

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 3, 2022

BOSTELMAN: Welcome to the Natural Resources Committee. I'm Senator Bruce Bostelman. I am from Brainard, and I represent Legislative District 23. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing. This is part-- just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Intro-- introducers will make initial statements, followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for introducing senator. If you are planning to testify, please pick up a green sign-in sheet that is on the table in the back of the room and please fill out the green sign-in sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the sheet-- the sign-in sheet to a page or to the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today but would like to have your-- like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign for that purpose. This will be part of the official record of the hearing. When you come up to testify, please speak clearly and loudly into the microphone. Tell us your name and please spell your first and last name to ensure we get an accurate record. We will be using the light system for all testifiers. How many people plan to testify on LB1262? OK, we will have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining, and the red light indicates your time has ended. Questions from the committee may follow. There's no displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with this-- with us today will introduce themselves starting on my left.

GRAGERT: Tim Gragert, District 40, northeast Nebraska.

AGUILAR: Ray Aguilar, District 35, Grand Island.

BOSTELMAN: My right?

MOSER: Mike Moser, District 22, Platte County and parts of Stanton County.

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BOSTELMAN: To my left is committee legal counsel Cindy Lamm, and to my far right is committee clerk Katie Bohlmeier. Our pages for this afternoon at the committee is Malcolm and Joseph. We thank you both for serving with us today. With that, we will have the opening on LB1262. Senator Murman, you are welcome to open.

MURMAN: Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. For the record, my name is Senator Dave Murman, and that is spelled D-a-v-e M-u-r-m-a-n, and I represent District 38, which includes the counties of Clay, Nuckolls, Webster, Franklin, Harlan, Furnas, Red Willow, and part of Phelps County. I come before you today to introduce LB1262, which establishes the Recreation Area Assistance Act. As I know you're aware, the legislators' Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee-- that's a mouthful-- STAR WARS Committee, has proposed in Sections 7 to 11 of LB1023 the Water Recreation Enhancement Act, which, among other things, funds projects at Lake McConaughy and Lewis and Clark Lake recreational areas. LB1023 will be heard before this committee at a later date. While I respect the work and recommendations of the Legislature's STAR WARS Committee, I believe that other large lakes and recreation areas in Nebraska are equally worthy and deserving of funds to promote the state's water resources, provide economic benefits to the people, communities, and businesses of Nebraska, and attract vis-- visitors from Nebraska and other states to boost local economies. After visiting with members of the STAR WARS Committee about this issue, I was encouraged to bring this bill to help other large lakes and recreational areas in Nebraska that have been affected by the pandemic. LB1262 redefines a recreation area as a lake or reservoir in this state measuring at least 3,000, but no more than 20,000, surface acres in size and around-- and the area surrounding the lake that is used for accessing the lake and for rec-- related recreational activities. Lewis and Clark Lake and Lake McConaughy are the two largest lakes in the state. LB1262 would add the next four largest lakes in Nebraska to receive similar benefits intended for the two largest lakes. Specifically, LB1262 would include Harlan County Reservoir, 13,250 acres located next to Alma; Cal-- Calamus Reservoir, 5,200 acres located near Burwell; Swanson Reservoir, 5,000 acres located west of McCook; and Sutherland Reservoir, 3,017 acres located east of Paxton. In drafting the bill, I asked my constituents what type of projects would be most beneficial. Specifically, the purpose of the Recreation Area Assistance Act would be to administer and carry out the following projects at eligible recreation areas in the state: provide new or refurbished boating docks; improve access roads and related

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infrastructure for the recreation area; improve internet access and telecommunications service for the recreation area; promote the use of recreation area and related tourism attractions including, but not limited to, splash pads, dog-- dog parks and dog runs; create recreational trails; promote fishing and create fishing cleaning stations; create tourist attractions; create kayak landings; create and improve camping and recreational vehicle sites. These types of projects are comparable to the projects and visions for Lake McConaughy and Lewis and Clark Lake in LB1023, although on a smaller scale. The Game and Parks Commission is granted the power necessary to carry out the purpose of the act in the same manner as it is in LB1023, including a fund to be administered by the commission. LB1262 states the intent to appropriate \$8 million from the ARPA funds to carry out this act. I believe that the act qualifies under the ARPA criteria. Specifically, it addresses the nega-- negative economic impact caused by COVID-19 pandemic, beginning in 2020 and continuing until today. As infections and deaths began to occur in Nebraska in the spring of 2020, we began to experience restrictions on commerce and public gatherings via directed health measures. This has resulted in individuals sheltering at home and not traveling to the recreation areas in question. Despite vaccines, the emergence of the variants and periodic spikes in infections have prolonged this behavior and negative impact to the industries in question. That is why aid to the travel, tourism, and hospitality, or similar impacted industries, has been specifically identified as an impacted industry that would qualify for ARPA funds and presumed eligible to receive such funds. This would involve a wide variety of small businesses, including motels, cabins, restaurants, grocery stores, gas stations, bait shops, boat and equipment rental stores, campgrounds, and other businesses and industries that serve as-- service these recreational areas. The travel, tourism, and hospitality business associated with these recreational areas has-- have suffered negative economic consequences-- consequences as a result of the pandemic and projects identified in LB1262 would assist in making these recreation areas more attractive to visitors, including out-of-state visitors from nearby Kansas, Colorado, and other states, thus boosting those businesses that have suffered. Such projects are reasonably related to the negative impact and will provide an incentive for people to visit the recreation areas by expanding and improving water access and recreational opportunities. Additionally, because of the pandemic and a trend towards a remote workforce, individuals are reconsidering where they want to live and raise a family. Funding these projects will not only help the industries that have suffered, but also make these areas more attractive places for those considering moving to

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rural communities. Chairman Bostelman and the committee members, thank you for your consideration of LB1262. I'll be happy to answer any questions.

BOSTELMAN: Thank you, Senator Murman. Are there questions from committee members? One question I have for you, are you specific to either property or-- owned or managed by Game and Parks? Are there any facilities out there that may be NRD, irrigation districts? Are you considering any of those and are you considering things only in your district or statewide?

MURMAN: Well, I'd actually like to consider any areas nearby those lakes that would be deemed eligible for ARPA funds, so nearby places on the river.

BOSTELMAN: But would Game and Parks own land, whatever it might be, or controlled or managed or-- or any? So NRDs, NRDs do-- do some; irrigation districts do have some; some of those, Lake McConaughy, Game and Parks manages it, so I'm just curious.

MURMAN: Yeah, I'm not sure exactly. I think there's people behind me that could answer more clearly--

BOSTELMAN: Yep.

MURMAN: --what's owned by Game and Parks and--

BOSTELMAN: OK.

MURMAN: --and-- and leased from them and so forth. But-- but I'd like to include any areas near the lakes, if that's possible, so.

BOSTELMAN: OK. OK. Seeing no other--

MOSER: Can I ask a question?

BOSTELMAN: Oh, Senator Moser.

MOSER: Do you have an itemized expense list of the things that you want to do or they just all in aggregate in your--

MURMAN: I do have some itemized list, and I think some of the testifiers behind me might have some also, that at least kind of give somewhat of a guideline of--

MOSER: OK.

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MURMAN: --what's needed and where it would be spent.

MOSER: All right, thank you.

BOSTELMAN: Seeing no other questions, thank you, Senator Murman. Will you stay for closing?

MURMAN: Thank you.

BOSTELMAN: First proponent, please. Anyone like to testify as a proponent? Good afternoon.

JIM SWENSON: Good afternoon, Chairman Bostelman and members of Natural Resources Committee. My name is Jim Swenson and I-- J-i-m S-w-e-n-s-o-n. I have the honor of serving as the deputy director for the Nebraska Game and Parks Commission, located here, headquarters in Lincoln, Nebraska. Testimony offered today is in support of LB1262 as it facilitates enhancement for us of recreation opportunities in Nebraska and potentially brings economic benefit to regions of the state, which excites us greatly, as we are a great tourist attraction with our park areas. This legislation complements our desire to enhance or develop new recreational opportunities and amenities on park areas that we manage, including amenities that will draw a larger number of visitors to our parks and into Nebraska. The projects and amenities identified within the legislation are appealing to us and are commonly requested by members of the public. Current demand for outdoor recreation, especially campgrounds and campsites, is a testament to the need for more opportunity. Of the four recreation areas identified by Senator Murman, three are in fact commission-managed recreation areas, those being Swanson, Sutherland, and Calamus, where we have operations on the landscape. Fourth reservoir, Harlan County Reservoir, is in fact managed by the Corps of Engineers, who are great partners with us in many aspects. We-- we share a relationship with them, for instance, at the Lewis and Clark Reservoir, but they are in charge of the park operations. Game and Parks has worked with them to do some inlaid features there, but park operations belong to them. The communities identified and associated with these bodies of water would certainly benefit from the added draw of tourists to the area, and it is worth noting that if surf-- surface acres' parameters were expanded, broadened a little bit, we could include some other commission-managed areas on the landscape as well. Thank you, and I'll be happy to answer any questions you may have.

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BOSTELMAN: Thank you, Deputy Director. Are there questions from committee members? Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Just real quick, of all the potential projects that he listed, are there any-- are there any there that are a particular priority to the Game and Parks?

JIM SWENSON: Yeah, that's a great question, Senator. You know, I'd have to steer towards those campgrounds and the campsite development. You know, our experience in recent years has been that there's a huge boom in RV sales. Last year alone, the Game Commission experienced about a \$2 million increase in revenues just with campsites, and we've identified that as one of our priority projects in the state, to expand the number of offerings that we have. Right now, we offer about 3,700 sites, RV sites statewide, and we want to definitely add to that. So, you know, the-- the priorities in my mind would focus on that. It brings good tourism into the area. And then of course, you have to have the support, even manage the shower buildings, things of that nature, to go on with that.

GRAGERT: And it'd be strange coming from me, but are there fishing-- fish-cleaning stations at any of the lakes he mentioned?

JIM SWENSON: There are some fish-cleaning stations. We're in the process of upgrading those with new grinding systems to make them better for the public to use, a lot easier to use, so-- but, you know, as good as the fishing is in Nebraska, Senator, we-- we probably needs more of those, so.

GRAGERT: There you go. Thank you.

BOSTELMAN: Seeing no other questions, thank you for your testimony today. Next proponent, please.

SCOTT SMATHERS: Good afternoon, Chairman Bostelman, members of the committee. My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I am the executive director of Nebraska Sportsmen's Foundation, a 501(c)(3) statewide membership organization with 13,000 members and like-minded partners working on educational units for the sportsmen and sportswomen of the state. This is one of those bills that puts us a bit in a quandary as a membership organization. Obviously, we are very pleased to see Senator Murman bring a bill that would help enhance our state recreational areas from a cross-section outside even the traditional hook-and-bullet atmosphere of use that our members use. Obviously, we all have families and we take friends and

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family with us for camping trails, birding, boating, obviously, all the above, and this bill would be very advantageous to help upgrade, add new structures, maintain the road structures, the boat docks, the other issues we've already-- you've already heard from the Game and Parks. Our concerns come from this little bit of a fact of a little bit of clarity issues on the surface areas of 3,000 square. Does that include land and water? Because if that's the case, we have quite a few other reservoirs outside of Senator Murman's district, i.e. Branched Oak, the largest Salt Valley lake, that is in desperate need of some-- some maintenance upgrades because of usage and pressure. I'm curious as to how we arrived at the square footage area. I'm also curious as to, did we handpick certain rese-- reservoirs within a certain district, which is still fine, but we just need some clarity so we can deliver that message to our membership base. Is it strictly water? Is it combined land and water? The other thing is we would like to see a little more def-- definition in the bill of what is going to be done in particular recreation areas and a timeframe, which I know is coming if the bill moves onto the floor and gets passed, with the Game and Parks. But overall, we're very happy that Senator Murman brought this bill. We understand that in current times, the old saying is, as much is new, as much as we need as old. Families and individuals are struggling with things to do at a cost-effective measure. The outdoors are one of those areas that you can partake in as a family, especially young or middle aged or old like me. You can take your grandkids relatively easy cost. The Game and Parks has made sure of that. So we want to make sure we're here to promote those activities for families, especially in the current climate of restrictions, and so that we can move forward. And I would also like to see that, with each area that's being considered, that maybe an ad hoc committee from those local areas would be a part of the-- really drill down to what is needed. With that, I'll answer any questions.

BOSTELMAN: Thank you, Mr. Smathers. Are there any questions from committee members? Seeing none, thank you for your testimony.

SCOTT SMATHERS: Thank you.

BOSTELMAN: Next proponent, please. If you're going to testify, please move towards the front of the seats so we can move through quickly. Good afternoon.

EMILY WHITE: Good afternoon. My name's Emily White, E-m-i-l-y W-h-i-t-e. I am the Harlan County tourism director in Harlan County. And first and foremost, thank you for the opportunity and the

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awareness of the needs of Nebraska's second-largest lake, and I say second largest because I'm counting that the whole lake is in Nebraska and its surrounding areas. I would love to invite each and every one of you to visit Harlan County Lake. It is really the most gorgeous place in Nebraska, in my opinion. I may be biased, but we have some wonderful things to offer, and I invite you all to come down and visit as the tourism director. We had-- had some fluctuating levels of our lake in current years. We had a flood and recession after that, and it's left some things in disrepair, especially along the shoreline, the northwest shoreline by Alma, that this bill would greatly impact. The COVID-19, as it has affected everyone, affected Harlan County terribly in the fact that people were at home and sheltered in place and didn't come visit our lake for at least that first summer, and every business in Harlan County was affected by that. And this bill, as a small business owner, my husband and I, I can speak to that economic impact of how it affected us as a business. Restaurants, hairdressers, bars, marinas, huge impact there. The Corps runs our lake, as this-- this other man said, and they have their own money. But that money only stretches so far, and usually it doesn't stretch to the northwest corner of our lake. And I know you guys have asked the other presenters for concrete things that we would want to do. I have those things. We have so many ideas that this money could bring to Harlan County Reservoir, and first and foremost would be the South-- South Street in Alma, Nebraska, is steps from the water. We would love to make a new dock right there so the people that come to the lake can park their boat and take steps onto our main street. There's 20, 30 businesses right there that would be directly impacted by this bill if we could-- could make that shoreline right there usable for people that come to Harlan County. I have stats from 2019, not from 2020 or '21 yet, but I would know that our-- our stats from 2019 show over 670,000 visitors to Harlan County Reservoir. I know that COVID impacted that number. It had gone down because of the stay-in-place orders. I don't think there is a business that wasn't impacted. During that time, we had some time of reflection and found that we do need more campsites; we do need a dock; we need activities for people to do that aren't necessarily going to be at the lake, like splash pad, dog parks, walking trails. This-- the money from this bill could impact us so greatly. And now that people are getting out and about, they would have time to use those things down at Harlan County Lake. We-- we pray that they would come down and-- and see us. Those are kind of the projects that we were thinking. Kayak landings was another one; picnic areas; extending the walking path. And Alma, the city of Alma carries a majority of the load for occupying tourists in the area with its

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movie theater, downtown shopping area, restaurants, pool, and our hospital that treats numerous tourists. And this economic impact it had on the lodging, especially, we have a hotel in Orleans that is trying to sell, but their books from 2021 and 2020 are making that quite difficult, so anything to help lodging, the shoreline. We have people from Kansas, Iowa, Colorado even coming to spend out-of-state money in Harlan County because we are seven miles from the Kansas border, so getting those people back and giving them something to do when they're in Harlan County would be greatly appreciated.

BOSTELMAN: Great. Thank you, Ms. White. Are there any questions from the committee members? Senator Gragert.

GRAGERT: I got an important question.

EMILY WHITE: I hope I can answer it.

GRAGERT: How's the walleye fishing in--

EMILY WHITE: Wonderful. Actually, the national-- or the Nebraska Walleye Association is kicking off its first tournament in April, so.

GRAGERT: You've held the Governor's Cup there, haven't you?

EMILY WHITE: We have.

GRAGERT: You-- lately?

EMILY WHITE: I-- I'm not sure.

GRAGERT: OK, thank you. That's good.

EMILY WHITE: Do you know?

GRAGERT: Thank you.

_____ : [INAUDIBLE] a couple years ago.

EMILY WHITE: A couple years ago.

BOSTELMAN: Other questions from committee? You should be biased to your area. You do a good job.

EMILY WHITE: I think we are pretty lucky to live where we do. Thank you.

BOSTELMAN: Thank you for coming in today and testifying.

EMILY WHITE: Thank you.

BOSTELMAN: Next testifier, please, proponent.

CYNTHIA BOEHLER: Good afternoon, Senators. My name is Cynthia, C-y-n-t-h-i-a, Boehler, B-o-e-h-l-e-r, and it's a privilege to address you today in the interest of a very special place. And I, yes, I am biased. I'm here today to represent Harlan County as the chairman of the board of supervisors and representative from District 4, and most of the downtown business area is in my district. And I would first like to thank Senator Murman for inviting me to do so, and I would like to thank you for your interest for the statewide water recreation scenes in our state. And as an elected official, it's always very important for me to make sure that I stay in tune with the people in my district and my constituents. And I will tell you that when this pandemic started, my phone calls increased immensely from the people whose businesses were affected very greatly. Because of the timing of this pandemic, our restrictions started coming down to us right at the beginning of tourist season. And so, too, it's pretty much an understatement to say that our businesses were affected somewhat, because they were really dramatically infect-- affected when we're used to having the number of people and tourists come through our area and they were sheltering in place and not coming and visiting us. Every business that I know of suffered greatly because of the COVID-19 restrictions, and Emily did a really good job of speaking about some of the things that we would like to do with some of those funds. We-- we really feel like, from Highway 183 to our first campground, which is Methodist Campground, that's about four miles east of Highway 183, we have a largely undeveloped shoreline there, which does belong to the Corps, but, however, they do lease it to the city of Alma, and one of the things that has been on the docket for the city of Alma for many years is to make a bigger RV park there. The RV park that we have there is booked before the season even begins, and they've just never had the funds, so being able to use this proposed funding for that would be an immense boost to our city's income. And we have the land for it. We have the location. We just need help with the funding for it. And so those funds would in-- would increase our revenue and increase the state of Nebraska's tax revenue because it would bring us more. Basically, it's people who come and park and stay all summer long there, so it increases our revenue. Our business district is right there. Our-- our main street is one block from the lake, and so the proposed dock would be a really big enhancement to our revenue in the city of Alma. We would like to possibly make a beach. We don't have a public beach anywhere on the west end of the lake. That would

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also be a big enhancement to our area. One of our major roads going in and out to the lake area on the West End is South Street, which is our furthest south street in Alma, which then merges into Cornhusker-- Cornhusker Street. We need to resurface that street. It gets a lot of use, campers, boats, everything, and that's, I believe, on our one- and six-year plan, and that's costly. We did get a estimate for that between \$900,000 and \$1.2 million just to do that stretch, and so anything that we could use from this funding would benefit us greatly to keep that in good condition. One thing that we were talking about before the meeting is that, as much as we love our tourists, and we really do, they become our family, and we want to do everything that we can to enhance their experience while they are there. However, there is a standing joke that if you need to get an email sent or a phone call made, you better do it before Friday because our cell phone service and our internet service is really disrupted, and so that, we've already talked about maybe putting some of this money towards broadband expansion. And so these funds could very, very much impact what we could do to enhance our area. And with the proposed plans to make a larger lake between Omaha and Lincoln, we know that that's going to pull some of our campers from this part of the state away, and so we want to start stepping up our game. So thank you so much for allowing me to come speak and I'd entertain any questions.

BOSTELMAN: Thank you. Did a very good job.

CYNTHIA BOEHLER: Thank you.

BOSTELMAN: Questions? Senator Gragert.

GRAGERT: Yeah, thank you, Chairman Bostelman. Thank you for your testimony. I was just wondering, if the government invested, you know, part of this \$8 million to Harlan County, what would-- would the city of Alma be able to put up any monies in matching funds of any kind?

CYNTHIA BOEHLER: Yes, we've actually spoken about that. We got together on Monday night with the mayor and the city administrator, and we were talking about just that, is that we would probably, with these funds, we would pretty much guarantee that you would have to have some sort of a percentage of match where-- where it be, you know, 70/30. And I-- I would almost think that we would have to maybe change the guideline per project on that. But matching funds, yes, we feel like that that would be something we would use. I can't think of any instance where we would be wanting to do a project for the

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county-- if we were given the option to, you know, get 30 percent of the funding for that, we'd jump at that because that would save our taxpayers.

GRAGERT: Thank you.

CYNTHIA BOEHLER: So-- and I just want to let you know that we are planning on putting a new fish-cleaning station on the north side because we don't have one on the north side.

BOSTELMAN: I'll check that out.

CYNTHIA BOEHLER: All right. Any other questions?

BOSTELMAN: Thank you for your testimony. Thank you for coming in today.

CYNTHIA BOEHLER: Thank you.

BOSTELMAN: Um-hum. Anyone else like to testify as a proponent for LB1262? Please come forward. Any other testifiers as proponent? Seeing none, does anyone like to testify in opposition to LB1262? Seeing none, anyone like to testify in the neutral capacity? Seeing none, Senator Murman, you're welcome to close.

MURMAN: Thank you all for consideration of this bill. The travel, tourism, and hospitality businesses associated with these recreational areas have suffered negative economic consequences as a result of the pandemic, and the projects identified in LB1262 will provide an incentive for the people to visit the recreational areas by expanding and improving water access and recreational opportunities. Those testifying today have given you firsthand evidence supporting the funding of these projects. For all these reasons stated in the testimony, I ask for your support of this bill and that you give it timely consideration and move it forward out of committee.

BOSTELMAN: Any other questions from committee members? We do have, I believe, nine proponent letters that we came in on this. And with that, that'll close the hearing on LB1262. Thank you, Senator Murman.

MURMAN: Thank you.

MOSER: How many plan to testify for this bill, if you'd raise your hand? I think we will go five minutes. Senator Bostelman, would you tell us about your bill, please?

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BOSTELMAN: Thank you, Vice Chairman Moser. Good afternoon, Vice Chairman Moser and the members of Natural Resources Committee. My name is Bruce Bostelman, and I spell that B-r-u-c-e B-o-s-t-e-l-m-a-n. I represent the Legislative District 23. I'm here today to introduce LB1102, which creates two new tools to protect Nebraska's environment. These tools are modeled after laws in Kansas and Missouri. First, under the new Nebraska Environmental Response Act, the NDE director is authorized to issue orders to persons responsible for a spill that may require remediation. If the responsible party fails or refuses to remediate, the state can then step in and take the lead, but may pursue cost recover-- cost recovery against the responsible party, along with administrative penalties. Recovered costs will go back into the cash fund created to be used for future cleanups. This bill helps to ensure that responsible parties pay for cleanups, rather than the Nebraska taxpayers. The bill clearly identifies liability and limited exemptions and provides for a voluntary remediation option. The bill also provides for an environmental lien to be filed against the property for the amount of the state's cleanup cost if a responsible party does not pay promptly. Second, the bill authorizes the DEE director to issue a case-- cease-and-desist orders, CDOs, cease-and-desist orders, if the director finds an act or practice that presents a substantial harm to the environment. The CDO is intended to put a quick stop to situations that pose a threat or could pose a threat if no action is taken. CDOs could be used in nonemergency situations, which can prevent a stockpile of waste material at a location. These situations could be addressed through a CDO rather than waiting for conditions to evolve into an emergency. The agency already has authority to deal with emergencies. The CDO process ensures that persons receiving a CDO are aware of its terms while it-- while it was issued and how to challenge it. CDOs go into effect immediately unless the recipient requests a hearing within 15 days of issuance. Violation of a CDO can result in a civil penalty, suspension or revocation of environmental permits, or enforcement action. I will also be bringing to the committee a technical amendment to address the fu-- a funding mechanism in the bill. It was an oversight, and it is my intention to-- our intention to seed the new Nebraska Environmental Response Act fund with \$300,000 in General Funds. This amendment provides for the necessary transfer language. Director Macy is here to answer any of your questions about this bill. I asked for your support of LB1102 and its advancement to General File. I'll take any questions. Thank you.

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MOSER: Questions for Senator Bostelman? You must have done a good job. Thank you.

BOSTELMAN: Of course.

MOSER: Testifiers in support? Please go ahead.

JIM MACY: Well, good afternoon, Senator Moser and members of the Natural Resources Committee. My name is Jim Macy, spelled J-i-m M-a-c-y. I'm the director of the Department of Environment and Energy, NDEE. Before I begin, I want to thank Senator Bostelman for introducing LB1102 on behalf of the department. I'm here today to testify in support of LB1102, a bill to create additional authorities and enforcement tools to improve protection of the environment. The bill also creates an incentive for voluntary cleanup action. First, LB1102 creates the Nebraska Environmental Response Act, which gives the NDE director authority to issue orders to initiate cleanup at contaminated sites, to assess cleanup costs and pursue cost recovery for cleanup costs against a re-- responsible party who fails or refuses to comply with the director's cleanup order. The bill creates a cash fund started with \$3,000-- \$300,000 in General Funds, but that continues to be funded with cleanup costs collected from responsible parties. The bill authorizes the director to assess environmental or administrative penalties under limited and specific conditions, with recovered penalties going to the school fund as required by the State Constitution. This creates specific funding for the department to initiate cleanups in circumstances where responsible parties refuse to step up. LB1102 creates or provides a critical incentive to responsible parties to step up to the plate and pay for cleanup costs before being ordered to do so. The bill would help to make-- to make sure that viable responsible parties pay for cleanups rather than Nebraska taxpayers. Again, the money recovered under LB1102 for cleanup costs goes into the cash fund to be used for future environmental cleanups. Having sufficient money in a cleanup fund allows the department to respond quickly to address problem sites. In addition, the bill creates an environmental lien that may be placed on a property owned by a responsible party for unpaid cleanup costs to better ensure the recovery of taxpayer funds. Second, LB1102 amends Section 81-1507 in the Nebraska Environmental Protection Act to authorize the director to issue cease-and-desist orders. This is an expedited order issued by-- when the NDE needs to stop current practice that violate the law and pose a substantial risk of harm to the environment before site conditions become worse. The cease-and-desist order is one way to put a quick stop to ongoing significant pollution events and order compliance actions that may

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continue beyond abating the immediate emergency. There are several safeguards in place to-- in LB1102 to make sure that the cease-and-desist orders are fair and meet due process. The bill establishes procedures to promptly notify in writing all persons who are subject to the order, as well as provisions for expedited hearings. This concludes my testimony. Thanks for your interest in the proposal, and I'm happy to answer or take your questions.

MOSER: Questions for the director? Senator Gragert.

GRAGERT: All right. Thank you, Vice Chair. Thank you for your testimony. I-- I wanted to just clear some things up I think I heard, and would your-- would this just be point-source pollution arena?

JIM MACY: Would this just be point-source pollution? Yes, I believe that would be that category.

GRAGERT: Does-- does this bill give you any more authority, when you're doing inspections, to be able to do the preventive actions and not wait till it actually breaks?

MOSER: Spins out of control.

JIM MACY: Yeah, it does three things. It amends the existing NEPA authority that we already have to-- to act to stop, issue a cease-and-desist order. It creates a new Environmental Response Act to initiate the cleanup and ensue cost recovery and-- and the-- and the environmental lien.

GRAGERT: What-- what kind of-- would this-- would this-- under this bill, would CAFOs be involved?

JIM MACY: This would be predominantly for a bad actor that isn't-- isn't complying with the law, so it-- it could be any facility that we regulate.

GRAGERT: And you regulate CAFOs and-- and that type of thing?

JIM MACY: We regulate a lot of different and varied sources, CAFOs being one, yes.

GRAGERT: OK. Thank you.

MOSER: Senator Cavanaugh.

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J. CAVANAUGH: Thank you, Vice Chairman Moser, and thank you, Director Macy, for being here and taking up this conversation. Thanks to Senator Bostelman for bringing this issue too. So, I mean, talking about just kind of-- my mind obviously goes to Mead, thinking about what happened in Mead, right? And I guess my question is, this seems like this is helpful and I think, you know, generally came out of looking at what happened there, would this, if we had this in effect five years ago, would that situation have-- have resulted differently?

JIM MACY: Well, Senator, I want to be really careful in my answer with you here. So-- so let-- let's-- instead of looking in the past, this looks forward into the future. I want to be careful in, you know, testifying to something that might affect existing regulatory authority and our enforcement complaint against certain facilities. So specifically, if-- if we have a bad actor that-- that isn't complying with the law, that there's an environmental emergency happening, it would allow us to say stop, and-- and then, if they didn't stop, for us to go in and-- and clean the emergency up.

J. CAVANAUGH: Well, I won't put words in your mouth, because I don't want to get you in trouble. But I'll tell you my interpretation of what happened in Mead, I guess, that you did tell them to stop and they kind of just ignored you. So what my, I guess, interpretation of what was going on there, was that you either had authority that you weren't exercising or you didn't have sufficient authority.

MOSER: I-- Senator, I don't think we want to go there.

J. CAVANAUGH: Well--

MOSER: Is that fair?

JIM MACY: I-- I-- yeah, we-- we want-- we've spent a lot of time on our complaint and-- and making a very solid case at-- at that particular facility, so I'm not going to testify on-- on anything that would speak to that.

J. CAVANAUGH: That's fine. In the abstract, this gives you another tool to act against bad actors who maybe in the past would not have been-- you would not have had that ability to stop them then. That's your support for this bill.

JIM MACY: This is, exactly, another tool in the toolbox for future problems that we might encounter.

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J. CAVANAUGH: And I think you said this pretty clearly, but I just want to make sure I understood you right. The \$300,000, that's just to start that fund and so that you don't need to assess those fees against people before you can start working on cleanups.

JIM MACY: That starts the cleanup fund, yes.

J. CAVANAUGH: Thank you.

MOSER: Senator Gragert.

GRAGERT: Thank you, Sen-- Vice Chairman Moser. Real quick, the current-- your current process of going after bad actors is all the way to General Attorney [SIC]? And is that pretty much is-- is that some of your first steps currently?

JIM MACY: Well, no, the Nebraska Environmental Protection Act, it is inclusive of many tools in the toolbox, letters of noncompliance, emergency orders, administrative orders, consent orders, and then referral orders to legal authorities, either be in-- in the state of Nebraska with the Attorney General or the Environmental Protection Agency.

GRAGERT: And will this bill speed up that process or will it give you-- I guess, how is this bill changing what you already have?

JIM MACY: This-- this-- we've always had authority to-- to act, and we've always had great tools in the toolbox to act. We-- we're an agency that always looks for better ways to more effectively and efficiently provide more focused state government for-- for the environment and to protect the environment. This authority, it's not an authority. It's a timing issue, so this allows us to quickly come in and say, please stop this; and then, if you don't stop this, to start a cleanup; and then there's additional tools in there to incentivize getting that cleanup done because we would put a lien on the property.

GRAGERT: Thank you.

MOSER: OK, other questions? Thank you for your testimony.

JIM MACY: Thank you, Senators.

MOSER: Next supporter.

AL DAVIS: Several handouts.

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MOSER: Welcome.

AL DAVIS: Good afternoon, Senator Moser, members of the committee. I'm handing out some documents that I received just a few minutes ago along with my testimony. I'd prefer that you let me give my testimony and then we'll talk about the documents. My name is Al Davis, A-l D-a-v-i-s, and I am the registered lobbyist for the Nebraska chapter of the Sierra Club, here today to testify in support of LB1102. Members of the Sierra Club have been keenly interested in seeing this state of Nebraska put more teeth into the law when egregious violations have resulted in irreparable damage to the environment, and we thank Senator Bostelman for bringing this bill. LB1102 is the direct result of the years and years of environmental abuse at the AltEn ethanol plant at Mead, Nebraska. AltEn's use of pesticide-treated seeds to produce ethanol has resulted in massive piles of fetid wet cake, with-- with-- which would nearly top Memorial Stadium if piled on a football field, and millions of gallons of pesticide-contaminated water and sludge still sitting in storage tanks and in open lagoons, where it exposes animals and humans nearby to fatal and tox-- to the fatal and toxic brew. Why it took years before NDEE acted to shut the plant is an open question, but it would appear that only The Guardian newspaper featuring the plant in a front-page story, only after that happened did NP-- NDEE get spurred to action to shutter the plant. Certainly, the managers of AltEn knew what was occurring on that site. After all, the packages of the seed that came in prohibited the product from being used as a feed source, and they didn't feed the product to cattle in the nearby feedlot which was also owned by the same individuals. So did the Department of Agriculture, which ordered AltEn to stop applying the product to nearby fields in 2019, and surely the seed companies, who portray themselves as the white knights coming in to remediate the site today, knew what was going on also. AltEn promoted itself to the industry as the place to dump their waste easily and freely. The seed companies are as culpable as anyone, and Nebraskans should be outraged that the seed companies used Nebraska as a dumping ground, exposing hundreds of people to pesticide on a daily basis to save themselves the cost of responsible disposal of their waste seed. Beginning in 2017, NDEE itself was called time and time again by residents of Mead upset with the toxic and acrid odor which permeated the village and sickened wildlife and domestic animals, yet nothing was done. If NDEE didn't have the authority years ago, then why didn't the director approach Senator Bostelman for changes to the law to give him the authority? It shouldn't take an international newspaper's coverage to spur the state into action to protect its

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citizens. Clearly, there are no heroes in this story. The Sierra Club supports the framework established in LB1102, but still believes there are several tweaks which would improve the bill. We support amendments to the bill which more clearly define specific terms, but have several questions which we feel should be answered so that the law is clear. Moving forward, will this bill prevent a future AltEn? The bill gives the director of NDEE significant latitude to enforce and regulate environmental problems, but does not force the director to take action against a violator. The use of permissive language causes a lack of trust among the environmental community because we have seen NDEE drag their feet and slow-walk compliance at AltEn and elsewhere. Sadly, AltEn is not an isolated case. The tire pyre-- pile at Alvo, Nebraska, is another example of demonstrated lax enforcement when relating to a problem violator. The discretionary language in the bill is problematic for the Sierra Club. The use of words like "timely," "reasonable," "waiver," and "recoverable," all provide wiggle room for varied enforcement, and that implies potential political influence on a specific issue. In February 2021, a digester line froze and broke at AltEn, releasing millions of gallons of pesticide-saturated water into the waters of the state. Under LB1102, this spill could be considered an act of God and exempt from the Nebraska Environmental Response Act. This is probably not the intent of Senator Bostelman since the company was already in noncompliance with NDEE at the time. That section might need to be revisited. Again, we thank Senator Bostelman for bringing the bill and urge the committee to consider amendments to the bill and move it to the floor. We also hope that the committee will prioritize the bill because its passage is important to all Nebraskans, our animals, our waters and our lands. Thank you. And now I'd like to just take a second to talk about these three documents that I passed out. This just came to my attention just a few minutes ago, but apparently, in 2012, the Nebraska Department of Environmental Quality signed off on the use of pesticide-treated seeds at AltEn, at Mead, Nebraska. They ruled that the change that AltEn was making from conventional corn to treated seeds was a minor change that didn't require a public hearing. So we've got a-- and then if you move forward then into the Attorney General's lawsuit, you'll find out that in that case NDEE says they found out in 2015 they were using treated seed, but then there's another reference to 2018, so I think there's a lot of culpability here. Thank you.

MOSER: Yeah, we're not here to relitigate what happened there. I guess we're trying to look toward the future. Comments from senators? Don't incriminate us.

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J. CAVANAUGH: Thank you, Vice Chairman Moser, and thank you for being here, Mr. Davis. So you had some good, I think, some good constructive criticism, I would call it, of the bill, and I appreciate that. And the one-- sorry, you had your line there that kind of jumped out at me, the-- so the permissive language part, so do you-- I mean, and maybe we could talk about this off the mic, but I just wanted to kind of get it. You know, choosing the level that you require an entity to do something can be problematic. If we say they have to do it, that doesn't give them the opportunity to address things that they don't need to address, and so that sometimes the necessity for permissive language, I guess.

AL DAVIS: Senator Bostelman and I talked about that yesterday a little bit. I just feel strongly that something needs-- a little bit more-- a little more teeth needs to be put into the bill. And-- and sometimes with permissive language, it gives people the opportunity to-- to slide through.

J. CAVANAUGH: I don't-- I don't disagree with that concept either. So, well, I appreciate your testimony and I'll take a look at this stuff, and then maybe we can visit later after I get a chance to look at the bill in light of your comments.

AL DAVIS: Thank you.

MOSER: Other questions? Seeing none, thank you for coming to testify.

AL DAVIS: Thank-- thank you.

MOSER: Any other support? Are there any opponents to this bill, if you'd come forward, please? If you're planning to testify, it's always a good idea to get in the queue, get in the front seat, so it saves a few moments of all our times. Welcome.

AMY SVOBODA: Thank you. Good afternoon. My name is Amy Svoboda, A-m-y S-v-o-b-o-d-a. Have to take a breath after wearing that mask for so long. My legal in-- career included eight years of writing regulations for the Solid Waste Disposal Act and for a superfund in Washington, D.C., and assisting the Department of Justice in bringing cases and negotiating settlements with Fortune 500 companies in New York and New Jersey. As a regulation writer, I appreciate your efforts, Bo-- Chairman Bostel-- Bostelman-- sorry, excuse me-- in crafting the proposed Nebraska Environmental Response Act. It's not easy to draft legislation or regulations to do what you want it to do without unintended consequences, particularly when a subject like

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this has been litigated for decades. LB1102 provides a good framework, but some provisions defeat, instead of strengthen, DEE's ability with respect to responses to releases of poll-- pollutants and recovery of its costs. As written, I oppose LB1102. I would like to propose orally amendments to key provisions. My written comments have other, less important amendments proposed, but if the following amendments would-- would be adopted, I would keenly support it. There are many provisions in the-- in the proposed law that are needed by the-- by the state. First, the bill needs a cleanup standard. It says in Section 2 the cleanup standard is that which is necessary to the extent practicable and to minimize harmful effects from the release. That's very indefinite. Cleanup standards have been refined over the last 40 years; and matter of fact, DEE has very good standards already in its rules in Title 128. These should be used instead. I propo-- I suggest that you use the words, quote, to the same standards that are required by Title 81-1505, as well as the corrective action-- act-- corrective action regulations adopted by the Environmental Quality Council. Those are Title 128. Going down to Section 2(2)-- excuse-- yeah, 2(2) deals with what costs may be recovered, and I-- I propose that you include costs that include evaluation of the impacts on human health and the envi-- environment as a result of the release of a pollutant. I understand that UNO is spending lots of money to-- to do such-- that-- to do that, looking at human health impacts. But, you know, the-- in Mead, I should say, with respect to Mead, and in-- and in Mead the response-- well, the volunteer people, you know, they have a bigger budget than really Nebraska, you know, combined, and there's no reason that the Nebraska taxpayer should pay for any studies to evaluate the impacts on human health and the environment. And many other states, and of course the federal law, permits this type of cost recovery. Section 2(7) is the-- is where the definition of pollutant is, and I-- I-- it doesn't include really all the-- the injury to all the environment. It only includes those which is listed, and I just propose that you-- you add plants and animals. I mean, that's-- that's commonly what's included in environment. I mean, for example, if you think of the Mead situation, what about the fish in the streams or many other situations? You know, there's lots of things you recover, and-- and you can, and it has been done, you know, for many years, evaluate the-- the cost or the value of those resources, Nebraska resources. Section 2, and I'd like to add a definition, and this is the most important thing to really think about and to-- to adopt or to add to the-- to the statute, that is the definition of a responsible party or responsible person, as-- as Nebraska has it, to include the current owner and operator, the past owner and operator, and the

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person who generated the pollutant which was released at the facility. And of course, that would ring a bell with the-- the Mead situation. You've gotta remember that the main impetus of the original superfund was to address a situation in which manufacturers of various harmful pollutants trucked their waste to off-site, so-called facilities so they could avoid liability. Nebraska law needs to cover that also. Section 7(1) should also refer back to the definition of responsible persons. As it's written, it limits cleanup to, quote, the persons who was responsible for the release. Now that sounds good, but many times in practice you don't really know who that person who caused the release. You know the owner, you know the operator, the past owner and operator, etcetera, and you know who brought this material to the site. But also, for example, what if the release was caused by an employee who ran a backhoe over a pipe which burst and toxic waste came out of it and flowed into a nearby stream? Under this, under the section as written, you're only going to include that emp-- the only person who would be liable would be that employee.

MOSER: I-- I think you can see the red light is on.

AMY SVOBODA: OK, gotcha.

MOSER: So we'll need to conclude your--

AMY SVOBODA: Gotcha.

MOSER: --spontaneous testimony at that point, and we'll see if we have questions from--

AMY SVOBODA: Sure. Anyway--

MOSER: --senators. OK, Senators, have questions? Senator Cavanaugh.

J. CAVANAUGH: Were you-- did you have anything else to say about Chapter 7 or Section 7?

AMY SVOBODA: No. Well, just you ought to be able to coll-- collect prejudgment interest. The state should be able to collect prejudgment interest, right.

J. CAVANAUGH: And you have⁰⁰ the comments you were just making were not-- are not in your written testimony?

AMY SVOBODA: I'm sorry?

J. CAVANAUGH: They are.

AMY SVOBODA: No, all the-- well, the ones I've made have been in here. There were additional ones. And now, since I got cut off, there are totally different additional ones.

J. CAVANAUGH: Could you-- we get your information--

AMY SVOBODA: Those-- those are the totality of the-- of my--

J. CAVANAUGH: OK.

AMY SVOBODA: --comments, yeah.

J. CAVANAUGH: Well, I appreciate your-- your comments. And I-- like I said to Mr. Davis, the constructive criticism, I think, is helpful in trying to make it. So your problem is not you don't think this is going in the wrong direction. You just think that there's some kind of tweaks that need to be made to make it actually have the effect that we're talking about trying to have here.

AMY SVOBODA: Right, really important tweets, because right now, right now you have the-- well, this is one of the issues. Right now you have, under-- under RCRA, Solid Waste Disposal Act, which is, you know, implemented in Nebraska, you have just about all the authorities who do what you want. But if-- if the state would take-- decide to take action under this new law, it-- you would be limiting yourself. You'd be limited in terms of who you could go after. You know, owner-- you don't have the owner-operator in here and the-- let alone people who were-- generated the-- the waste. And you also-- I haven't talked about this Section 8, but here you let DE-- the director say that with volunteer cleanups, that you don't have to do certain things, and so that would be-- that would be really bad. It would put too much pressure, I think, on the director, and it would cause-- I mean, you'd be have an uneven-- uneven enforcement, piecemeal enforcement, and a lot of pressure on the director.

J. CAVANAUGH: Who is the pressure coming from for the director then?

AMY SVOBODA: Well, right now, the regulations say, if you've got a voluntary-- I mean, the law proposes if you have a voluntary cleanup, then you don't have to-- well, the-- the director can let you-- can waive you out of some requirements. I mean, that's-- that's a negative thing.

J. CAVANAUGH: So the pressure would be coming from the polluter?

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AMY SVOBODA: Well, right, right, from the, you know, people who don't want to do their multimillion dollar cleanup, right.

J. CAVANAUGH: I gotcha. Thank you.

MOSER: OK. Other questions? Senator Gragert.

GRAGERT: Thank you, Vice Chairman Moser. Thank you for your testimony. I would like to go to your summation on line-- on your second page there, number 4, Nebraska should not lower its cleanup standards for voluntary cleanup. You feel this bill, we're lowering the cleanup standards--

AMY SVOBODA: Yes.

GRAGERT: --or D-- NDE is? In what way?

AMY SVOBODA: Yes. Well, they can. They have the opportunity to do it. In Section 8 it says that, that the director can waive requirements.

GRAGERT: OK.

AMY SVOBODA: That's it. And so, you know, it doesn't say which ones or how many or whatever.

GRAGERT: But that doesn't necessarily mean that he-- that the cleanup standards are lower. He could just waive any cleanups, is what--

AMY SVOBODA: Well, yeah, he could waive the cleanup standards and then--

GRAGERT: OK.

AMY SVOBODA: --they'd be lower, right, yeah.

GRAGERT: OK. Thank you.

MOSER: OK, other questions? Thank you for your testimony.

AMY SVOBODA: Yeah, thank you.

MOSER: Any other opponents? Are there any neutral testifiers? Three.

KENNETH WINSTON: Good afternoon. Mr. Chairman, members of the committee.

MOSER: Welcome.

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KENNETH WINSTON: My name is Kenneth Winston. I'm getting a confusing signal. It's both green and red.

MOSER: Oh, she'll fix that. Could you take the green-- the red light off?

KENNETH WINSTON: Thank you. Sorry.

MOSER: I'll-- I'll tell you when to flip that on. Thank you for catching that. Go ahead.

KENNETH WINSTON: Just a moment of levity.

MOSER: Yes.

KENNETH WINSTON: My name is Kenneth Winston, K-e-n-n-e-t-h W-i-n-s-t-o-n. I'm appearing on behalf of the Bold Alliance in a neutral position on LB1102. Bold has consistently advocated for the protection of our land, water, and legal rights because we know what-- that pollution harms people. And I think you probably have had some conversation about the contamination at Mead, Nebraska, so I won't go into all the details, but-- but there's hundreds of thousands of tons of-- thousands of tons of material that are on site and hundreds of millions of gallons of liquid waste that are also on site, and-- and there's been runoff that's contaminated things, like killing the fish in a-- in a-- in a pond six miles away. And there's currently an ongoing analysis and evaluation of the impacts on the people of the area by the-- by the Nebraska-- University of Nebraska Med Center. So we don't really know all the impacts, so cleanup is really important and we agree with all of those ideas. And by the way, Bold has-- has stepped up in this action and has provided free-of-charge water filtration systems to people who live in the area who-- who requested them. So let me talk about the provisions of LB1102 that we support. We support the aspects that deal with cleanup of pollutants. That's absolutely important. We-- we absolutely support that. We also support the creation of a fund to address the cleanup efforts and support having the people responsible for the pollution be required to pay for the cleanup. We also support having the-- granting the director authority to take direction-- direct action against the polluter, rather than having to go to the Attorney General or the local county attorney. However, there are some pro--provisions that we think need to be addressed in order to make LB1102 an effective tool to hold polluters res-- accountable. In particular, and this is echoing the-- the comments that Ms. Svoboda made, we're concerned about the lack of a definition for the word

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"responsible person," or the term "responsible person." Under the current language of the bill, we think that a lower-level employee could be held responsible for cost of the cleanup when they were merely carrying out directions from a corporate entity that profited from their actions. In a situation like that, the person who profited would not be held accountable. The person who was being attacked or being sued by the state would likely file bankruptcy because they couldn't afford to pay the cleanup and the state would not recover any money for the cleanup. We also want to make sure that the impacts to plants and animals are included, and that costs include the need to evaluate the impacts on human health and the environment as a result of the release of the poll-- pollutant. And I had been working on some amendments and I had asked the senators to send them up for-- to Bill Drafters. I'd hoped to have them back by the time of this hearing, but that has not happened so-- so far, but would be glad to share those amendments with the committee and with your staff when they are available. There's one other thing that-- that I did not include in my written testimony that I would like to also suggest, which is to have a public input process so people of the area could have input into the cleanup because they're obviously the people who are impacted by it. Thank you. I'd be glad to respond to questions.

MOSER: All right. Questions for the testifier? Thank you very much for your testimony. Thanks for coming today.

KENNETH WINSTON: So I get off easy today. Thank you.

MOSER: Anybody else in the neutral? We did receive two communications, one in support and one in opposition. Senator Bostelman, if you could close.

BOSTELMAN: Thank you, Vice Chair Moser. And thank all the testifiers who come in today to testify and the comments they made, obviously, we'll be looking those and working those-- through those in the very near future. I do believe the responsible person, what was referred to, or party may already be defined in the NEPA Act, so that may already be covered, but we'll take a look at that and see, but appreciate those who came in and testified and I'll take any other questions you might have.

MOSER: OK, thank you. Questions for Senator Bostelman from-- from the committee? Just one: I assume that you're going to look at the objections that we received and see how those affect how the bill is written?

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BOSTELMAN: Yep, definitely, yes.

MOSEER: You're open to suggestions to make it better?

BOSTELMAN: Yep, that's why I said we will take all the comments that were made by-- and material we have from those who came and testified today. We appreciate that. It always makes for good-- better bill.

MOSEER: Yeah, that's good judgment. All right. Well, that concludes our hearing today. Thank you for attending.