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Natural Resources Committee
February 02, 2007

[LB390 LB593]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 2, 2007, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB390 and LB593 and gubernatorial appointments. Senators present: LeRoy Louden, Chairperson; Carol Hudkins, Vice Chairperson; Tom Carlson, Mark Christensen; Annette Dubas; Deb Fischer; Gail Kopplin; and Norman Wallman. Senators absent: None. []

SENATOR LOUDEN: We will begin the Natural Resources Committee hearings at this time. The sergeant at arms will close the doors. I am Senator LeRoy Louden, I represent District 49. To my right is Senator Norm Wallman, from Cortland. Seated over here next would be Senator Tom Carlson, from Holdrege; Senator Gail Kopplin, from Gretna; and to my right is Jody Gittins, the legal counsel and the lady that looks after what I do. To my left is Senator Carol Hudkins, vice chairperson of the committee; and to her left is Senator Deb Fischer, from Valentine; and on the end is committee clerk Barb Koehlmoos. We will turn off any cell phones or pagers, put them on silent anyway so there is no disturbance in the hearing room. Those wishing to testify on a bill should come to the front of the room when the bill is to be heard. As someone finishes testifying, the next person should move immediately into the chair at the table. If you do not wish testify but would like your name entered into the official record as being present at the hearing, please raise your hand and the page will circulate a sheet for you to sign. This list will be part of the official record of the hearing. This year we are using a computerized transcription program and it is very important to complete the green sign-in sheets for testifiers prior to testifying. They are on the tables by the doors and need to be completed by all people wishing to testify, including senators and staff introducing bills and people being confirmed. If you are testifying on more than one bill, you need to submit a form for each bill. When you come up to testify place the form in the box by the committee clerk. Do not turn the form in before you actually testify. Please print and it is important to complete the form in its entirety because if our transcribers have a question about your testimony, they use this information to contact you. As you begin your testimony, state your name and spell it for the record even if it is an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people to testify, it may be necessary to place time limits on testimony. If you have handout material, give to the pages and they will circulate it to the committee. If you do not choose to testify, you may submit comments in writing and have them read into the official record. No displays of support or opposition to a bill, vocal or otherwise, will be tolerated. If you need a drink of water while testifying, please ask the page. At this time the pages are Erin Frank from Bassett and Steve Scharf from Lincoln. And with that we will begin...oh, we've got two senators who have joined us at this time, Senator Mark Christensen, from Imperial; and Senator Annette Dubas, from Fullerton. With that we will begin a confirmation hearing for director of the Department of Natural Resources, Ann Bleed. [CONFIRMATION]

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ANN BLEED: (Exhibit 1) My name is Ann Bleed, that's A-n-n B-l-e-e-d.
[CONFIRMATION]

SENATOR LOUDEN: Would you like to tell us something...tell us what you're thinking about this and perhaps where you'd like to see the Department of Natural Resources work for? [CONFIRMATION]

ANN BLEED: Yes. I will try to do that. Chairman Louden, Vice Chair Hudkins, and Senators. First, I want to thank the Governor for his vote of confidence in appointing me as the director of the Department of Natural Resources. Today I am here to give you a little bit of description of my background; in general, introduce myself, describe my qualifications, and ask for your support. If I am confirmed I will do whatever I can to foster open communication and develop a good working relationship between the department and the state water management community and water users in the state. I believe such cooperation is an absolute necessity if we are to succeed in meeting the water management challenges facing Nebraska. The goal of my academic training has focused on how humans can manage land and water resources to maintain a good quality of life, both in the short-term and in the long-term. My first master's degree was from Penn State University and then I got a doctorate from the University of Wisconsin. Those degrees focused on the study of ecology and how animals, including humans, relate with and adapt to, their ecosystems. My second master's degree is in industrial and systems management engineering and that degree and the subsequent focus of my research at the University of Nebraska as a professor in the water resources center, as well as in the conservation and survey division, focused on hydrology. It focused on water management activities, multi-objective decision-making, and optimization, and also natural resources economics. I also taught courses in the School of Natural Resources on natural resources policy and integrated resources management. My professional engineering license is in civil engineering. I've also served in leadership positions in local government including 12 years, and two years as chair of the Lincoln-Lancaster Planning Commission, along with Senator Hudkins' husband who was on the county commission at that time. I served as state hydrologist with the Department of Water Resources for 12 years and gained experience in administration of the department as deputy director for six years and then acting director for 16 months of the Department of Natural Resources. I, along with Roger Patterson, represented Nebraska as one of the so-called gang of six that successfully negotiated a settlement to the Nebraska v. Wyoming Lawsuit. The term, gang of six was applied to the two engineers from Nebraska, two from Wyoming, and two from the United States Bureau of Reclamation who essentially crafted that settlement. I also worked as Nebraska's member on the engineering committee for the Republican River Compact on that settlement of that lawsuit. As a result, I not only have intimate knowledge of these important interstate settlements and compacts, but I also have experience in negotiating in water disputes. I also have formal training as a dispute mediator and facilitator and

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have experience in facilitation including assisting in facilitating the subcommittees of the Water Policy Task Force. In addition to my qualifications, I also believe it's important for you to know how I will approach the job as director of the Department of Natural Resources. In brief, I believe that successful water management must be based on the basic concepts of open communication and cooperation with all water interests, including natural resources districts, surface water irrigation water districts, power districts, municipalities, and recreational and environmental interests. I would also take very seriously my responsibilities as director of the department to ensure that Nebraska's water is allocated in a fair manner and definitely in accordance with the law. My ultimate goal is to do whatever I can to help Nebraska manage its water resources so that we can sustain Nebraska's high quality of life for both the current generation and future generations. When the Legislature passed LB962, it charted a course for the management of water resources that recognizes that where surface water and ground water are hydrologically connected, it is in fact one resource and must be managed as one resource. Thus, both surface water users and ground water users are mutually dependent on the same resource. If we are to be successful in sustaining our water supplies, we must overcome the current antagonism between surface water users and ground water users in this state and work together to jointly develop successful integrated management plans. I am very excited about the potential of LB962. However I am also very aware of the inherent challenges that that law presents us. Legislative Bill 962 maintained the principle of local control of ground water by the natural resources districts and state control of surface water by the Department of Natural Resources. I believe that it is very important for locally elected boards with the...to manage ground water in accordance with the values and management philosophy of the people who live in the basin being affected. However, in addition to regulating surface water, I think it is also the responsibility of the Department of Natural Resources to ensure that these integrated management plans get developed and are implemented in accordance with the law. In particular, in fully-appropriated areas, the law requires that the plans must protect existing surface water users and ground water well owners whose wells are dependent on recharge from the surface water supply. Legislative Bill 962 also builds on the premise that the people affected by the water policy and regulations must be involved in the decision-making process. The combination of the split jurisdiction and the emphasis on public input can be complicated and in the short run, may appear to be an inefficient way of developing water policy. However, I believe that if we take the time to work together, the process will result in lasting water policies that are fair to and generally accepted, by all interests. Nebraska faces especially difficult problems in over-appropriated basins where we must reduce our consumptive use of water if we are to sustain the economies in those basins and particularly to sustain irrigated agriculture in those basins. Making these...reductions will not be easy and that's an understatement in the Republican Basin. We will have to take a lot of time and effort to develop regulations that will work for the basin. And we will also have to, I believe, help out these basins as we make the transition between being over-appropriated to being a fully-appropriated basin. In short, we will most likely have to have increased restrictions

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on water use in the so-called quick response area. This is the area where curtailment of the wells will produce the quickest response and increase in surface water as a result of the reaction. This is not something that would be continued in the long term, but during the transition period the focus on reducing consumptive use in quick response areas, I believe, will be a necessity. Funding will be necessary to make sure that in so doing, we do not place unfair burdens on certain groups of water users. In my view, both the local districts and the state as a whole bear some responsibility for allowing over-appropriated basins in our state to develop. Therefore, I believe that both the state and the local districts must accept responsibility for providing the funding that will be necessary for successful implementation of LB962. I thank you for your attention today. Before I close, I want to repeat how honored I am to have the chance to be working with you, the Governor, and the other leaders of the state and water community as director of the Department of Natural Resources. If confirmed, I will do whatever I can to develop effective processes and strategies to address the water challenges facing Nebraska. I would be glad to try to answer any questions that you may have.
[CONFIRMATION]

SENATOR LOUDEN: Ann, you've been acting director for how long now?
[CONFIRMATION]

ANN BLEED: About 16 months. [CONFIRMATION]

SENATOR LOUDEN: Okay, about a year and a half then. Okay. And so this is your first-time appointment? [CONFIRMATION]

ANN BLEED: Yes. [CONFIRMATION]

SENATOR LOUDEN: Okay. Questions for Ann? Senator Christensen.
[CONFIRMATION]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Ann, you mentioned good communication and things this way. What will be included with that? Will we be receiving, since we're setting policy, the information that you send to the NRDs, and if we have questions we send in, how quick do we expect to see turnaround on questions? Things like that? How will that all work? [CONFIRMATION]

ANN BLEED: Senator, if you would like to receive a packet of information that we're sharing with the natural resources districts as we put together the new rules and regs for the Republican NRDs, we would certainly be glad to send you that information. There are two ways we've communicated that information, one is on computer disk and the other is to provide it on our FTP web site. The latter is easier because there's a lot of...but we would certainly be glad to do that. [CONFIRMATION]

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SENATOR CHRISTENSEN: Okay. [CONFIRMATION]

SENATOR LOUDEN: Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: Welcome, Ann. Kind of along the same line of Senator Christensen's question, communication is definitely going to be a very important thing in regards to water issues over the coming months. We're going to be talking about it a lot on the legislative floor; there's lots of talk out across the state. What ways would you see your position and your office communicating with the public in general as well as the different governing entities to help ensure we're getting the information out there that people need so that they can understand the issues? [CONFIRMATION]

ANN BLEED: Well let me tell you a little bit of what we have been doing and plan to continue doing. I'll start with this week. I left Lincoln Monday and went to a meeting with the Twin Platte NRD stakeholders group. I met with natural resource district managers and irrigation district managers who talked about the cooperative hydrology study on Tuesday. And then I went up to a meeting with the North Platte natural resources district Wednesday morning; met with irrigation districts in that area Wednesday afternoon. I drove up to Chadron and met with the Upper Niobrara White NRD stakeholders group that evening. And then I spoke to about 250 people in Holdrege yesterday noon sharing and updating the status of water issues in the state. Our department has been doing that; we will continue to do that. We do get a lot of requests for information. I just realized I hadn't completely finished answering both your questions, Senator. We do try to respond to that information as quickly as possible. In some cases the information requires a fair amount of analysis and especially when it involves ground water modeling. We sometimes do not get that turned around as quickly as we'd like simply because of the nature of the task. We will certainly continue to try to do that. Our records are open and our web site is available. We try to post as much information as we can on the web site. In fact the complaint I often get is there's too much information on there and it's hard to figure out where you're going. We're trying to make improvements to that. We are trying to do everything we can to provide information that people need and to address their questions. [CONFIRMATION]

SENATOR DUBAS: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Louden. Director Bleed, as you approach this position what do you see as the two or three greatest challenges in the year 2007?
[CONFIRMATION]

ANN BLEED: Well, I think without a doubt the greatest challenge is to do what we must in the Republican River Basin to comply with the Republican Compact. And as I said

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before that is not going to be an easy task. But that definitely is the biggest challenge. The second challenge that we are looking at is trying to get the integrated management plans that are ongoing, the development that is ongoing, actually finalized and implemented and particularly to get plans in place along the Platte River so that we can comply with the requirements of the Platte River Recovery Implementation Program. Those would be the three biggest challenges. There's some challenges coming up, Senator Fischer is aware of these on the Niobrara River. We've already started talking with the natural resources districts and in fact I was on the phone this morning with the manager of the Middle Niobrara natural resources district to try to set up a meeting with those districts to work on some of the Niobrara water issues. [CONFIRMATION]

SENATOR CARLSON: Thank you. A second question. According to the statistics I'm looking at, in 2006 in the Republican Basin, we were deficient about 32,000 acre-feet of water. In 2007 without undue or practically impossible financial hardship on various people in the communities in the Republican, what do you feel would be a reasonable gain on that deficiency? And what do you think is possible? [CONFIRMATION]

ANN BLEED: Well, it depends on your point of view on what is reasonable. If I'm Kansas that would be one thing. What we are aiming at, what we have talked about with the natural resources district is two things: one is to put into place a plan that will essentially be ready to implement or actually gone through the board approval process that will get us into balance with our allocations and consumptive use in the near term. We want those plans in place around August which is when we have the Republican River Compact meeting. That is the first date in which it will be determined whether or not Nebraska is in compliance with the compact. We are not out of compliance at this point in time. The goal that we have established for ourselves and suggested to the natural resources district that should be the goal for our joint integrated management plans, is to become to a point of balance between our annual allocation and our annual supply within five years, 2012. Now that will not necessarily erase the deficit immediately. It's a rolling average so eventually that deficit will go away. At this point in time, I think it would be extremely difficult to completely erase what the Governor has, I think, correctly estimated could be as high as a 200,000 acre-foot deficit in the Republican Basin. [CONFIRMATION]

SENATOR CARLSON: Thank you, and one more question and you might think that I would ask you this. Where in the line of positive things to do would you locate vegetation control in the streambed? [CONFIRMATION]

ANN BLEED: Okay. There are a couple of--I was just going to qualify that. There are a couple of issues involving vegetation control. One is that vegetation obviously consumes water. And it's...especially when you are dealing with invasive species as a nonbeneficial consumption use of water that is creating hardships for our compliance with the compact. We need to try to get that under control. Another aspect of the

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vegetation is that especially below our reservoirs in Harlan County Lake, it has a lot of cottonwoods and willows have started to grow up and that blocks the flow of water. Last year, for example, we did purchase water from the Bostwick Irrigation District and when we released that water hoping to get it down to Kansas, the vegetation blocked it off and there was even some low-lying flooding. And the water obviously is not getting where it needs to go. That is a huge problem and I've already started talking with the Bureau of Reclamation. We need to do some more work with the Corps of Engineers to see what we can do to eliminate that flow-blocking vegetation in the channel. Part of the problem is it's not an invasive species, it's a native species so the permitting processes could get more complicated, but we are starting that work. I've been working with Steve Chick, the head of the Nebraska Resources Conservation Service and he is helping us coordinate a number of the efforts that are going on across the state to try to manage vegetation. Another place where this is an issue is in the Niobrara Basin where red cedar, which again is not an invasive species, it's a natural species, is also clogging the channel and causing problems. And so we've got some big issues with vegetation management for two reasons and we need to get working on them. [CONFIRMATION]

SENATOR CARLSON: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Senator Fischer. [CONFIRMATION]

SENATOR FISCHER: Thank you, Senator Louden. Welcome, Director Bleed. [CONFIRMATION]

ANN BLEED: Thank you. [CONFIRMATION]

SENATOR FISCHER: In your personal opinion, what do you think the Legislature and specifically this committee, need to be looking at this year, this session, dealing with water issues? [CONFIRMATION]

ANN BLEED: Well, it would be nice if you would pass our cleanup bill (laugh) for starters. I think the big issue is going to be, in my personal opinion, how we put into place the necessary regulations in the quick response area because that's the area where we can get the water to the river the quickest. Now eventually we can get to a point where I think we have somewhat equal allocations across the basin whether you are in the quick response area or the upland area because they both impact the river. But as most of you know, wells that are farther from the river--they have an impact but it doesn't happen as quickly and the vice versa is true. If you shut that well off you do not see the benefit of shutting the well off as quickly. So we've got to be working with the quick response areas and with surface water. The purchase of the surface water last year from the Bostwick Irrigation District did get water into the river very quickly. You just release the water from the reservoir and it's there. The problem is that what this would require if we do it strictly through regulation, is a substantial amount of restriction

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of water use in these quick response areas and often those are the same people who have lost a lot of the surface water due to the declining stream flow. So how do you do that fairly? One way would be to put the same restriction on everybody and so you could say, we're going to reduce pumping throughout the entire basin, say by 50 percent. The problem with that as I see it is at this point in time there is no need to reduce the pumping in the upland areas that quickly. Yeah, it would be fair but it would also be depriving people in the basin of the opportunity to bring some economic benefits to the basin and to the state. So from an economic standpoint that doesn't make a lot of sense to me. So I think the key is to try to allow pumping where we can, restrict where we have to, but then somehow figure out a way to level the playing field. And the only way that I know to do it is with compensating the people in the quick response well area in proportion to the extra restrictions they have to suffer over and above their neighbors in the upland area. And that's going to take money. [CONFIRMATION]

SENATOR FISCHER: Second question if I may? [CONFIRMATION]

SENATOR LOUDEN: Okay. [CONFIRMATION]

SENATOR FISCHER: What issues do you see ahead for the state of Nebraska in dealing with the federal government on water issues? [CONFIRMATION]

ANN BLEED: Well, I think the major issue, the immediate issue in dealing with the federal government is the Endangered Species Act on the Platte, in implementing the Platte River Implementation Program. I do believe if that program is implemented as written, that along with an important component of that program of adaptive management, that we can develop a plan on the Platte that will be reasonable and that will satisfy the Endangered Species Act. We are at the table there. If the Fish and Wildlife Service starts to go in a direction where we do not believe the science supports the requirement, being at the table is going to be very helpful, and we can challenge that science through the adaptive management process. To me that's the immediate issue with the federal government. We will have issues on the Missouri River when the federal government and Corps of Engineers is obviously very much involved in those issues. So far I think we have a very good working relationship with the Corps and for the most part, with the other states along the Missouri. That will be another issue. Those are the two major ones I see. [CONFIRMATION]

SENATOR FISCHER: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Senator Christensen. [CONFIRMATION]

SENATOR CHRISTENSEN: Thank you, Chairman Loudon. Ann, you mentioned compensation. Will you be bringing back suggestions for us to work on the compensation side of things then, or? [CONFIRMATION]

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ANN BLEED: Yes. [CONFIRMATION]

SENATOR CHRISTENSEN: How do you see doing that? [CONFIRMATION]

ANN BLEED: Right now as I said, we are working with the natural resources districts to try to develop some viable plans for the Republican Basin. One of the issues we discussed in a meeting last week was just this very issue and they're, the NRDs are looking into how they might be able to find a way to address the compensation issue, especially for the quick response well area. But I have told the NRDs and the Governor knows this so it's not a surprise to him, if we come up with a viable plan that will bring us into balance with allocation and use within five years, and it requires funding, I would be very willing to go to the Governor and to the Appropriations Committee and obviously I would keep you folks involved as well, to request the necessary funding. I've made it very clear to them, however, that that doesn't mean that we will have the funding. And I think with the Governor's Water Policy Task Force...excuse me, Water Cash Fund there would be some money available that could be used in the Republican River if that cash fund gets funded. [CONFIRMATION]

SENATOR LOUDEN: If there are no other questions, thank you, Ann.
[CONFIRMATION]

SENATOR LOUDEN: Oh, one more? Okay, that's three. Senator Carlson.
[CONFIRMATION]

SENATOR CARLSON: One more question. Ann, I've heard you speak in the past and I think this is a fair question because I believe it kind of relates to your position and what you're talking about. You've spoken about augmentation before. Would you describe that a little bit and maybe how that...whether you feel that could fit into the Republican River problem? [CONFIRMATION]

ANN BLEED: Okay. Well augmentation by its name is when you increase the supply of the river in some manner. And there basically are two ways to develop an augmentation plan. One would be with an inter-basin transfer and that would be taking water out of another basin such as the Platte or the Elkhorn, or the Missouri. I've heard all number of those being offered, and transferring it to the Republican Basin. The state law currently states that if you have an NRD that is fully or over-appropriated, that the natural resources district from which the transfer is coming as well as to which the transfer is going, must approve the transfer. So that is the first hurdle I think, in terms of inter-basin transfers for the Republican since most of the natural resources districts in the immediate vicinity of the Republican are also fully or over-appropriated. It is my understanding that Tri-Basin has agreed to have a hearing on whether or not to allow an inter-basin transfer to the Republican, and they just decided that I believe, a couple of

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nights ago. That restriction is not present if we were to take water from the Elkhorn or the Missouri. If we were to do that however, again, funding would be a major issue. Inter-basin transfers are not cheap and there's a lot of water quality issues in moving the water from one basin to another that also needs to be addressed. The other form of augmentation is within the basin and essentially, no matter what you do, what you are doing is retiming the flow of water. And it sort of is like if you put, one of the augmentation concepts is to put a well in or a group of wells in at some distance from the river, to pump that water and somehow either pipe it down to the river or to have it run through a channel to the river so you augment the flows in the channel immediately. However, if the well is hydrologically connected to the river and in the Republican, as far as we know, there is no area that is not hydrologically connected to the river, eventually the water that you pumped to the river earlier will show up as a depletion to the river. And under the Republican River Compact, it states that if we do an augmentation plan, we have to make sure that there is no increased depletion to the river on an annual basis which wouldn't be a problem in the early time we were pumping the water into the river, but would be later, and that augmentation plan has to be approved by the Republican River Compact Administration. And we have done a tentative look at some of those augmentation plans. From what we've seen, they're expensive. You have to either drill the wells or buy existing wells and get the water to the river. That doesn't mean it can't be done. We have also, working with the natural resources districts who got funding from the Integrated Water Resources Program Fund that was established last year, to look further into augmentation plans, and the NRDs are doing that. I think in the long run it could be a partial fix but it's not going to solve the whole problem.
[CONFIRMATION]

SENATOR CARLSON: Thank you. [CONFIRMATION]

SENATOR LOUDEN: Okay. Seeing no more questions, thank you, Ann.
[CONFIRMATION]

ANN BLEED: Thank you very much. [CONFIRMATION]

SENATOR LOUDEN: (Exhibit 2) Thanks for being here today. Any proponents for the appointment of Ann Bleed to the Department of Natural Resources? Any opponents to the appointment of Ann Bleed to the Department of Natural Resources? I have a letter here from a Ronald Klein from Berthoud, Colorado that is opposed to the appointment. Anyone wishing to testify in the neutral? [CONFIRMATION]

STEVE SMITH: Hello. My name is Steve Smith, S-t-e-v-e S-m-i-t-h. [CONFIRMATION]

SENATOR LOUDEN: Did you make out a green sheet? [CONFIRMATION]

STEVE SMITH: I did. I gave it to... [CONFIRMATION]

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SENATOR LOUDEN: You got it? Good enough. Okay. [CONFIRMATION]

STEVE SMITH: I represent WaterClaim, a group of irrigators and businesses in southwest Nebraska. As a committee which has oversight over the Department of Natural Resources, I simply ask that you assist us in obtaining information so that we can make good, valid decisions. Over the last several years we have made numerous requests for information. We have had a great deal of difficulty getting the data that makes it possible for us to identify what must be done. So I'm simply making a request, please help us get the information. Thank you. [CONFIRMATION]

SENATOR LOUDEN: Okay. Questions for Steve? Seeing none, thank you, Steve, for testifying. Anyone else wish to testify in the neutral? If not, then I guess we'll close the hearing on the appointment of Ann Bleed to director of the Department of Natural Resources, and from that we will go to LB593. [CONFIRMATION LB593]

JODY GITTINS: Good afternoon, Chairman Louden, members of the Natural Resources Committee, my name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I am committee counsel for the Natural Resources Committee and introducing LB593 on behalf of Senator Louden. This is a relatively simple bill, one of the easier ones I've had to introduce so far this year. It simply eliminates the requirement that in the year 2009, the owner of any tank site, at where tanks have not previously been located, shall be fully insured through private insurance to cover the costs of any remedial action. This law went into effect last year but it actually doesn't take effect until 2009. This, Senator Louden's bill, simply repeals that section of the law and allows those tank owners to continue operating out of our existing LUST Fund, Leaky Underground Storage Tank Fund. [LB593]

SENATOR LOUDEN: Okay. Questions for Jody? Thank you, Jody. First proponent? [LB593]

TIM KEIGHER: Good afternoon, Chairman Louden, members of the committee, my name is Tim Keigher, that is K-e-i-g-h-e-r. I appear before you today in support of LB593 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. First of all, we'd like to thank Senator Louden for introducing this bill on our behalf. The LUST program was established back in I believe it was 1989, to provide remediation funding for cleanups where there were tanks, petroleum tanks specifically. This program came about as the result of a federal U.S. EPA mandate where it required tank owners to do upgrading as far as spill prevention, overfill protection, corrosion protection, etcetera and also provide financial responsibility. Back when the mandate was instated, there was no insurance company that wanted to basically buy the burning building. They knew a lot of these sites were contaminated from years of overfills and spills is where the majority of them came from and from some leaking underground tanks as well. So the majority of states came up with these LUST programs and I guess

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LUST is kind of a fun name to talk about too. But it's basically funded by nine-tenths of a cent on gasoline and three-tenths of a cent on diesel. It is paid by the distributor. You could say, does the distributor passed that cost along? It's like any other cost a fuel retailer has, you try and pass that cost along as a cost of doing business if you can, and if you can't you are still responsible for paying it. Legislative Bill 593 as previously mentioned would strike the language that would not allow a tank owner who installs new tanks on virgin soil, to be eligible for the LUST Fund. I guess we simply look at that as we are going to be required to pay this premium of nine-tenths or three-tenths into the LUST Fund but we would have no insurance coverage. It would be kind of like if you had auto insurance, were paying the premium to a company, but you couldn't have any benefit from that and had to go out and buy insurance from another company to have coverage. The LUST program has cleaned up many contaminated sites over the past, what would it be, 18 years. According to some information I've gotten from DEQ they currently have 800 active investigations or remediations going on. They have a backlog of about 551 sites. They have orphan sites of 722; that's where they are not able to identify a responsible party. They have 39 sites that are pending classification and they estimate in the future that they'll have 106 sites that will have a release. Their estimate of liability for known and future sites that 2,112 is \$70 million. They have cleaned up 4,495 sites over the past 18 years for a total of just shy of \$92 million. I guess we simply feel that if you are required to pay a premium you should get the benefit of that. If you look at going to private insurance which we have from some bills that were introduced in previous legislative sessions, you're going to have to do a tank site assessment. The insurance company wants to know what the contamination level is before they insure it because they are only going to take care of that contamination level forward. Speaking with DEQ, the average Tier 1 site assessment these days, well, a couple of years ago, I don't know what today's number would be, was about \$7,500. When you do the Tier 1 assessment you were testing more of just where the tank field lies. I think insurance companies require a much more sophisticated and much more testing and my estimate on that is \$10,000. The premium last time I checked ranged anywhere from \$300 a tank to \$1,500 a tank depending upon the insurance company. Most insurance companies are really not that excited about writing this coverage. There is no liability. Like I said, the burning building, they are not that interested in. With new sites, yes. I would think you probably could find insurance carriers who would write it because they know what the risk is. If it's not contaminated to start with, with new tanks, new lines, new forms of leak detection, etcetera, the premium probably is reasonable. My problem with that...what the law currently states is you're going to pay the premium and you are not going to get the benefit. I guess one other thing that...we felt is, we would like to see the LUST program continued. It does sunset in July of 2009 and we feel that with these number of tanks according to DEQs calculations that are left to be cleaned up, that we would like to see the program extended beyond that. We are not opposed to looking at private insurance at some time in which all the sites that are out there that need to be cleaned up, are cleaned up, and then everybody starts out on a level playing field. We look at the LUST program as a self-funded program with the state as a third-party

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administrator and the question has been raised before, well this is a liability of the state. Well it's simple, if the state needs more money into the LUST program you can simply raise the nine-tenths to a higher rate. I believe it started out as three-tenths at one time and then was raised to the nine-tenths because it was not generating enough money, so. With that I'd be happy to try and answer any questions that you might have. [LB593]

SENATOR LOUDEN: Questions for Tim? I have some, Tim. [LB593]

TIM KEIGHER: Okay. [LB593]

SENATOR LOUDEN: This LUST Fund now, is that going to sunset? I mean is the one fund going to sunset? Is that the reason they have to have insurance, start buying insurance? [LB593]

TIM KEIGHER: Well, the LUST Fund itself is scheduled to sunset in July of 2009, okay? And I feel we need an extension of that. That is not what this bill is asking for. So I am asking you for something additional there. But what this bill does is it allows people--after 2009 should the LUST Fund continue to be eligible for reimbursement. [LB593]

SENATOR LOUDEN: Okay then. If this bill passes then, in 2009 there won't be any kind of insurance for these underground tanks? [LB593]

TIM KEIGHER: So if I understand what you were saying, if this bill does pass, there won't be any program? [LB593]

SENATOR LOUDEN: Right. [LB593]

TIM KEIGHER: Under current law yes, the program would end even if this bill passes. It's my intention to come back and seek an extension. [LB593]

SENATOR LOUDEN: Okay. Then you're asking for something else to happen later on. Well, how much money is in the fund right now? Do you have any idea? If...what, nine-tenths of a cent on every gallon of gas sold in Nebraska? [LB593]

TIM KEIGHER: Well, the fund takes in roughly \$12 million a year, give or take a couple of million depending upon the volume of fuel sold in the state. I'm not really sure that I could answer that question with the information that I have in front of me. [LB593]

SENATOR LOUDEN: Okay. [LB593]

TIM KEIGHER: There may be somebody else that could answer that better. [LB593]

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SENATOR LOUDEN: Then you feel that, I mean, what was passed last year was to get the state of Nebraska out of the insurance business right? [LB593]

TIM KEIGHER: Well, the intention of what was passed was to take a segment of tanks which would be new tanks on virgin soil, out of the LUST program after July 1, 2009. But I guess I didn't, I wasn't looking at the dates; they do coordinate and I didn't realize that when I asked you to introduce this. But my intention is to go back and ask for an extension next year of the LUST program because we are not going to be done with the remediation and the state's going to need the money to continue cleaning up those sites so the program, I think, needs to continue. [LB593]

SENATOR LOUDEN: Would we be further ahead then to do some type of a bill to extend the LUST program and do away with the private insurance? [LB593]

TIM KEIGHER: At the same time? It would probably be good to coordinate the two together, yes. [LB593]

SENATOR LOUDEN: Okay. Any other questions for Tim? Thank you, Tim. [LB593]

TIM KEIGHER: Thank you. [LB593]

SENATOR LOUDEN: Any proponents for LB593? [LB593]

ED WOEPPEL: (Exhibit 3) Chairman Louden and members of the committee, I'm Ed Woepfel, that's W-o-e-p-p-e-l, with the Nebraska Cooperative Council. I'm here today representing Bob Anderson. He intended to be here but had some other legislative things that came up that he had to attend to. But briefly, we are in support of this legislation. I think Tim laid out the issue very well and in some of the questions you asked, Senator Louden, probably got at some of the things we're talking about. One...probably two other areas that we are concerned about for our members. the farmer-owned cooperatives across the state, is when you have a very limited market, certainly when you're trying to buy and there's not many sellers, that's perhaps not good economics for the folks that are buying. Accessibility is another issue that we're concerned about. If there's not a lot of folks out there, any of those kinds of risks are going to be difficult for people. So we think from an accessibility as well as the cost that could be very prohibitive so. With that I won't take any more of your time but I'd certainly answer any questions that you may have. [LB593]

SENATOR LOUDEN: Questions for Ed? I would ask one, Ed. You think then your insurance would cost you a lot more than what you're paying in on this LUST Fund at the present time? [LB593]

ED WOEPPEL: I think so over time. You know, as that market contracts and insurance

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gets...it's more difficult to obtain, and I think within the letter, you can even see what the Department of Insurance and DEQ found in their survey, that it's limited out there in terms of providing... [LB593]

SENATOR LOUDEN: Would you still, I mean your costs of insurance, you would offset, you'd compare that to the nine-tenths of a cent per gallon because either way the customer is going to pay the price of the insurance, right? [LB593]

ED WOEPPEL: Correct. Eventually. [LB593]

SENATOR LOUDEN: Okay. Whether they put nine-tenths of a cent or whether they put the cost of insurance and the price of their overhead. [LB593]

ED WOEPPEL: Exactly. [LB593]

SENATOR LOUDEN: Yeah. Okay. Thank you. Any questions for Ed? Thank you, Ed. [LB593]

ED WOEPPEL: Um-hum. [LB593]

SENATOR LOUDEN: (Exhibit 4) Other proponents for LB593? Are there opponents for LB593? Anyone wishing to testify in the neutral? I have a letter here from Mike Linder to be read in for in the neutral. He's the director of the Department of Environmental Quality. [LB593]

PAT RICE: Chairman Louden, members of the committee, my name is Pat Rice, P-a-t R-i-c-e. I am the assistant director in charge of the water quality program within the Department of Environmental Quality. And I am here in a neutral capacity. I think the letter that Director Linder submitted is fairly self-explanatory. One point I'd like to clarify is that the fund itself will not sunset in 2009. That sunset date that's mentioned in the draft bill and the legislation is the eligibility date for releases to be reported. Any releases after that date would not be eligible for coverage under the fund. So the fund itself will continue on until all of the sites are cleaned up or until the Legislature takes action to sunset the fund. But there is no sunset date for the fund presently. [LB593]

SENATOR LOUDEN: Okay. Will you take questions? [LB593]

PAT RICE: I certainly will. [LB593]

SENATOR LOUDEN: Questions for Pat? Senator Fischer. [LB593]

SENATOR FISCHER: Thank you, Chairman Louden. Mr. Rice, you're saying that the fund is not going to sunset but basically any new sites found won't qualify. [LB593]

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PAT RICE: That's correct. [LB593]

SENATOR LOUDEN: Okay, I have a question then. I...sort of along Senator Fischer's line of questioning, I guess. Then how about this new people that come in there with the service station. Are they going to be paying into that fund? [LB593]

PAT RICE: The fee is charged on the sale of petroleum products and it's nine-tenths of a cent a gallon on gasoline sales and it's three-tenths of a cent on diesel sales at the pump. The petroleum marketers collect those fees as they do the other taxes that are on gasoline products and they remit those revenues to the state. [LB593]

SENATOR LOUDEN: Okay. Well my question is, we're going to have this expressway here pretty quick, probably next week out west and I'm sure there will be a gas station go out there in that virgin ground along Box Butte, and put in a big gas station. After this 2000 and whatever the date is, they will have to pay into the LUST Fund and they will also have to have their own insurance but they won't be able to get any money out of the LUST Fund? [LB593]

PAT RICE: As of...as the statute exists right now that would be correct. They would still be required as long as fund is in existence to collect the fees from the consumers that buy gas and transmit those fees to the state. [LB593]

SENATOR LOUDEN: Then they would actually be paying insurance twice? [LB593]

PAT RICE: I'm not sure that that's correct. [LB593]

SENATOR LOUDEN: Well I mean they would be paying it...the nine-tenths of a cent on the gas that they were selling at the pump but that they'd also have to go out and buy a private insurance policy to cover any spillage or whatever they have? [LB593]

PAT RICE: The federal requirement is that they have essentially, liability coverage and they would have to maintain that through some means whether it's through the fund which is the way it is now up to \$1 million or through the private insurance. [LB593]

SENATOR LOUDEN: Okay, thank you. Any other questions for Pat? Thank you, Pat. [LB593]

PAT RICE: Sure. [LB593]

SENATOR LOUDEN: Anyone else wishing to testify in the neutral? Seeing none, then we'll close the hearing on LB593 and open the hearing on LB390. Senator Aguilar's legislative aide is here to present the bill. [LB593 LB390]

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MARGARET KOHL: And I'm sorry Senator Louden, but I broke your rules because I put a sign-in sheet before the hearing started into the box over there, so she's already got that. [LB390]

SENATOR LOUDEN: Okay, thank you. [LB390]

MARGARET KOHL: As said, Senator Louden, I'm Margaret Kohl. I am Senator Ray Aguilar's legislative aide, and my name is spelled M-a-r-g-a-r-e-t K-o-h-l. Senator Aguilar is busy on a tour of Air National Guard and Army National Guard facilities today so he's sorry he can't be with you. It's a lot warmer here than where he probably is. I want to thank you for taking the time to hear the bill and allowing me to present it on his behalf. It was brought to us by the State Fire Marshal's office. Legislative Bill 390 deals with underground storage tanks and it brings state law into compliance with federal law by adding to the State Fire Marshal's list of items for which they promulgate rules and regulations. Legislative Bill 390 changes statute to include provisions to prohibit delivery to, deposit into, or the acceptance of a regulated substance into an underground storage tank which has been identified by the State Fire Marshal's office to be ineligible for such delivery, deposit or acceptance. Such designation would be an indication of a leakage problem that has been identified and LB390 adds the duty of training and certification of operators of those tanks to the Fire Marshal's office with an effective date of August 2009. That gives the Fire Marshal and tank owners two years to adjust to the new regulations. The specifics of how a tank might be identified as having a problem or how it would be tagged so that the distributor knows not to put any substance into it, will be set out by rules and regs per the guidelines from the Environmental Protection Agency as will the specifics of the tank operator training requirements. That's the basics of the bill and someone from the Fire Marshal's office is supposed to be following me to give you any specifics that you might have questions about and about how they envision this law being implemented. Thank you. [LB390]

JOHN FALGIONE: Okay, thank you, Margaret. First proponent? [LB390]

JOHN FALGIONE: (Exhibit 5) Good afternoon Senator Louden and members of the Natural Resources Committee. My name is John Falgione, that's J-o-h-n F-a-l-g-i-o-n-e. I am the Nebraska State Fire Marshal. I am testifying today in support of LB390 which was introduced by Senator Aguilar on behalf of our agency. Legislative Bill 390 is legislation required to comply with the federal government's 2005 Energy Policy Act which requires all states to adopt statutory provisions to prohibit fuel deliveries to noncompliant tank owners and to adopt federal guidelines for operator training. Legislative Bill 390 has two components related to underground storage tanks. First, under the fuel delivery prohibition component, tanks which have been identified by the State Fire Marshal or by a delegated authority as being out of compliance with state law or regulations, could not be filled with new product until the problem was rectified.

Noncompliance can happen for several reasons such the tank is not being monitored for leaks or it lacks the requisite protection devices. These problems can have some serious environmental and safety concerns. Currently the State Fire Marshal cannot stop a party from getting fuel delivered to a tank that is not up to code. Under the fuel delivery prohibition component of this bill, delivery personnel would be prohibited from depositing fuel into a tank if the State Fire Marshal or a delegated authority has attached a red tag on the fillpipe with a warning that says in effect, filling this tank with petroleum is a violation of state law and the rules and regulations of the State Fire Marshal. There would be a criteria to determine ineligible tanks for tanks for providing service to tank owners that they have been found ineligible for deliveries and a process for reclassifying ineligible facilities as eligible for fuel delivery. Rural or remote areas can defer being red tagged for six months if it would jeopardize the availability or access to fuel unless there is an urgent health threat. The head of our fuels division estimated that less than six sites out of hundreds of service stations across the state may have their fuel deliveries interrupted for noncompliance. The second component is operator training for tank owners and operators. The State Fire Marshal would develop a state-specific training program with input from the petroleum industry to train tank owners on safe petroleum handling procedures. Legislative Bill 390 would give the agency the necessary authority to adopt rules and regulations to fully comply with the Energy Act. Without full compliance with the Energy Act, federal funding for our tank inspection division could be in jeopardy. Thank you for your time and consideration. I will answer any questions you may have. [LB390]

SENATOR LOUDEN: Questions for John? Senator Fisher. [LB390]

SENATOR FISCHER: Thank you, Senator Louden. Thank you for being here today. Did I understand you correctly when you said LB390 is just to put the state into compliance with federal law and rules and regs? [LB390]

JOHN FALGIONE: Correct, Senator. [LB390]

SENATOR FISCHER: Are there any substantive changes? [LB390]

JOHN FALGIONE: No. [LB390]

SENATOR FISCHER: Do the federal laws require an operator training program? [LB390]

JOHN FALGIONE: Not at this time, no...not a... [LB390]

SENATOR FISCHER: So that would a substantive change, then wouldn't it? [LB390]

JOHN FALGIONE: This is on the delivery program, the delivery people, not the

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operators of the tanks themselves. This is for the people that are delivering the product to let them know that they cannot put product into that tank for a reason that we've deemed the tank is unsafe, that it could be leaking causing damage to the environment, or for other safety reasons. [LB390]

SENATOR FISCHER: So people who deliver petroleum products would have to go through a training program that...and who's going to set up their training program again? [LB390]

JOHN FALGIONE: The Petroleum Marketers Association and we will work in close conjunction with them to develop that program. [LB390]

SENATOR FISCHER: And this is for possibly six sites across the state? [LB390]

JOHN FALGIONE: Well, it's been our experience we could possibly have six sites over a year's period of time where we would have some compliance issues out of the many hundreds of gas stations, service stations that we have, but you're talking in the neighborhood of about 7,000 tanks or more. Because each site may have multiple tanks so out of the 7,000 tanks we could have a possibility of 25 tanks maybe, or less. Usually if we have a leaking tank at a facility it's not all the tanks, it's one tank out of that group that may be a problem situation. And through the work of the Fire Marshal's office and the industry we've had very good compliance from the tank owners as far as them taking care of the situation if we have a leaking tank, to deal with it and get it repaired. But as it stands, we have no way to keep someone from putting more fuel into that tank if they don't choose to repair it. [LB390]

SENATOR FISCHER: Does your office usually do inspections on the leaking tanks? [LB390]

JOHN FALGIONE: We do inspections on the facilities...attempt to do them on a regular basis to check their inventory records, make sure they are doing the proper leak detection. They have the other proper protection in place to keep the tank from corrosion and the lines tested, make sure their tests are all being done. [LB390]

SENATOR FISCHER: I'm sorry I keep harping on this; obviously I'm not getting it though. Aren't these tanks already identified? Why would an operator who's going to deliver fuel have to be able to identify them and have a training class? [LB390]

JOHN FALGIONE: This is for the wholesaler that's delivering to the retail operation. Those folks are usually at different, you know...they are buying from a different source. It's not the tank owners or operators usually that are providing their own fuel supply. They are purchasing fuel from another supplier. And there are people out there that just deliver the fuel, the broker, and they hire personnel to drive those trucks and that's the

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people that we want to train to know... [LB390]

SENATOR FISCHER: To identify the...the leaking tanks. [LB390]

JOHN FALGIONE: To identify; if that tank has got a lockout on it, they can't cut that lockout and put fuel into that tank because there's a reason that tank is locked. There's a problem with it. [LB390]

SENATOR FISCHER: I see another gentleman jumped up here; he probably wants to help me out. [LB390]

JOHN FALGIONE: He is our program manager of this...so...okay. [LB390]

SENATOR FISCHER: Okay, thank you. [LB390]

SENATOR LOUDEN: Are there other questions for John? I have a question, John. Is this something you are already doing or is this an area that the Fire Marshal would be getting into? [LB390]

JOHN FALGIONE: We're already doing inspections on those tanks but we have no method in place, we have no authority now to keep someone from putting more fuel into a leaking tank. [LB390]

SENATOR LOUDEN: And how are you going to fund this training? [LB390]

JOHN FALGIONE: The fund...the training is going to be provided through the Petroleum Marketers Association, is my understanding. [LB390]

SENATOR LOUDEN: Okay, they're going to do it? [LB390]

JOHN FALGIONE: Yes. [LB390]

SENATOR LOUDEN: If they say they're not going to do it, I mean, is that like letting the fox count the chickens then if they are training their own people? [LB390]

JOHN FALGIONE: No. We have... [LB390]

SENATOR LOUDEN: I mean, do you have to have an oversight? [LB390]

JOHN FALGIONE: Yes, we have an oversight...and we have a good working relationship... [LB390]

SENATOR LOUDEN: I was just wondering...all of a sudden you have to have another

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three-tenths of a cent per gallon in order to train these people, that's where I was going. [LB390]

JOHN FALGIONE: No, Sir, I foresee nothing like that. [LB390]

SENATOR LOUDEN: Okay. Thank you, John. Thank you, no other questions, I guess. [LB390]

JOHN FALGIONE: Thank you. []

SENATOR LOUDEN: Okay, next proponent for LB390? [LB390]

CLARK CONKLIN: Senator Louden, my name is Clark Conklin. C-l-a-r-k C-o-n-k-l-i-n and I'm the chief of the fuel safety division, been in charge of underground tanks here for the State Fire Marshal's office for about the last 15 years or so. I might be able to clarify a couple of questions or issues. Number one, the bill, LB390, has two separate parts to it. The first part is a delivery prohibition which we would prohibit deliveries into tanks that don't meet compliance. The second part of the law is completely separate and it provides operator training for service station operators, managers of convenience stores and those kinds of things, so that they understand the regulations and are able to better comply with them. Those are the two separate parts of the federal law that we're asking to be implemented here, so. Not related at all. That's the first clarification, okay (laugh). [LB390]

SENATOR LOUDEN: Are you ready to take questions? [LB390]

CLARK CONKLIN: Yes, I am, absolutely. [LB390]

SENATOR LOUDEN: Okay. Senator Christensen. [LB390]

SENATOR CHRISTENSEN: If you red tag these, does the red tag have a lock with it? [LB390]

CLARK CONKLIN: Yeah, it would be a seal of some kind on a fill-pipe that would prohibit delivery. [LB390]

SENATOR CHRISTENSEN: It's a seal, so but it's easy to break and refill then? Why not with your red seal put a lock on? Wouldn't that be as good as training? [LB390]

CLARK CONKLIN: Well, it could...well, it might eventually. We think that there might be a more proactive approach to not getting to the lock-down point I guess. It would be nice if we'd go...show up and we wouldn't have to put a seal on a tank at all, hence the training program. [LB390]

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SENATOR CHRISTENSEN: Right. But I guess if there's a potential that anybody could make that mistake, it sure is a lot better to have a red lock than to have a red tag and have more ground water contamination, I guess... [LB390]

CLARK CONKLIN: Okay. I...yeah... [LB390]

SENATOR CHRISTENSEN: ...and probably cheaper than the training. [LB390]

CLARK CONKLIN: Well, yeah, I can't address the cost of training but a red lock on a tank certainly would go a long way and we haven't made a determination yet as to what sort of a red tag, I guess, we would put on there. A red tag kind of has a bit of a thought to it that it's nothing more than a little paper thing on there. And the red tag has become a generic term for requiring a securing of that tank and I think that's just a term that is being used sort of generically around the country. Whatever device we choose to use, number one, it would have to be easily removable by one of our inspectors once the tank is brought back into compliance. And we'd have to be able to go out there very quickly and somehow or another, disable that tag so that a delivery could be made back to the tank. So in the case of a red lock, I am envisioning something here that's pretty substantial, you know. I'm going along with this but it may be difficult for whoever is qualified to remove that tag or that lock, so that that guy can get back in business. It may be that our inspectors aren't able to get back out there quick enough to conveniently do that. [LB390]

SENATOR CHRISTENSEN: Okay, thank you. [LB390]

SENATOR LOUDEN: Other questions for Clark? Senator Dubas. [LB390]

SENATOR DUBAS: It's been stated that there is probably not a lot of these facilities there on...not able to take this? Are these facilities that are going to be forever not able to take fuel or are they in the midst of trying to make corrections, or? [LB390]

CLARK CONKLIN: Well, the State Fire Marshal's office will always work with a tank owner to make sure that we can achieve compliance. It's these issues where typically a tank owner either refuses or is unable to gain compliance...a lot of times it's unable or unwilling. And in those cases that's when we would use the tag-out lock of a red tag of the tank. We've always worked with tank owners to get them back into compliance; we will continue to do that. I think that there's only, I think that the term, the number that was used was six--when I was asked the question before, prior to this hearing, I said, oh, about a half a dozen a year would be an upper limit. Where we have folks that just simply are unwilling to comply and we need to have a little bit of additional leverage to get them back into compliance and this seems to be a good way. [LB390]

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SENATOR DUBAS: Then along the same line as Senator Fischer's question on the training, are we just training the people who aren't allowed to take these fuels or are we training all service station operators, etcetera? [LB390]

CLARK CONKLIN: All service station operators. It will apply to everybody who is in charge of the day-to-day operation of a tank. And we have a developed curriculum; we're waiting for the federal guidelines to come out as to what exactly this training is going to have to entail because it's part of a federal law. And the states are required to implement this law. They're going to offer, EPA is supposed to provide us with guidelines as to what this curriculum, what this training program is supposed to be about, what it's going to entail. And at this point in time we just don't have, we have a general idea of what it's going to be, but how it's going to be implemented is going to be a little bit in question right now until we can get information from the feds--their guidelines. [LB390]

SENATOR DUBAS: Okay. So just to clarify this for me again, these are the service station operators, not the people who are delivering the fuel, it's the operators who are running the facility. [LB390]

CLARK CONKLIN: That's correct. [LB390]

SENATOR DUBAS: Okay, thank you. [LB390]

CLARK CONKLIN: Yeah, two entirely separate issues. [LB390]

SENATOR LOUDEN: Any questions, again? I have a question. Is this, does this have to be passed to comply with the federal law? [LB390]

CLARK CONKLIN: Yes. [LB390]

SENATOR LOUDEN: And does it have to be for a fire marshal, does federal law designate the fire marshal has to do this? [LB390]

CLARK CONKLIN: Well, in Nebraska, the Fire Marshal is the implementing agency for the EPA's underground storage tank compliance. We've been doing that for 20 years, I guess. The department, in Nebraska, it's generally...in most states it's generally handled by an environmental quality agency because these are all EPA-mandated laws, regulations. In most states a single agency such the Department of Environmental Quality would handle all of these different issues. But in Nebraska when we set this program up a long time ago, it was split between the Fire Marshal's office and the Department of Environmental Quality, where the Fire Marshal is in charge of the day-to-day operation of the tank and the tank while it's in the ground, essentially, and the Department of Environmental Quality would take care of all the cleanups. The Fire

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Marshal is more suited to conducting routine inspections and DEQ is more sensitive toward the cleanup issues. [LB390]

SENATOR LOUDEN: Okay, other questions? Thank you, Clark. [LB390]

CLARK CONKLIN: Thank you. [LB390]

SENATOR LOUDEN: Anyone else wishing to testify as a proponent? Okay, testimony as an opponent? Testimony in the neutral? [LB390]

TIM KEIGHER: Good afternoon Chairman Louden, members of the committee, my name is Tim Keigher, that is K-e-i-g-h-e-r. I appear before you today in a neutral capacity. I guess our industry is never in favor of new regulations and requirements. But we do understand that this is a federal requirement placed upon the Fire Marshal's office. And we have worked with the Fire Marshal's office in trying to come up with what these rules and regs are going to be and we think we will come up with some good solutions as time goes on and like Mr. Conklin said, some of the details from the feds have not come out, as an example, who at each retail facility has to be trained? Is it the owner of the company? Is it the manager or is it the clerk that is on duty? Obviously from our perspective we're hoping it doesn't go any lower than the manager level because we feel it's going to be very difficult to train a clerk on how to operate an underground tank system and automatic tank gauging and all that. But we're waiting for those details to come out and are working with his agency very closely on that. And I felt that I needed to come up and find out if I was the chicken or the fox too, so. (Laughter) Any questions? [LB390]

SENATOR LOUDEN: Questions for this old fox? (Laughter) Seeing none, Tim, I guess we'll let you get out of here Scott free. [LB390]

TIM KEIGHER: Thank you. [LB390]

SENATOR LOUDEN: Thank you for testifying. [LB390]

TIM KEIGHER: Um-hum. [LB390]

SENATOR LOUDEN: Anyone else wishing to testify in the neutral? Seeing none then I'll close the hearing on LB390. Thank you. [LB390]

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Natural Resources Committee
February 02, 2007

Disposition of Bills:

LB390 - Advanced to General File.

LB593 - Held in committee.

Chairperson

Committee Clerk