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Natural Resources Committee
February 21, 2007

[LB664 LB677]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 21, 2007, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB664 and LB677. 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: Good afternoon, my name is LeRoy Louden. I'm chairman of the Natural Resources Committee; I represent District 49. To my far right is Senator Norm Wallman, from Cortland; seated next to him is Senator Annette Dubas, from Fullerton; next to her, Senator Tom Carlson, from Holdrege; and next to him is Senator Gail Kopplin, from Gretna. On my short right here is Jody Gittins, committee counsel. To my left is Senator Carol Hudkins, vice chair of the committee, from Malcolm; Senator Deb Fischer, from Valentine; and next is Senator Mark Christensen, from Imperial; and Barb Koehlmoos, committee clerk. Pages today are Erin Frank from Bassett and Marcus Bish from Ord, both UNL students; we have a new one today in Marcus. If you will turn off--your silencers--handle your cells phones so that they don't make noise, or whatever you do with them, we'd appreciate that so there will be no disturbance during the hearings. Those wishing to testify on a bill should come to the front of the room when that 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 to 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 in the form before you actually testify. Please print and it is important to complete the form in its entirety. If our transcribers have questions 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 somebody 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 it 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 vocal or otherwise, will be tolerated. If you need a drink of water while testifying please ask the pages. With that we will begin with bill LB664, Senator Hudkins' bill and will...you will be the one to present the testimony. [LB664]

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SENATOR HUDKINS: Thank you, Senator Louden. Good afternoon, and to the rest of the committee, good afternoon as well. I am Senator Carol Hudkins, H-u-d-k-i-n-s. I represent District 21. And today I am presenting for your consideration, LB664. This particular bill amends the Geologist Regulation Act to require that when a project is being performed for which state permitting or approval is necessary and a geologist is used to perform some part of the planning, or provides information used in the application or permit, then the geologist must be licensed by the state of Nebraska. Legislative Bill 664 does not require the use of a geologist when applying for a state permit or approval. The modification only requires that if the applicant decides to use a geologist for a purpose identified as the practice of geology under the act, and such purpose is associated with the application, then the geologist must be licensed under the Geologist Regulation Act. A very simple bill, and I would attempt to answer any questions, thank you. [LB664]

SENATOR LOUDEN: Questions for Senator Hudkins? Seeing none, thank you, Senator. First testifier in favor of LB664? [LB664]

NAN LINDSLEY-GRIFFIN: Good afternoon, Chairman Louden and members of the committee. My name is Nan Lindsley-Griffin, spelled N-a-n L-i-n-d-s-l-e-y - G-r-i-f-f-i-n. I'm a professor of geology at the University of Nebraska-Lincoln in the geosciences department and I'm also a registered professional geologist. And I'm also a member of the State Board of Geologists, I'm the emeritus education member and so my memory goes back as far as the origins of this bill. I'd like to tell you a little bit about the legislation and how it came about. First of all, what's a geologist? Well a geologist is a scientist with special training in physics, chemistry, geology, biology, math, but especially with training in earth materials, any natural earth materials such as rock, soil, groundwater, surface water, and the way these things interact. We are not engineers, we don't build structures, we deal with natural earth processes. And basically, then, I was involved originally in designing the first legislation that was passed in the state to license professional geologists to ensure that geologists, if you are going to have a geologist working for you, he or she should be properly trained and experienced and know what they're doing. And basically we worked with the Engineers and Architects Board to design a set of rules for licensing that would be parallel with these other very similar professions in the state. Now after our original bill was voted out of committee during the final round of debate, an amendment was added without consulting us. This amendment added an exemption for all state-permitted geologic work. And so the green sheet accompanying the bill here that has all these exemptions on it was listing engineers and soil scientists and water chemists who were performing their normal licensed work, are exempted from being geologists because as long as it's within the general purview of what an engineer or a water chemist might do, it's okay for them to do it. It's just that if you have to have a geologist it should really be a geologist and not something else. So the result of this is that it affects almost every geologic activity for

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which there is a state permit issued and it really turns out to be contrary to the original spirit and intent of the law as we originally imagined it. So what we're hoping is that we can encourage you to support the removal of this exemption, tighten the law to better require the protection of Nebraska citizens, and make sure that if a geologist is doing work in the state, he or she will be qualified. Senator Hudkins, thank you for introducing this for us and I'll be happy to answer questions if anyone has them. [LB664]

SENATOR LOUDEN: Questions for Nan? Senator Hudkins. [LB664]

SENATOR HUDKINS: Thank you. Just a question for my own information. Are there a great number of geologists within the state of Nebraska? [LB664]

NAN LINDSLEY-GRIFFIN: We have approximately 250 geologists actually licensed and working in Nebraska. Not all of them live in Nebraska. The requirement is that if you live in Kansas and you want to come across the border and do geology, you have talk to the state board and get licensed to meet our standard, which by the way, is much stricter than Kansas' law, which is good. So we also have a number of geologists who are in the state who are not yet licensed, students for example, who are still going through training. Young people who have graduated and gotten their first job and they can't be licensed until they have worked for five years under the supervision of another licensed geologist. So there are probably 400 or 500 people doing geology in all of these categories but not all of them are licensed. [LB664]

SENATOR HUDKINS: Thank you. [LB664]

NAN LINDSLEY-GRIFFIN: You're welcome. [LB664]

SENATOR LOUDEN: Senator Carlson. [LB664]

SENATOR CARLSON: Senator Louden. Thank you for your testimony. What is involved in the way of procedure for becoming licensed in the state of Nebraska and what kinds of fees are associated with it and is there a reciprocal arrangement with any other states? [LB664]

NAN LINDSLEY-GRIFFIN: Yes. First of all, you must have a baccalaureate degree in geology with core studies in certain courses that are absolutely critical in this state. Secondly, you must work for five years and have five years of professional experience under the supervision of another licensed geologist. Thirdly, you must be of good character and we ask for letters of reference from other registered geologists, from supervisors, people like that, to guarantee yes, this is cool, this person is ethical. And then fourthly and probably most important, there is a national exam administered by the Association of State Boards of Geologists and this national exam comes in two parts. Part 1 is fundamental of geology, part 2 is practice of geology. You have to pass both

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parts with a score of about 70 percent and if you can pass the exam, then you probably have done all of the other things too. It's quite a tough exam. Let me see now, the next part of your question... [LB664]

SENATOR CARLSON: Costs and then are there reciprocal arrangements? [LB664]

NAN LINDSLEY-GRIFFIN: Costs...we have an annual charge of...oh, pardon me, I'm having a senior moment, it's I believe on the order of \$90? I may be confused because we have been talking about needing to raise our charge to cover expenses, so pardon me if I'm a little off on that. This is quite a bit less than some other states, for example my state registration in the state of Georgia is \$120 so we're very reasonably priced. As for reciprocity, the law says that if you are already licensed in another state with comparable rules to Nebraska's, then after a review by the state board of your qualifications, you may be licensed in this state. And we would like to probably continue doing that because we think it protects the citizens from people just coming in and doing weird things without knowing anything about Nebraska issues. So I think that's a really good thing. [LB664]

SENATOR CARLSON: Thank you. [LB664]

NAN LINDSLEY-GRIFFIN: You're welcome. [LB664]

SENATOR LOUDEN: Are there other questions? With this, do you have to have a geologist if you were going to build a livestock construction, oh, site or something like that and that? Do you have to have a geologist to do that? [LB664]

NAN LINDSLEY-GRIFFIN: No, I certainly don't think so. It's not something I've ever known any geologist to be involved in. That's basically a straightforward engineering problem and a qualified engineer with experience in constructing that kind of structure is already exempted under the existing rules. Where the geologist would come in is if the engineer basically screwed up and a contaminant plume was injected into either surface water or groundwater, and especially if it gets into groundwater, then you need the geologist to track the subsurface contaminant. That's what we do is we deal with the interactions of natural substances such as water and soil and rock. [LB664]

SENATOR LOUDEN: Well, if I was going to put in a septic tank system would I have to have a geologist? [LB664]

NAN LINDSLEY-GRIFFIN: No, Sir. I didn't hire one when we did our septic tank by golly, and... [LB664]

SENATOR LOUDEN: Yeah, but you got yours at a discount from... [LB664]

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NAN LINDSLEY-GRIFFIN: Oh, that's right, I could have done it myself, right. (Laughter)
Well anyway, I would hire a really good engineer... [LB664]

SENATOR LOUDEN: I see. Other questions for Nan? Thank you for testifying. [LB664]

NAN LINDSLEY-GRIFFIN: Thank you for your attention. [LB664]

SANFORD KAPLAN: Thank you, Senator Louden and the rest of the committee as well. My name is Sanford Kaplan. That's S-a-n-f-o-r-d K-a-p-l-a-n. I'd like to thank the committee for considering LB664 and your continued interest in managing the natural resources of Nebraska. Two years ago I sat before this same committee and brought to the attention of the then chairman my concerns about Section 81-3541(l). As written, this section might encourage an agency to not use a geologist to do professional work even in those areas in which a geologist is best suited to do that work. By reason of their training that may include courses in surface and groundwater flow, structural geology, the study of rocks, minerals, soil, geologists are uniquely qualified to evaluate these phenomenon in the field. As a practicing geologist who has consulted individuals in public agencies on a wide variety of geological problems, I recognize how vital geologic input can be in making good decisions about land use, water supply, and environmental health and safety. Tomorrow, at the invitation of the Nebraska Planning and Zoning Association, I'll be giving a talk at their annual meeting in Grand Island on the role of geology and land use planning, just tomorrow. Any exemption that de-emphasizes the importance of geology in those areas, what can possibly make its biggest contribution is detrimental to the health and welfare of the state, its people, and its environment. I encourage you to support LB664 that eliminates the exemption in the original act. Thank you again for your consideration of this bill and I'll answer any questions if you have any for me. [LB664]

SENATOR LOUDEN: Any questions for Sanford? Seeing none, thank you for testifying. [LB664]

SANFORD KAPLAN: Surely. Thank you. [LB664]

SENATOR LOUDEN: Next proponent? [LB664]

JEFF JOHNSON: (Exhibit 1) Good afternoon, Senator Louden and members of the Natural Resources Committee. My name is Dr. Jeff Johnson, J-e-f-f J-o-h-n-s-o-n. I am vice president and regional manager of Olsson Associates here in Lincoln, Nebraska. I am currently serving as a board member of the Nebraska Board of Geologists and I am a registered professional geologist. I'd like to offer testimony on behalf of the board in support of LB664. The Board of Geologists was created by passage of the Geologists Regulation Act in 1998 to regulate the profession of geology and I quote, in order to safeguard life, health, and property and to promote the public welfare, end of quote.

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This concern of the public and property remains the board's first priority as it continues its oversight of the licensure of professional geologists and geologist interns in Nebraska. And to answer a question for Nan, currently the board lists 275 licensed professional geologists and 9 geologist interns. A fundamental reason for the existence of the board is to ensure that geologic work in Nebraska is performed by qualified, competent professionals. However in the current statute as we've already talked about or you've heard from previous people, that there is an exemption in the law. This exemption is of great concern to the board, mainly because of the numerous state-approved or permitted programs, I wanted to expand on what Nan had said, there are state approvals also as well as permitted programs that geologists work under, and also make up the majority of the geologic work which is currently performed in Nebraska. In addition state-approved or permitted work under environmental and natural resources programs administered by various state agencies is very closely linked to the safeguarding of life, health, and property and the promotion of public welfare as outlined in the act. Therefore, the board feels that the state permit exemption is in conflict with the basic premises of the act and it makes it very difficult to ensure that a large portion of the geologic work in Nebraska is in fact being performed by competent, qualified professionals. As a result, the Board of Geologists supports striking this exemption as proposed in LB664. This same legislation was introduced last year by Senator Ed Schrock, chair of the Natural Resources Committee on behalf of the Board of Geologists. At the hearing a number of groups expressed concerns and an interim hearing was suggested which we have gone through over this last year. In the past year the Board of Geologists has worked diligently to address those concerns and we feel like we are there today. We would like to thank Senator Hudkins for introducing LB664 and all of her work on the bill, as well as wish the senator a happy birthday. I do want to add one part...I've got this in a document to submit to the committee. But one thing I do need to bring up is not included in here, it dawned on me when I was shaking hands with the Cattlemen this afternoon. When we were talking about one of the concerns it was, do you add additional work or is there additional costs to things like a livestock permit and it sounds like this might be coming up as an issue so I wanted to address it here. What we believe and it is we feel, very clear in the law, there is an exemption for engineers within our act. The DEQ or Department of Environmental Quality has as a part of their requirement for livestock permitting, the need to have an engineer sign and seal any type of livestock permit. Because that requirement is there and because there is already an exemption for an engineer, we feel there is no need to require a geologist on that work. What we're saying is that if you do hire a geologist, we want them to be a professional geologist that meets the requirements of the regulation so there is not an extra level or a need or a cost applied for such things as livestock. So hopefully, that helps clarify that. Thank you very much for the opportunity to present this testimony and I urge you to support LB664 and to advance it to the floor. I will try to help answer any questions that you might have. [LB664]

SENATOR LOUDEN: Questions for Dr. Johnson? As I was looking at this bill and of

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course that isn't part of the work that's being done it, but you never know when this thing gets tossed out like this, but if I was going to shut down a well or decommission a well, do I have to have a geologist do that or can...do I have a well driller, or who do I get to do that? [LB664]

JEFF JOHNSON: A well driller would be the person that would decommission a well. [LB664]

SENATOR LOUDEN: Okay, then how come in this bill or in this part of the statute it mentions in there that...or is that something you don't have to work with is, I guess that's the one you don't have to work with and decommissioning wells and... [LB664]

JEFF JOHNSON: Right. And there is an exemption for well drillers in our act also. [LB664]

SENATOR LOUDEN: Um-hum. Okay. Any other questions for Dr. Johnson? Thank you for testifying. [LB664]

JEFF JOHNSON: Thank you. [LB664]

SENATOR LOUDEN: Proponents for LB664? [LB664]

DUANE GANGWISH: Good afternoon, Senator Louden, members of the committee, my name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h and I'm a registered lobbyist for the Nebraska Cattlemen. We are here to support LB664. Last year we were one of the opponents and I can confess that that was maybe more out of fear than out of knowledge. Over this last interim we have met with Dr. Johnson and with Demaris and with Senator Hudkins' staff and I want to thank you for bringing the bill and involving us in the conversation. Our concerns as Dr. Johnson eloquently pointed out, was would this add another layer of regulatory oversight for the construction and permitting of livestock facilities and we believe through our conversations that that is not the case, that those are as Dr. Johnson very well pointed out, covered in the process of having a professional engineer. We appreciate the opportunity to be involved in the discussion and with that I'd ask you to support it and move this to General File. If you have any questions, I'd be happy to answer. [LB664]

SENATOR LOUDEN: Any questions for Duane? Seeing none, thank you, Duane. Any more proponents? Any opponents? Seeing none, anyone wishing to testify in neutral? Seeing none, then I guess we will close the hearing on LB664. Senator Hudkins, do you wish to close? [LB664]

SENATOR HUDKINS: I'll waive closing. [LB664]

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SENATOR LOUDEN: Senator Hudkins waives closing so with that we will go to, open the hearing on LB677 and Senator Dubas will present it. [LB664 LB677]

SENATOR DUBAS: Good afternoon, Senator Louden, members of the Natural Resources Committee, thank you for giving me this opportunity this afternoon. My name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s and I represent the 34th Legislative District. The idea and the concept for LB677 was offered to me by the Nebraska Cattlemen. And I agreed to introduce this bill on their behalf because I am compelled to find a solution to the change in rules and the definition that seems to have happened kind of midstream. This legislation would encourage operator compliance with requirements related to livestock inspections and the Livestock Waste Management Act. As it reads now, any person who is required to request an inspection under Section 54-2423 who operates a livestock operation after January 1, 2000, shall be subject to a late fee of not less than \$50 nor more than \$500 for each offense. Each month a violation continues shall constitute a separate offense. The confusion comes from EPA's involvement in this and the definition of who are required to request these inspections and those who do not even know that they are currently racking up an extensive late fee. The testifiers behind me, especially I believe, Jay Wolf, will have in-depth history surrounding the confusion of this ever-changing definition and requirements. In short, the intent of LB677 is to create a window of time for individuals to clarify and to comply with the requirements implemented over the course of the past nine years. Individuals could comply without being subject to a late fee beginning on the enactment date of this legislation until December 31, 2007. It is my understanding that with the last change many ranchers and small operations were unaware of the requirements to apply for a permit and subsequently go through the inspection. And I have received several phone calls in my office stating that very same fact. Well, I thought I was exempt, I didn't understand that the rules had changed and hadn't been made aware of those. There is no fiscal impact that can be projected with this bill. Currently, in visiting with DEQ there are around 420 inspections that still need to be completed by DEQ and I've been told that most of these operations are small to medium-sized farmers and ranchers. And DEQ has been very helpful in providing this information and can get you more information should you require. They are here to answer your questions. I would encourage you to advance this bill to General File for debate and would be happy to answer any questions. But as I said, there are people coming behind me who will be able to give you more personal and up-to-date information on this issue. [LB677]

SENATOR LOUDEN: Questions for Senator Dubas? Seeing none, thank you, Senator. First proponent? [LB677]

JAY WOLF: (Exhibit 2) Good afternoon, Senator Louden and members of the committee, I am Jay Wolf, J-a-y W-o-l-f. I'm a third generation rancher from Albion and I'm currently serving as president of the Nebraska Cattlemen. I want to thank Senator Dubas for bringing forward LB677. I think that we can all appreciate that this bill is short

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and to the point and I'd like to visit with you as to why we think the bill is needed. First I'll give a brief history of the statutes that brought about the need for LB677 and then I'll identify some examples of the unintended consequences of previous legislation, and finally I'll share with you the responsibility that we as stockmen are committed to fulfill. The issue is that DEQ is required by Section 54-2423 to assess a late fees when producers request an inspection by a date long past. On the surface that seems rather innocuous but the magnitude of the late fee is staggering and they continue to grow. The current section of Chapter 54 was first crafted in 1998 in LB1209. And this was the first time livestock operations were required to request an inspection. The intent of the inspection was first of all to identify all livestock operations in existence and secondly, determine whether or not action was required to meet environmental regulations. The bill created a grace period during which the request for inspection was free. A request for inspection between January 1, 1999 and January 1, 2000 required a fee of \$50 for Class I and II operations and \$500 for Classes III and IV. During the grace period ranchers would have correctly interpreted that LB1209 did not apply to them because the definition contained in Section 1, subsection 7 read, livestock operation means the feeding or holding of beef cattle versus swine, sheep, poultry and other livestock in buildings, lots or pens, which are normally not used for growing of crops or vegetation, but does not include the holding of cattle and calving operations for less than 90 days per year. So you can see why a rancher would, and he was correct, thought this bill didn't apply to him. Six years later in 2004, with the passage of LB916 the terminology changed from livestock operations to animal feeding operations. And the categorizations changed from classes to group sizes, small being 0-299, medium 300-999, and large as 1,000 and over. Animal feeding operations are defined differently than livestock operations were and animal feed operation says, a location where beef cattle, dairy cattle, horses, swine, sheep, poultry and other livestock, have been or will be stabled or confined and fed or maintained for a total of 45 days or more in a 12-month period and crops, vegetation, forage growth and other postharvest residues are not sustained in the normal growing season over any portion of the location. So this then brought the ranchers into the equation. And the Legislature also instituted a late fee as Senator Dubas described and it's between \$50 and, or it can be \$50 or \$500 per month, but every month is an additional violation so these add up in a hurry. DEQ staff are present and I believe they are prepared to give you more explanation on these late fees. Now an example of how this is all coming together is one of our members, Dave Schutte, from Dixon County, he runs about 120 cows, and he has a small row crop operation. Dave has historically weaned his calves and purchased another 400 calves and filled his pens. Well Dave heard on a South Dakota radio station that he should register his premise. And so he called up DEQ and asked about that. Well DEQ interpreted that as a request for inspection and the department made arrangements to visit his operation. After they'd been there they--he received a notice that controls were required and since he had not requested an inspection prior to January 1, 2000 he owed a \$3,400 late fee. At that point he contacted our staff and they worked with him to write letters to DEQ to Director Linder. In February of '06 the department responded that

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they could not forgive the late fee. But after they reinspected his premise they rescinded the controls required. So here is a guy, he calls up DEQ and controls aren't required but he still has a \$3,400 late fee. That's what I would call a disincentive to step up and ask for an inspection. And I don't think that's the intention that the Legislature had I mind. Just this month the Cover Ranch in Alliance received a similar notice. Theirs was for \$5,200 for a late fee. Drought and other factors have increased the number of ranchers that are backgrounding calves. If a ranch holds their calves for more than 45 days and there's no permanent vegetation in the pen then they are now considered an animal feeding operation and they're required to ask for the inspection. If you wean calves and you background them for 60 days and you've got more than 1,000 of them, you're defined as a large CAFO. Now there isn't a rancher around that considers himself to be a feedlot. And they think of CAFO legislation as being for feedlots, but the net grabs them as well. With the passage of this bill, the Nebraska Cattlemen is committed to orchestrating a massive education campaign to inform ranchers and small producers that they need to get an inspection, but we'd like to do that without this big hammer hanging over their heads. Money should go to protecting the environment and not state funds for late fees; that's how we see it. Legislative Bill 677 is not a free pass for the big guys. Mr. Chairman and committee, I would submit that they are already permitted. Legislative Bill 677 will help ranchers and small family operations. We believe we'll all be better served if these producers are encouraged to request inspections, invest their funds to protect the environment as opposed to our current situation. I have a handout regarding the Schutte and Cover cases that I'll give to the page. Mr. Chairman and members of the committee, I urge you to advance LB677 and put it on General File and I will be pleased to answer any questions. [LB677]

SENATOR LOUDEN: Any questions for Jay? Senator Carlson. [LB677]

SENATOR CARLSON: Senator Louden. Jay, under the old system, clear up for me again, what were Classes I, II, III, and IV? [LB677]

JAY WOLF: They were based on size and I got it in here...just give me a minute...there it is, small, no...just a second...here it is, okay, Class I and Class II were operations...well I don't have it, I'll have to ask DEQ (laughter). Sorry. [LB677]

SENATOR CARLSON: All right. Okay. [LB677]

SENATOR LOUDEN: Other questions for Jay? Senator Fischer. [LB677]

SENATOR FISCHER: Thank you, Senator Louden. Nice to see you, Jay. Can you tell the committee about how long people have their cows that are calving in a springer lot? In a confined situation? [LB677]

JAY WOLF: Well that generally would be 45 to 60 days, typically. [LB677]

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SENATOR FISCHER: And as a rancher, do you consider that a CAFO? [LB677]

JAY WOLF: Well no, you wouldn't think of it that way. But if in fact you were removing all vegetation for 45 days, the law says you are. [LB677]

SENATOR FISCHER: Do you know why the number of days was decreased from 90 to 45? [LB677]

JAY WOLF: No I don't. [LB677]

SENATOR FISCHER: Do you know why the size of the different classes were changed? [LB677]

JAY WOLF: I think that was done in order to try and make Nebraska statute the same as the federal EPA rules. [LB677]

SENATOR FISCHER: Okay. Do you have any information on what the average size of a cow-calf operation is in the state of Nebraska on mother cows that would be in a confined space for 45 days or more during calving season? [LB677]

JAY WOLF: Well I wouldn't have any research or anything like that. It's always surprising how small the average herd is because there are so many... [LB677]

SENATOR FISCHER: But in Nebraska, not... [LB677]

JAY WOLF: ...even in Nebraska... [LB677]

SENATOR FISCHER: ...yeah, nationally it's smaller I think than in the state of Nebraska, though. [LB677]

JAY WOLF: Um-hum. Michael Kelsey is here, perhaps he can answer that questions, but I don't know the answer. [LB677]

SENATOR FISCHER: Okay. Then thank you. [LB677]

SENATOR LOUDEN: I was wondering, on this thing, Jay, should this bill be set up so that, the way I understand it now, that if you want to go ahead and get your inspection if the bill goes through, you'd still have to pay anywhere from \$100 to \$500 fee depending on your size to have them come out and take a peek, is that... [LB677]

JAY WOLF: I think it's \$500. [LB677]

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SENATOR LOUDEN: Yeah, should that be waived in that thing? So or otherwise you're going to get people that are going to try and second guess the DEQ on whether or not they got cattle in there for 45 days or not...or they can go in there and plant a little rye or something, to save them a few bucks. [LB677]

JAY WOLF: Yeah, the \$500 fee is a problem for smaller producers and that and we agree with that. I, once again, I'm going to defer to DEQ. I believe that is an EQC, Environmental Quality Council, sets that amount, but I don't...I'm not sure that that was set by the Unicameral. [LB677]

SENATOR LOUDEN: Well, I was going to say I wouldn't...be easy to get along with if I had to pay \$500 to have DEQ come out and take a look at my corrals that I got scattered all over the countryside out there. Because every one of them, if it's...there's not any cattle in it, but the size of the corral, they could tell me why it's a large animal operation. Just because you don't have cattle in there doesn't mean that they can't decide that and that's what kind of worries me and I was wondering if the Cattlemen have had any thinking along that line? [LB677]

JAY WOLF: We have and we share your concern. I mean, I think when the \$500 fee was envisioned, you were thinking about a \$500 fee for feedlots, and most of which are of larger size and that seemed reasonable enough or at least it did to the people that passed the rule. But when you start thinking about somebody with a couple hundred cows and have them pay \$500 so they can come out and tell them controls aren't required, that raises some hackles. [LB677]

SENATOR LOUDEN: Yeah, that cuts into your beer money that's for sure (laughter). Any other questions for Jay? Senator Fischer. [LB677]

SENATOR FISCHER: May I ask another question, Senator? [LB677]

SENATOR LOUDEN: Yes, go ahead. [LB677]

SENATOR FISCHER: Okay, thank you. Jay, when...in your business, you're in cow-calf, is that correct? [LB677]

JAY WOLF: Um-hum. [LB677]

SENATOR FISCHER: And when you have cattle in a springer lot, in a calving lot, how many days do you keep your cattle in there would you say in that confined area, not to get you in trouble here... [LB677]

JAY WOLF: No, that's all right. Although actually I've had the inspection so I am all right. [LB677]

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SENATOR FISCHER: Good. Okay. And... [LB677]

JAY WOLF: And they did come out and they said no controls required on the ranch part of it, we had them in the feed yard. [LB677]

SENATOR FISCHER: Right. [LB677]

JAY WOLF: To answer the Senator's question, we confine our heifers when they're calving for about that 45 days but there certainly are operations that do it longer than that. Our cows aren't confined in an area where they remove all the vegetation so although we keep our cows in for 60 days, it's not in a AFO-type setting. [LB677]

SENATOR FISCHER: Can I ask you how big of a lot you're talking about? [LB677]

JAY WOLF: For where our heifers are? Oh, it's...you know, that's an interesting question because we run them out in kind of I want to say, a five-acre lounging area during the day; we bring them into a small pen at night. And that pen wouldn't be much over an acre. And so there's all vegetation removed from that pen, so I'd have... [LB677]

SENATOR FISCHER: But would you say these calving lots are smaller than average on the number of head you have in those lots than say in your feed yard? [LB677]

JAY WOLF: It's... [LB677]

SENATOR FISCHER: Are they as tightly confined; is the density greater in a calving lot than in a feed yard situation? [LB677]

JAY WOLF: In ours they are. [LB677]

SENATOR FISHER: Are they? [LB677]

JAY WOLF: We bring them in at night. Now typically I would say that that's not right. I mean, we just do it differently than some do. There would be others that would have less concentration in their calving pens. [LB677]

SENATOR FISCHER: And do you use those lots in any other time of the year? I know a lot of ranchers who only use calving lots during calving season. [LB677]

JAY WOLF: Yeah. We try to keep everything out of there the rest of the year to allow vegetation to grow and we think that that kind of helps to sterilize the pens. [LB677]

SENATOR FISCHER: Okay. Thank you. [LB677]

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SENATOR LOUDEN: Any other questions for Jay? Seeing none, thank you for testifying. [LB677]

JAY WOLF: Thank you, Senator. [LB677]

SENATOR LOUDEN: Next testifier in favor of LB677? [LB677]

LAURA KREBSBACH: Good afternoon. [LB677]

SENATOR LOUDEN: Good afternoon, Laura. [LB677]

LAURA KREBSBACH: (Exhibit 3) My name is Laura Krebsbach, L-a-u-r-a K-r-e-b-s-b-a-c-h and I'm here as myself today, I'm not representing anyone. I do have some information sheets that I'd like to have committee members and others have. I know that in the past I've said that I did believe that this was needed and I still do believe it's needed. But there is a couple of things that I wanted to bring up and that is that there's a question of equity and fairness. And when we look at what happened with the EPA and the federal regs that got us where we are today. They decided to change the rules, brought the ranchers in, the ranchers lost their 90-day exemption for calving which left them out of the AFO-CAFO which the feds reduced to the 45 days and brought them into the CAFO regs. And I do believe that they were caught in a tough situation and I believe that the ranchers should get an exception. But as written, LB677 does create a huge advantage, I guess I'd like to say, for feeders that have decided that they didn't necessarily want to request that inspection. And so I think something that could really remedy this situation is an amendment where we could tie the adoption of the regs specifically to the language the feds used to change the ranchers from ranchers to the CAFOs. And that way we specifically target that segment and give them that exemption without creating the blanket exemption. But I do believe that we do need to give these folks relief and I just want to stress that it should be for the ranchers. That's all I have. [LB677]

SENATOR LOUDEN: Questions for Laura? Thank you for testifying, Laura. [LB677]

LAURA KREBSBACH: You mean I'm going to get out of here without any questions? [LB677]

SENATOR LOUDEN: Yeah, how about that? (Laughter) [LB677]

LAURA KREBSBACH: Thank you. [LB677]

JOHN K. HANSEN: Chairman Louden, members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n. I am president of the Nebraska Farmers Union

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and I did remember to spell my name today. We are in support of LB677 and we understand that the changing regulatory underpinnings of federal change that came which then set off a chain reaction that caused us at the state level to also have to change ours, and out of fairness to the producers we think this is a reasonable extension. And that one of the issues that we have had sometimes with DEQ is that sometimes they're perhaps not as proactive as they could be relative to folks that they should be regulating. I realize that that's difficult for them as well. But it's the, gosh, you should have known we changed the regs and so now you're supposed to comply and you know, ignorance of the law is no excuse, seems to be the standard. And I...there was good reason why a lot of producers thought they should not have needed to comply. That did change and so this seems like a perfectly reasonable and logical and appropriate response given the situation. And so for those reasons we are in support of the bill and thank Senator Dubas for bringing it. [LB677]

SENATOR LOUDEN: Any questions for John? Thank you, John, for testifying. [LB677]

JOHN K. HANSEN: Thank you, Mr. Chairman and members of the committee. [LB677]

SENATOR LOUDEN: Other proponents for LB677? Are there opponents for LB677? Those wishing to testify in the neutral? Jay, or could some of you folks come up...Mike, yeah. [LB677]

MIKE LINDER: Good afternoon, Senator Louden, members of committee, my name is Mike Linder, last name L-i-n-d-e-r. I am director of Nebraska Department of Environmental Quality, and if you have any questions, I'd be happy to try and respond. [LB677]

SENATOR LOUDEN: Any questions for Mike? Senator Hudkins. [LB677]

SENATOR HUDKINS: Thank you. Mr. Linder, when you inspect facilities what are you looking for and what determines if controls are going to be required? [LB677]

MIKE LINDER: We look for potential impact on water quality, either ground or surface water quality from the site. And that's been the basic determinant since the mid-'70s when we adopted the program. The changing federal rule added kind of an arbitrary size limit and anybody over 1,000 head is presumed to need a permit, so that added a new wrinkle. But basically, we're looking for potential impact to water quality. [LB677]

SENATOR HUDKINS: Are most of the larger feeders already in compliance and so this bill is dealing with the ones who before didn't think that they needed to do anything? [LB677]

MIKE LINDER: I would like to think that every large feeder has asked for an inspection

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but I don't know that. And the way the bill is drafted would apply to any facility of any size. So what percentage, obviously we don't know who hasn't asked for an inspection. So I really can't, don't have a sense of if there are any large facilities that haven't requested inspections. I just...we have some numbers on how many facilities have asked for inspections after the deadline date that we have assessed penalties on. How many are beyond that it's hard to know. [LB677]

SENATOR HUDKINS: So in these days of GPS you don't know where they are? [LB677]

MIKE LINDER: We don't know. [LB677]

SENATOR HUDKINS: Okay. Thank you. [LB677]

SENATOR LOUDEN: Questions for...Senator Fischer. [LB677]

SENATOR FISCHER: Thank you, Senator Louden. Mr. Linder I just want to follow up on Senator Hudkins' line of questioning there. I am amazed too. You don't know if the larger feeding facilities have requested inspections? [LB677]

MIKE LINDER: Well we've...over the years... [LB677]

SENATOR FISCHER: And by larger I'm talking about 5,000 head or more. [LB677]

MIKE LINDER: Right. Over the years we've had I don't know, I suppose over 10,000 requests for inspections. Whether that's all of them or not, I can't say definitively. [LB677]

SENATOR FISCHER: Do you...under...I don't know if this is current law but I know a few years ago, not that many years ago, people who were feeding cattle had to be inspected, I assume by the DEQ, and get certified? Would that be right? You certify that you could feed cattle for you know, up to a 5,000 head feedlot or up to a... [LB677]

MIKE LINDER: Um-hum. That wouldn't be our regulations I don't...I don't know if that's the Department of Agriculture? [LB677]

SENATOR FISCHER: Not DEQ? Okay. Thank you. [LB677]

SENATOR LOUDEN: Questions for...Senator Carlson. [LB677]

SENATOR CARLSON: Senator Louden. Do you think that those that haven't requested inspections, do you tend to think that these maybe have a greater impact or a lesser impact on environment. Would it be a bigger problem or a lesser problem? [LB677]

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MIKE LINDER: Well it stands to reason that the larger the facility the bigger potential problem there is. Now our experience is that oftentimes the larger the facility, the more investment they put into a good operation. So it's...you can't make a generalization like that, but it's hard to generalize on...operations are so dependent on operation and maintenance and upkeep. [LB677]

SENATOR LOUDEN: Senator Hudkins. [LB677]

SENATOR HUDKINS: How long does it take to do an inspection, and just...in general? [LB677]

MIKE LINDER: I'll ask Dennis Heitmann of our, he's head of our ag section, to respond to that. [LB677]

DENNIS HEITMANN: Good afternoon, Senator. My name is Dennis Heitmann, D-e-n-n-i-s H-e-i-t-m-a-n-n, and I supervise the ag section with DEQ. When our inspectors receive the request for an inspection we schedule a time with the producer to go and look at the facility or the proposed facility. And the time spent there depends naturally on the size of the operation itself. But I wouldn't expect that the inspector would be there for more than two hours at a site, at a normal site anyway. [LB677]

SENATOR HUDKINS: Thank you. [LB677]

SENATOR LOUDEN: Questions? Senator Carlson. [LB677]

SENATOR CARLSON: Well...thank you, Senator Louden. I think that Senator Dubas indicated this and I missed it but of those requesting inspections, how many haven't been inspected? [LB677]

DENNIS HEITMANN: Of the number that we've received since the Livestock Waste Management Act was passed, that number, there was probably around 4,250 that were inspections requested. Around 3,300 were exempted the following year, in 1999 for those small or under 300 animal units. So those remaining, there's probably around 400 yet that we need to look at and most of these are in the medium category. There may be some that are in the small or large category, but... [LB677]

SENATOR CARLSON: What was medium again? [LB677]

DENNIS HEITMANN: Medium for a feedlot would be 300 to 999. [LB677]

SENATOR CARLSON: Okay. [LB677]

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SENATOR LOUDEN: Any questions? Senator Fischer. [LB677]

SENATOR FISCHER: Thank you, Senator Louden. I would imagine that you've done inspections all over the state. Can you tell me where, and I probably don't even want to ask this question, but I'm going to. Can you tell me if there's certain locales in the state where you have found that controls seem to be more necessary? Is that a, because you said it's based on water quality and I need to visit with you just on the side, how you determine that, first of all. But have you determined where in the state there seems to be an area where controls are more necessary? Or does that depend on size more than location, or...don't pick on any area of the state, just... [LB677]

DENNIS HEITMANN: Right. Senator, it's kind of a combination. You mentioned size but locality does play a part in that because of the rainfall that's received for a specific area. The eastern part of the state receives considerably more rainfall than the western part of the state. So I don't know if we have any percentages as to how many in a certain geographic area of the state are required to put in a waste control system or not because in some areas the population of the facilities or operations is greater than in other areas, but the drier area of the state, the less chance for surface water runoff. [LB677]

SENATOR FISCHER: Do you find that many ranches with a cow-calf operation especially ever need controls? [LB677]

DENNIS HEITMANN: I cannot recall any that are strictly cow-calf where we have required controls. We have worked with some operations that maybe need to divert runoff onto a different area of their property or something like that. But I cannot recall any where we have said you need to put in a waste control system. [LB677]

SENATOR FISCHER: Why are we doing this then? Is it to be in compliance with federal regulations? Or is this something that we've gone off on on our own here at the state level and why? [LB677]

DENNIS HEITMANN: Well it's kind of...probably...a combination of the two. We have had the Nebraska Environmental Protection Act since the '70s and then the Livestock Waste Management Act in '98 and basically gave us the responsibility to ensure that operations do not impact waters of the state. So with the EPA CAFO rule, there were more operations that ended up being defined as an animal feeding operation and thus there was a requirement that you evaluate those...whether or not they needed an NPDES or that federal permit. So it's kind of a combination of the federal requirements as well as the state historical laws. [LB677]

SENATOR FISCHER: Since we're, I believe as Senator Dubas said, and maybe you gentlemen did too, that there were 420 that have had requests and they haven't had the

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inspection but they requested it. They are small to medium operations. I guess I'm looking at this bill and thinking how I can cause all sorts of problems by saying, why are we even doing this? Why are we even doing this for these operations? I like this bill, I think it's great that we're giving, basically giving a break to people who didn't know about it for one thing, in my opinion didn't need to be inspected for another, and I'm looking at it thinking maybe we need to amend the bill, thinking out loud guys, don't get upset. But maybe we need to amend the bill and say, why are we even doing this for these size operations if you can't keep up with the inspection on them anyway and they aren't causing problems. (Laughter) [LB677]

MIKE LINDER: I think...the 45 days in particular, that feature is strictly a federal CAFO requirement so we had to incorporate that in our regulations, we didn't necessarily agree with it. But we wanted to match the federal rule on that piece... [LB677]

SENATOR FISCHER: But do we have to match it? [LB677]

MIKE LINDER: Well either that or the feds... [LB677]

SENATOR FISCHER: Do we have to say 45 days? [LB677]

MIKE LINDER: ...will run the program, you know, you have to match, so... [LB677]

SENATOR FISCHER: Oh, enough said. [LB677]

MIKE LINDER: But I don't think...it's not a secret. In fact I think we've been proactive in saying over the years that we are actually more stringent than the federal program in one way. And that is we have always taken a risk-based approach to who needs a permit as opposed to the federal approach has always been if you're a certain size you have to have a permit. Nebraska set up its program in the mid-'70s saying, if there's a potential to impact water quality, you need to have controls and it could be a very small facility, could be a very small facility that needs controls or a very large facility that didn't need controls. And when the federal government was promulgating their rule, we were pretty persuasive...obviously not persuasive enough, but pretty aggressive in our argument that the feds shouldn't even apply their program here because we have a better program. And that was really kind of the whole context of LB1209 in 1998 is we just reaffirmed Nebraska's program as being a good program, made these changes to it and then we had to try to match the federal program later. And on this 45-day part, is one area where the feds were more stringent but we didn't think it made sense. Again, it's an arbitrary, just a number as opposed to potential to affect water quality, so. You know, I say it's more stringent than the federal program but it's also based on something. It's based on whether or not you're going to impact water quality, not just size. And so some of our larger facilities that we didn't feel had the potential to impact water quality, we didn't require controls. So it worked both ways but so that's...there's a

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lot of history in this program and so some of these questions that are kind of difficult to answer in the short amount of time, but... [LB677]

SENATOR FISCHER: Oh, come on, come on. Could you maybe get us some information on...you said that there's a number of smaller operations that cause problems and larger ones that don't, and with water quality. Could you give a breakdown on the different sizes of operations and just how many are being controlled? I assume you have that information from your inspections, which ones you feel are causing problems with water quality and that they've had to make some kind of change. [LB677]

MIKE LINDER: It would... [LB677]

SENATOR FISCHER: By size, I mean I would think you'd have that from your inspections. [LB677]

MIKE LINDER: Well, I'll have Dennis respond to that. [LB677]

DENNIS HEITMANN: Yeah, we do have the information in our files. We have not summarized that on size as to how many we've inspected by size, how many of those we've required a permit or waste control systems. That information is there, we have just not summarized it. [LB677]

SENATOR FISCHER: Okay. Thank you. [LB677]

SENATOR LOUDEN: Other questions for the boys? (Laughter) I got some, but my concern is more on the ranching side of it and I was wondering and I think you've probably mentioned the criteria for inspection and is this going to be if cattle are held 45 days or is this going to be 300 head or less, or 300 head or more, or...where, whose corral are you going to have to drive out and take a look at? [LB677]

MIKE LINDER: Not on this bill. Or, you mean regarding... [LB677]

SENATOR LOUDEN: Yeah, the way this bill is written and how has, who's liable for an inspection I guess? [LB677]

DENNIS HEITMANN: I guess that part of the act I don't think is being amended here as to who needs to request the inspection, it's when it needs to be submitted. Basically any operation that is a small, is exempt from the inspection and permitting part of the act. And a small for cattle would be 299 head or less. And that would be the same for the cow-calf combination. [LB677]

SENATOR LOUDEN: Providing they don't keep them shut up, they can't keep them

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shut up more than 45 days. Does that enter into it? [LB677]

DENNIS HEITMANN: Well, the 45 days gets you into the definition of whether they're an animal feeding operation. If they confine them for more than 45 days and all the vegetation is gone in that 45 days, they become an AFO, an animal feeding operation. Now what size of that AFO depends on the number of animals. So if they're a small AFO they're still exempted from the inspection and permitting requirements under the act, unless they have a discharge. [LB677]

SENATOR LOUDEN: Now is it 45 days or if the vegetation is gone? Does it have to be one or the other or both, or what? [LB677]

DENNIS HEITMANN: It's actually both. They can have them there for 60 days and still have vegetation and still would not be considered an AFO. So you have to look at the 45 days and then whether or not all the vegetation is gone on those 45 days. [LB677]

SENATOR LOUDEN: Well my, that question was leading to, what about my branding corral? Is it going to be exempt or not? Because we'll put about 450 pairs or so in there and when we get done branding the vegetation is usually gone. [LB677]

DENNIS HEITMANN: Right. [LB677]

SENATOR LOUDEN: Out in that Sandhills country, so when you throw that factor in there, the vegetation isn't there, why then you got another ball game coming around. [LB677]

DENNIS HEITMANN: Again, they'd have to be confined for 45 days in that scenario. [LB677]

SENATOR LOUDEN: Whether or not the vegetation is gone or not? [LB677]

DENNIS HEITMANN: So if...yeah. Before you could even consider it to be an AFO they'd have to be there 45 days. [LB677]

SENATOR LOUDEN: Okay. And then who would need it? Okay, because what we're talking about is waiving, or everybody has...gets an exemption to go for a couple of years to get inspected now. Now, who has to be inspected? Do I have to have you come out there and look at my corrals? I mean, every ranch out there in the Sandhills and all over Nebraska going to have to have somebody come and inspect their corrals if they've probably got more than 200, 150 cows and their calves is 300 head so I mean, it doesn't have to be a very big operation when you're talking about 300 head. [LB677]

DENNIS HEITMANN: A cow and a calf together is one. [LB677]

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SENATOR LOUDEN: One unit. [LB677]

DENNIS HEITMANN: Is one. [LB677]

SENATOR LOUDEN: Okay. [LB677]

MIKE LINDER: So in that scenario you don't add those animals together until the calf is separated from the cow. Okay, so a cow-calf is one head. Now if you never reach that 300 level you do not have to request the inspection. [LB677]

SENATOR LOUDEN: Okay. Now while you're on that deal, I wean my cows and calves. I put the cows on one side of the fence in the corral and the calves on the other. Now have I doubled my numbers to 300 head? [LB677]

DENNIS HEITMANN: You could have if you have 150 of each and they're separated, then it would be 300 head. [LB677]

SENATOR LOUDEN: And then get back to it there's a lot of ranches out there that... [LB677]

MIKE LINDER: Right... [LB677]

SENATOR LOUDEN: ...have that many cattle and way more, so I'm wondering, this is what worries me is how many people have to be inspected and are we going to have to pay \$100 or \$500 or something to have the DEQ run around out there when they can't even get done what they've been trying to do? [LB677]

DENNIS HEITMANN: If an operation meets the definition of an AFO and they are medium or large, they are required to request the inspection. Now the inspection fee is \$100 for any small operations, \$200 for the medium operations and \$500 for the large operations. And that's the inspection fee itself. So... [LB677]

SENATOR LOUDEN: For each facility or each ranch or whatever. [LB677]

DENNIS HEITMANN: Well then you get back into your definition of what is a single operation. You could have multiple corrals or multiple feeding areas on your property. It's considered one operation. So there would, again, in that case you would have to add the numbers together from each of your locations and come up with the size of your operation, but it would just be one inspection fee. [LB677]

SENATOR LOUDEN: Okay. Now could those fees be waived if the bill was amended? [LB677]

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MIKE LINDER: You mean the inspection fee itself? [LB677]

SENATOR LOUDEN: Yeah. [LB677]

MIKE LINDER: Well, sure, it's created in state statute. It's not a federal requirement, so. [LB677]

SENATOR LOUDEN: Okay. I mean this is your, whatever, you...come down for you guys for your cash funding or something like that? Is that what this is all about? [LB677]

MIKE LINDER: The livestock program is funded 80 percent general fund, 20 percent cash fund. And so that's the ratio that we're mandated to maintain whether it be by inspection fees or annual fees or however the Legislature would set it up. [LB677]

SENATOR LOUDEN: Now they...somebody put out an exhibit here and of course Cover's ranch and that's in the district that I represent and I'm quite familiar with it because I drive by it pretty regularly. And I see they, I know what they do, they background their calves actually instead of having them run all over the pasture, they keep them in that feedlot...and it looks like a feedlot more or less. But they're in there through the winter, there's no running water or anything around close. But yet, for some reason they probably didn't think they had to comply but anyway they didn't get inspected and now they owe \$5,200 or about one-third of a Ford pickup and they're Ford dealers besides, so I suppose the price of pickups are going to go up (laughter). Is this...what is the reason for this, are you just doing this, for what would you say, damned orneriness because they didn't comply when they were supposed to, or what's the reason... [LB677]

MIKE LINDER: Well the statute, I think... [LB677]

SENATOR LOUDEN: ...I mean, because that's in statute, they have to pay that? [LB677]

MIKE LINDER: Right. [LB677]

SENATOR LOUDEN: Okay. [LB677]

MIKE LINDER: And they, apparently, and I'm not familiar with the situation but they apparently didn't request an inspection until after the deadline date and so the statute sets up a mandatory late fee in that situation. We don't really have any discretion to waive those fees. [LB677]

SENATOR LOUDEN: Okay. [LB677]

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MIKE LINDER: But it is not a matter of when we get out there to inspect, it's when they request the inspection. [LB677]

SENATOR LOUDEN: Well, because I know there's a lot of ranches out through that Sandhills that are doing this and there's a whole bunch of people that are going to madder than hops when this comes down because there's a bunch of them aren't going to want to pony up, you know, \$5,000 or so because they didn't think they had to comply sitting out there in the middle of nowhere and just kept their calves penned up and that's what kind of... [LB677]

MIKE LINDER: Well certainly, I mean, it's in everybody's interests to get those facilities in the system and know about them and get them, you know... [LB677]

SENATOR LOUDEN: Why is it in everybody's interest, I couldn't care less what some of my neighbors are doing with their cattle over there. I mean, as long as they are out there... [LB677]

MIKE LINDER: I hear differently from others... [LB677]

SENATOR LOUDEN: ...with no running water and I'm not, you know, anybody...if there was a stream of running water I can understand it but out there in some of that alkali ground and stuff, you know, I...yeah, I don't know, you might say it's in everybody's interests, sure isn't in mine anyway. But this is a question...I'm wondering how you felt about waiving the fees and I think that's most of the questions I have. Any other questions for...Senator Fischer. [LB677]

SENATOR FISCHER: Thank you, Senator Louden. Just to follow up here, do you charge fees for other inspections? [LB677]

MIKE LINDER: In other programs? [LB677]

SENATOR FISCHER: In other programs. [LB677]

MIKE LINDER: I can't think of any off hand. [LB677]

SENATOR FISCHER: Do you know why a fee was established for this program to begin with? [LB677]

MIKE LINDER: Yes, I do. We didn't have any fees prior to LB1209 I don't believe, and that was 1998. And since then we've gone through a number of iterations again, the Legislature trying to set up a percentage of the program to be paid by cash fund, by fees on the industry. And inspection fees was one way; there's an annual fee to operate.

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There's an application fee, it's just kind of a menu of fees that we came up with... [LB677]

SENATOR FISCHER: Do all these... [LB677]

MIKE LINDER: ...the Legislature came up with to fund the program. [LB677]

SENATOR FISCHER: Do all these fees deal with livestock operations? Or their... [LB677]

MIKE LINDER: The ones I just mentioned do, that pay the 20 percent. [LB677]

SENATOR FISCHER: Do you...but I'm asking, do you have any fees on any of your other programs that you... [LB677]

MIKE LINDER: Oh yes, I can't think of inspection fees but we have... [LB677]

SENATOR FISCHER: Oh, I thought you said no earlier. [LB677]

MIKE LINDER: Well just inspection fees we don't. I can't think of another program with an inspection...when an inspector goes out there's a fee associated with that but... [LB677]

SENATOR FISCHER: Is there always a fee associated with an inspection that the department does? [LB677]

MIKE LINDER: A request for inspection in the livestock, I believe. [LB677]

SENATOR FISCHER: But not just livestock, anything else that you... [LB677]

MIKE LINDER: I can't think of any other just pure inspection fee. [LB677]

SENATOR FISCHER: Oh. Okay. [LB677]

MIKE LINDER: I may be wrong but I can't think of one. But we have a number of other fees, our air quality program is funded by emission fees. How many tons of pollutants are emitted, and so. [LB677]

SENATOR LOUDEN: Other questions? If not, I guess you got everything answered that we can think of right now, so thanks for testifying. [LB677]

MIKE LINDER: If there's anything else, just let us know. [LB677]

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SENATOR LOUDEN: We sure enough will. Thank you for coming up. [LB677]

MIKE LINDER: Yes. [LB677]

SENATOR LOUDEN: Anyone else wish to testify in neutral testimony? Seeing none, do you wish to close Senator Dubas? [LB677]

SENATOR DUBAS: Yes, I do. I appreciate the DEQ coming up here and attempting to answer some of the questions that you have and I've called them on several occasions to try to make sure that I was on the right track with this and appreciate their help in answering my questions. The intent of this bill is not to eliminate fines for environmental noncompliance; we aren't looking to go that direction. If you've got an operation that's not environmentally sound and it's causing problems we're not looking to let those people off the hook. What we're trying to address here is rules have changed, exemptions changed, class sized changed, and unfortunately producers got caught in the mix of that bureaucracy wrangling. That's what this bill is trying to address; those people that got caught in that mess. DEQ has stated that it's mainly small and medium sized operation that right now they feel are being affected, not to say that there might not be some large ones out there, but with the zoning that we have in place in most of the counties across the state and just the sheer size of operations and the awareness of the public, I would find it hard to believe that there would be a large operation that is in existence that hasn't been inspected just because of public awareness and concerns. And so for a large operation to be operating today they've gone through the permitting, they have the permits and licenses in place. So again, I don't think this is looking to let anybody off the hook as far as operating efficiently and responsibly. Again, we're not looking to necessarily...the inspection fee will stay in place. It's the late fees that are accruing on a daily basis that are causing the problems for our producers and will continue to cause problems and so that's what we're trying to address with this bill. So it's my hope that the committee will support this bill and advance it to General File and I'd be happy to answer any other questions you may have. [LB677]

SENATOR LOUDEN: Questions for Senator Dubas? [LB677]

SENATOR DUBAS: (Exhibit 4) Oh, I also do have a letter to go on record from the Independent Cattlemen of Nebraska in support of this bill. [LB677]

SENATOR LOUDEN: Okay. If no questions then, I guess that closes the hearing on LB677. (Exhibit 5) [LB677]

SENATOR DUBAS: Thank you. [LB677]

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Disposition of Bills:

LB664 - Advanced to General File.

LB677 - Advanced to General File, as amended.

Chairperson

Committee Clerk