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Natural Resources Committee  
February 05, 2014

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[LB683 LB767]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 5, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB683 and LB767. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; Ken Schilz; and Jim Smith. Senators absent: None.

SENATOR CARLSON: Welcome to the Natural Resources Committee. I'm Tom Carlson, Senator, District 38, chairperson of the Natural Resources Committee. Committee members: To my far left is Senator Rick Kolowski from Omaha, District 31; next to him Senator Ken Haar from Malcolm, District 21; Senator Jim Smith from Papillion, District 14; coming through the door is Senator Ken Schilz from Ogallala, District 47; to my immediate left is Laurie Lage, our legal counsel for the committee; to my far right is Barb Koehlmoos, the committee clerk; next to her, Senator Lydia Brasch from Bancroft, District 16, she's also the vice chair of the committee; and then Senator Jerry Johnson from Wahoo, District 23; and Senator Annette Dubas from Fullerton, District 34. Our page today is J.T. Beck, a senior at UNL, here to serve you as you may have a need. Those of you that are planning to testify, please have picked up a green sheet, fill it out and have it ready to go before you take your spot at the table to testify. And if you don't wish to testify but would like your name entered into the official record as being present, there's a white form back on the table that you can sign and that would be a part of the official record of the hearing. If you wish not to testify, you can submit comments in writing and have them read into the official record. If you do have handouts, please have 12 of them ready for the committee, and if you're in need of those, then our page, J.T., can help you with that. When you come up, take the chair please and speak clearly into the microphone. There's no need to adjust the microphone. It will pick you up as you sit in the chair. Please state your name and spell it for us so that we have that in the official record. Nobody on the committee uses any electronic devices during the hearing and if any of you have cell phones, we'd ask you to either turn them off or put them on vibrate. And there are no displays of opposition or support for a bill. We've never had a problem yet and I don't think that we'll have one today. So we're not going to use the light system today, so I won't go through that. Any questions by anyone? All right. We will go to LB683 and Senator Scheer, you're recognized to open on your bill. Welcome.

SENATOR SCHEER: Thank you, Chairman Carlson and Natural Resources Committee and my pleasure to be here again this year. By the way, my name is Jim Scheer, S-c-h-e-e-r, representing Legislative District 19 here in the Nebraska Legislature. I'm here to introduce LB683 which amends the Storm Water Management Program statute that needs to be updated to the 2010 census. It provides storm water funding available to communities, but it's on a per capita basis, so in order for them to appropriately manage those funds on the state basis, we need to update the census to the most

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current census that's available, that being the 2010 census. Pretty simple. I try to keep things as short as possible, so I will close. And if there's any questions, otherwise there will probably be someone with more technical information following me, if that is your pleasure. [LB683]

SENATOR CARLSON: Thank you, Senator Scheer. Senator Haar. [LB683]

SENATOR HAAR: Senator Scheer, is this sort of a cleanup bill anyway? [LB683]

SENATOR SCHEER: Yeah, it's just a technical cleanup. It's just simply changing the 2000 census to the 2010 because the populations obviously have changed in some communities. [LB683]

SENATOR HAAR: Okay. So I'm assuming this wouldn't become your priority bill. Would you see this as maybe a consent calendar? [LB683]

SENATOR SCHEER: I certainly would hope so. I mean it's something that has to be done but, you know, I think all of us, you know, have our priorities somewhat picked out... [LB683]

SENATOR HAAR: Right. [LB683]

SENATOR SCHEER: ...and this is not on my radar, but it is certainly something that needs to be done. [LB683]

SENATOR HAAR: Okay. Thanks for that. [LB683]

SENATOR SCHEER: Or, you know, I guess an alternative would be if you folks had some type of a bill that you were going to send out that there might be multiple ones that would fit together. You know, certainly, I could care less how it gets incorporated in something as long as we can facilitate the passage of it. [LB683]

SENATOR CARLSON: Okay. Thank you. Any other questions? Seeing none, thank you and you'll be here to close? [LB683]

SENATOR SCHEER: Yeah. [LB683]

SENATOR CARLSON: Or will you be here to close? [LB683]

SENATOR SCHEER: I sure will. Thank you. [LB683]

SENATOR CARLSON: Okay. All right. Thank you. We're ready for proponents to testify. Welcome, Pat. [LB683]

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PAT RICE: (Exhibits 1 and 2) Good afternoon, Senator Carlson and members of the committee. My name is Pat Rice, last name is spelled R-i-c-e. I'm the acting director of the Department of Environmental Quality and I'm here to testify in support of the bill today. I'd like to thank Senator Scheer for introducing this bill on behalf of the department. As he mentioned, this is basically a cleanup bill to correct the reference that's in the current existing statute to reflect the change in the federal census from the 2000 census to the 2010 census. The Storm Water Management Plan, and I guess there's a couple of handouts going around too. I'll wait until you all get those. The Storm Water Management Plan or program was put in place in 2006 by the Nebraska Unicameral and provided state grant funding to counties and municipalities that are required to develop and implement Storm Water Management Plans under the National Pollution Discharge Elimination System. Twenty percent local match is required for these funds. By statute, 80 percent of the funding goes to cities and counties identified in the U.S. Census as "urbanized areas." An urbanized area is defined as having 50,000 people or more and that doesn't mean just the community itself, but the surrounding incorporated areas. There's some quite complex language in the federal register about how that's calculated, but it's basically a community and its surrounding areas that amount to 50,000. One of the tables that is passed out here shows you the changes that are taking place this year. Grand Island, while the population of Grand Island proper is still less than 50,000, the metropolitan area of Grand Island is now 50,440, so they have made it to the list here and they moved into the top category which receives 80 percent of the funding that's available under the legislation. And the table shows you what has happened, what the populations were, what the 2013 awards were, and what they will be in 2014 with Grand Island moving into the uppermost category there. The other handout that I...or in the back of that side, I guess I should show you, is this one that says a Storm Water Grant Projects, these are the type of activities that are currently being funded by those communities that are eligible for funding. And then the other handout is just a map that shows all of the urbanized areas in the United States. And on the flip side of that shows the new areas that were added this year because of the change in the census population. And Grand Island is the only one in Nebraska that changed in population. So again, this is basically cleanup legislation and I'd be happy to answer any questions that you might have. [LB683]

SENATOR CARLSON: All right. Thank you. Questions? Senator Haar. [LB683]

SENATOR HAAR: Yes, thank you. Just a question of curiosity. Omaha is getting some of this money, of course. Is any of that going to the design or implementation of the huge undertaking they have to have on storm water, wastewater? [LB683]

PAT RICE: It's part of that, yes. The overall CSO project does incorporate storm water features and Omaha is designing features as part of that CSO effort. And that effort is growing. It's now estimated, I believe in testimony we heard the other day, up to \$2

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billion by the time Omaha is done, so. [LB683]

SENATOR HAAR: Wow. Wow. Okay. Thank you. [LB683]

SENATOR CARLSON: Thank you. Other questions of the committee? Yes, Senator Kolowski. [LB683]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Rice, you wouldn't happen to have an extra 1.5 billion would you to help Omaha on that challenge? (Laughter) [LB683]

PAT RICE: No, sorry. [LB683]

SENATOR KOLOWSKI: Thank you. We all knew the answer to that, but I thought it's a major, major issue in Omaha and we were challenged by that. [LB683]

PAT RICE: Yeah. We do work with Omaha to provide them funding through our revolving fund program. We don't have that kind of money but we loan them as much as we can. [LB683]

SENATOR KOLOWSKI: A serious question. When you have another city come on board like Grand Island did, is there a raising of the amount of dollars within the state or do you just take it out of the same pie? [LB683]

PAT RICE: No, the amount of money stays the same and then we just have to divide by another entity. [LB683]

SENATOR KOLOWSKI: Understandable. Thank you. [LB683]

PAT RICE: And the funds are distributed on a percentage basis of the population within those communities in those...in the bracket. [LB683]

SENATOR KOLOWSKI: Thank you. [LB683]

SENATOR CARLSON: Other questions? I have a question. If we look at this and you talk about Grand Island being designated urbanized because the immediate community was over 50,000. On the back side, on this...this must not be 50,000 on this side. It must be something far less because Nebraska has a lot of communities noted on there. [LB683]

PAT RICE: Right. There's a separate smaller category which is shown on the back side of the table, and Grand Island was down in the lower portion of the table and then because of the change in population, they moved to the upper bracket. According to the

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legislation that we're operating under here, 20 percent of the funding goes to those smaller communities, the smaller group on the bottom, and 80 percent goes to the ones on top. So Grand Island moved from the 20 percent bracket into the 80 percent bracket as far as eligibility for funding. [LB683]

SENATOR CARLSON: Okay. Maybe I'm seeing. Then on this map where Grand Island is, it shows a little brown spot now. Yeah, the side you're looking at now. [LB683]

PAT RICE: Yeah, this one. Yes, that's correct. [LB683]

SENATOR CARLSON: Okay. I understand. Okay. All right. Thank you. Any other questions? Seeing none, thank you for your testimony. Any other proponents? I might say with DEQ to use the term "cleanup bill" might be a little misleading. (Laughter) Any other proponents? Any opponents testifying? Anyone neutral position? All right, seeing none, Senator Scheer waives closing and so with that, we end... [LB683]

SENATOR SCHEER: Thank you very much. [LB683]

SENATOR CARLSON: Thank you...the hearing on LB683, and we'll open the hearing on LB767. Senator Schilz, welcome. [LB683]

SENATOR SCHILZ: Thank you, Chairman Carlson and members of the Natural Resources Committee. Good afternoon. My name is Ken Schilz, K-e-n S-c-h-i-l-z and I represent Legislative District 47. I bring LB767 to you on behalf of the petroleum marketers. The bill would allow the Petroleum Release Remedial Action Fund to be used to reimburse the cost of underground storage tank operator training, which is to be done by a responsible individual as defined in Nebraska Revised Statute 66-1514. This training is required by the Federal Energy Policy Act of 2005. I know that DEQ understands the purpose of LB767 but would like to work on the language and I believe the petroleum marketers and through Laurie are supportive of that as well. Thank you for your willingness to work with DEQ and the petroleum marketers on this amendment, and I ask for your support of LB767. Obviously, there's a representative of the petroleum marketers here to testify and he may be better able to answer questions, but I'd be happy to try to answer them myself if you have any. [LB767]

SENATOR CARLSON: Okay. Thank you, Senator Schilz. Any questions? Yes, Senator Haar. [LB767]

SENATOR HAAR: Yes, thank you. To me this makes sense. Just a...kind of a technical question. Who paid for the training before? Was it...? [LB767]

SENATOR SCHILZ: You know, I don't know for sure, but I'm guessing it fell on whoever had to have training, but you can probably ask the guy behind me. [LB767]

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SENATOR HAAR: Okay. Thanks. [LB767]

SENATOR CARLSON: Any other questions? Okay. [LB767]

SENATOR SCHILZ: And this is a true cleanup bill, so. (Laughter) [LB767]

SENATOR CARLSON: Okay. All right. All right, we're ready for proponents. Welcome, Tim. [LB767]

TIM KEIGHER: Good afternoon, Senator Carlson, members of the committee. My name is Tim Keigher, that's K-e-i-g-h-e-r. I'm the executive director of the Nebraska Petroleum Marketers and Convenience Store Association and appear before you today in support of LB767. First of all, we'd like to thank Senator Schilz for bringing this bill forward for us. I'd like to give you just a brief history of the Underground Storage Tank Program and I think it will help answer your question as well. The Underground Storage Tank Program is a federal program that was implemented back in 1986 with a deadline for compliance of December 22 of 1998. It required all underground storage tank owners to upgrade their underground storage tank systems to add spillover-fill prevention, leak detection on both the tanks and the lines, and to add corrosion protection because most of the tanks at that time were steel. The goal of the Underground Storage Tank Program is to investigate and clean up petroleum and storage tanks that have leaked into the environment. This includes mostly underground storage tanks, but also includes above ground storage tanks that have contaminated the soil with petroleum products. Many of the tanks that have leaked were found at service stations across the U.S., but other tanks include heating oil tanks and farm tanks of certain sizes over 1,100 gallons. Since no insurance company...also as part of the federal program you had to provide financial assurance of \$1 million per release. And since no insurance company would write the insurance because it was kind of like buying the burning building, there was already contamination at the site, that's why most states created Leaking Underground Storage Tank Funds, LUST for short, so it's kind of a fun term. In Nebraska, we fund our Leaking Underground Storage Tank Program with nine-tenths of a cent on gasoline and three-tenths of a cent on every gallon of diesel that is sold. I guess we look at the Underground Tank Program as kind of a self-funded program and we're putting money into the fund, and DEQ manages the fund, and there's criteria for cleanup, which we've been working on the cleanup for...well, I've been here 14 years and been working on it longer than that, so. To my knowledge the last statistics I have, and DEQ could provide you better statistics with more current ones, but there's approximately \$5 million in the fund. I believe they're spending about \$5 million a month cleaning up. They're doing about 50 sites per month. We have a criteria of the Risk-Based Approach, which is called RBCA, which allows for the site to...if the contamination is not leaving the site, getting into drinking water and those types of things, the site then can be closed and let it remediate itself. Getting to the training requirement, the training requirement is a new

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requirement. It was part of the 2005 Energy Act and required that owners of underground...regulated underground storage tanks provide training. They have to provide training to the owners of the company, to the middle-management supervisory level who has oversight over the facilities with underground tanks, and to the persons operating the underground storage tanks. So it would be the C-store level employee who is there on a day-to-day basis. In the training that we're looking at doing that some other states like Kansas and Iowa have done, we're training the owner and the supervisory level person. The owner is referred to as the A level operator and the supervisory level is the B, and then the C-store clerk is the C level person. We're training the...looking to train the A and the B. That's what these other states are doing and then the A and B is able to go back and train the C-store level employee. The cost of the training is about \$300 a person, is what I'm finding. Other states like Kansas and Iowa have taken money from their Underground Storage Tank Programs to provide payment for the cost of the training. And I guess I looked at it simply and just went through and looked at all the list of everything that was eligible for reimbursement from the Underground Tank Program and just added in there that the language that is contained in the bill that would allow the reimbursement to the responsible person, that would be the owner of the company or his or her qualified trainer, that would be the company that did the training, or the company that like the Petroleum Marketers Association plans on hiring a company to do this training, we could seek reimbursement on behalf of the people that were trained for us. The training is required not of only service stations and convenience stores, it's also required of anybody that has a regulated tank, like a church that has a backup or a heating oil tank, a hospital that would have a backup generator, trucking companies, etcetera, etcetera. Some statistics that I had that may be a little old, there are approximately 6,000 tanks that are registered with the Fire Marshal's Office in the state of Nebraska. So I tried to extrapolate out of that how many people would have to be trained. If you look at the average convenience store, it probably has three tanks. But then you look and say, you know, a hospital will have probably one or two tanks. A trucking company one tank. Just taking a stab at it, I'm saying there's 5,000 people that would have to be trained because you can have the owner of the company and if he had two supervisors, that's three people per that company, and then if you look at the \$300, that's a million and a half dollars. The 2005 Energy Act said that you had to have this program in place by August of 2013...or it might have been '12, I don't remember now. But anyway, since the Fire Marshal's Office has been working on promulgating these rules, which to my understanding they're at PRO right now for review, that we're in compliance with the U.S. EPA at this point. I brought this bill now even before the rules and regs are promulgated because I'm assuming that by late summer or early fall, that process will have taken place and the training can begin. I'm not really sure how much time we're going to have to do the training. I'm hoping that we're going to have at least a year because there's a lot of people that have to be trained. It is my intention to hold training sessions throughout the state of Nebraska. I'm obviously going to invite the Grocer's Association, the Trucker's Association, Hospital Association to participate in our training

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program as well. And I guess I just felt that this is a great tie to the Leaking Underground Tank Program is cleaning up previous leaks. This is helping train people to recognize the technology that's out there, what it is doing, and what they should do in case an alarm goes off on a leak detector, what should the C-store level employee do because U.S. EPA found that was a problem and that's why they required this training, so. I have had several conversations with DEQ and understand their concerns and I think they are legitimate concerns and I am willing to work with them to come up with some language to help make this more palatable and workable from their perspective as well. There is a little...you know, the Fire Marshal's Office is in charge of the operator training and DEQ is in charge of the money. So there's...probably have to work with the Fire Marshal's Office in conjunction with DEQ as well. But with that, I'd be happy to try to answer any questions you may have. [LB767]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions? Senator Johnson. [LB767]

SENATOR JOHNSON: Thank you, Senator Carlson. Thanks, Tim. I've been out of the business long enough so I don't know everything that's going on anymore within the petroleum, but the training, the owner of a...I'll just use Casey's, a major... [LB767]

TIM KEIGHER: And a nonmember, by the way. [LB767]

SENATOR JOHNSON: Okay. (Laughter) That was not my question. (Laugh) Okay, well, we won't...we'll pick on that nonmember. The owner is a company, a person, do you train two people at every Casey's, or the supervisor at that location, or how do you handle where they have multiple...? [LB767]

TIM KEIGHER: Sure. Well, the owner of Casey's would have to be trained or whoever that designated person is, whoever is going to be the A designated person in a corporation like that. And then the supervisory level people, typically supervisors probably oversee anywhere from eight to 12, 15 stores, depending upon how...you know, their proximity to each other. And then they can go back and train the clerks at the station...at the convenience store itself. So in an organization like Casey's, I mean, I don't know how many people would have to be trained. It will be a large number because of the number of facilities they own, but obviously they're not all in Nebraska, so. [LB767]

SENATOR JOHNSON: Okay. Another question and it isn't directly related unless the ag sector is putting underground tanks, you know, out in...on a farm, and some of those are getting to be, you know, large storage tanks. Are they affected by this as far as training if they do put in an underground? [LB767]

TIM KEIGHER: Yes, my understanding is if they're over 1,100 gallons they're regulated,

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so they would have to be...they would have to be trained as well. [LB767]

SENATOR JOHNSON: 1,100 gallons on a one site or their total farm? [LB767]

TIM KEIGHER: It's my understanding per tank. So if they have one tank over...underground tank over 1,100 gallons, they would have to be trained. [LB767]

SENATOR JOHNSON: So they could have multiple tanks, but if they're all under 1,100, they'd be exempt? That's your understanding. [LB767]

TIM KEIGHER: That's my understanding, correct. [LB767]

SENATOR JOHNSON: Okay. Thank you. [LB767]

SENATOR CARLSON: Other questions? Senator Dubas. [LB767]

SENATOR DUBAS: Thank you, Senator Carlson. Mr. Keigher, is there any kind of training that's going on now with employees? [LB767]

TIM KEIGHER: In the state of Nebraska? Not anything that's going to follow what the feds are requiring. I mean, I'm sure that most of my members do training for, you know, how to operate the cash register, customer service, how to sell age-sensitive products, tobacco, alcohol and that. I'm sure that they're providing some information to their employees on, you know, hey, if this alarm goes off, you should be calling us. This is what it does, but evidently they're not...throughout the country they're not providing enough of that training and that's why the U.S. EPA is requiring this. [LB767]

SENATOR DUBAS: So it hasn't been formalized...any kind of formalized training hasn't been in place, or...? [LB767]

TIM KEIGHER: Not in the state of Nebraska. [LB767]

SENATOR DUBAS: Okay. [LB767]

TIM KEIGHER: Kansas has been doing this training probably for four years. Iowa has been doing it for, I think, two years. And I'm not sure what other states are doing, but all the states are required to do it, yes. [LB767]

SENATOR DUBAS: Is this just like a daylong seminar type training, or...? [LB767]

TIM KEIGHER: It's approximately eight hours worth of training after the A and the B. [LB767]

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SENATOR DUBAS: Thank you. [LB767]

TIM KEIGHER: You bet. [LB767]

SENATOR CARLSON: Thank you. Other questions? Senator Haar. [LB767]

SENATOR HAAR: Yes, thank you. So Casey's, who's not a member of your organization, do they...they would also have to have the training, right? [LB767]

TIM KEIGHER: Yes, they would also have to do the training. [LB767]

SENATOR HAAR: And that would come out of this same kind of funding? [LB767]

TIM KEIGHER: Yes, but they are paying into the fund too, though. [LB767]

SENATOR HAAR: Right. Okay. So it doesn't hinge on belonging to your organization to have...? [LB767]

TIM KEIGHER: No, and I anticipate there will be other organizations, engineering firms or whatever, that will also offer the training as well. [LB767]

SENATOR HAAR: Yeah, yeah, okay. [LB767]

TIM KEIGHER: In conversations with the Fire Marshal's Office previously, we had discussed about on-line training. The last I recall speaking with them they were not in favor of that because they had no guarantee on who was taking the test and you're going to have to pass a test, competency type thing. It's not a...you know, it's just a more of a review thing, but you have to pass it to get a certificate that you've been trained. [LB767]

SENATOR HAAR: And just real basically, what would I need to know...what would I know when I get through with this training? [LB767]

TIM KEIGHER: Well, it depends on what level you're speaking about. I mean, the owner would have to...is going to understand what the whole system does, what all the bells and whistles on it, what they do. You know, it's very sophisticated these days that if you lose pressure in a line, it will sound an alarm. There are automatic tank gauges that can detect releases by measuring the liquid. There are statistical programs that, you know, measure the liquid that's in the tank, the deliveries that are brought in, sales that are brought out, and those types of things. So they will be very knowledgeable of the whole system. The supervisory level people will probably be as close to as the owner, but the C-store level employee is going to have to know, you know, this is what this box in the back does. It's recording the inventory level in the tank. If this light is green or if this light

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is red, if there's an alarm that goes off, here's what you should do. You should contact your supervisor, contact the company home office. And what it's saying is, there's a potential leak and that type of thing. [LB767]

SENATOR HAAR: Okay. Thanks. [LB767]

SENATOR CARLSON: Senator Kolowski. [LB767]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Tim, just a quick question about the end of a life tank. When...say there's some kind of quick shop and they had the normal gasoline situation, but it gets sold and they turned into a half of a cleaners and half of a sandwich shop, so they're not selling gas anymore. They take the pumps out and all that, but the tanks are still there. Are there rules asking those tanks be removed from that site? Must they be dug up and...? [LB767]

TIM KEIGHER: My recollection is they can be there...put into out-of-use for a year, but after that they have to be removed. And it may be two years under some circumstances. I don't recall that off the top of my head, but yes, there is. [LB767]

SENATOR KOLOWSKI: So they could sit there for two years, develop leaks and we wouldn't know it because no signals are going off. [LB767]

TIM KEIGHER: Well, they have to...to be put in a dormancy state, they have to have all the product removed from them and those types of things. And that's...falls under the jurisdiction of the Fire Marshal's Office. [LB767]

SENATOR KOLOWSKI: Okay. Is it difficult to get all the product out? [LB767]

TIM KEIGHER: No. I mean, vacuum trucks and those types of things, I think they do a good job of it, yeah. [LB767]

SENATOR KOLOWSKI: Fumes would remain and that's a possible danger also? [LB767]

TIM KEIGHER: You know, I don't know the answer to that question. [LB767]

SENATOR KOLOWSKI: Thank you very much. [LB767]

SENATOR CARLSON: Okay. Other questions? Yes, Senator Brasch. [LB767]

SENATOR BRASCH: Thank you, Chairman and thank you, Tim, for bringing this bill to the attention of Senator Schilz. I'm curious, at this point the State Fire Marshal has the responsibility of periodic inspections at the facilities... [LB767]

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TIM KEIGHER: Uh-huh. [LB767]

SENATOR BRASCH: ...to see if they're in compliance with existing rules and regulations. [LB767]

TIM KEIGHER: Correct. [LB767]

SENATOR BRASCH: And so what this bill does is, it is establishing responsibilities on the owner-operator and designate to main...for assurances on a day-to-day basis. In-between inspections, will the inspections still take place by the State Fire Marshal on the rules and regs periodically? [LB767]

TIM KEIGHER: To my knowledge, yes. But I shouldn't answer for them, but to my knowledge, yes. [LB767]

SENATOR BRASCH: To your knowledge, yes. And this is just so day-to-day everything that the Fire Marshal would be looking for periodically is being met. [LB767]

TIM KEIGHER: Well, I think the bill itself is more of how we can pay for the training. That's the purpose of the bill. Back in 2006, I believe it was, there was language put in that gave the authority for the Fire Marshal's Office to be in charge of the operator training and to develop the rules and regs. And mainly we're trying to train the owners of these underground tanks and I think more specifically, the people that are there on the day-to-day basis, the clerks and retail people to recognize why these pieces of equipment are there and what their purpose is and the severity. If the alarm is going off, don't cut the chord to the speaker, which I've heard that from the Fire Marshal's Office. I've heard they put pillows over the speakers so they don't have to listen to it. Don't ignore it, do something with it. It's there for a purpose, yeah. [LB767]

SENATOR BRASCH: And then who trains the Fire Marshal? Or the Fire Marshal is doing the training, who has trained the Fire Marshal? [LB767]

TIM KEIGHER: The Fire Marshal's Office is not doing this training. [LB767]

SENATOR BRASCH: Oh, they're not. Okay. [LB767]

TIM KEIGHER: No. We agreed with them back in 2006 that we would come up with a source of the training and I'm looking at a company in Kansas that has been doing this training for the Kansas Petroleum Marketers and New Mexico and I believe the state of Washington and some other states. But I do know that there's an engineering firm in Iowa that has been doing this training. In fact, they've been doing some of the training for the Kansas company as well, so. [LB767]

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SENATOR BRASCH: Okay. Very good. Thank you. [LB767]

SENATOR CARLSON: Okay. Other questions? In this fund, how long was it designed to be utilized and how long was the nine-tenths of a cent? [LB767]

TIM KEIGHER: Nine-tenths on gasoline and three-tenths on diesel, yes. [LB767]

SENATOR CARLSON: And how long was that...supposed to go into it before it wouldn't be any need for it? [LB767]

TIM KEIGHER: You know, it was implemented prior to my time, but just being familiar with what other states have done and the state that I was in previously, I think it's designed to be there until all the sites are cleaned up. And, you know, the last I knew there was about 1,100 sites and that's probably a year, maybe two-year-old number. So I don't know how many sites there exactly are left to be cleaned up now. I'm sure I could get that answer for you though. [LB767]

SENATOR CARLSON: Well, a pretty good number yet to be cleaned up, I'm sure. And you started out, I think you said, you got...is about \$5 million in the account. [LB767]

TIM KEIGHER: Last I knew there's about \$5 million, yeah. [LB767]

SENATOR CARLSON: And what comes in per year? [LB767]

TIM KEIGHER: Oh, boy. I don't recall enough to give you an accurate answer. [LB767]

SENATOR CARLSON: Okay. Okay. All right. Thank you. Any other questions? Okay, seeing none, thank you for your testimony. [LB767]

TIM KEIGHER: Thank you. [LB767]

SENATOR CARLSON: Anyone else as a proponent? Anyone testifying as an opponent? Anyone in the neutral position? And I was hoping that we would have one. Mr. Rice, I'd like to ask you if you would come forward and be open to answer some questions. Thank you. Appreciate your doing this. Now I got on it a little bit with Mr. Keigher, but can you give us kind of an overall general description of the program and what it was intended to do and how that's going. [LB767]

PAT RICE: (Exhibits 3 and 4) Yeah. It's going fairly well. There's a handout coming around. I believe it's two pages. They're stapled together. On the very top sheet of it, it starts out with a little background and history. Mr. Keigher reported part of that to you, it was established in 1989. I don't believe that there was a sunset date envisioned. As he

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mentioned, again it was designed to be there until the leaking tanks were cleaned up. In 19...I believe it was '96, there were some changes in the federal law that required that all tanks be upgraded, either double wall with leak detection so that we wouldn't have a single wall, the old steel tanks that we've had all the trouble with. Back in the early 1900s when we started to put those tanks in the ground, nobody thought about how long they'd last. So that was the unintended consequence. They started to rust through and leak and then there needed to be some way to clean them up. The fund as it's established provides the...meets the requirement under the federal law that each individual tank owner have either the ability to cleanup or have liability insurance in place for a \$1 million worth of effort. And the tank makes each responsible party eligible for that \$1 million per tank site. And we've hit a few of those sites where we've gone to the \$1 million limit, but most of them are well under that. To date, the handout I believe has some numbers in there about the amount of sites that we've got. We still, as Tim mentioned, there's about 1,100 known leaking sites out there right now. And then we've got a few more that we anticipate that we will find. We continue to find sites where people are cleaning up properties. Maybe the property sat dormant for a long time. Maybe someone had inherited the property and then they go to find a tank and they have to go to the Fire Marshal to get a permit to remove the tank. And Tim was correct that the Fire Marshal does issue permits for that. The Fire Marshal is on site when those tanks are pulled and they make a report to us. They take samples, if they need be, on whether or not there is soil visible that's contaminated. You can see the staining in the soil from the product that was in the tanks and then they'll try to measure the amounts of that and they'll try to determine a rough aerial extent of where that contamination was. That information is then provided to the...to our agency and then we contact the responsible party and negotiate with them on a cleanup plan. [LB767]

SENATOR CARLSON: Okay. [LB767]

PAT RICE: And one of the questions that was asked earlier was about how much money that comes into the fund every year. It's about \$11.4 million. [LB767]

SENATOR CARLSON: A year. [LB767]

PAT RICE: Yeah, it's what it's averaging right now. And that comes from those fees that we're charging, the tank registration fee that the Fire Marshal charges. [LB767]

SENATOR CARLSON: And it looks like then from what you handed out, that there's still a lot of sites left to be cleaned up, so it's going to take a while. [LB767]

PAT RICE: Yes, it will. At \$11.4 million a year and \$131 million estimated liability out there, it's going to take a while. [LB767]

SENATOR CARLSON: Okay. Senator Johnson. [LB767]

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SENATOR JOHNSON: Yeah, maybe a little bit of a follow up. When I was in the business, I know for a while there wasn't enough money, enough funds in there to...wasn't any cleanup done for a while. Was that because of so many tanks in that situation? It seemed like there had been money taken out of this fund for other reasons. [LB767]

PAT RICE: There have been some diversions over time. The suspension that took place in 1995 was for a number of reasons. Initially, when the legislation was passed, there were funding trigger levels that were established. In trying to meet those trigger levels and when the fund would turn on and turn off, we'd have to contact the marketers and have them, you know, crank the pumps back. [LB767]

SENATOR JOHNSON: Yeah, should have asked them. [LB767]

PAT RICE: We were trying to keep up with things. We weren't doing a very good job. There's also no requirement that people submit their bills within a timely manner to us. We found that we had over \$10 million worth of work that was out there that nobody had submitted bills for and all of a sudden the bills started to come in. But we've changed our rules and we've changed the legislation so that the bills need to be turned into us in a timely manner and we make estimates on phases of projects, so we've got a better handle on the work that we've authorized to be done. And again, we're trying to maintain...right now we're trying to maintain something in that \$2.5 million ranges of fund balance. And we think that's adequate to allow for a big entity like maybe a railroad that comes in with a bunch of tanks that they've been sitting on and now is a good business time for them to turn in the bills and we get the bills. So that gives us the cushion we need to operate. [LB767]

SENATOR JOHNSON: But you're comfortable now that the money coming in and your obligations are going to work, so basically what I'm asking is, we don't tap this fund for anything else, it's...it needs to stay where it's at. [LB767]

PAT RICE: We've got it pretty well balanced right now, that's correct, Senator. [LB767]

SENATOR JOHNSON: Okay. Thank you. [LB767]

SENATOR CARLSON: Senator Dubas. [LB767]

SENATOR DUBAS: I think the training, obviously, is very important. Just in light of the question Senator Johnson just asked you, do you see that paying for the training out of this fund will put any of the cleanups in jeopardy, will cause a problem for the fund? [LB767]

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PAT RICE: Well, we're still working on trying to identify how many people would be trained. And as Mr. Keigher mentioned, he's anticipating about \$300 a person to train and roughly 5,000 people, so it would be about \$1.5 million that would come out of the fund. When the Fire Marshal's regulations are approved, there will be a provision in there for retraining and I believe the period on that is every three years. So every three years, some will have to go back and retrain and get retested. So the million and a half ended up being about probably \$500,000 a year if you averaged it out that would go towards training. [LB767]

SENATOR DUBAS: But all of these entities that are going to go through the training, all these individuals, they're all working for companies that are paying into the fund, so. [LB767]

PAT RICE: That's correct. [LB767]

SENATOR DUBAS: Okay. Very good. Thank you. [LB767]

SENATOR CARLSON: Okay. Any other questions? Well, with this requirement, it would seem to me like that's not a bad plan to have in effect where people that are in a position to do something, if there's a problem, are trained to be able to do it. Would you agree with that? [LB767]

PAT RICE: Certainly. [LB767]

SENATOR CARLSON: Okay. I had something else here. Let's see if I can...do you have any complaints from either petroleum marketers or citizens about the nine-tenths of a cent per gallon that the public pays for in order to do this? [LB767]

PAT RICE: I can't recall that we've received any for years. [LB767]

SENATOR CARLSON: So the public probably wouldn't care whether it was nine-tenths of a cent or two cents. [LB767]

PAT RICE: I wouldn't want to speak for the public on that one. (Laughter) [LB767]

SENATOR CARLSON: I look at Senator Schilz. He knows what I'm thinking about. (Laughter) Okay, any other questions? Senator Brasch knows what I'm talking about. [LB767]

SENATOR BRASCH: I know what he's thinking. [LB767]

SENATOR CARLSON: All right. Appreciate your answering these questions. Thank you. [LB767]

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PAT RICE: Certainly. [LB767]

SENATOR CARLSON: Anyone else in...okay. Anyone else in a neutral position?  
Senator Schilz waives closing. So we complete, then, the hearing on LB767. Thank you  
for coming. [LB767]