up. And I think that that's inherent that we, while protecting the environment, that's in our mission statement. And we do that. We have our environmental programs, we have our underground injection control program that was approved by EPA and delegated to us. We have our waste stream provisions on how we're going to handle certain things on produced fluids or drilling

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muds. Most of the wells that we drill are drilled with bentonite and water-gelled systems for a viscosifier. We don't use any barite, we don't need the weight. These newer wells we have necessitated to have to use a salt saturated mud. But when we drill there, our rules would say you have to line...line that pit with a heavy mill liner. The fluids are going to have to be evaporated. We solidify the cuttings into another rock and we cover it up and we have them build those reserve pits about 6...so we can cover it up, fold it in, 6 feet down. So, I mean, we're doing those things, Senator Haar. We're doing those things. [LB635]

SENATOR HAAR: Well, now in 57-923 it says "shall," shall adopt and promulgate rules and regulations for fees and you do that, right? You charge fees. [LB635]

BILL SYDOW: Yes, sir, we charge fees. They're very minimal. [LB635]

SENATOR HAAR: Okay. So, and that's fine. The point here is in 57-905 which gives you the powers and the duties, it says, you shall have authority. And I guess I'm saying that I think you need to exercise more of that authority. Is there anything about Senator Wallman's bill, if we took out the water part, that we mandate--and this could happen as soon as the law goes into effect--using FracFocus? [LB635]

BILL SYDOW: No. We still have to pass the rule. We'd still have to pass the rule. We still have to go through the rule-making program. [LB635]

SENATOR HAAR: No, no, I'm not saying if you would, but I'm saying if the Legislature. [LB635]

BILL SYDOW: We would still have to pass a rule to conform our rules and regulations to the laws of the state of Nebraska. We have to do that. And so I think we're well down the road. I would...you know, I'm asking you not to advance it because we're about there. We're about there. We just have to go through the administrative law codes to...through that final approval process. And barring anybody's comments, which I don't think we're going to get any more, we will then adopt those rules. There are a couple of rules that regard finances and we're going increase the operators' bonds from a \$5,000-per-well bond to a \$10,000, and a blanket bond from \$25,000 to \$100,000. And that's where we had a lot of heartburn on that one. And we're also going to put in place a rule making that we just never had time to do it, but we're going to start a plugging and abandonment trust fund on our inactive wells so we can charge \$200 a year per well and it goes into a trust fund. And then if we have to plug wells on the commission's dime, put it that way, we'll have that fund available. We won't have to go through the appropriation process for that. So, I mean, the rule making, it's...and you've looked at it, it's 13 pages. There's a lot of stuff in there. There's a lot of hard work that's gone into that and... [LB635]

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SENATOR HAAR: Do I have a copy of that? This is what you handed out, the rule making? [LB635]

BILL SYDOW: No, sir. I'll give you... [LB635]

SENATOR HAAR: I would like a copy of that. Now, just from memory, do you remember, last year Senator Wallman's bill would have basically duplicated Texas, and this bill is really much less because it just duplicates the rules that you had before. How would Texas... [LB635]

BILL SYDOW: No, it doesn't duplicate the rules we had before. [LB635]

SENATOR HAAR: No, I'm sorry, the rules that were on your Web site and that you're working on; that right now Senator Wallman's bill pretty much duplicates... [LB635]

BILL SYDOW: Yes, sir, there are several provisions that we're not going to...we had no intention of asking anyone to report where they got their water from. We had no one...no intention. While they could report back to us produced fluids, we didn't make them say how much fluid they got back in 60 days. [LB635]

SENATOR HAAR: But other than that, they're the same, pretty much the same. [LB635]

BILL SYDOW: Well, there's another provision... [LB635]

SENATOR HAAR: Okay, what's that one? [LB635]

BILL SYDOW: Well, it's in the permitting process. We would state in our rule that any stimulation that the operator would deem to be necessary, we don't know what we would exactly stimulate a well with if we were successful. It would have to be approved and the wording isn't...is maybe needs to be modified on that on the drilling permit. But we don't know if we'll ever...what we might do. I don't want to make them tell me what they're going to do, and then if they don't do that then they have to come back and get approval to change something. So...okay, I didn't address that. [LB635]

SENATOR HAAR: So how much...yeah, how much more extensive was Senator Wallman's bill last year? Because it was basically a duplicate of Texas. [LB635]

BILL SYDOW: All Senator Wallman's bill was last year...and, I mean, it was...it concerned FracFocus, and we always had the full intention of using FracFocus. So Texas, their legislation mandated that the Texas producers file their chemical treatment on FracFocus. That's what it did. [LB635]

SENATOR HAAR: Okay. And our Legislature can't do that? If we pass that bill in the

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Chamber, we cannot do that? [LB635]

BILL SYDOW: No, I'm not saying that you can't do that. I'm saying I don't want you to do that because we have the ability right now to do exactly what we're doing in our rule making and have on that amended rule. Once we get through four bodies, if you will, or four offices, this rule is ready to go. It's ready to go. We can require it tomorrow, but I'm going to tell you it's probably not going to be until June or July. [LB635]

SENATOR HAAR: Okay. That's all I have. [LB635]

SENATOR CARLSON: Okay. Any other questions? Then I'm going to ask a couple of questions and we've had Mr. Sydow on the hot seat for an hour and 25 minutes. And after I finish briefly what I have, I'm going to let you go. Would you get to this page with me? [LB635]

BILL SYDOW: Yes, sir. I'm here. [LB635]

SENATOR CARLSON: Okay. Down toward the bottom you see the volume, 32,018 gallons. [LB635]

BILL SYDOW: Yes, sir. [LB635]

SENATOR CARLSON: What does that mean? [LB635]

BILL SYDOW: That means that what I added up there is...that's an input of my calculation, but if we added 500 and 6,500 and 25,518, that was the volume of that job, counting the hydrochloric acid of what was called a pad, which is pumped ahead of the fracture job to begin to initiate some fractures, and then actually the job. [LB635]

SENATOR CARLSON: I'm going to cut you off here. So those...25,518, 6,500, and 500 add up to 32,000. That's the total amount of water used on this particular... [LB635]

BILL SYDOW: The total amount of fluid. Actually the water would be about 65 percent of that number. [LB635]

SENATOR CARLSON: Okay. All right. Now, let me ask you something else, because you said that an individual that had rights to irrigate was going to force some compensation and give up 20 acre-feet of water. [LB635]

BILL SYDOW: That was an agreed-to negotiation. [LB635]

SENATOR CARLSON: An agreed-to negotiation. And you referred to that as a lot of water. [LB635]

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BILL SYDOW: Well, that was about a million gallons on... [LB635]

SENATOR CARLSON: Yeah, I've added it up. Okay, I'm agreeing with you. But you called that a lot of water. [LB635]

BILL SYDOW: Yes, sir, compared to what we've done historically. [LB635]

SENATOR CARLSON: Okay. And I think in perspective in terms of perhaps what it's going to accomplish, on the concept of irrigation it's not very much water. On a pivot that has 130 acres...20 acre-feet, if you had a 12-inch allocation, uses enough water so now we can only use 10.2 inches. We can still grow a pretty good crop with 10.2 inches. My point is, I'm glad you think it's a lot of water because you're saying, I wish we didn't have to use that much. It's not much water. Which leads me back to you're conscious about the amount of water that's being used and you should be. But I think it's not a lot of water. And so when you say that's the most water we've used, it's not a lot of water. I also want to say that, you know, aside from you being on the hot seat today and you coming in here and it's not really a pleasant circumstance, in some previous conversations with you I have a pretty good idea of what your character traits are and what your beliefs are, and I appreciate that. And so thank you for being here. [LB635]

BILL SYDOW: Thank you. [LB635]

SENATOR CARLSON: Okay. Next opponent. And it's been long enough, my memory is gone, how many opponents do we have? Okay. All right. Welcome. [LB635]

CARLA KIRBY: Hi. My name is Carla, C-a-r-l-a, Kirby, K-i-r-b-y. I'm from Kimball, Nebraska, and I oppose LB635. Just a little background, I've almost forgotten what I was going to say after all this. I was born and raised in Kimball, Nebraska, on a farm south of Kimball. Groundwater is extremely important to me. I kind of want to draw some comparisons. Life on a farm, on a dryland farm in the western Panhandle of Nebraska, is entirely different than anything you have here on the eastern end of the state. My life is entirely different than yours. Life on a dryland farm in Kimball County, Nebraska, is similar, but also different than in the fertile valley of Scottsbluff. In Scotts Bluff County, a lot of corn producers and that's great. We talked about having corn on our dryland farm and the quote that was given to me is, corn likes their feet wet and their face to the sun. Well, we can sure do the "face to the sun," but the "feet wet" is not going to happen on our dryland farm. I live on a family farm that my father purchased back in 1940. My grandfather was a state representative and mayor of Kimball County. My ancestors settled the town. I bring those things up. My father always wanted to be a farmer. My grandfather was the very first land man in Kimball County. My father served for over 30 years on the soil conservation board. He also served with the REA commission and was instrumental in getting the electricity and the lines out in our area. I

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bring those two things up so that you know that I was raised with the concept both of being involved in the Panhandle and with conservation practices, good stewardship of the land, and paying attention. In the '40s when my father bought the current farm that I live on, he raised five children there. He had, over the years, many different kinds of crops. He also had cattle. He had pigs. I was the baby of the family. When I turned 18, an oil rig guy came and swept me off my feet. Well, over those next 12 years until our return, we followed his career through Wyoming and Colorado. So I have a dog in both fights. I certainly don't want anything to happen to my water. Without the water...I now have returned. My father passed away in 2003 when he was 90, having lived all those years on the farm. I inherited the home place and that's where we live. I have returned to the house that built me. We are vested entirely in that farm. That has been my home for all of my 55 years, even when I moved for 12 years around with my husband's career. I also worked for a small oil company in Sterling as the office manager. With my husband rising up from a rig hand to a production superintendent, we have seen and dealt with, in Wyoming, Colorado, and Nebraska, different parallels of the Nebraska Oil and Gas Commission. Between understanding about fracking, and boy, my dad would have liked an oil well; it didn't never happen. (Laugh) But the table conversation--fracking is not new. I can remember hearing that when I was in elementary and junior high school. And then, of course, the quote, unquote, oil boom and bust of the '70s and the '80s, there has never been any problem nor has there been groundwater contamination to my knowledge, nor in our little corner of the world have I heard anyone complain about that or their practices. I have, however, from time to time heard complaints about the Nebraska Oil and Gas Commission on the oil side: Wow, we have to comply with this rule; okay. Once again, the oil industry works very well with the Nebraska Oil and Gas Commission. I feel they do a good job of policing and protecting my resources as a landowner. I think that LB635 is a duplication of this effort. Kind of out there in the west, we have a little problem with more and more and more government. I think the Nebraska Oil and Gas Commission does a very good job. I don't think we need to duplicate the effort and that's my testimony. Thank you. [LB635]

SENATOR CARLSON: Okay. All right. Thank you. Any questions of Mrs. Kirby? Yes, Senator Haar. [LB635]

SENATOR HAAR: Yes. Thank you for the stewardship of your land. Does the wind blow at your farm? [LB635]

CARLA KIRBY: (Laugh) Yes. I wanted to put up a fence so my topsoil didn't go to Wyoming or Colorado. [LB635]

SENATOR HAAR: I'm sorry Senator Schilz has left, because we think there should be a lot more wind turbines in your neighborhood. [LB635]

CARLA KIRBY: Actually, a wind turbine company had approached me on our land and

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had...you know, wants to put up wind turbines. I think that would be great. Also, my understanding of the wind turbines, though, with my husband being in the oil industry, people have said, well, those wind turbines are going to replace you. No, it still requires oil to run the wind turbines. Anything to contribute to the energy of our country is great. If you want a soap box, let's talk about build some refineries. Build a refinery in Nebraska. Oh, it will take ten years. That's what you said ten years ago. We'd have it now, but I won't go on that soap box. Sorry about that, Senator. [LB635]

SENATOR HAAR: Okay. But wind you'd like, right? [LB635]

CARLA KIRBY: I like wind. [LB635]

SENATOR HAAR: Okay. Thank you. [LB635]

SENATOR CARLSON: Okay. Any other questions? Okay. Thank you for coming and your testimony. [LB635]

CARLA KIRBY: Thank you. [LB635]

SENATOR CARLSON: Next opponent. And we've got a few others. Why don't you come up and take the on-deck seats here and we can move on a little quicker. Welcome. [LB635]

STAN BELIEU: Hi, my name is Stan Belieu and it's S-t-a-n B-e-l-i-e-u. Thank you. I changed my testimony pretty radically based on the conversation that we had, so I'll just try to hit the high points. First of all, I heard very clear from you and also my boss, Mr. Sydow: Get going on these rules and regs. And I've been in charge of that and I apologize to this committee for not getting more prompt on it. My one excuse is, in a comprehensive well review, or a rule review, we have federal regs in there; and sometimes dealing with EPA Region 7, as we have, has things slowed down. So some of it's waiting on their approval of some of those changes. FracFocus Web site--if you have some questions on that, I'm probably the guy in, probably the state guy in the country that knows more about FracFocus, so I can help you with that. But this question of what it can and can't do, it can't do that additional section, and it probably won't ever be able to do that. It's been made by the Groundwater Protection Council; I'm currently serving as president of the Groundwater Protection Council. So it is really designed for 27 states. And I just want to state for the record that the companies were voluntarily reporting it until states, as we have or we are looking at it here, are starting to mandate it. So that's what's going on with that. We look at this and we think we have the statutory authority to do what we're doing; and we're trying to carry out our mission. And I want to assure this committee that we take our job of protecting the citizens of Nebraska, their health, our environment, and looking at those factors, those economic factors that apply for Nebraska; and through our focused rule-making process, we really want these

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Nebraska-specific things. So that's what we're really trying to work towards is getting very Nebraska-specific rules and going through that whole process. And again, I apologize to this committee and not getting the rules taken care of as fast as I probably should have, so. [LB635]

SENATOR CARLSON: Okay. Thank you. Questions? Senator Haar. [LB635]

SENATOR HAAR: Yes. Last year in your testimony you said, I'm very confident there's already a system that handles chemical disclosure that's already developed and being used, and Nebraska can use utilize this system if we choose, for free. And that was FracFocus you were referring to. [LB635]

STAN BELIEU: That's correct, yes. [LB635]

SENATOR HAAR: Yeah. So is there anything more that Nebraska has to do before we can require, whether it be the Legislature or the commission, before we can require that drillers use that Web site because they're already mandated, as you said last year, in Texas, North Dakota, Colorado, Oklahoma. So had they run into trouble with mandating it, or who mandated it in those cases? [LB635]

STAN BELIEU: I think it goes different ways. Sometimes the legislatures have done it, sometimes it has come from the agency itself, but I'm not aware of any major oil and gas producing companies that are opposed to disclosure. I think disclosure is just something that needs to be done. And the concept of this is, if you're doing something in my backyard, I need to know the chemicals that are going into that and that's just part of the whole process. [LB635]

SENATOR HAAR: And when it comes to water, my backyard is the whole state. That's our most valuable resource. One thing I brought up earlier was a page from FracFocus on a well in Colorado, Halverson 20-11. And it does include things that aren't under my sink like xylene; trimethylbenzene 1, 2, 3; etcetera, etcetera. Can we guarantee that these chemicals won't be used in Nebraska? How do we know, and why are they being used in Colorado? [LB635]

STAN BELIEU: I probably shouldn't answer specifically for Colorado, but I would say that it has to do with their reservoirs, their oil and gas producing formations, why they would use those chemicals and we wouldn't here; where our formations, that isn't required to do the job. I think we've got a...I know Dana Wreath is a master's degree petroleum engineer that can talk about why you run different chemicals. I'll say this. In any hydraulic fraction on any job, those chemicals are used to react. You don't put them down there unless you don't want them to react with something. So you want in a perfect world, a chemistry major, your neutralization reaction. That's what you want going on there is you have a neutralization reaction happening and the by-products of

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that, hopefully, then, are benign. [LB635]

SENATOR HAAR: Yeah. So, but some of these don't sound benign. Well, I looked them up and they're not benign. So the question is, though, in our laws or in your rule making and rules, do we prohibit things like trimethylbenzene 1, 2, 3; xylene; and these other things which really are very volatile, they're very dangerous. You've got to wash your skin right away if you get them on you, these sorts of things. So do we prohibit those kinds of things, or would it simply require the reporting? [LB635]

STAN BELIEU: No, we would not prohibit them. We would require the disclosure that they are being used. [LB635]

SENATOR HAAR: Okay, so your function after these rules go through and so on, will be disclosure. And if, in fact, that we want some of these chemicals not to be used, do we have that ability? [LB635]

STAN BELIEU: You know, there's a good question. If you look at our statutes, could we prohibit certain chemicals? I can't answer that honestly without a legal opinion on something like that. [LB635]

SENATOR HAAR: I'd like an answer to that one because it is a concern of mine. [LB635]

STAN BELIEU: Okay. [LB635]

SENATOR HAAR: And that might be something that we need to consider. Even if your rules go in and your regulations and the disclosure, we may need some additional things here. Okay. Well, thank you very much. [LB635]

SENATOR CARLSON: Okay. Further questions? Thank you for your testimony. [LB635]

STAN BELIEU: Thank you. [LB635]

SENATOR CARLSON: What's your position again? [LB635]

STAN BELIEU: I'm the deputy director. [LB635]

SENATOR CARLSON: Okay. All right. Thank you very much. Welcome. [LB635]

ELIZABETH FERGUSON: Hello. My name is Elizabeth, E-l-i-z-a-b-e-t-h, E. Ferguson, F-e-r-g-u-s-o-n. I am the president and majority owner of Eatmon Well Service Company. And what that is, is we are an oil and gas well service company. I'm a minority here being a woman and having that job. I'm quite nervous. This is a first time.

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My father was the talker. He was the county commissioner and he was also, I believe...chairman of the state county commissioner group and he did all of this, not me. (Laugh) So I just wanted to put on the record that I do oppose LB635. I believe that the Nebraska Oil and Gas Commission is the regulatory body that has the experience and the expertise to regulate the industry, and I apologize, but not politicians who have little knowledge of our industry. I have so much horror stories about trying to explain what a well servicing rig is to somebody at the Nebraska Department of Motor Vehicles in Lincoln here. It's not much fun. The Nebraska Oil and Gas Commission has recently undergone a lot of its revisions of its rules and regulations, including the very language almost identically written to Mister...the bill that has been presented, LB635. For this reason, the commission is being proactive and I think has already addressed the issue of reporting and disclosure of the chemicals used in hydraulic fracturing, and they are fully capable of handling the issues without writing this into our statutes. I would also like to point out that out of the 93 counties in the state of Nebraska, 19 of them produce oil and gas; and out of those 19, the majority of them are in the Panhandle where the Nebraska Oil and Gas Commission resides. Being located in the Panhandle, this allows them the ability to monitor our industry, and trust me, they do monitor very closely. And in closing, I'd just like to once again say that I do oppose LB635. We've been in the business, the oil and gas well service business, since 1956 here in Nebraska, so I have been born and raised in the business and I have never had any problems with working with the Oil and Gas Commission and following their rules and regulations. [LB635]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions? Senator Smith. [LB635]

SENATOR SMITH: Thank you, Senator Carlson. And Ms. Ferguson, thank you for coming here today. And you're right. I think sometimes bills that come before us are very well-intended but sometimes misguided. And that's why it's...and not necessarily just this bill, but other bills, and that's why it's so very, very important to have subject matter experts like yourself, business owners, people that are knowledgeable of the issue at hand, it's really important to hear from you. And we appreciate you taking time in coming here and sharing. Thank you. [LB635]

SENATOR CARLSON: Any other questions? I'll make one further comment. I should have...well, you didn't act nervous. You sounded like you were to begin with. But this whole process is real important because we are a Unicameral and we have one body of 49 senators, and you act as the second house, like a House of Representatives, when you come to testify at a hearing; and it's very, very important and we appreciate you being here. Thank you. [LB635]

ELIZABETH FERGUSON: Thank you. [LB635]

SENATOR CARLSON: Next opponent. [LB635]

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JILL BECKER: Good afternoon, Senators. My name is Jill Becker, spelled J-i-l-l B-e-c-k-e-r, appearing before you today as a registered lobbyist on behalf of Black Hills Energy. And I just wanted to talk a little bit about what Black Hills does in this area. Black Hills uses hydraulic fracturing in virtually every well that we drill. We are currently active in North Dakota, Montana, Wyoming, Colorado, and New Mexico. We have had properties in the past in Nebraska. We no longer do. But we have participated in over 2,000 wells throughout various parts of our country over a period of 37 years. And in our experience, we have had no contamination of fresh water sources or violations of environmental laws. The process that we're talking about today is a very expensive process. Depending on the type of well that you drill, the drilling cost of the wells can be in the millions of dollars. In some cases, depending on the type of formations that we're talking about, specifically like the shale formations, hydraulic fracturing can be the only way that the well will be able to produce oil or gas in commercially economic quantities. We appear before you today in opposition not because we are opposed really for the underlying basis of what Senator Wallman's bill is asking. His bill is asking for disclosure and Black Hills Energy supports that. We do that in various states that we operate in, so we are in full support of requiring that of companies. We are in opposition to the bill because we think that the rule-making process that is already underway is the most appropriate way to have that disclosure happen. And we believe that the legislative process should be enacting authority if the Oil and Gas Commission needs it, and I think you've heard today that they believe they have that authority. And then we think that the rule-making process should really get at the technical aspects of those disclosure requirements. So for that reason, we are in opposition to the bill. And with that, I'd be happy to answer any questions you may have, and I'll be in this chair a shorter amount of time if you don't ask me anything about geology. (Laughter) [LB635]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of Jill? Senator Haar. [LB635]

SENATOR HAAR: Thank you. Since you are a lobbyist, we get to hit you with the hard ones. [LB635]

JILL BECKER: Fair enough. I will answer if I can. [LB635]

SENATOR HAAR: I appreciate that and thank you very much. So does Black Hills Energy use FracFocus in other states? [LB635]

JILL BECKER: We do, and unfortunately I didn't print off many copies of this, but I do have a copy of, for example, a well that we did in Colorado. So we do participate in FracFocus. I can't answer for you, off the top of my head, which states we operate in mandate us to register on FracFocus and where we do it voluntarily. I can't answer that, but the short answer is, yes, we participate. [LB635]

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SENATOR HAAR: Yeah. Well, we saw in some earlier testimony, North Dakota, Wyoming, those all...Colorado, all require it. Yeah. [LB635]

JILL BECKER: Require. Um-hum. [LB635]

SENATOR HAAR: Yeah. Just looking at the chemical, the ingredients, so you have to also report the ingredients that were used for the fracking process? [LB635]

JILL BECKER: We do. Yep, there's a list of ingredients that are reported. [LB635]

SENATOR HAAR: Okay. Do any of them have strange names or would these all be things you'd find under your kitchen sink? [LB635]

JILL BECKER: I probably couldn't spell half of them and so I have absolutely no idea. They're very... [LB635]

SENATOR HAAR: Could I have that list before you go? [LB635]

JILL BECKER: Yes, you certainly may. You know, certainly some of them are...I want to say more normal ingredients like sodium carbonate, but certainly there are some things in here. I don't know now if I had my exploration and production expert here, he could probably tell you exactly what those are, and you probably know too. [LB635]

SENATOR HAAR: Yeah, I would like to talk to that person. Maybe you could set up an appointment and... [LB635]

JILL BECKER: Sure. Sure. [LB635]

SENATOR HAAR: So, and it's really important we get a lot of input. Do you think just...you know, this is just sort of an off the top of your head answer, that we in eastern Nebraska have any right, or as a state senator to have any right to question what's going on with gas production in our...or should that just be left to the landowner? [LB635]

JILL BECKER: No, I think you certainly have every right to ask and I think what you've seen from a lot of the member companies is that's exactly the reason that they moved to voluntary disclosure. You know, some of the states you mentioned do mandate it, but there's a lot of states that don't; and company policies have...companies have decided that they're going to voluntarily disclose. [LB635]

SENATOR HAAR: And so it's kind of a pain but you do it anyway. [LB635]

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JILL BECKER: You know, I don't have to fill out this form so I don't know how much of a pain it is, but you know it's...you know, certainly it's one more thing to do. I don't know how painful it is; but, you know, it certainly provides information if people want to have it. [LB635]

SENATOR HAAR: Yeah, good. Okay. And I would like that sheet from you before you leave. [LB635]

JILL BECKER: Sure. Sure. [LB635]

SENATOR HAAR: Thank you. No further questions. [LB635]

SENATOR CARLSON: Any other questions? Okay. Thank you for your testimony. [LB635]

JILL BECKER: Thank you. [LB635]

SENATOR CARLSON: Next, we...how many more do we have? We've got three more. Okay. Welcome. [LB635]

DANA WREATH: (Exhibit 18) Thank you. My name is Dana Wreath, D-a-n-a W-r-e-a-t-h. I'm a vice president with Berexco, LLC. I came from Wichita, Kansas, today. We are the largest operator, largest producer of oil and gas...of oil in Nebraska. There's really very little gas produced in Nebraska. And I think I'm the first person to testify here today that actually works for a company that operates an oil and gas well. And I think we operate roughly 411 wells right now and operate...in Nebraska, and operate in eight states. And we produce approximately 20 percent of all the oil that's produced in this state, which is about 7,000 barrels a day; we produce 1,400. And we're also the most active driller in the state. In the last 20 years, we've drilled more wells than anybody else, approximately 125 wells. And in that time, I want to point out that we fractured a total of three wells. So fracturing is not, in the state of Nebraska, particularly a widespread practice like it might be in some other states. It happens occasionally. But because of the geology in this state, it's not nearly as pervasive, and the water requirements are much smaller than many other states. And, honestly, on page...I have a little description here of why Berexco opposes this particular bill. And I think one fundamental thing, if you want to be thoughtful about it, is that it's very hard for a legislative body to legislate, to make oil and gas rules from the statehouse. And sometimes you have unintended consequences. Sometimes rules don't really meet the needs of the stakeholders and I'm going to get into an example of that here shortly. And further, there's an established process in place. I was part of that committee. And you don't want rule changes to happen over the course of two months, three months. It takes a while. And I don't really see a problem, Senator Haar, that it's taken a year, a year and a half. I think that's probably typical of many states. We've been involved in

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similar rule-making processes in Kansas. And let me go on in this second section here, on the second page, I point out the language that I believe Director Sydow pointed out, in Section 2(14) on page 9, those two lines that require stating what the completion practice is on a drilling permit in order to be fully approved, really probably would have an unintended consequence. If you think about it, we don't know how we're going to stimulate that well until we drill it. We don't know what the results are. So to comply with the rule, I'll just simply put down every possible stimulation I might do on the permit. What's the point of that? You see the idea that it's really an unintended consequence that doesn't really meet the needs. And then I also want to discuss briefly the business of requirements to report the amount and source of water for stimulation and also the fracturing fluid recovered. You know, I want to mention to you a specific job we pumped here last summer. We pumped a frack job of 100,000 gallons, that's 0.3 acre-feet, by the way, for those of you that are familiar with irrigation volumes. There was no frack fluid recovered on the flowback. The formation took it. It didn't flow back at all. We subsequently pumped that water back and it was put into an injection system, and reported those volumes to the Nebraska Oil and Gas Commission. So it's, in effect, I think probably most likely a waste of \$700,000 in this state to require that additional reporting to really not gain a lot of additional information. The next page, very briefly, is a graph. And I think it really sums up the whole point of this situation. This is a graph of IHS energy data, publicly available data of the state of Nebraska's oil and gas production. You can see it's approximately 7,000 barrels a day. Now...and I've titled at top, "Nebraska is not North Dakota." And that's the fundamental point here. North Dakota's production is 750,000 barrels a day and it's been inclining rapidly because the geology provides--big difference--the geology provides for the opportunity to drill deep horizontal wells and put on multistage fracturing. Well, that geology simply is not present in this state. I can prove it to you. If it was present, this graph would be going up. [LB635]

SENATOR CARLSON: Let me...you come from Kansas, you don't have a whole lot... [LB635]

DANA WREATH: Yes, sir. [LB635]

SENATOR CARLSON: Don't worry about the red light. [LB635]

DANA WREATH: Okay. Well, thank you, sir. [LB635]

SENATOR CARLSON: We have it there for a purpose. (Laughter) [LB635]

DANA WREATH: Okay. And I'm drawing near the end, but...and I kind of summarize on the last page what the numbers are because I think it's useful to have the facts, the numeric facts. Our production in this state here in Nebraska has been fairly stable because people drill vertical wells these days using seismic. It's been very helpful to

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increase production. But the horizontal drilling really has not worked in this state. And I've written here, our publicly available database shows that only five horizontal wells have even been drilled in this state to date--five. And from what I can tell, they all lost money. Think about that. They all lost money. I don't see that there's going to be much of any horizontal drilling in the future. And in a sense, I'm here to report what amounts to bad news to this committee. You might view it as good news that there's not going to be a lot of water consumed in hydraulic fracturing. That's true. The bad news is, there's also not going to be a lot of economic activity and benefit to the state from hydraulic fracturing. My personal estimate is the state will be lucky if ten frack jobs are pumped in 2013 in this state. And I can tell you we have plans to pump zero and we're the most active driller in the state, the largest producer of oil in the state. So it's not a situation where there's this massive fracturing that's out of control that's got to be regulated. I don't think that situation exists, respectfully. What we have is an occasional frack job that uses fairly small amounts of water and it isn't particularly big industrial activity in this state. I'd also like to make one other comment following up on what Director Sydow said regarding many of these constituents are present in your kitchen cabinet. And that's certainly true, and I think Senator Haar, you pointed out some that aren't. But I would also point out that natural gas or propane or ethane or hydrochloric acid, which are also present in these wells, are also not underneath your kitchen cabinet. But that's just part of the oil and gas business. We're going to have oil and gas, we're going to have hydrocarbons, and we're going to use acid in wells as well. And I think it isn't strictly a rule that whether or not it's in your kitchen cabinet means it should or should not be used in fracturing a well. I think it's more a point of what's effective and also what's safe and meets within the regulatory framework that we live under every day operating in this state. So overall, I would just make the basic point that I think this legislation, while well-intended, it doesn't really gain us a lot. What we really ought to do is just stick with the process we're under and not have this bill stop it. I'd just as soon not go back to these committee meetings again to have to redo language if this bill stops our existing language moving forward. And just get on with the show, put the rules in place, the additional rules in place that are before the state, and I think we'll be okay. Things will be fine. [LB635]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions? Senator Haar. [LB635]

SENATOR HAAR: Well, thank you for coming from Kansas. You have more snow than we have. I am jealous. And more gas wells, I'm jealous. The place I would disagree, if we have one well, it's really important to know what's in that well and so on and so forth. I wish we had a thousand. But one or a thousand, one as we've seen, for example, in the Gulf, one well created billions of dollars' worth of damage. And one well, if it weren't properly constructed and monitored in Nebraska, could create great damage to our aquifer. And water is our most valuable resource; and Kansas wants it, by the way. [LB635]

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DANA WREATH: I would respectfully disagree with your characterization. In particular, you're talking about a well in the Gulf of Mexico that produced more oil per day than the entire state of Nebraska. So I think that's kind of stretching the physical situation. You know, I too am not aware of any well that Berexco operates that has ever caused any groundwater pollution as the result of hydraulic fracturing. And I think it's a little stretching the situation to imply that we're not adequately regulated right now. I can tell you, we are the most active driller in the state. When we file drilling permits, those guys at the commission, they look at them. And if I turn in a permit that does not have, in their view, appropriate mechanical construction, they won't approve it. I've had that happen. They've told me, you've got to run deeper surface or something needs to be changed in the way we're proposing to construct the well. So I don't view it's a situation where you just say, oh, my gosh, one well could destroy massive amounts of groundwater. It's really not applicable to talk about a Gulf of Mexico situation. And I think we're generally pretty well-regulated in this state. And we operate in a lot of different states. I see regulatory regimes in a variety of other states, and it's not like Nebraska is some Wild West at all. [LB635]

SENATOR HAAR: Well, I wasn't using...I should have been more specific. There are hundreds of deepwater wells in the Gulf of Mexico and yet one created great problems. And so, just to say we have only one or three or ten wells in Nebraska really doesn't make me...just that fact doesn't make me feel that good. It doesn't matter, whatever we drill, whenever we go through our aquifer for whatever purpose, that needs to be safe. [LB635]

DANA WREATH: Well, I would certainly agree with that. And I think what you're really saying is, you want to ensure that the rule-making process and the application of those rules by the commission is well done. And I don't... [LB635]

SENATOR HAAR: But in some states we've seen that the legislature has mandated, for example, FracFocus. We have not done that in this state. Right now...right now, people don't have to go out there and get on FracFocus. [LB635]

DANA WREATH: Well, I think it depends on the state. In the state of Kansas, there's no pressure whatsoever to have FracFocus be implemented. It's not an issue before the Kansas Corporation Commission nor the legislature. I think it depends on the given state. But I would simply go back again, what you really want is to ensure that the rules of the state are done well. And I think...I haven't heard anybody allege that the Oil and Gas Commission is doing a lousy job applying the rules. I don't think anybody has said that. I'm not saying that. I think they're actually doing a pretty effective job. And again, I see regulations in a variety of states in regulators. [LB635]

SENATOR HAAR: Well, and coming back just one more time, because you brought it

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up about, you know, the stuff in these...that is used and, in fact, the thing that I got from Jill Becker, this is a Colorado well and it's operated by Black Hills, so I'm sure it's done well. But under the distillates, and they show the maximum ingredient concentration in the additive: water, 100 percent; petroleum distillates, 40 percent. And a year ago when the director testified he said, the constituents of hydraulic stimulation fluids used in Nebraska are generally safe and can be found under your kitchen sink and in your pantry; we eat them. And I just can't imagine eating petroleum distillates, and so I think...I think we shouldn't overreact, but I think the idea that everything that's going into the ground is safe and so, gee whiz, we don't have to worry about it, that also is something that's a misconception and the public is starting to worry about it. [LB635]

DANA WREATH: Well, I think you can appreciate that since I haven't seen that document, it's hard for me to comment on it, but I would also say that hydrochloric acid is not particularly safe either. Yet what actually is used in most wells in the state of Nebraska, and commonly in Kansas and Oklahoma and Texas as well, is hydrochloric acid. It's put down a well to dissolve some rock and enable the oil and gas to flow in. You know, it's quite dangerous. I wouldn't want a glass of it sitting right here. [LB635]

SENATOR HAAR: I wouldn't either. [LB635]

DANA WREATH: Yet...yet there's no motion whatsoever to ban the use of hydrochloric acid. And, in fact, there's lots of industrial processes that may use some chemicals that you wouldn't want your kids drinking, but that doesn't mean they aren't used responsibly and safely by the industry. [LB635]

SENATOR HAAR: No, and I'm not arguing with that. But the characterization that's being given to the fluids is that we have the same kind of stuff under our sink and it's the kind of stuff that we eat and drink, and I think that's false. [LB635]

DANA WREATH: Well, I think...again, you used...I think you were trying to quote, the director used "generally" under our sinks, and certainly there's always the possibility that some things are going to be there that aren't under your kitchen sink. I would agree with that, but it doesn't really mean that there's any great state...threat that we should overreact and create a bunch of legislation that doesn't really meet the needs beyond what the existing rule-making process is headed towards. [LB635]

SENATOR HAAR: I'm sorry you had to deliver the bad news that you're not drilling more in this state. So thank you. [LB635]

SENATOR CARLSON: Okay, any further questions? Thank you for your testimony and thank you for coming. [LB635]

DANA WREATH: Thank you. [LB635]

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SENATOR CARLSON: Next. [LB635]

ANN WARNER: I'm Ann Warner, A-n-n W-a-r-n-e-r from Kimball, Nebraska. I am a business owner/farmer/oil field trash. (Laugh) And we have a few little stripper wells. Like I said, we farm. I call it a NAPA auto store for oil wells. We have parts that you fix motors, engines, belts. I clean up fairly well. Anyway, I have children and grandchildren that live in the area so I think that I am very much vested in the community, as far as the underground water. And our little stripper wells is not even a dot at the end of the sentence for most of the rest of these people, but have dealt with the Oil and Gas Commission over the last 30 years, my husband and myself. In our situation, we bought like with five good wells, 15 that needed to be plugged, so you get them cheaper. And so, we have plugged wells and know from experience, have worked with the Oil and Gas Commission and can only do one every couple of years or something because it's very expensive. Oh, now I've lost my place in my notes. But anyway, I feel that they have done a really great job. I don't always like to do their paperwork, myself; I'm sorry. Anyway, I do feel that LB635 is unnecessary due to the way that they take care of things now. I've had lots of contact over the years. I think they do a very good job. Sometimes I don't like their answers, but I have to do it anyway, so. Let's see. I think they oversee and are respectful of our resources. I think our resources are important to them, and try to protect them in all the ways that is with their job. We try to be respectful of resources and the water that we have in our business, my husband's and I's. Another reason I think that it's nice to have it with the Oil and Gas Commission, you can call them up, you can ask if there is a problem that is communitywide or statewide that needs to be changed. I think they're real good about checking that out and making changes if that's necessary. I think they're good at evaluation and enforcement of the well operations, and that it would be sufficient without the LB635. Anyway, I would like to respectfully request that you oppose this bill, and I guess that will conclude my statement. Oh, I did have one other thing. I heard this morning that Tim Wistrom was voted in for the Oil and Gas Commission. I think it's absolutely fabulous. He would do a better job than myself even, and I think that that's really great. [LB635]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Senator Smith. [LB635]

SENATOR SMITH: Thank you, Senator Carlson. Ms. Warner, thank you for coming today and for testifying. I'm glad you brought that up. So what...you've had direct contact with the folks on the commission. [LB635]

ANN WARNER: Yes. [LB635]

SENATOR SMITH: Mr. Sydow and commissioners? [LB635]

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ANN WARNER: Yes. [LB635]

SENATOR SMITH: And tell me your experience in working with them, their level of professionalism. Do they appear to take shortcuts in any sort of way? [LB635]

ANN WARNER: No, because we had a well on...was it the Phillips...on the Phillips lease that we were having problems plugging and getting to the level that we were supposed to and get the plug in the right place. And after we had spent about three times what it should have been, one night I said to my husband, I said, why can't we just put the plug in, you know; what is the big deal? And he, you know, if you once got the hole plugged, it's plugged. And he's going, well, it has to be at a certain level and like that to make sure that there is no water contamination, and they're really good about that. And so they were nice about it. We had spent a lot of money and so we quit and actually finished it the next year then, so, but we put it where they told us to. [LB635]

SENATOR SMITH: So they take their regulatory role very seriously? [LB635]

ANN WARNER: Yes. And they...you have to call them ahead of time so...and notify them if you're going to do any work so they can be on site to check it out. And you have to fill out the paperwork ahead of time of where you're going to put the perforation sand, and where you're going to put the cement, and how far down, and above the casing, below the casing, and... [LB635]

SENATOR SMITH: Well, I'm certain as a business owner, you're...it's a bit of a conflict because you don't particularly like the regulators... [LB635]

ANN WARNER: That's true. [LB635]

SENATOR SMITH: ...and here you find yourself in a situation where you're defending them and their professionalism. So I appreciate you being here. I think you brought a very balanced and thoughtful comments to this discussion, so thank you very much. [LB635]

ANN WARNER: Thank you. [LB635]

SENATOR CARLSON: Any further questions? Well, thank you for your testimony. Thank you for your comments about Mr. Wistrom. Thank you. [LB635]

ANN WARNER: Okay. He'll be a great asset. Like I said, he'll do a better job than I could. [LB635]

SENATOR CARLSON: Okay. How many more testifiers do we have? Okay, come up here to the on-deck chairs, please. Welcome. [LB635]

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DARWIN PIERSON: Good evening. My name is Darwin Pierson, P-i-e-r-s-o-n, and I represent NIOGA, the Nebraska Independent Oil and Gas Association. And we are very much against this bill too. We feel that the people in western Nebraska have done a very good job and the people out there are very well-satisfied with it. So we are not in favor of messing around with it. Thank you. [LB635]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Senator Smith. [LB635]

SENATOR SMITH: Thank you, Senator Carlson. And I'll ask...Mr. Pierson, thank you for being here for testifying, and I'm going to ask you the same question I asked Ms. Warner. Have you had contact with folks from the commission and the director, and give me your opinion as to working with them and their...the way they take their... [LB635]

DARWIN PIERSON: I'm sorry, I'm not...I don't have my hearing aid with me. [LB635]

SENATOR SMITH: Okay. Have you worked with the commission? [LB635]

DARWIN PIERSON: Yes. [LB635]

SENATOR SMITH: Tell me your experience in working with the commission. [LB635]

DARWIN PIERSON: Well, I was in the drilling business for a number of years and I operated a lot of different gas...or oil wells. And working with them, they were very firm on what they wanted done, but if you did it, you were all right. [LB635]

SENATOR SMITH: Tough...tough, but fair. [LB635]

DARWIN PIERSON: Yeah. [LB635]

SENATOR SMITH: All right. Thank you very much. [LB635]

DARWIN PIERSON: You bet. [LB635]

SENATOR CARLSON: Okay. Any other questions? Okay. Thank you for your testimony. [LB635]

DARWIN PIERSON: Thank you. [LB635]

SENATOR CARLSON: Next. Welcome. [LB635]

MICHAEL CARR: Well, I bet you guys are hungry. I'm getting hungry. (Laughter) My

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name is Michael E. Carr, M-i-c-h-a-e-l C-a-r-r. I'm a petroleum engineer, both by occupation and education. I graduated with a petroleum engineering degree from the Colorado School of Mines. I lived in McCook, Nebraska, for 34 years, which I was engaged in the oil and gas business. And I'm now probably the only petroleum engineer that lives in Lincoln, Nebraska. (Laughter) I think basically what I've heard and what I feel is, let's give the commission a chance to make the rules, and if you don't like them then go do something. But I think we're at a point here where you've got a really good Oil and Gas Commission. They're very professional and they're very talented. And I think, let's don't try to reinvent the wheel. Let's let them do their job and I think you'll be satisfied with it. That's it. [LB635]

SENATOR CARLSON: Okay. Thank you for your testimony and for coming. Any questions of Mr. Carr? Okay. Thank you. [LB635]

MICHAEL CARR: Thank you. [LB635]

SENATOR CARLSON: Welcome. [LB635]

RANDALL HRBEK: Thank you. My name is Randall Hrbek, R-a-n-d-a-l-l H-r-b-e-k. I'm an independent producer in the great state of Nebraska and I oppose LB635. I think the Nebraska Oil and Gas Commission does an exceptionally good job and I think, like Mr. Carr said, why reinvent the wheel, you know. They do a good job. They know what they're doing. They're hands on. They're out there every day. They know what's going on, you know. [LB635]

SENATOR CARLSON: (Exhibits 19 and 20) Okay. All right. Thank you for your testimony. Any questions? All right. You waited a long time for that, but we appreciate you coming. Thank you. Any further in opposition? We do have a letter of opposition from Carma Webb of the Nebraska Independent Oil and Gas Association. Do we have anybody testifying in a neutral position? We do have a letter in neutral position from John Kerekes of the American Petroleum Institute. And with that, Senator Wallman. [LB635]

SENATOR WALLMAN: Thank you, Chairman Carlson. Good evening. I found it very interesting, you know, I brought up about the water. And I didn't bring up water quality as such, much, and I don't know, I don't want to drink Lime Away, so...but it's about the water. And Senator Carlson, if you pump the aquifer too low, like Florida did in places, you're going to have sink holes. And that's happened in Florida. They irrigated their orchards too much and they got sink holes. So that can...I don't know if it will happen in Nebraska with more clay, but it's happened with more sandy soils, so it can happen in sand. And it's about the water, folks. And we were told last year, we had rules that we would have them in place. We were told that. I was told that. I don't know about you. I have nothing, and Black Hills Energy is a good neighbor. You know, they supply gas to

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my area. And so I have nothing against that. And this wasn't brought to me by any lobbyist or anything, you know, any environmentalist group. I want to have a playbook. We found out in HHS, if you don't have a playbook in your state, somebody else may come in and you will have a playbook and it might not be what you like. So if we have to change some verbiage in this or something, we can do that. I am not against the oil and gas industry, but I think we need a playbook and we were told last year we had rules and regs. We need rules and regs to protect our environment. It's plain and simple. And protect the landowner, and protect that...and when you transfer water, like he said, to one, you know, bought out an irrigation well, transfer it to another area, that's transferring water, the way it sounded, it to another basin. And so you can...and water doesn't just come like this. If I've got an irrigation well here, it's going to come in here. So if you pump that water out, your neighbor may lose water. And so some of these issues, I think, if we have to change some verbiage we can make it work. And I was told last year we would have something in place, we'll have something in place by July. We don't know. So thank you for the hearing, and I think this deserves some debate, and appreciate you all being here. Any questions? [LB635]

SENATOR CARLSON: Okay. Thank you. Questions of Senator Wallman? Seeing none, thank you. [LB635]

SENATOR WALLMAN: Thank you. [LB635]

SENATOR CARLSON: (See also Exhibit 21) And with that, we close the hearing on...no, we close the hearing on LB635. Thank you all for coming. [LB635]