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Natural Resources Committee  
February 22, 2008

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[LB727 LB1145]

The Committee on Natural Resources met at 1:30 on Friday, February 22, 2008, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB727 and LB1145. 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 Senator LeRoy Louden. I'm chairman of the Natural Resources Committee. I represent District 49. I'll introduce the senators that are here at the time. To my far left is Senator Tom Carlson from Holdrege; entering is Senator, what is his name now, (laughter) Norm Wallman from Cortland; and then next to my right is Senator Gail Kopplin from Gretna; on my immediate right is Jody Gittins, legal counsel; to my left is Senator Carol Hudkins, vice chairman of the Committee from Malcolm; to her left is Senator Deb Fischer from Valentine; and to her left is Senator Mark Christensen from Imperial. And on the end is Senator (sic) Barb Koehlmoos, the committee clerk. With that I would ask that you turn off or silence your cell phones so they don't make any disturbance. 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, there is a form by each door that you can sign. This will be part of the official record of the hearing. This year we're 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. If our transcribers have questions about your testimony, they use this information to contact you. Also today our page is Kristen Erthum and she's from Ainsworth, she's a sophomore at Doane College. 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 it to the page and she 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 will be tolerated and if you need a drink while testifying, please ask the page. With that we will start with the hearing on LB727, Natural Resources Committee. Where did Jody go? (laughter) She's got the paperwork. Anyway, when our legal counsel gets back here, we'll start with LB727 and she will introduce the bill for it and that is to change provisions relating to hearings conducted by Department of

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Natural Resources. And with that, I guess, we will stand down. [LB727]

JODY GITTINS: My apologies to the committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the Natural Resources Committee and introducing LB727 on behalf of the committee. This bill was presented to the committee on behalf of the Association of Resource Districts. It has the approval as written by both the Association of Resource Districts and the Department of Natural Resources. The purpose of the bill is to bring the Department of Natural Resource statutes regarding hearings into conformity with other state statutes regarding hearings. Under the current law, a party to any proceeding has the right to request a hearing if the request is made within 15 days after a decision has been reached by the department. This changes that to allow any party 30 days to request a hearing. There are people and members of the Nebraska Resource Association who presented this bill to Senator Louden on behalf of the committee who will testify after me as to why they believe this bill is necessary and would be a correct fix to our hearing process. [LB727]

SENATOR LOUDEN: Any questions for Jody? Seeing none, thank you, Jody. First testifier for LB727. [LB727]

DON BLANKENAU: Good afternoon, Mr. Chairman and members of the committee. My name is Don Blankenau, my last name is spelled B-l-a-n-k-e-n-a-u, first name, D-o-n. I'm appearing here today on behalf of the Nebraska Association of Resources Districts. This bill was originally offered as a place holder for what we had hoped would be a more elaborate bill. Specifically, the way DNR was going to conduct hearings deviated from their historical practice. Perhaps just some context would be helpful. Years ago when an applicant came before the department they would file that application, the department would then notify all parties who had requested notification of such applications. Those parties would then review the application, decide whether it was helpful or harmful, and then file their request for a hearing. That would then create a contested case hearing where the department would sit as effectively the judge of it, the applicant would present their evidence indicating why they should get the appropriation to take water, and then the objectors would present their evidence as to why that was not the case. DNR reviewed the statutes with the Attorney General's office, concluded that really was not appropriate and what they wanted to do was to receive those applications, decide whether to grant that application or not, and then publish notice of their decision on their web site. If you are watching on the web site, you would then observe their decision and then file your objection and then get a hearing on the decision that had been made. The parties, the NARD, natural resources districts and a number of irrigation districts and other parties, really preferred the old way of doing things but I think they all respected DNR's interpretation of the statutes. So they, we collectively met with DNR and the irrigation districts in the hopes of providing a very clear hearing process that was closer to the old way we did things. And we had several meetings, I think there was a good spirit of cooperation among the group, and we

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almost got there but we're not there yet. So as we stand today, we would just ask that you proceed with LB727 as it is written. That alone will give us an additional 15 days to request a hearing and hopefully between now and next session we can come back with the more comprehensive hearing process for you. [LB727]

SENATOR LOUDEN: Okay. Questions? Senator Wallman. [LB727]

SENATOR WALLMAN: Thank you, Senator Louden. You know, John, I appreciate your coming but 30 days, is that enough for you? [LB727]

DON BLANKENAU: I think so. There's sort of a balance that you want to reach between too much time and not enough. The 15 days was considered not enough because, obviously you have to assign someone to daily look at that web site and look at all the decisions and if that one person is on vacation, you might miss your opportunity. But 30 days seems appropriate, I think, to everyone at this point. [LB727]

SENATOR WALLMAN: That goes by pretty fast too. [LB727]

DON BLANKENAU: It sure does. It sure does. [LB727]

SENATOR WALLMAN: Thank you. Thank you, Chairman Louden. [LB727]

SENATOR LOUDEN: Okay. Question, if you're planning on coming in with a bill next year, then do want us to fight this one hammer and tong or if we can't get it on a consent calendar, give it up, or what do we do with this if that's the case, if you had visions (laugh) before this and this is what we progressed down to? [LB727]

DON BLANKENAU: I don't want to speak for all the parties involved obviously, but I think the NARD would be happy just to have you push this as hard as you can but certainly not hammer and tong. We obviously understand there are bigger, more pressing issues than this one. [LB727]

SENATOR LOUDEN: Okay. Other questions for Don? Seeing none, thank you. [LB727]

DON BLANKENAU: Thank you. [LB727]

SENATOR LOUDEN: And at the present time, Senator Dubas from Fullerton has joined the committee. Next testifier in favor of LB727. Are there opponents for LB727? Anyone wishing to testify in the neutral? Seeing none, I guess that closes the hearing on LB727. We will then go to LB1145. [LB727]

JODY GITTINS: (Exhibit 1) 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'm committee

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counsel for the Natural Resources Committee and introducing LB1145 on behalf of Senator Loudon. The purpose of this bill is relatively simple. It simply moves, extends the date out from June 30, 2009, to June 30, 2012, under the Petroleum Release Remedial Action Act. This extension would allow responsible parties, third-party claims, and the department itself to apply for reimbursement for remedial actions taken under the Act. Under current law, reimbursement is only allowed for claims for remedial actions undertaken for releases that are reported prior to June 30, 2009. Typically, this has come before us almost every third or fourth year since the Act's inception to extend those dates out. You have a letter in your file in the neutral position from the Department of Environmental Quality stating its position as to what the effect this would have on the fund. I know there...Mr. Tim Keigher is, presented this suggestion to Senator Loudon and Senator Loudon introduced it on behalf of the petroleum marketers. [LB1145]

SENATOR LOUDEN: Questions for Jody? Seeing none, thank you, Jody. First testifier for LB1145. [LB1145]

TIM KEIGHER: Good afternoon, Senator Loudon and members of the committee, my name is Tim Keigher, K-e-i-g-h-e-r. I appear before you today as the executive director and the registered lobbyist for the Nebraska Petroleum Marketers and Convenience Store Association and we wish to thank Senator Loudon for introducing this bill on our behalf. I think if I hurry along here, you might be able to get out of here by 2:00 so. I just thought I'd give you a couple of quick, little background. NPCA represents over 250 independent petroleum marketers and convenience store operators operating over 1,200 retail fueling outlets throughout the state of Nebraska. We're here in support of LB1145 because, I guess, we feel that while we are required to prove financial responsibility at the request of the U.S. EPA back in the late 1980's where no insurance was willing to write the coverage at that time because no company was willing to buy "the burning building" because sites were already contaminated. While insurance may be available today, I've done some research on that. It's anywhere from \$300 to \$1,000 per tank which you may consider reasonable or unreasonable, I don't know. I guess our concern is that you have a backlog of approximately 1,400, and I think I told several of you in private conversations prior to this hearing it was 1,700; I stand corrected. It is closer to the 1,400 but to obtain the private insurance, you're going to have to go out and do a site assessment of your site because the insurance company is only going to cover from this day forward. And we're estimating that the average tier one investigation done by DEQ is approximately \$7,500, and the insurance company is going to want a more extensive site assessment so I'm estimating that to be around \$10,000. The problem with that is, you are then, I think, obligated to that insurance company because they're going to be able to raise the premium to you because you're not going to want to go out and seek new insurance and pay the \$10,000 site assessment again so. As many of you know, the fund is currently funded by nine-tenths of a cent a gallon on gasoline and three-tenths of a cent on diesel fuel. And, I guess, we'd also like to

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see...have another bill that is in this committee, was introduced last year, LB593. And what LB593 does, is it removes language that would require owners of underground tanks where you put in new tanks, new piping on virgin soil, effective after June 30, 2009, to have private insurance. And I guess our thought process is there, that if everybody has to continue to pay into the fund, even though the eligibility date would end June 30 to turn in the claim, we're still going to have to continue to pay into the fund but we wouldn't have any coverage. So it would be kind of like paying an insurance premium to cover your car but not having any coverage. So I guess for those reasons that's why we would like to see the eligibility date extended to 2012 and, you know, at that time, maybe the 1,400 will be a lot less. I know DEQ at one point was averaging about 40 to 45 sites a month and I think that at some point when all the sites have been cleaned up, then I think we're willing to look at, you know, moving in a different direction if we feel that's needed. I guess one last point is, obviously this affects the smaller locations more than it does the larger ones. You know, larger locations are doing more volume. They could spread a private insurance premium out over more gallons where a smaller retail outlets are on a level playing field as far as their insurance premiums these days, because everybody pays nine-tenths per gallon as opposed to a \$1,000 a month regardless of the gallons you do so. With that, I'll close and try to answer any questions you may have. [LB1145]

SENATOR LOUDEN: Questions for Tim? Seeing none, we might get out of here, Tim. Thank you for your testimony. [LB1145]

TIM KEIGHER: Okay, thank you. [LB1145]

ED WOEPPEL: Senator Louden and members of the committee, I'm Ed Woeppel. I'm here today representing the Nebraska Cooperative Council which is a trade organization for the farmer owned cooperatives across the state. We currently have about 90 percent of those cooperatives that are members of ours. I think Mr. Keigher laid out the issue pretty well and certainly we see that the same way. We're in support of this legislation. And I know, it's a Friday and the sun's actually shining and it's kind of nice outside, so I won't try and plow the same ground. But we support this. It's worked very well for our members and we would like to see this continued so. If there's any questions I'd be... [LB1145]

SENATOR LOUDEN: Okay, questions for Ed? Then what about some of these coops that, you know you go into some of the small towns and they've kind of closed up and that sort of thing. Are they...do they, the coop that takes them over, do they have to take of those tanks or do you get some money out of this fund to do that with? [LB1145]

ED WOEPPEL: And that depends on what may happen with any kind of merger or purchase agreement that would occur, so probably each situation would be different. So I don't think you could say specifically, yes, it always happens or it happens this way.

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[LB1145]

SENATOR LOUDEN: Okay. Thank you. Other questions for Ed? Seeing none, thank you, Ed, for our testimony. Next testifier for LB1145. Is there opponents for LB1145? Anyone wishing to testify in the neutral? Seeing none, I guess that closes the hearing on LB1145. So now, do we want to move into executive session? It's been moved and seconded to executive session. [LB1145]

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Disposition of Bills:

LB727 - Advanced to General File.  
LB1145 - Advanced to General File.

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Chairperson

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Committee Clerk