

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

[LB105 LB106 LB492 LB561]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 12, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB561, LB105, LB106, and LB492. Senators present: John Murante, Chairperson; Tommy Garrett, Vice Chairperson; Dave Bloomfield; Joni Craighead; Mike Groene; Matt Hansen; Tyson Larson; and Beau McCoy. Senators absent: None.

SENATOR MURANTE: (Recorder malfunction)...My name is John Murante, I am the Chair of this committee, and state senator for District 49 which is Gretna, Chalco, and northwest Sarpy County. We are here today for a number of public hearings. The bills will be taken up in the order in which they appear on the agenda outside of this room. If you are here to testify on any of the bills, we ask that you fill out one of these green sheets and state your support or opposition to any of the proposals which we will be hearing today. When you come up to testify, please turn it in to this bin right in front of our committee clerk. If you are here in support or opposition to any of the bills that we will be discussing today but you are not going to testify, we have a sign-in sheet located on either side of the room...on the tables on either side of the room. There you can state your opposition or support for any of the bills that we are hearing today and those opinions will be taken into consideration in the same manner as if you had come up and testified before us. The order with which we will proceed on any given bill is that we will give the introducer an opportunity to open on his piece of legislation. Then we will proceed to proponents, opponents, conclude with neutral testimony, and finally the introducer will have an opportunity to close. If you are testifying, we ask that you state and spell your name for the record, very important for our transcribers' office. We ask that you listen very carefully, try not to be repetitive. If a person has already stated a point which you were hoping to express, again, please fill out the sign-in sheet on the side of the room and we will take your opinion into account. Here in the Government Committee we do use the light system. Each testifier is allotted four minutes to speak. When the yellow light comes on, you have one minute remaining. We ask that you begin wrapping up your remarks at that time. When the red light comes on, we ask that you conclude your testimony at which time we will open up for questions from the members of the committee. At this time I would ask everyone, senators, and in the audience to silence or turn off any electronic devices or anything that makes any noise. We are a committee which is equipped for electronic devices, so you will see members pulling up information and taking notes on their laptops and that is what we are doing with our electronic devices up here. If you have a prepared statement, an exhibit, or anything you wish to distribute to the members of the committee, we would ask that when you come up to testify, please give 12 copies to the page and the page will distribute it to the members of the committee and it will be inserted into the record. If you don't have 12 copies, again, just give it to the page and we'll make the copies for you. Our pages for the day are Seth Thompson of Ogallala, Nebraska. And Tobias Grant may be joining us later--okay, he's on his way--from Lincoln, Nebraska. The members of the committee will now

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

proceed to introductions of the members of the committee. To my immediate left is State Senator Matt Hansen from Lincoln, Nebraska. To his left, State Senator Beau McCoy from Omaha. To his left, State Senator Joni Craighead, also from Omaha; followed by our committee clerk, Sherry Schaffer. To my immediate right is Charles Isom, the committee's research analyst. To his right, State Senator Tommy Garrett from Bellevue, Nebraska, who is the Vice Chairman of this committee. To his right, State Senator Dave Bloomfield from Hoskins, Nebraska. To his right, State Senator Tyson Larson who will tragically not be with us today. To his right, State Senator Mike Groene from North Platte, Nebraska. And with that we have completed our introductions and the formalities and we will proceed to the first item on the agenda, LB561. Senator Stinner, you are recognized to open.

SENATOR STINNER: Thank you. Thank you very much, Senator. Members of the Government...good afternoon, members of the Government, Military, and Veterans Affairs Committee. For the record, my name is John Stinner, spelled J-o-h-n S-t-i-n-n-e-r. I'd first like to thank Senator Watermeier for allowing me to slide up the scale a little bit today. I truly appreciate it. I've got about 400 miles to drive yet today, so, hopefully, this will skate through and I can get on the road. But anyhow, LB561 is a bill to make changes to the laws governing irrigation districts in the state of Nebraska. Before I discuss the proposed changes, you should have some background information on irrigation districts. Irrigation districts are political subdivisions of the state of Nebraska organized by and for the purpose of serving electors who are landowners within the boundaries of the district with surface irrigation waters. Each elector must have at least 15 acres of land in the district. And the irrigation districts date back to 1895 when the first surface water irrigation systems were built. There are currently 41 irrigation districts varying in size from a handful of landowners to ones that are 41 miles long. These are funded by operation and maintenance charges assessed upon the electors; we call them O&M charges. If you're ever out west and people start to talk about irrigation districts, this is a way of extracting dollars. It is shown on my statement as a tax. O&M charges actually run the district. Therefore, only electors are authorized to vote on irrigation district matters and serve on boards of directors. In summary, the changes proposed in LB561 are intended to update the law on irrigation districts as follows: clarify the definition of electors for irrigation districts; authorizes election by mail at the district's discretion; provides for smaller irrigation districts to eliminate subdivisions and to have at-large board members; and provide election-administrated authorities to address practical election issues. My further testimony will provide you with more details about these proposed amendments. The first issue addressed is an update to the law on who an elector is. Section 2, found on page 2, amends a section of law that has not been changed since 1943. This section defines key terms "electors." Changes made by LB561 recognizes that entities such as LLCs and trusts now own significant portions of land in irrigation districts. These legal entities did not exist in 1943 and are becoming more common. Other questions have risen as to who is the voting representative of those entities. LB561 answers the legal questions that have been raised in practice. The second change authorizes the option to use a mail-in ballot. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

amendment does not mandate mail-in ballots, but is an option made available and the procedures are set forth in the law. If the mail-in ballot is authorized and used, it is believed that participation in the water districts' elections will increase. The third change recognizes that the population in rural Nebraska is decreasing and becoming more difficult to find electors to serve on boards of directors. Under the original law, after a district was formed, the county board was charged with the duty of dividing the land comprising the irrigation districts into three districts with similar geographic sizes. Members of the boards of directors were to be selected from each of these three districts. For an example, the Hooper Irrigation District has only 842 acres in the entire district. Currently, it is common that a single farm can be larger in size than its district. It is more difficult to find persons in these small divisions who are willing to serve on the board of directors of the irrigation district. On page 5, the new subsection (3) authorizes an option for the irrigation districts comprising of a less than 15,000 acres to eliminate the three divisions and for the directors to be elected on an at-large basis. The elimination of the three divisions can be done only by the board of directors, hold an election on the issue, and only upon affirmative vote of two-thirds of the electors of that district. Research shows that 26 of the 41 irrigation districts may wish to consider this as an option to select their directors at large. The fourth and final change are to clarify the election process. The laws containing the process for irrigation district elections are outlined in this act and does not incorporate general election laws. The changes proposed are to clarify the duties of the electors and county officials in certain situations. This will conclude my overview. We have several testifiers who have much more experience and expertise in this matter than I, and I would urge you to advance LB561. Thank you. [LB561]

SENATOR MURANTE: Thank you very much for your opening. Are there any questions?
Senator Bloomfield. [LB561]

SENATOR BLOOMFIELD: Thank you. Senator Stinner, I don't know, it's just something that occurs to me, it seems like we're doing a lot in this bill, a lot of things that may not be related to one another. And I wonder if you've gotten a legal opinion if this is, in fact, constitutional what we're doing here? [LB561]

SENATOR STINNER: The genesis of this bill came out of the irrigation districts' need to update their entire law. One of them deals with the type of entities that we now use, LLCs, trusts, corporations, etcetera. The law didn't contemplate that. So, it fixes that. The vote by mail situation, I think, everybody is trying to push for that. That's an easier way of getting the appropriate amount of voters, especially...you know, some of this may come at a busy time for a farmer. So voting by mail opens that up. Some of the general election laws were dated in this and it just kind of changes some of that terms and really kind of solidifies and clarifies some of the things that were happening there. Then it just, also, just because of the size of farms, you know, for an example, our valley, normally, when it started, a farm there was averaging 160 acres. So if

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

you were in an irrigation district, many times you had, you know, two, three, four, five handfuls of people that own it. Now, through consolidation of agriculture...your districts... [LB561]

SENATOR BLOOMFIELD: I understand what... [LB561]

SENATOR STINNER: ...need to be reconfigured and reworked. [LB561]

SENATOR BLOOMFIELD: I understand what you're trying to do. I'm just not sure that we can do it all in one bill; that's my concern. [LB561]

SENATOR STINNER: Okay, so noted. [LB561]

SENATOR MURANTE: Okay. Senator Groene. [LB561]

SENATOR GROENE: Senator Stinner, would you have an estimate of 41 districts, how many actual citizens are allowed...can vote right now? Probably...in your expertise. [LB561]

SENATOR STINNER: All I looked at is in terms of acres and who...I haven't looked at those numbers, but in our research, as far as small districts, small districts we define as 15,000 acres and below. I don't know how many people would be in a district with 15,000 acres. But it would still take the board of directors to get together, have a special election and to do away with that districting because there is opportunities. And I'm trying to think of an example in our valley of somebody that may own half of those acres or three-quarters of the acres of the 15,000 leaving only two or three electors. Well, if your district...you couldn't have an election. [LB561]

SENATOR GROENE: That's what I was getting at. Are other districts... [LB561]

SENATOR STINNER: That's the problem with the way it's set up today. They need the opportunity to do an at large. [LB561]

SENATOR GROENE: Is there districts out there might only have eight voters and you got four... [LB561]

SENATOR STINNER: I think that the testifiers behind me will have some of that...or some knowledge to that. [LB561]

SENATOR GROENE: All right, thank you. Thank you, Senator. All right. [LB561]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR STINNER: I know the one that I'm on, Chimney Rock, we have probably 25 to 30 people that actually qualify as electors. So that's not all that many. [LB561]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Seeing none, thank you very much for your opening, Senator Stinner. [LB561]

SENATOR STINNER: Thank you. [LB561]

SENATOR MURANTE: We'll now proceed to proponent testimony to LB561. Welcome to the Government Committee. [LB561]

RON WOLF: (Exhibit 1) Thank you, Senator Murante, members of the committee. My name is Ron Wolf, R-o-n W-o-l-f. I'm a newbie at this, first time before this committee, so bear with me, please. My public speaking experience as a child was asking for a date on a 29-person party line, so that's my training. (Laughter) I do have a letter here from the North Platte Valley Water Association in support of this bill. Would you prefer I hand it out or pass it to the clerk? [LB561]

SENATOR MURANTE: To the page. [LB561]

RON WOLF: Thank you, sir. I'm here today representing the Nebraska State Irrigation Association. It's a group that...our members are comprised of water companies, these Chapter 46 irrigation districts that you're discussing today, public power and irrigation groups and some private surface water members. We're the streams and lakes people. We're not into the groundwater pumping. One of the things that Senator Stinner touched on is the size of the districts and the lack of population. Every Chapter 46 irrigation district election is the first Tuesday of February. The district I used to work for has got around 56,000 acres. We had our election the second. We had four votes. We're strung for 145 miles; weather was a little nasty. People with frozen water...cattle feeding; it didn't work very good. And this is fairly typical, even in the larger districts. So it's not just the small ones that are having this trouble. We need the input to know what these people want and that's one of the ways to bring them in is on these elections and you need their guidance to administrate these things properly. This bill will...the voting is by 15 acres of ownership, as the senator pointed out, or as a holderman or an entryman on 40 acres of irrigated ground that's owned by the state of Nebraska or the federal government. So that also makes you a voter. In our district, again, we're strung for 145 miles. We have no public buildings left in some of our election districts; small schools are closed, meeting halls, churches. This bill would also allow the boards to nominate a public place that may not be within that district, but close to it as a polling place if they choose not to use the mail-in voting. We've been operating on policy which is strung all over the place. Our old attorney was very

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

conservative. The law didn't address mail-in votes; the law didn't address absentee votes. We're operating on the fringes here. I see the clock is on...there are people here that will, Senator Bloomfield, answer your legal question. And I believe there are people here that can answer the how many voters. I would certainly take questions and try to answer them if I can. [LB561]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for your testimony and coming down today, much appreciate it. [LB561]

RON WOLF: Thank you. [LB561]

SENATOR MURANTE: Additional proponent testimony for LB561. Welcome to the Government Committee. [LB561]

BRAD EDGERTON: Thank you, Senator Murante, and members of the committee. My name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n, and I'm the manager of Frenchman-Cambridge Irrigation District, located in the Republican River Basin. I'm here to testify in support of this bill today. A little bit about our district, we serve about 45,000 acres and we have approximately about 250 landowners. Some of those landowners do live out of state, so those people wouldn't be eligible to vote under this. We did have our elections on, I believe, February 3, first Tuesday of the month. We have three divisions, so we have an election every year. The board serves a three-year term, so this...since I worked for the district six years, this is my sixth election. I'm responsible to set up the polling place, find judges and clerks to work the elections which also have to be an elector, so that's becoming more difficult to find people, actually serve and work from 8:00 in the morning to 6:00 at night at these polling places. At our election, we had 14 votes. It was determined that three of them were not on our list as an elector; they voted as a corporation and those votes were not counted. So it's always...I'm not going to say fun, but when people aren't allowed to vote, I'm the one that gets the call and I have to explain to them what the law says and why their vote didn't count. So, a lot of work went into this bill; a lot of different people worked on it. We've been working on it for a couple of years. We feel that it's long past due and we need some changes so that these districts can have elections and have the people actually elect board members that represent their interests. When talking to different districts in our area, I know there's one small district in western Nebraska, Pioneer Irrigation District, they have about 1,800 acres and I know they only have four electors in their whole division. And they do have three divisions, so I think eliminating the need for those divisions would be a benefit for those folks. With that I'll conclude and answer any questions you might have. [LB561]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Senator Groene. [LB561]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR GROENE: Why are your elections on an odd date? Why aren't they on the ballot that everybody... [LB561]

BRAD EDGERTON: Irrigation districts are unique. I mean, we...you have to own 15 acres of land to be an elector. So it's a whole different ball game with irrigation districts, so statute says we'll...and then, you know, we have to hold our elections on the first Tuesday of February. And then the statute goes on to say that if you're over a certain size, you have to meet the following Monday to canvass the votes. So we're over that 25,000-acre foot mark. [LB561]

SENATOR GROENE: How do you notify the electorate that there's an election? [LB561]

BRAD EDGERTON: We put notices in newspapers and we also go around and post them in public locations in each of these towns. [LB561]

SENATOR GROENE: Thank you. [LB561]

SENATOR MURANTE: Thank you, Senator Groene. Are there any additional questions? Seeing none, thank you very much for your testimony. [LB561]

BRAD EDGERTON: Thank you. [LB561]

SENATOR MURANTE: Additional proponent testimony to LB561. [LB561]

MATT LUKASIEWICZ: Thank you, Senator and members of the committee. [LB561]

SENATOR MURANTE: Thank you. [LB561]

MATT LUKASIEWICZ: My name is Matt Lukasiewicz, M-a-t-t L-u-k-a-s-i-e-w-i-c-z. I'm the general manager for Farwell Irrigation District and Sargent Irrigation District up in the Loup Valley. And I'm still new to this game. And, in fact, this is the first testimony I've ever presented myself at, so bear with me. But I don't think I can emphasize anything more than just echo the other two gentlemen, except for maybe just giving an example of our past election and the process that we went through and the struggle that was. Last Tuesday, we held our election and the night before there was some snow. Of course it's always a struggle finding our judges and clerks of three to sit on these boards. And two of which couldn't...weren't able to make it less than 12 hours before the election the night before. One for personal reasons, one because she didn't feel comfortable driving in the snowy conditions the next day. So there we were,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

struggling to find a full panel to judge this election committee. And once we did find all three of them to sit in the next day, you got to remember that there's three ladies sitting here...generally ladies, men sometimes too, but sitting here for ten hours a day and to receive one vote in our case. There was five cast total. We do do absentee ballots. So one of which was an absentee ballot that was cast before the election which was actually the gentleman running for office. Three of them were the three judges. And there was one person that actually came in that whole ten hours that those three ladies had to sit there. In my opinion, it's a waste of time; it's a waste of money for the irrigation districts to go through this whole process. To allow mail-in ballot process would be so much easier, in my opinion. This will be going on my fourth year of going through this and I can see how this would greatly benefit our districts. I guess, you know, one other part of this bill is districts under 15,000 acres to be able to have at-large directors instead of per subdivisions. One of my districts is under 14,000...just over 14,000 acres. And this is a scenario that would, again, benefit us because of the fact that we have...the younger generation is...has become an absolutely...you see...it just seems to be more difficult to be getting to the farming community and to find these...this younger generation to become even interested in a board position such as the irrigation district. Being able to elect at-large directors may be a benefit as well to us. So I guess I'll just close and say, you know, I strongly encourage you guys to consider this bill and get it advanced and try to assist us in the future with our election problems. Thank you. [LB561]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions from the committee? Seeing none, thank you very much for coming down today, much appreciate it. [LB561]

MATT LUKASIEWICZ: Thank you. [LB561]

SENATOR MURANTE: Additional proponent testimony to LB561. Welcome to the Government Committee. [LB561]

VANESSA SILKE: Thank you. It's my first time before this committee as well. My name is Vanessa Silke, S-i-l-k-e. I'm an attorney with Blankenau, Wilmoth, Jarecke here in Lincoln. And today, I'm testifying on behalf of the Southside Irrigation District, the Thirty Mile Irrigation District and the Central Platte Natural Resources District. Each of these entities are here in support of LB561. And I specifically want to address the questions from Senator Bloomfield and Senator Groene, and any other questions you might have about the legal background for the way LB561 is drafted. As you've heard from the stakeholders who have testified here before, there are a number of issues with the way the statutes are drafted right now. And it's been about 50 years since we've seen an update. Now at the outset it's important to understand that these irrigation districts are political subdivisions of the state of Nebraska. And so like any other political

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

subdivision, the way that they make decisions or impose fees for services is all governed by statutes. And in this case, it's the specific statutory provisions that we see in Chapter 46, Article 1. And so as one of the many attorneys who represent irrigation districts throughout the state of Nebraska, when we're asked for guidance as to how we can include more folks in the election process or to serve on the board of directors, we have to start with the statutes. And as you heard from each of these stakeholders, it's not always clear who they should or shouldn't include. But what is clear is that we need to find a way to include as many of the landowners as possible in this process. It's important to remember too that these irrigation districts hold some of the oldest surface water rights in the state of Nebraska. And they hold these surface water rights for the benefit of all the landowners in their districts. And so it's imperative that we find a way to have as many hands on deck managing those water rights and making sure that they're used for beneficial purposes under the scope of their water appropriations for the long term here in Nebraska. And so you asked if there were opinions from attorneys. And specifically on the letter that Mr. Wolf entered in on behalf of the North Platte Valley Water Association was written by Steve Smith, an attorney in Scottsbluff, who represents a number of irrigation districts. Lee Orton also helped draft the provisions of LB561, as well as Dan Lindstrom. Some of you may be familiar with those folks. All of us agreed that we need to have clear guidelines to govern participation by these landowners. And we do that with a view towards the experiences that we have with each of the irrigation districts that we represent. So in each case, we have a different group of landowners, whether it's 400 acres or 40,000, we've run into these issues that LB561 address. So with that I'll open it up for any questions that you all may have. [LB561]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?
Senator Bloomfield. [LB561]

SENATOR BLOOMFIELD: Thank you, Miss Silke. I don't, necessarily, mean harm to your intent here. I just think, maybe, I'm going to ask for an Attorney General's Opinion, because there are a limited number of things we can do within a bill. And I'm not sure what we might have stepped over that. I could be entirely wrong, but I think we want to proceed carefully down that line. And if we have, we can correct it in committee. And if we have not, then we can go forward. But probably some time between now and Exec I will, in fact, ask for that Opinion. [LB561]

VANESSA SILKE: Is there any specific aspect of the bill or just the number of provisions?
[LB561]

SENATOR BLOOMFIELD: No, just the number of things that are in it concern me a little bit. And, like I said, I may be way off base. And if I am, some of the folks in here may correct me. It's happened before. (Laughter) [LB561]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

VANESSA SILKE: Well to be clear, this only governs statutory irrigation districts that are formed pursuant to these statutory provisions. So it won't impact the election process for any other type of political subdivision or alter the Election Act or any other provisions in any other way. It only governs these districts. [LB561]

SENATOR BLOOMFIELD: Okay. [LB561]

VANESSA SILKE: We also don't change the baseline requirements that you be a resident of the state of Nebraska and a landowner holding at least 15 acres or a leasehold interest in 40 acres. That doesn't change. [LB561]

SENATOR MURANTE: I think what Senator...I think the constitutional provision Senator Bloomfield is worried about is the single subject provision in the constitution. [LB561]

SENATOR BLOOMFIELD: Yes, it is. [LB561]

SENATOR MURANTE: I'll be talking with him about how this could conceivably be two separate subjects, but we'll talk about that at a different time. [LB561]

VANESSA SILKE: Whatever guidance we can help or add to, we're happy to provide. [LB561]

SENATOR MURANTE: Okay. Any additional questions? Senator Groene. [LB561]

SENATOR GROENE: I haven't read the bill. Does this just increase the amount of electorate? Or does it also decrease the amount of elected positions? [LB561]

VANESSA SILKE: It should increase the number of folks who, clearly, qualify as an elector. And if you're an elector, you can vote in the elections and you can serve on the board of directors. [LB561]

SENATOR GROENE: But does it consolidate some of the boards? [LB561]

VANESSA SILKE: It gives the option...it doesn't eliminate positions on the board of directors. It eliminates...it gives the board of directors in certain small districts the option to reduce...to consolidate the divisions within the district and just hold their elections at large. But it wouldn't reduce the total number of directors. [LB561]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR GROENE: Thank you. [LB561]

VANESSA SILKE: Thank you all for your time. [LB561]

SENATOR MURANTE: Any additional final questions? Seeing none, thank you very much for coming down. Any additional proponent testimony to LB561? She's just leaving. Any opponent testimony to LB561? Is there any neutral testimony to LB561? Senator Stinner, you're recognized to close. [LB561]

SENATOR STINNER: Thank you. Well, I think after you've looked at the bill, after you've reviewed the testimony and listen to the testimony, this is badly needed language updates. It's been 72 years since this language has been updated. So we've got to get the language right so that the districts can conduct business the way that they were intended to conduct business. It also provides for mail-in votes. That increases that participation factor. And with that I'll close and thank you for your time. [LB561]

SENATOR MURANTE: (Exhibits 2 and 3) Thank you very much, Senator Stinner. And with that...we do have some letters of support. We've received one letter to be read into the record from the North Platte Valley Water Association, and a second from Amy Prenda of the Nebraska Water Resources Association. With that we have closed the hearing on LB561. And we will proceed to the next item on the agenda, LB105. Senator Watermeier is here. Welcome back to your Government, Military, and Veterans Affairs Committee. [LB561]

SENATOR WATERMEIER: (Exhibit 1) All right. I feel privileged. Chairman Murante and members of the Government, Military, and Veterans Affairs Committee, I am Senator Dan Watermeier, representing District 1. That's spelled Watermeier, W-a-t-e-r-m-e-i-e-r, from the southeast corner of the state and here to introduce LB105. Currently, counties are financially responsible for the cost of an autopsy, grand jury payments, and witness compensation when there is a death of an incarcerated person. LB105 seeks to transfer these costs from the county to the state if the inmate died while serving a sentence in a state correctional institution. Last year, Senator Sue Crawford introduced LR582. This was an interim study aimed at reviewing the work of the 1996 task force of unfunded mandates and studying the impact of unfunded and underfunded mandates on counties and county government. As a result of the conference calls and public hearings held regarding LR582, a list of possible state-action items related to unfunded and underfunded mandates and fees were identified. One of the items identified was to require the state of Nebraska, rather than the county, to pay for costs associated with an autopsy and grand jury if a prisoner dies in state custody. There are state correctional facilities in Lincoln, Omaha, York, McCook, and Tecumseh. And I agreed to offer this legislation because I represent Johnson County, the home of the Tecumseh State Correctional Institute, or I will refer

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

to it as TSCI. Since this facility is fairly new, it was relatively easy to calculate the cost to the county associated with TSCI. Since 2002, such costs have amounted to more than \$150,000 for Johnson County. This includes grand jury fees, witness fees, coroner tests, as well as district and county court filing fees and mileage for paper service. There are approximately 1,000 prisoners at TSCI; and that vary a little bit, it may be a little less than that. LB105 would help Johnson County with approximately half of this \$150,000 in expenses which do vary from year to year. The legislation would help with the autopsy costs, the grand jury fees, and the witness fees. Johnson County also experienced increased costs for court filings because of the number of filings made by these 1,000 inmates. The county waives as much of the fees as possible. Due to the staff time required by the county clerk, who also serves as the clerk of the district court, Johnson County had to hire a part-time office person to handle the increase in court filings to the district court. The added expense is about \$60,000 annually, which doesn't sound like much for a large county, but it is for a smaller county like Johnson County. This annual expense is in addition to the more than \$150,000 in costs associated with TSCI since the prison has opened. It takes approximately one and one-half cents of the county's levy to support the cost from the state prison. It is state law that if an inmate dies in state custody, an autopsy must be conducted and a grand jury must be convened. Therefore, Johnson County must cover these costs, even though the prisoners are state prisoners and most likely are not from nor arrested in Johnson County. Although my comments have focused primarily on Johnson County, other counties included Douglas, Lancaster, York, and Red Willow would benefit from this legislation. I believe you will hear from Lancaster County here as well. I think it is logical to require the county to pay the expenses if an inmate dies while in the sheriff's custody, but I don't think it is fair to require the county to pay for autopsies and grand jury hearings of state prisoners that happen to die in the county. Although this legislation wouldn't cover all the county's costs associated with the state correction institution, it would assist the affected counties and would resolve the problem of one more unfunded mandate. I recently read that in the Platte Institute, it estimated that unfunded mandates from the state account for about 8 percent of budgets of local government. Property taxes as a revenue source for county governments is based on the principle of local control over local spending. Unfunded mandates stray from that very principle. LB105 is one small step towards resolving the broader property tax problem in Nebraska. I urge you to look favorably on LB105. And I'd be glad to try to answer any questions. It's not a real complicated issue. And there will be people testifying behind me that will maybe make a better picture for us. [LB105]

SENATOR MURANTE: Thank you, Senator Watermeier. Are there any questions from the committee? Seeing none, thank you very much for your opening. [LB105]

SENATOR WATERMEIER: Thank you. [LB105]

SENATOR MURANTE: And we'll proceed to proponent testimony on LB105. Welcome back to the Government Committee, Mr. Clark. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

DICK CLARK: Chairman Murante, members of the Government, Military, and Veterans Affairs Committee, my name is Dick Clark, D-i-c-k C-l-a-r-k. I'm appearing on behalf of the Platte Institute for Economic Research. Thank you for the opportunity to testify today in support of Senator Watermeier's LB105, which would shift from counties to the state the investigatory costs associated with suspicious deaths occurring in state custody. State mandates on local government abound in Nebraska. A Platte Institute study released in December examined the budgetary impact of major unfunded mandates, those with their own line items in local budgets essentially, and found them to comprise 6 to 9 percent of county budgets examined. When we consider a lot of the smaller mandates, those that do not, necessarily, jump out from the page in a local budget, the number could be significantly higher. I could list off many of these mandates for you, but this committee's interim study report from December has a pretty good list already. State imposition of cost on local governments through unfunded mandates is one of the many policy choices that have put increasing pressure on local budgets and pressure on the local taxpayers who foot the bill for those budgets through their property taxes. For vital government services, it's important to first determine which level of government should be responsible and which revenue source would best incentivize responsible stewardship. Some mandates relate to services that ought to be handled in a markedly different manner from how they are handled today. Some mandated activities may not be appropriate government functions at all, or maybe more efficiently provided by the private sector. I'm not here today to tell you that there should not be an autopsy or other investigation when somebody dies suspiciously in state custody. But the government entity most able to impact those costs through its internal policies is the Department of Correctional Services, not the counties where prisons happen to be located. I testified yesterday about how overcrowding in our correctional facilities is a direct causal relationship to prison violence. And so, really, this is something that's more related to state policy than local policy. And we need to remove unfunded mandates, not just to relieve counties of doing some extra work, but to promote better policy, to promote more responsible stewardship of public resources. Eliminating unfunded mandates also removes an extra level of complexity in government and promotes transparency for members of the public who are trying to understand which policymakers, state or local, are responsible for their tax burden and what they can do about it. I think the Fiscal Office says that we're talking about \$61,000 per year. And yes, this is really just about a handful of counties that you heard the introducer list off. The principle here is the important thing. And I would encourage this committee to take the opportunity presented by Senator Watermeier's bill to remove an unfunded mandate on counties. Thank you for this opportunity to testify. I'd be happy to answer questions. [LB105]

SENATOR MURANTE: Thank you very much, Mr. Clark. Are there any questions? Seeing none, thank you very much for coming down today. Additional proponent testimony to LB105. Welcome to the Government Committee. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

JULIE SMITH: (Exhibit 2) Thank you, Senator. My name is Julie Smith, J-u-l-i-e S-m-i-t-h. I'm the Johnson County attorney and also the Johnson County coroner. I've been serving in that capacity for a few years now, this is my third term. I brought with me a handout that shows the inmates who have died at the Tecumseh State Correctional Institution since it opened in 2001. And once it's passed out, you'll be able to see that there have been 20 inmates who have died at the Tecumseh State Correctional Institution. For every inmate who dies, there must be a grand jury. And for the grand jury we have an autopsy so that we have evidence to present at the grand jury. Regardless of the circumstances surrounding the death, whether it's a suspicious death or natural causes, we have to do a grand jury. And as the law is written now, Johnson County has had to pay for all of these grand juries. Under the column marked coroner's fees, that contains the fees for the autopsy, for the room, the doctor, and for transporting the deceased inmate to Omaha for the autopsy. The transport company charges a fee. The jury fees and witness fees are not broken down by inmates. And that's because sometimes we try to do two or three grand juries in one day to save costs. But the total cost to Johnson County just for inmate deaths since the prison opened in Tecumseh is almost \$70,000. Which, again, that may not seem like a lot, but it is for Johnson County; we're very small. The census lists our population as 5,200 people, but that includes the inmates at TSCI, which is almost a thousand inmates. So really, we're closer to 4,000 people. We have a very small budget. Furthermore, just from a fairness sense, these are state inmates. If you look at the list of the 28 inmates, there is not a single one who is from Johnson County, who committed his crime in Johnson County. They've all committed their crimes elsewhere. And then they were serving their sentence in Johnson County when they happened to die. So I agree with the other testimony that from a fairness standpoint, it seems like this would be a cost better spread out across the entire state, rather than the citizens of Johnson County footing the entire bill. I also agree with what Senator Watermeier said, it seems that if an inmate would die in the Johnson County jail, that should be on our dime as the county. This is a state institution. And so, I would urge for the members of this committee to advance this bill so that it becomes a state cost. Another point that I would like to make before I close is this could be looked at as the final medical expense for these inmates. All the medical expense of the inmates is already being paid by the state, as they are in state care. This is really their last illness and the autopsy is their last medical expense. And it would just seem to me like it should be paid by the state. And I'll take any questions if there are any. Thank you. [LB105]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?
Senator Bloomfield. [LB105]

SENATOR BLOOMFIELD: Thank you, Chairman Murante. I'm very sympathetic to what you're dealing with here. But does the state give any money to the county to house these prisoners at all? Is there some income to the county that offsets some of this? [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

JULIE SMITH: I don't think that there is any direct income to the county. I suppose that there could be...one could argue that by having people live in the county, businesses in the county get income. Maybe people who work at the prison eat lunch at our restaurants and things like that. But as far as to the county government, I don't know that there is any income from the prison. The prison itself, of course, is exempt from property taxes. So I think that the prison has been good for some local businesses and, perhaps, some people who own rental houses, but as far as the county government goes, it's been really quite expensive. [LB105]

SENATOR BLOOMFIELD: Okay. I had a bill to remove some of those county expenses too, but it went to Judiciary and met an untimely death. (Laughter) Thank you. [LB105]

JULIE SMITH: Thank you. [LB105]

SENATOR MURANTE: Thank you, Senator Bloomfield. Senator Groene. [LB105]

SENATOR GROENE: Thank you, Chairman Murante. My assumption is that a death occurs in a county, that's a responsibility of the sheriffs no matter why the death. You're not asking to get rid of the responsibility, I would sure like to keep the separation...I don't want the state prisons investigating their own deaths, I would like that local sheriff doing that and you looking into it. But you're saying you do it, but you send the bill to the state. Is that what you're saying? [LB105]

JULIE SMITH: Yes, and actually the sheriff hasn't been going out on these deaths, but I have as the county coroner. And, generally, someone from the State Patrol has been coming down already. I'm not trying to get out of doing any work, and I would certainly still go out there. [LB105]

SENATOR GROENE: I just want the separation there. I don't want the prisons investigating themselves. It could be a suspicious death, you're involved in those too, aren't you? [LB105]

JULIE SMITH: Yes, we are. The county coroner, which is me, would still go out to every inmate death, and would also conduct a grand jury so that they could investigate the circumstances surrounding the death. This bill would just shift the cost from the county to the state. [LB105]

SENATOR GROENE: And it's county residents on the grand jury to investigate. [LB105]

JULIE SMITH: It is. The procedure would all stay the same. The only thing that would change is who pays for the autopsy, the jury fees, and the witness fees. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR GROENE: (Inaudible) for that clarification. [LB105]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Seeing none, thank you very much for coming down today. [LB105]

JULIE SMITH: Thank you. [LB105]

SENATOR MURANTE: We're still on proponent testimony to LB105. And welcome back to the Government, Military, and Veterans Affairs Committee. [LB105]

KERRY EAGAN: (Exhibit 3) Thank you, Senator Murante. Good afternoon, Senator Murante, members of the Government, Military, and Veterans Affairs Committee, my name is Kerry Eagan, that's spelled K-e-r-r-y E-a-g-a-n. I am the chief administrative officer for Lancaster County Board of Commissioners. I'm here to testify on behalf of Lancaster County in support of LB105. We have five facilities in Lancaster County which house persons serving sentences in state correctional institutions. Under existing law, of course, Lancaster County is mandated to pay the cost of autopsies performed on individuals who die in these facilities. Each year, approximately nine such autopsies are performed in our county. The average cost is about \$1,600 per autopsy, so we spend about \$14,400 each year for autopsies performed on inmates under the jurisdiction of the Nebraska Department of Correctional Services. Additionally, Lancaster County is responsible for the cost of grand juries involving the death of an inmate who died while serving a sentence in a state correctional institution. Based on an average of approximately nine grand juries per year, the county pays approximately \$3,750 per year for grand jury costs involving state inmates. However, we did have a bad year in 2013 where we paid \$10,000 for 13 grand juries. In fact, every grand jury we had that year involved someone who died in state custody. Combined with the annual cost of autopsies, Lancaster County averages about \$18,000 per year for the combined cost of autopsies and grand juries involving these state inmates. I should note that these are just the hard costs on autopsies and grand juries for witness fees, grand jury fees, it does not include the indirect costs for county attorney time, which is substantial; the election commissioner who is also the jury commissioner; and the district court clerk also spend substantial amount of time on this function. So these are just the direct costs relating to autopsies and grand juries. The Lancaster County Board of Commissioners believes it's unfair for the property taxpayers of Lancaster County to pay these costs for state correctional institution inmates who come from all Nebraska counties. Accordingly, the board does support LB105 and we, respectfully, request the committee to advance this bill. I'd be happy to answer any questions. [LB105]

SENATOR MURANTE: Thank you very much for your testimony. Senator Bloomfield.
[LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR BLOOMFIELD: Thank you, Senator Murante. The statement you just made, there were a lot of other people involved that aren't, basically, being paid extra? [LB105]

KERRY EAGAN: Well, not in this testimony. [LB105]

SENATOR BLOOMFIELD: Yeah. [LB105]

KERRY EAGAN: Yeah. We've only looked at the hard costs, which we can put pen and paper to for the cost of autopsies. [LB105]

SENATOR BLOOMFIELD: Is it your opinion under LB105 then that there would be a marked increase in that cost if the bill were to be sent to the state? Are we going to start charging for the time that... [LB105]

KERRY EAGAN: Our attorneys read the bill very narrowly. And that's why we probably have the difference in interpretation. But we only look at the hard costs for autopsies and grand jury costs. We didn't read it as broad enough to include the function of the county attorney as the county coroner, which is a statutory function, or the function of the jury commissioner either for these types of cases. [LB105]

SENATOR BLOOMFIELD: So even if the state becomes responsible for it, you don't see the cost increasing to cover their time? [LB105]

KERRY EAGAN: Not the way that we interpreted the bill. Again, we interpreted it very narrowly and only included these costs. [LB105]

SENATOR BLOOMFIELD: It's subject to interpretation, apparently. Thank you. [LB105]

KERRY EAGAN: Well, I hope I'm wrong and that it does include all the indirect costs which are quite a bit more difficult to figure. But, you know, we have a senior staff attorney who does all our grand juries and he's one of the highest paid attorneys in our county and that's pretty substantial the jury function for calling all the grand juries, 19 grand jurors...members for a jury. That adds up. It's a lot of cost. [LB105]

SENATOR MURANTE: Thank you, Senator Bloomfield. Any additional questions? Seeing none, thank you very much for your testimony. [LB105]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

KERRY EAGAN: Thank you. [LB105]

SENATOR MURANTE: Additional proponent testimony. Mr. Dix, welcome back to the Government, Military, and Veterans Affairs Committee. [LB105]

LARRY DIX: Senator Murante, members of the committee, for the record my name is Larry Dix, spelled L-a-r-r-y D-i-x. I'm here in support of LB105. This, certainly when we look at this, we thank Senator Watermeier for carrying this. It is one of a number of bills that came out of this committee's study last year on unfunded mandates. And we know, we look at this and we say, yeah, these are pretty small numbers. But it's surprising how excited when people get their tax statement and a couple of digits out on that levy, it's decreased by a couple of numbers. It does mean something. And it would drop the levy in Johnson County. It is enough money in a small county like that that it would show a reduction. And as we look at the unfunded mandates, certainly we thank Senator Bloomfield, I know he's introduced a bill. Senator Bolz has had a bill in front of this committee. Senator Groene has had a bill in front of this committee. And as you start talking about those unfunded mandates, and we say, yeah, this is a little amount here and there, it's sort of like what the people are going through in Boston. You have a little bit of snow every day and before long it piles up. And that's what's happened to us over the years on unfunded mandates. These have become over...you add them up time and time again and they become significant costs. And they do relate to property tax and they do go to that. And so, we think this, along with the other bills, should get them out to the floor. Senator Bloomfield, I know we, too, read it that we would not bill for the county attorney's time or anything like that. And, certainly, I think, legislative intent on the floor, when that was debated, certainly could be added into the record to make sure that nobody intended that to be added. And I think that would probably address that. We go back to that a lot of times. This really is for the cost of the autopsies and the grand juries. So I think that could be handled out on the floor with a little bit of discussion. [LB105]

SENATOR BLOOMFIELD: I've already made that note. Thank you. [LB105]

LARRY DIX: Thank you. Thank you for making the note. With that I will conclude my testimony and answer any questions anyone may have. [LB105]

SENATOR MURANTE: Thank you, Mr. Dix. Are there any questions? Seeing none, thank you very much. Additional proponents wishing to testify on LB105; any additional proponents? Any opposition testimony to LB105? Is there any neutral testimony? Senator Watermeier, you are recognized to close. And Senator Watermeier waives closing on LB105. And that closes the hearing on LB105. We'll proceed to the next item on the agenda, LB106. Senator Watermeier, welcome back. [LB105]

SENATOR WATERMEIER: Absolutely. [LB105]

SENATOR MURANTE: You're recognized to open. [LB105]

SENATOR WATERMEIER: Okay. Thank you, Chairman Murante and Government, Military and Veterans Affairs Committee members. I am Senator Dan Watermeier, W-a-t-e-r-m-e-i-e-r, representing District 1 and back to introduce LB106. LB106 creates the Livestock Operations Siting and Expansion Act. The legislation directs the Nebraska Department of Agriculture to develop an assessment matrix for use by county officials when determining whether to approve an application for a livestock operation siting permit. In designing the matrix, the department is to consider matrices already developed by Nebraska counties, design the matrix to produce quantifiable results based on the scoring of objective criteria, assure the matrix is a practical tool, and provide a minimum threshold required for approval. The matrix would be used to evaluate operations on factors such as odor control practices, manure storage and application practices, proximity to neighboring residents, community support, and economic impact to the community. The department must also consider, when developing the matrix, whether the criteria is protective of public health and safety, practical, cost effective, objective, based on scientific information, designed to promote the growth of animal agriculture, designed to balance the economic viability of farm operations with protecting natural resources and community interest, and whether it is usable by county officials. The Director of Agriculture is to appoint a committee of experts with representation from NACO, livestock production agriculture, and the university to advise the department of the development of this matrix. A county may enact a requirement that an area zoned for agricultural uses only that a person must obtain a permit from the county planning commission or a county board of commissioners for a new livestock operation or for the expansion of an existing livestock operation if over the specified size thresholds. The thresholds contained in the bill are the same as those currently used by the Department of Environmental Quality which is requiring inspections. LB106 does not alter the permitting requirements of the NDEQ. The current authority for counties to grant conditional-use permits would expire two years after the adoption of the rules and regulations and the assessment matrix. Counties have the option of grandfathering in their size thresholds if they exceed what is required under this act. A county may deny a livestock operation siting and expansion permit if the site is not zoned for agricultural use only. If the operation will exceed the size threshold, but does not meet the minimum score required under the matrix or if necessary to protect public health, safety, and welfare. Such a decision must be made within 90 days after notification of the applicant is complete, except that the time limit may be extended for an additional 45 days for certain specified reasons. If a permit is denied, the applicant may appeal the decision by requesting a review of the Livestock Operation Siting Review Board within 30 days. The Governor will appoint the board members which will consist of two county representations, two livestock representatives, and three members representing economic development and environmental interests. The board shall uphold a county decision unless the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

board determines that the decision by the county was unreasonable or arbitrary or an abuse of discretion based on their review of the record and the information presented by the applicant. Either the applicant or the county may appeal the decision to the board...to the district court. A recent report from the Department of Agricultural Economics within UNL recognized that the livestock industry in Nebraska is a significant part of the state's agricultural sector and of the overall state economy. Livestock production accounts for more than 25 percent of the state's gross state product. However, the report stated that despite the apparent economic advantages for livestock production in Nebraska, the industry has not grown in the past two decades at rates comparable to their neighboring states. The economists cited numerous issues and policies that have constrained potential development including limitations on corporate farming activity, state and local permitting processes, nuisance rules and lawsuits, and issues and concerns from the general public and interest groups. The report stressed that further expansion of the livestock industry is dependent upon finding feasible solutions to each of these issues. That is what LB106 will attempt to do. A group representing livestock producers and county officials worked on this issue over the interim. They recognized that the current local conditional-use permitting process can lead to uncertainty as to the conditions required, inconsistency from county to county, and it places emotional political pressure on local officials. Conditions placed on operations can limit expansion or siting by making it uneconomically feasible. We need to balance this process by protecting the local control of the counties and their use of zoning, while assuring the regulations on farms and ranches are reasonable and based on scientific evidence. LB106 will provide for consistent standards based on factual, objective criteria to be used by local governing bodies while granting permits, therefore, allowing for predictability and uniformity in the process. To keep our definition of being an ag state, we must encourage the livestock industry to operate and expand in Nebraska. LB106 will promote economic growth and help make us more competitive with our neighboring states. Governor Ricketts has promoted Grow Nebraska. Well with this bill, I am promoting Grow Ag in Nebraska. I would urge you to considerably...look at this bill considerably, favorably, and would appreciate your consideration. I really do think it's a good fit for Nebraska. And I'd be open for any questions, but I will stick around and close on this bill. [LB106]

SENATOR MURANTE: Thank you, Senator Watermeier. Are there any questions? Senator Bloomfield. [LB106]

SENATOR BLOOMFIELD: One quick one: This...and I haven't read it and studied it real close, but, Senator Watermeier, this seems to me like we're reaching the heavy hand of state government into county business again. I'll listen to testimony today, but you have any comments you want to make on that? [LB106]

SENATOR WATERMEIER: Well, yeah, I do. You know, the thing that we need to make sure that...I've always been concerned about is making sure we can keep local control of things we do.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

I mean, I don't care whether it's a school issue or a water issue or issues like zoning. And I really believe that having a matrix like this in place will be another tool in the toolbox of whether a county commissioner or these zoning planning boards that they can take and look at it. And I really think what it does, if you look at how the DEQ permitting process works, it's a very extensive process. But when an applicant goes through that, and this is not directed to that, but when an applicant goes through that, he knows where he has to go to satisfy what the state and the county want. But to answer your question about being the state over...overhanded, I don't think it's going to do that. I think we're actually going to keep a local pressure and by having the committee members on those local zoning...have the power to do that. [LB106]

SENATOR BLOOMFIELD: Okay. I'm not going to debate this at this time, but it seems to me like the county board can say, no, we don't want to do this and the state says, well, you're going to anyway. But we'll listen to debate and you and I will talk about it later. [LB106]

SENATOR WATERMEIER: Fair enough. [LB106]

SENATOR BLOOMFIELD: Thank you. [LB106]

SENATOR MURANTE: Thank you, Senator Bloomfield. Any additional questions? Seeing none, thank you very much for your opening, Senator Watermeier. [LB106]

SENATOR WATERMEIER: Thank you. [LB106]

SENATOR MURANTE: How many proponents do we have on LB106? Quite a few. How many opponents do we have? Quite a few. (Laugh) So we'll have as the proponents, if you can come and sit in the first couple of rows so that we're prepared to have you filter through as quickly as possible that would be good. Mr. Dix, welcome back to the Government Committee, and you are recognized. [LB106]

LARRY DIX: (Exhibit 1) Thank you. My name is Larry Dix, L-a-r-r-y D-i-x. I'm executive director of the Nebraska Association of County Officials and I am here in support of LB106. I'm going to touch on a little bit of the activity that happened. What I'm passing out is a map on the zoning so, Senators, you'll know which counties are zoned, which ones currently have no zoning in them. Last spring, throughout spring and summer and fall of last year, there was a committee that was put together and on that committee were county board members, planning and zoning directors, members of the Cattlemen and Pork Producers, Farm Bureau, and they met a number of times. And we talked about the impetus for getting this together was talking about economic development in the state of Nebraska; how do we grow the state of Nebraska? What do we do?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

Unfortunately, we don't have a lot of coal to bank on; we don't have the mountains; we don't have a lot of things other states have. What we do have is a phenomenal agricultural climate. And this one had been discussed many, many times. And as you can imagine with those groups in the room, this discussion got debated pretty heavily. There was a lot of give and take going back and forth. And NACO's interest in it...there's a couple of interests, because I know a lot of people are saying, well, what in the world, why is NACO doing on this position? Senator Bloomfield, I know you're one of those. We looked at it from a number of directions. One is economic development: How do we grow the state? Number two is how do we maintain our tax base and possibly increase our tax base? We're always concerned about that, the tax base. And then number three, how do we have some consistency in siting of these, and how do we help our county board members make good decisions based on data? Not based on the emotions and things like that, but based on good data that will assist them in developing their county the way they want to develop them. We want to make sure there's clarity. We want to make sure there's a process. And I think more and more people are coming at this from a process-driven decision. And I know state senators, you're the same. Over the years, I've sat here, we've seen fiscal notes become more detailed, there's more information available to you. You can make a better decision. Once we started looking at what was happening in Madison County and Pierce County with the matrix system, we found and we heard from the county board members in those locations that because they had data, because a matrix was filled out, because they sort of knew how they wanted to shape things, they could make better decisions on siting of these facilities. So the group ended up going towards a matrix system. And we think that's good. We believe the counties still have the authority to deny these permits. We...the process...and you'll read the bill, and there is going to be those that follow me that go into more detail in the bill, but there is language in there that the counties retain the authority to approve and deny the permit. So we believe that local control still remains in fact. I would tell you, when this came in front of the NACO board, it was discussed at great length. And the NACO board unanimously voted to approve this. So I know a lot of people have those concerns about local control, but when they really went through and read the bill, we approved this. One last comment I'll make before the light turns red. Some of you...all of you, were not here in 2003. We had a similar discussion and it was something called Livestock Friendly Counties. And at that point in time, you can go back and you can look at the transcript, the room was filled with people saying, we're going to lose local control; Livestock Friendly is absolutely going to destroy local control. Transcripts say that; I remember going back and looking at it. Livestock Friendly now, we're at 29, I think, counties, and there's probably 4 or 5 more counties that are signed up. And I don't think that was harmful. I think that was a good program. But it had similar roots; it had similar discussion points. So with that I'll end and I know we've got a number of people that want to talk. Try to answer any questions. [LB106]

SENATOR MURANTE: Thank you, Mr. Dix. Senator Bloomfield. [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR BLOOMFIELD: You're right, I am surprised to see you on the side of this you're on. And you made the statement that the board passed it unanimously? [LB106]

LARRY DIX: NACO board...and the NACO board is represented at 20 members across the whole state of Nebraska. [LB106]

SENATOR BLOOMFIELD: Okay. How much of the membership is involved in that decision, what percentage of the membership of NACO? [LB106]

LARRY DIX: That...the membership elect every member to that board. So we have a process that we go through. We talked about this at our annual conference. We talked about this at our legislative conference. We had this in front of the group at two different conferences and that would be the full membership is invited to attend those meetings. [LB106]

SENATOR BLOOMFIELD: So you're comfortable the whole membership is aware of what's going on. [LB106]

LARRY DIX: Yeah, you know, when I sit here and represent 1,400 county officials, I'm not going to have every county official say, yep, Larry, you know what? We're right behind you. We know that. You're probably going to hear from some of our members today that say, well, I don't think we're quite there, we don't necessarily believe that. And we understand that. We understand that. But we do have a process we go through that where we vet these things and get it out to the people and that was the process we went through. [LB106]

SENATOR BLOOMFIELD: Okay, thank you. [LB106]

LARRY DIX: Um-hum. [LB106]

SENATOR MURANTE: Thank you, Senator Bloomfield. Any additional questions? Senator Groene. [LB106]

SENATOR GROENE: Thank you, Chairman. Is there laws and rules I don't know out there that protect the individual too? If you own a farm place and you don't want 40,000 head of hogs down the street from you, are those still in place? Or does this overrule...? [LB106]

LARRY DIX: There are still...this does not take away zoning. There is still zoning in place. And there's going to be those that follow me that talk about number of head and size of animal units.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

And so I think, probably, I'd ask you to ask that question to a testifier that comes behind me.
[LB106]

SENATOR GROENE: Thank you. [LB106]

SENATOR MURANTE: Thank you, Senator Groene. Any final questions? Seeing none, thank you very much for your testimony today. [LB106]

LARRY DIX: Thank you. [LB106]

SENATOR MURANTE: Additional proponent testimony to LB106. And welcome to the Government Committee. [LB106]

JAY REMPE: (Exhibits 2 and 3) Thank you, Senator Murante. My name is Jay Rempe, J-a-y R-e-m-p-e, vice president of governmental relations for Nebraska Farm Bureau. And I don't often wander down to this end of the hallway; I'm always down in Revenue or Natural Resources, so appreciate the opportunity to be here. What I want to try to do real quickly in the short amount of time is kind of go through a little bit of the bill, kind of a little bit of the details to lay out how it would change from the current law today and what would change under this bill. And then some folks behind me will come up and talk...describe a little more about the benefits of the bill to agriculture and the livestock industry. As Mr. Dix said, this bill came out of a discussion that started about a year ago with ten people representing both counties and livestock folks. And they came together through these concepts. And so we tried to take these concepts and put it into legislative language and sometimes that gets a little difficult to try to do and I'll try to step through this. There are three changes in this bill that are made to the process, the livestock siting process as it exists today. But first, let me talk real quick about what doesn't change and Mr. Dix mentioned this. Counties still have zoning authorities as they do today. They can make the land-use decisions within their county of what areas that are going to be used for agriculture; what areas are going to be transitional ag; what areas are going to be commercial, residential, VAP. They still have complete authority to make those decisions. Secondly, as today, a county can decide whether or not to require a conditional-use permit on a livestock operation or a project. That does not change under this bill. The county can decide whether to require a livestock permitting process in their county. For those counties that choose either not to zone or not to require a permitting process, nothing changes from today. The DEQ's permitting process is still out there that controls the environmental aspects of this livestock operation, both from a surface water quality and a groundwater quality standpoint. So that doesn't change. One of the changes that occurs is if a county decides to require a permit, the legislation puts in place a minimum size threshold that would apply to all counties across the state to what the permit...where the permit is required. Those size thresholds are taken from the DEQ permit today. So we have consistency

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

with DEQ in that regard. But we also have a provision in there that counties can grandfather those...their size threshold in if it's greater than the amount that's set in the bill. So a little caveat to that. If they decide to require a permit, then the matrix comes in, as Mr. Dix described and Senator Watermeier described. The matrix comes in, the county scores the application on that matrix, and then, ultimately, the county makes a decision whether or not to prove. The matrix is meant to bring information to bear, to bring some factual base, some data to the decisionmaking process to assist the counties along. And, ultimately though, the decision still lies with the county. And I want to point this out on page 6, lines 18 through 30: A county can still deny a permit if it's located in a zoning district that isn't for agriculture purposes; if it doesn't meet the minimum threshold on the matrix; and third, if it thinks it's necessary to protect the public health, welfare, and safety of the county. The only thing is, it requires that that finding...be based on a finding of fact and that be reasonable and defensible. And that's nothing new. I know assistant county attorneys--I have one from Sarpy County--from year 2000 that was encouraging the counties to make their decision based on a defensible finding of fact. It's just...it's good policy for the counties to do that. So that's...nothing changes. Also, I'll point out on page 7, lines 17 through 20, it says: A county shall grant the permit unless it finds, based on the information or documentation in the record, that denial of the permit is necessary based on the reasonable defensible finding of fact to protect the public health, welfare, and safety. So the decision still lies with the county; we're not changing that. The other net change is, we are providing some uniformity of the process--the Department of Agriculture--we've come up with application forms that would be used statewide. The information that's required on the application forms would be standard across the state and the record of the decisionmaking. And I'll close with one final point: We do have the re-siting review board in the bill as a way to...if somebody is denied they can appeal that decision to a higher level, but the standard in place for the decision--deference is given to the counties--that board must find that the county acted in an arbitrary manner, or a capricious manner. It's the same standard that's used in TERC hearings. And so deference is given to the counties, so, ultimately, it again...once again the county still kind of holds the cards if you will. So, I just wanted to real quick try to explain the bill, give a little more details behind it. And I'd be happy to answer any questions you might have. [LB106]

SENATOR MURANTE: Thank you very much for your testimony. Senator Bloomfield.
[LB106]

SENATOR BLOOMFIELD: Thank you. You used two words there that to me give the state a lot more power and it's the little-bitty word "if" and the other word "unless." Right now, the counties have control that "if" and "unless" is not in there. [LB106]

JAY REMPE: Um-hum. [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR BLOOMFIELD: Am I correct in seeing that we're giving a lot more power to the state here and kind of putting the thumb on top of the county? [LB106]

JAY REMPE: I understand the "unless" part, Senator. I'm not sure if I follow where the "if" is. [LB106]

SENATOR BLOOMFIELD: You used "if" actually about three times. [LB106]

JAY REMPE: Did I? [LB106]

SENATOR BLOOMFIELD: Yes. [LB106]

JAY REMPE: Okay. The county, ultimately, it's the county's decision. They can deny it...well, just as today, if it's not in an area that's known for agriculture use, today they can deny it. So nothing changes there. [LB106]

SENATOR BLOOMFIELD: Right. [LB106]

JAY REMPE: They can deny it if the...okay, there's that word... [LB106]

SENATOR BLOOMFIELD: There's that word. [LB106]

JAY REMPE: Okay. [LB106]

SENATOR BLOOMFIELD: Right now, can they not deny it totally without the "if" and the "unless"? [LB106]

JAY REMPE: Yeah, just as they can now too. I mean, just as they can under this as well. [LB106]

SENATOR BLOOMFIELD: They can now; under this they cannot. [LB106]

JAY REMPE: Right...no, they can. They can deny... [LB106]

SENATOR BLOOMFIELD: If... [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

JAY REMPE: That public health safety and welfare if they...it's just like today, they have to have a reason to deny it today, Senator, and this would be the same way. I mean, they just can't deny it for no reason today. We'll talk...we'll talk a little more soon. [LB106]

SENATOR BLOOMFIELD: Yes, we will. Thank you. [LB106]

SENATOR MURANTE: Thank you. Are there any additional questions? Seeing...oh, excuse me, Senator Hansen. [LB106]

SENATOR HANSEN: Sorry, I came in late. You were talking about the possibilities where a county could deny the permit and, obviously, yes, if it's not an agriculture zoning, I think that's clear. But the other two seem dependent on size thresholds. And this isn't an area of expertise to me, but can you explain that so we...the county can deny it for public health if it's over a certain size? [LB106]

JAY REMPE: The permitting process...right now today, every county has a size threshold that they require permits over that size threshold. So that...the change in this bill would be that size threshold would be standard, uniform across the state. It wouldn't be...and it's tied...I think it's page 5 where we list out those size thresholds and that's tied back to the DEQ permitting process. And the decision whether or not to deny the permit isn't solely based on that size threshold, it's based more on the score and the matrix, which size comes into play under the matrix. And I neglected to say this, but I handed out an example of the matrix that is used in Madison County. If you look at that, the larger the operation, the less points you score. So in that regard, you don't score quite as well on the matrix for size. But the size comes into play in the matrix in the accounting for it, and it's the total score of the matrix that would count. Does that answer your question? [LB106]

SENATOR HANSEN: Not necessarily. [LB106]

JAY REMPE: Okay. [LB106]

SENATOR HANSEN: But thank you. [LB106]

JAY REMPE: Okay. Well, I'll try...maybe we can visit a little more. I apologize, I'm not quite understanding, I guess. [LB106]

SENATOR MURANTE: All right. Any final questions for Mr. Rempe? Senator Groene.
[LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR GROENE: I'll go back to my question. In any of this, does the local citizen...you talk about government and big farm, the local citizens who live in an area. If they don't want that pig farm right next to them, are they losing any of the powers they have now at the county level? [LB106]

JAY REMPE: No, they could still...the way we tried to draft this was the county is still required to have hearings...it's up to the county, I guess, if they want to have hearings and that, go through the zoning administration and the county board, and they could still provide their input just as they could today. [LB106]

SENATOR GROENE: Okay. [LB106]

SENATOR MURANTE: Senator Bloomfield. [LB106]

SENATOR BLOOMFIELD: Thank you. Under this matrix though, if...and there's that wonderful little word again. [LB106]

JAY REMPE: Um-hum. [LB106]

SENATOR BLOOMFIELD: If the matrix says something can be here, and you've just built in the last five years a \$300,000 home and a little farm place out there, and the matrix says this place will support a 40,000-head hog operation, they can put it in just across the fence row from you. And I don't think there's a doggone thing that citizen can do to stop it. [LB106]

JAY REMPE: No, there would be. You could, just as today, you... [LB106]

SENATOR BLOOMFIELD: Complain to the county. [LB106]

JAY REMPE: Right. And if the county is convinced that it's...it doesn't meet the...the public health, the welfare, and safety standards, they could deny it, just as they do today. [LB106]

SENATOR BLOOMFIELD: But under this new matrix we're setting up, I think they can...the producer could come in and say, well, the matrix shows it will handle it, you can't stop it. I think this has an odor besides hogs in it. [LB106]

JAY REMPE: No, I think the matrix will provide some more information to bear on that situation, honestly, Senator, that in terms of scoring you could look at odor and you could look at

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

some other factors and you could put a score and say, okay, how well...it would provide the county officials some more information to make an informed decision in that regard. [LB106]

SENATOR BLOOMFIELD: But that one lonely guy sitting out there with his relatively new farm set up isn't going to do well against that matrix system. Again, Mr. Rempe, you and I can discuss this later. I don't want to be here at 10:00 tonight. [LB106]

JAY REMPE: I appreciate that, so thank you, Senator. [LB106]

SENATOR MURANTE: Thank you. Any final questions? Seeing none, thank you very much for coming down. Additional proponent testimony to LB106. Welcome. [LB106]

TERRY KEEBLER: Good afternoon, Senator Murante, committee members. My name is Terry Keebler, T-e-r-r-y K-e-e-b-l-e-r. I'm here today testifying for myself. But some background: Last year when the committee was set up to look at this situation, I was NACO president; at that point I was a Johnson County commissioner. I've been farming for the last 20 years. I was commissioner for 12 years and was NACO president last year. So, I'm the one that appointed NACO committee members to this committee, along with the livestock...people the livestock groups appointed. We sat down, we had, I think, seven or eight meetings through the course of the year. As Larry Dix commented, we looked at it from economic development and from zoning and what would work for everyone in those regards. I'm not going to get into all of those discussions, but we had two zoning administrators on that committee. We had three or four county board members on the committee, and I was one of those. So I think we had very good discussion through the course of the year. A lot of give and take on what would and wouldn't work and why. So I think we got good background through the course of that year in committees. And this is what came out of those discussions. With that I'd be happy to answer questions, I'm not going to belabor the point. [LB106]

SENATOR MURANTE: Okay. Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. Additional proponent testimony to LB106. Welcome to the Government Committee. [LB106]

CHUCK FOLKEN: Thank you. Welcome. Senator Murante and members of the Government Committee, my name is Chuck Folken, C-h-u-c-k F-o-l-k-e-n, and I'm here today on behalf of the Nebraska Cattlemen. Nebraska Cattlemen support LB106 and has made it a priority bill for our association this year. I own and operate a feedlot near Leigh, Nebraska, with my wife and my children. I also participated in the livestock and county official working group that developed the concept of LB106 for the Nebraska Cattlemen. Beef producers in rural Nebraska are residents and small business owners and we want to work with our local government and communities on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

issues such as zoning and economic development. However, the lack of clarity and consistency in local zoning across the state has consistently been raised as an issue among our members. Nebraska Cattlemen believes the county zoning regulations should be reasonable and based on sound science. Livestock production is a perfect fit for rural economic development in Nebraska and reasonable zoning regulations facilitate that. A recent UNL study indicated that a 10 percent increase in the beef industry would result in an additional 11,600 jobs and \$11.2 million in local taxes. I grew up in the beef industry and have a personal experience with zoning and the local process. And despite Nebraska's number one industry being beef production, I can tell you that producers' talk in Nebraska is perceived as a livestock unfriendly state across the nation. County officials are forced to make subjective decisions under zoning regulations. LB106 adds objective standards and will help eliminate the awkward positions that many county officials are faced with today. Most county boards are looking for objective science-based processes and procedures to make those decisions, eliminating the sometimes political and emotional nature that currently exists. LB106 finds a balance by maintaining local control by creating standards that harmonize across the state. LB106 provides more tools for local government to help them better govern themselves and to know more about each of the livestock operation applications that walks through their door. LB106 provides clarity and consistency that beef producers in Nebraska are seeking to make sure our industry can thrive in Nebraska. Thank you very much for the opportunity to testify. [LB106]

SENATOR MURANTE: Okay, and thank you for testifying. Are there any questions? Seeing none, thank you very much for coming down today, much appreciate it. Additional proponent testimony to LB106. And welcome to the Government Committee. [LB106]

JENNIFER MYERS: Thank you. Thank you, Chairman Murante and committee members, for allowing me to testify today. This is my first time testifying in front of the committee, so bear with me as I get through this. I want to also thank Senator Watermeier for introducing LB106. My name is Jennifer Myers, J-e-n-n-i-f-e-r M-y-e-r-s. I'm the planning and zoning administrator from Merrick County. I'm also the planning and zoning NACO affiliate president. I'm here today in support of LB106. I will state for the record that the planning and zoning affiliate membership is split on its support of this bill and you will be hearing, probably, later on from some of those that are in...as a proponent (sic) to this. In any regard, this journey did start early last year when I was asked to be part of the committee that Jay and Larry Dix referred to during their testimony. I was greatly appreciative of the opportunity to sit at the table and be part of the conversations that occurred over the next many months. I will say that being a zoning administrator, I knew that I might be putting myself in front of the firing squad due to zoning and livestock not always being on the same page in this matter. But during our many discussions, we were able to come to many common conclusions about some of the positives and deficiencies in our policies. We know that Nebraska's economy is driven by its grain and livestock production, especially in the cattle industry. I grew up on a farm in Merrick County and appreciate what economic viability

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

livestock has provided to our state. I even have two of our local cattle and pork producers here today that will be speaking in support of the bill. So given that the state of Nebraska is the largest beef-exporting state, why are we here today? Most counties in the state have a conditional or special-use permit application process in place to regulate new or expansion of livestock facilities over a certain number of animal units. This process involves the applicant presenting its application in front of the planning commission who in turn provides recommendations to the governing board, which in most cases is the board of supervisors or commissioners. Both processes are as a public hearing, as stated by the name and the conditional-use permit, conditions are allowed to be added to the permit, in addition to the minimal standards as set forth in the local regulations. This seems to be where the problems are occurring. Public emotion is driving the conditions that are being added instead of local regulations. So one of the questions I've been asked since the introduction of this bill is why pass a law for a minority of counties where there have been issues? Well if you think about it, we don't usually pass laws if everyone is doing everything right. We pass laws for the minority that have done something wrong. Another question posed is why...will this take away local control? The intent of this bill by our group that met was not to take away local control but to provide a scientific management tool for the local agents to help facilitate a fair and equitable process for the applicant and the county. Is LB106 the perfect bill? No, but is it an issue that needs attention? Yes, or else we wouldn't have all these people here today to testify. Our group knows that this bill may need some fine tuning. We recognize this and are willing to work towards something that is amenable to most parties involved. I appreciate and thank you for your time today. [LB106]

SENATOR MURANTE: And thank you for your testimony. Are there any questions? Seeing none, thank you for coming down. [LB106]

JENNIFER MYERS: Thank you. [LB106]

SENATOR MURANTE: Additional proponent testimony on LB106. And welcome to the Government Committee. [LB106]

STEVE WOLFE: (Exhibit 4) Thank you, Senator and committee. My name is Steve Wolfe, S-t-e-v-e W-o-l-f-e. And I'm resident of Kearney County, which me and my brother have a family dairy there. We just...to let you know a little bit about our history, you probably can tell already I might not be a Nebraska native. (Laughter) We moved here in 1997. Okay, and some people ask, why did you move to Nebraska? Why would you move your dairy to Nebraska? Well, the main reason we moved our dairy to Nebraska was you guys have plenty of feed here; there's a lot of corn, there's a lot of alfalfa, there's a lot of soybean. So we just felt like it was an avenue for our children to stay in the dairy business and for us to have more economic opportunity here. The other reason was, we felt at that time Nebraska was a livestock friendly state. Since then I'm not

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

sure I can say that anymore. I would like to say that. I'd probably tell my family back in Virginia that we're still livestock friendly, but I'm not sure that's true. The decreasing number of dairies in Nebraska is pretty relevant. If we look...when we moved here in '97, there was approximately 90,000 dairy cows in Nebraska. Since then, to date, there's about 60,000 dairy cows in Nebraska. Now in the late '90s, there were quite a few dairies that moved in. And approximately about half of the number of dairy cows in Nebraska are in that number, so about 30,000 of those cows kind of moved in at that time. That was before we had zoning. Since then, you know, we just keep kind of decreasing. We can't seem to get any dairy permits approved. One thing that I find that's really heartbreaking is that we're losing processing. Now our dairy is in Kearney County and if you guys remember, there was a processing...cheese processing plant in Ravenna that was about 40 miles from our dairy that closed down about two years ago. And the main reason that processing plant closed down was just the lack of milk, the lack of cows. If we look at our neighboring states, they've all grown in the dairy industry. And they've all expanded processing plants and built new processing plants. So there's something we're doing wrong here, you know. But, you know, there's not one or two things, there's something that we're doing wrong here. So we need to figure out what that is because as I look and if I wanted to relocate somewhere, the opportunity here for the natural resources is great. No other state has any better opportunity, but yet we cannot seem to get over that hump and grow like our neighboring states have. The economic value of a dairy for each cow it's said that there's a \$5,000 economic farm income within a 50-mile radius of that dairy...of that cow. So the economic value is tremendous. So I definitely speak in proponent for this bill and I also have a letter of recommendation from the Nebraska State Dairy Association for their support in this bill also. I'll present that with you. [LB106]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?
Senator Bloomfield. [LB106]

SENATOR BLOOMFIELD: Thank you, Mr. Wolfe, for coming in and thank you for what you do. I used to run a small dairy. Thank you for what you do. [LB106]

STEVE WOLFE: Thank you. [LB106]

SENATOR BLOOMFIELD: There's a lot of work involved. You stated the number of producers has gone down. What, if you know, is the average size of the milking herd? [LB106]

STEVE WOLFE: I think the average size, and I'm not sure you want to quote me on this, is about 175 cows. [LB106]

SENATOR BLOOMFIELD: Okay. What's the size of your operation? [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

STEVE WOLFE: My operation is 550 cows. [LB106]

SENATOR BLOOMFIELD: Okay. You know what the size of the herd...average herd was 10, 12...or when you...how long have you been here? [LB106]

STEVE WOLFE: I've here 17 years. [LB106]

SENATOR BLOOMFIELD: Do you know what the size the average herd was 20 years ago? [LB106]

STEVE WOLFE: Approximately...probably be around a hundred, 110 cows. So we have grown. [LB106]

SENATOR BLOOMFIELD: Okay. So the herd has increased considerably while the numbers of producers has gone down,... [LB106]

STEVE WOLFE: Yeah, but what hasn't increased? [LB106]

SENATOR BLOOMFIELD: ...as has everything about, but thank you. [LB106]

STEVE WOLFE: Okay, thank you. [LB106]

SENATOR MURANTE: Thank you, Senator Bloomfield. Oh, hold on one second, Senator Groene. [LB106]

STEVE WOLFE: Sorry. [LB106]

SENATOR GROENE: Chairman Murante, thank you. Do you know of cases...is it just...people don't apply for applications or are they getting turned down? [LB106]

STEVE WOLFE: Well, it's interesting you brought that up. Just outside of the town of Ravenna, about four years ago, there was a special-use permit, a dairy that was wanting to come in and they ended up, of course, had the public hearing and a lot of opposition. And actually our county board did approve that dairy, that site, but they put so many stipulations and restrictions on it, it was not anywhere near economically stable for that dairy to even consider that spot. So, you know, the dairy industry is pretty tight knit, we pretty much...you know, you hear where people are having success and where people are not. And, unfortunately, Nebraska has...is pretty well

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

black-eyed for dairy industry. And that's not the only one; there's been quite a few that's tried to come in. And even though that one was approved, I mean they...the stipulations...you know, our county board members all of a sudden were experts on every area of the dairy. And they put tremendous amount of stipulations. [LB106]

SENATOR GROENE: How far from town was it going to be built? [LB106]

STEVE WOLFE: It was about four miles from the east side of town. [LB106]

SENATOR GROENE: Is Kansas friendly? [LB106]

STEVE WOLFE: Kansas is growing in dairy numbers. South Dakota is growing in dairy numbers. Iowa is growing in dairy numbers. And Colorado is growing in dairy numbers as we decrease. [LB106]

SENATOR GROENE: Thank you. [LB106]

SENATOR MURANTE: Thank you, Senator Groene. Any final questions? Seeing none, thank you very much for your testimony. [LB106]

STEVE WOLFE: Thank you. [LB106]

SENATOR MURANTE: Additional proponent testimony to LB106. Welcome. [LB106]

GARY LAMBRECHT: Thank you, Senators. Gary Lambrecht, G-a-r-y L-a-m-b-r-e-c-h-t. I'm going to speak as a producer, landowner in Washington County, Nebraska. And Washington County is first county north of Omaha. The main operation...it's a family farm, the main operation is at my dad's place which is a mile north of the county line, so it's about as close to Douglas County as anybody could get. Right now we have 19 houses in our section. And the table is wood, I can knock on wood that we have never had a complaint before. For the last nine years I have sat on the planning commission for Washington County and for the last five years...this is the fifth year that I've acted as chairman of the planning commission for Washington County. About a year ago, we applied...a year and a half ago, we applied for the Livestock Friendly status for Washington County. It was passed unanimously by the board of supervisors. We went ahead and went through the permitting and we recently, here a month ago, got turned down. In that time process, I had a couple of meetings with Steve Martin from the state and we went over the regulations that Washington County has. At this point in time, I can honestly sit here and say the rules and regulations that Washington County have are outdated and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

are way too vague to even...to be able to understand. The planning administrator from Washington County, myself, and Steve Martin we could not come up with logical answers. We went ahead with the process and said we'll change the regulations if we get denied. Upon the denial we...I...personally have at home, our planning administrator has printed out six different copies of different counties all within the eastern part of Nebraska. And looking at their rules and regulations, there is so much differences between one county to the next county, it's hard to pick a happy medium of where you want to be. If this bill does not pass, the county will go and try to work on their rules and regulations to bring it up to Livestock Friendly. I would actually encourage you guys to move this out of committee because I think it is a good thing for the state of Nebraska. With Iowa having, basically, state control over their land; Kansas having, basically, state control over their land, and I don't think it's taking away from the counties on the county level. I think you will hear counties, as Washington County--we had a meeting with the supervisor of Washington County--is going to say that there is some things in this bill that is too vague at this point in time. And I'm not disagreeing that there is some things that may be a little vague, but it's a step in the right direction. One of the things that is coming down the pipeline is the I-29 corridor. With the regulations in the West Coast, they want to be able to move some of the dairies, some of the hog operations and to this central location. If we had something across the board that instead of saying, yes, come to the state of Nebraska, but you're going to have to go to each county to look at and figure out where you can fall in. With that, I will thank you for your time and answer any questions. [LB106]

SENATOR GARRETT: Thank you, Mr. Lambrecht. Are there questions on the committee? Seeing no questions, thank you for your... [LB106]

GARY LAMBRECHT: One last thing I would do is I would volunteer at any point in time to help on the matrix of this. With my experience on...as on the planning commission, and being from as far eastern Nebraska as possible, I think I could be of value to working on the matrix of this. [LB106]

SENATOR GARRETT: Thank you. Are there additional proponents? Welcome. [LB106]

LIZ DOERR: Thank you for your time today. I'm Liz Doerr, L-i-z D-o-e-r-r. I was asked to serve on the NACO working group by the Nebraska Pork Producers because of my dual role as a pork producer and as a part-time zoning administrator for Knox County. I would like to share a few of my experiences to show why I support LB106. While there are many livestock operations that have been permitted, there are producers who have tried or simply gave up because of the complicated regulations. When I first started my job about ten years ago, I had a producer come in for a permit for a hog barn and I helped him figure out a way to get it approved. Afterwards, the producer told me that he had no intention of building the barn and had applied just to see

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

what would happen because he had heard it was next to impossible to get a livestock permit in our county. At the time, Knox County had very restrictive regulations in place which I felt were based on opinions, not science. I had another producer who wanted to bring his son into his operation and to replace a barn and put the new barn on the other side of the building site so it was farther away from the neighbor, but the basic setback...you know, he couldn't meet that. And he was about two miles from the county line. He knew that on the other side of the county line the rules were very different. And this frustrated him and so he just decided to give up without actually even applying. So how many other cases are there where a producer wasn't technically denied a permit, but merely never tried because of the challenges. Through our working group discussions, our intent was to put science behind the regulations and still maintain some local control. Local control can be a good a thing, but in the rural areas, it can be difficult to find willing people to serve in those positions that can understand the issues and remain impartial. Another producer had to go through a lengthy process before he could finally get approved for a 1,200-head hog barn. Some of the planning commission members were not using facts in their decisions which caused the delays. The bill will help to standardize the process and make it more predictable for the producers. But through a change in leadership both on the county board and my planning commission, we were able to update our livestock regulations and become designated as Livestock Friendly just last fall. Had legislation for science-based regulations been in place previously, my county could have saved a lot of tax dollars and fighting. I'd be happy to try to answer any questions that you may have and thanks for your time. [LB106]

SENATOR GARRETT: Thank you, Miss Doerr. Are there any questions from the committee? Thank you for your testimony. Additional proponents. [LB106]

LANA BUSHHOUSEN: I'm Lana Bushhousen, L-a-n-a B-u-s-h-h-o-u-s-e-n. Thank you for having us here today. I represent the Gary Bader and Sons farm, ranch, and feedyard at Palmer, Nebraska. I am here in support of LB106. And I agree with many of the testimonies that came before me. I'm not going to go through all the details that they've addressed, but just that I do agree with them. But I want to tell you my story. In 1998, my husband and I saw a window of opportunity to have ownership in Nebraska agriculture. My parents and siblings, who are back on the farm, were developing plans to expand the family farming and cattle feeding operation. They were looking forward and planning for ways to grow and prosper for the future of the next generation of our family. We all have...each one of my siblings, we each have a son that wants to come back. We asked if we could be a part of this and saw this as a lifelong investment, a way to raise our children with rural values and live the American dream. After discussing the pros and cons, my husband and I, because we lived here in Lincoln, we sold our house here in the city and put a down payment on the first piece of land and part of the cattle herd to own a percentage of what my family had. We knew it wouldn't be long before the changes would take place and we were excited about building for our future. Our plans were to convert pasture to begin feeding calves that were part of our cattle herd and some that we would also buy. We would purchase

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

corn and hay from local farmers, in addition to feeding that which we grew. And we also are farm growers as well. We would also support the small community just about five miles down the road where we would buy fuel for our tractors, get supplies for the construction of pens, so we would keep the money in the county. At the time we employed a local farmhand and planned to hire additional help. We contracted with an environmental engineer to design the layout and the land-use conditions that were in compliance with the Department of Environmental Quality. In December of 1998, we requested a DEQ inspection. And in June of 1999, just six months later, applied for a conditional-use permit with Howard County. The permit was good for one year. However, within a short period of time, opposition grew from an organized citizens group and put a halt to our plans, along with our hopes and our dreams. There were three public hearings and an appeal in just six months. Howard County allowed public opinion from a small, special interest group to outweigh the facts and the economic potential. The planning and zoning board also made changes along the way which added to the regulations and our cost of doing business. After months of fighting for a position, we cut our losses, gave up the investment in Howard County and turned to the neighboring county, Merrick County, which the primary residents were my brother and his wife now live where I grew up, is on the county line. In contrast to the overwhelming opposition, stipulations, and expense in Howard County, Merrick County approved our permit and we began expanding. Because Merrick County is livestock friendly, we continue to support the local economy and invest for the future generation. It saddens me to know that family farms are still facing the same problems and issues today over 15 years later. A recent example would be the family hog operation in Burt County. It is time for Nebraska to notice that we need to invest in our future and provide a better path for the next generation of farmers. Thank you for your consideration of this bill. [LB106]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming in today. [LB106]

LANA BUSHHOUSEN: Thank you. [LB106]

SENATOR MURANTE: We're still on proponent testimony to LB106. And welcome to the Government Committee. [LB106]

JOHN CSUKKER: Thank you. Thank you for allowing me to speak. My name is John Csukker, that for the record is J-o-h-n, last name a little crazy, that's C-s-u-k-k-e-r. I'm been down here for 23 years and this is the very first time I've ever been in front of the Government testifying, so I'm excited, yet I'm nervous. I'm from Shelby, Nebraska, and I've been involved in that period of time with the environmental permitting both primarily at the state and county level for livestock farms. And I'm here to testify in favor of LB106. I won't go through all the assessment tools that was spelled out much better than I can do right now. But I've used the Madison one as an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

example, I'd like to use that. That's been in place, I believe, I could be wrong, but I believe it's been in place for about 15 years. I helped four young men and their wives get permits through that matrix. And as you know, the points are given or subtracted according to what their practices are, set back distances, type of manure management systems, and it's somewhat of a sliding scale. If you need to increase your points, you can increase your distances, you can increase or add additional...maybe bio filters or some additional odor practices. And what I liked about it, is that it provided those families a tangible number, or a passing score in that case, I believe 300 points in Madison County, that can be used by the livestock farmer in the county to make sound decisions, as well as protecting the county residents. And as you know, the confidence in decisionmaking is important for any business, and it's also true for any livestock farmer. The permitting cost for just the livestock farmer, as mentioned before, can be astronomical. I've known from \$3,000 to \$5,000, \$10,000 up to over \$50,000. And that's just for the design, engineer, application paperwork, and fees. Now this matrix, when it was used here and in LB106, which is...has yet to be finalized of course, it's not...is based on Madison or Pierce, but this matrix can be used by the farmer before any permitting costs can occur in order to determine if his or her livestock plans are sustainable. It can also be used in a backwards way for the zoning administrator to come back and say, no, you have to stay away from these homes because you're too close. So whether or not they can make sound business decisions on that basis. With that I know it's short, but I open up to any questions. I appreciate your time. [LB106]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today, much appreciate it. [LB106]

JOHN CSUKKER: Thank you very much. [LB106]

SENATOR MURANTE: Additional proponent testimony to LB106. And welcome to the Government Committee. [LB106]

TAVIS CHRISTIANSEN: Thank you. Thank you, Senator Murante and committee members. My name is Tavis Christiansen, T-a-v-i-s C-h-r-i-s-t-i-a-n-s-e-n. I live in Lyons, Nebraska, Burt County. A little history about us, I'm here speaking on behalf of my brother-in-law and my father-in-law. There's three families involved in our swine operation. My brother-in-law and I both came back to the farm in 1992. My father-in-law moved to Burt County in 1956. We proposed through antiquated and older facilities to build a new facility. We looked at various places. We're a breeding stock multiplier, bio-security is at our utmost concern. We live...we neighbor Cuming County, a very Livestock Friendly county. In the last 12 years, I think we are probably over half of the permits that have run through our P&Z. Not a lot of livestock going on in Burt County. When we found the site we liked, it actually sits the furthest away from all the towns in Burt County. But at the same time, in doing so, and in the past, the livestock has left

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

that area. We thought that might be a challenge, it was. We started the process on August 15 by mailing a letter to a two-mile radius of the citizens--what our plans were, the size of it, the nature, deep pits, how livestock has evolved, all the other things that have gone on in the past from where we are today. On August 15, I submitted our CUP permit, conditional-use permit, application. On September 8, we had our first P&Z hearing. It is also known as the hearing that never happened now. We were supposed to have an October 14 BOS or board of supervisors public hearing. It got canceled because of some concerns by the counsel to the county on some technicalities--it was published in the wrong paper. The zoning administrator published it in our local paper where we live, and it should actually circulate in the designated county paper for that year. That is why, primarily, we started over. Very frustrating to us--I echo all the other things you've heard from other people, especially from the livestock that have talked about the costs: the engineering, the zoning, and the stuff that goes into it. It's time consuming; it gets emotional, mental, physical. We finally got our first hearing....the actual hearing that...the commencing got our 8-0 vote was on November 3, was a P&Z, public hearing, three and a half hours long, just like the first one that never happened. We finally were given the board of supervisors' approval on December 8. That was also a public hearing of three and a half hours. Three hearings: one that never happened; and two hearings. As far as we're concerned, LB106 addresses some of those problems. To have two public hearings, to us makes no sense. The P&Z is a fact-finding body. And I...just to address Senator Bloomfield when he said a \$300,000 house out in the country, the country is A-1 ag. You can't build a livestock facility in town. You can't build it in a transitional area. And you cannot take...the livestock has to stay out in A-1 ag. And you promote A-1 or agriculture first before housing development. Thank you. I'll answer any questions if you have any. [LB106]

SENATOR MURANTE: Thank you very much. Are there any questions? Senator Groene.
[LB106]

SENATOR GROENE: Will this matrix...so that every farmer knows exactly what he has to do statewide--how far from the road; how far from the community? [LB106]

TAVIS CHRISTIANSEN: I believe some of them brought up setbacks. We have setbacks. Ours are double the distance in Cuming County currently. [LB106]

SENATOR GROENE: But that's what I'm saying, it would...it would make it across the state the same so... [LB106]

TAVIS CHRISTIANSEN: Well, that would be a very nice... [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR GROENE: Is that what the matrix plan is? Or every county would still have their own... [LB106]

TAVIS CHRISTIANSEN: You...you...I probably can't speak to setbacks how it would change within, maybe someone else can address that when they come up. Ours are right now on animal units and all...is the larger from 1,000 to 5,000 animal units which is where we're classified as three-quarters of a mile on a ECH, enclosed housing, right now. And in Cuming County, it's half of that. All...they're just not like and I think the matrix would help a lot of that. You got to get some universal...or at least like rules. I think it would help; it would be very beneficial. [LB106]

SENATOR GROENE: Thank you. [LB106]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Seeing none, thank you very much for coming down today, much appreciate it. Welcome to the Government Committee. [LB106]

MARK McHARGUE: Well, thank you. I appreciate that. Chairman and committee, my name is Mark McHargue, M-a-r-k M-c-H-a-r-g-u-e. I'm a crop and livestock producer from Central City and I also serve as first vice president of Nebraska Farm Bureau and I'm here on behalf of Nebraska Farm Bureau and testifying in support of LB106. On our family operation, we do produce hogs and grain and also popcorn. And we have just went through the process, within the last two years, of actually seeking a conditional-use permit from our county so this is very fresh in my mind. And because of that experience, there are some things that I think we do need to address. I also would like to thank Senator Watermeier for introducing this bill. And the committee was talked about several times that have worked on this over the last year. And I really think they brought together a good bill that encompasses a lot of things that Nebraska Farm Bureau was concerned with. And quite frankly, as I have gone through that process, I was concerned with too. It's been talked about the economic impact of livestock; the numbers are not good for the state, the kind of state that we have. And as a farm operation, our farming organization, that's concerning when we see livestock numbers. But on the flip side, when you look at the economic data from the university, what kind of economic impact it could have on our state. And so a couple of things, all this discussion brings up is when you start looking at the conditional-use permit. We applied for the permit. And I have to tell you, that ten years ago, our family farm also applied for a permit. And we walked into the county hearing meeting, we had about 50 people there and it was almost like a mob. And just out of really left field, started fielding things like we're contaminating the groundwater; I'll never be able to open the windows in my house; my children are going to develop asthma; I can't hang the laundry out on the line. And my brother and I were sitting in that hearing going, wow, we didn't see this coming, we're just a family operation that wanted to add a hog barn. And so that was very difficult as a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

producer to handle. And we walked out of there and actually our county did approve that. But we chose as a family operation not to expand at that time because it just...there's things that happen when your character is assassinated. And we chose not to at that time. Well, as time has gone by, we chose to make an attempt at building a facility here just the last couple of years. And I have to tell you that it went quite a bit better for us. We did get it approved. The facility that we have now we are...I don't know if I should say gladly, but paying \$16,000 a year in property tax, and I think that helps our local economy. But, you know, I consider myself an educated person. And we run a multimillion dollar, a multigenerational farming operation. I'm vice president of the largest farm organization in Nebraska, but yet I didn't have any problem with looking at the economics of building a livestock facility. But what gave me so much anxiety was actually going through the process to get it from our county. The DEQ process might...my permit is 300 pages long. I didn't have a problem with doing that DEQ permit because I knew what they were asking me was going to be based on science. I knew exactly what they needed. I knew what framework I needed to fall in. Well, I think we take that and we cross that over to...as we looked at our county zoning, I think some sort of a matrix that's been talked about extensively would really just give producers like myself some framework. We know that there's going to be some scientific data behind it; score it, come up with a score; decide whether you're going to accept that score; and all the different things that are talked about. But for me, that would just add a level. And I think there's probably a lot of producers out there that, you know, they would really like to expand, but just because of the anxiety choose not to and I think that's hurting Nebraska. I'd welcome any questions you might have. [LB106]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today, much appreciate it. [LB106]

MARK McHARGUE: Thank you. [LB106]

SENATOR MURANTE: Are there any additional proponents to speak on LB106? Seeing none, let's begin with the opposition testimony. And as before, if you intend to testify in opposition, we would ask that you come closer to the front of the room and try and sit in one of the first two rows. And welcome to the Government, Military, and Veteran Affairs Committee. [LB106]

VERN JANTZEN: (Exhibit 5) Thank you, Chairman Murante. And good afternoon, Mr. Chairman and members of the committee. My name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I am a farmer from Plymouth, Nebraska, and I thank you for the opportunity to visit with you this afternoon about LB106. I am opposed to LB106. This bill has the potential to put pressure on local zoning policies and appears to me to just be duplication on the state level of what is already an adequately functioning zoning process on the local level. In my book, local is best. If my sources are correct, there are 82 of the 93 Nebraska counties that have zoning regulations.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

Section 3 of this proposal states: The department shall adopt and promulgate rules and regulations to develop an assignment matrix which shall be used by county officials to determine whether to approve or disapprove a permit application for a livestock operation siting permit pursuant to Section 4 of this act. When I read the word "shall" my understanding is that there is not a lot of wiggle room to decide if it is debatable, if we should develop some state rules, and if we can negotiate on following the adopted rules at a local level. My fear is we are in danger of developing a narrow set of rules on a state level that do not allow for the diversity in zoning needed across this state and that is best addressed on the local level. I also have questions about directions in this proposal to seek out experts to help draft new rules and develop forms for applications along with specifying what information and documentation is acceptable for making an application. My definition of an expert and what expertise they may bring to the table may not be the same definition that the Director of Agriculture will use in selecting experts for this process. Are my concerns and rights as an individual represented in this process? These same questions will be present when the seven members of the Livestock Operation Siting Review Board are appointed by the Governor. Will seven people be able to adequately represent the diversity of Nebraska agriculture or is this a job for the local zoning board? My final area of concern deals with the cost of this proposal. The state Department of Agriculture will need staff to carry this out. Up to ten experts are allowed to develop this program and that will come with some cost. And then what are the costs associated with having a siting review board? I would ask that this committee to consider two questions before advancing this proposal out of the committee. Is this program really necessary? And if it is, what will it realistically cost to get it going and then to keep it running? It is my opinion that we have this base already covered with local zoning boards and we don't need to spend a bunch of money we could use for a better cause than to try to fix something that is not broken. I'd also like to address the fact that I at one time raised hogs and I am also a retired dairy farmer. The reason I no longer do those livestock operations is because there was not enough return to pay the bills. I would encourage the committee and the Legislature as a whole to do...look at the return that people get when they are in livestock. What we need to address in this state is open, fair, competitive markets and that do not exist at this time. And tinkering with zoning is not going to solve the problem. We have bigger issues that need to be looked at. Thank you. And I would be willing to answer any questions that the senators would have. [LB106]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today, much appreciate it. [LB106]

VERN JANTZEN: Thank you. [LB106]

SENATOR MURANTE: Additional opposition testimony to LB106. Welcome to the Government Committee. [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

TRACI BRUCKNER: (Exhibits 6 and 7) Good afternoon, Senator Murante and the committee members. Thank you for the opportunity to testify today. My name is Traci Bruckner, T-r-a-c-i B-r-u-c-k-n-e-r, and I'm testifying on behalf of the Center for Rural Affairs in opposition to LB106. I also come at this from a former farming position. My husband and I actually raised hogs, farrow to finish, and I will say that we weren't taken out of the business by local zoning, we were taken out of the business by unfair and uncompetitive markets. We oppose LB106 because it seeks to create a statewide matrix for use in siting livestock facilities, including expanding facilities, and take away local control, eliminating a county's right to determine for themselves land use and planning decisions. While livestock production is important to rural Nebraska, and while livestock production continues to be a major component of the rural economy, it is not the only or ultimate value of rural Nebraska. The desires of other rural citizens, the consequences to the rural environment, the compatibility of livestock production to other economic development initiatives, and rural community quality-of-life issues are other equally important issues that must be balanced in land use and planning decisions. While this bill suggests a matrix may include other considerations, it does not require it. In addition, decisionmaking on a statewide basis will fail to consider unique local interests and needs. If they are to be considered, local officials and local people must do so. LB106 gives counties a very small role in this and even includes a provision that overrules local decisionmaking. If you look at page 8, beginning line 22, that's where it states that local boards can be overruled by the state board created through this bill. LB106, in addition to other bills that have been introduced regarding livestock production, fails to consider the largest barriers to livestock production: a fair, open, and competitive market system. Rural communities are made up of people, some who are livestock producers. And any legislation that seeks to address making it easier to site livestock production facilities should also consider how to increase the number of producers, not simply the number of cattle, hogs, chickens, or other livestock facilities. Considering only the number of animals and production facilities without considering the people who raise them is a recipe for environmental and social decay. LB106 is simply another vehicle to increasingly concentrate livestock production and sacrifice our rural environment. One just needs to look to Iowa to understand what happens when you take away local control and replace it with a statewide matrix. And there is someone here who will be testifying to that today. If the rationale being applied to other livestock-related bills heard this week, people should be trusted to make decisions about the issues that impact their lives and economic well-being. LB106 does not do that. LB106 eviscerates local decisionmaking. We would hope the sponsors of LB106 would work with all rural people to fashion a solution to foster livestock production that is in the best interests of all rural people. Over the last 15 years, there have been a number of studies that examine property values and industrial livestock operations. Along with my testimony today, I provided you a copy of the study that finds that animal feeding operations result in significant loss in property values ranging anywhere from 50 percent to 90 percent for nearby properties. This report includes case studies from other states whereby property values have been affected, including one that was abandoned and unable to be sold due to the facility that was established

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

700 feet from their property. We respectfully request that you to indefinitely postpone LB106 so that counties have the right to decide for themselves land use and planning for their local people. And I'd be happy to answer any questions. [LB106]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?
Senator Bloomfield. [LB106]

SENATOR BLOOMFIELD: At the very end of your testimony, you said something about a facility being placed within 750 feet of a home, can you elaborate on that a little bit? [LB106]

TRACI BRUCKNER: It's in the study that I handed out. They looked at a case, I believe it was in Illinois, where a home...they had to abandon the home because the livestock facility was set so close to the home that it affected their quality of life. And they abandoned the home and they were not able to sell that home. And the company ended up settling with them, but only agreed to give them, I believe, 60 percent of market value of what their original market value was for their farm because it had declined because of the livestock facility. [LB106]

SENATOR BLOOMFIELD: But the home was there well before the... [LB106]

TRACI BRUCKNER: Yes. [LB106]

SENATOR BLOOMFIELD: Okay. Thank you. [LB106]

SENATOR MURANTE: Thank you, Senator Bloomfield. Are there any additional questions?
Seeing none, thank you very much for your testimony today. [LB106]

TRACI BRUCKNER: Thank you so much. [LB106]

SENATOR MURANTE: Additional opponent testimony to LB106. [LB106]

LINUS SOLBERG: Nobody has talked about football down here. [LB106]

SENATOR MURANTE: (Laugh) There's still plenty of time. [LB106]

LINUS SOLBERG: That was on my bucket list, I got to come down here and see a game. I was so privileged to do that, but now I got five grandkids down here and you guys are all brainwashing them to be Husker fans. [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR BLOOMFIELD: I see you're wearing a red shirt, thank you. [LB106]

LINUS SOLBERG: Huh? [LB106]

SENATOR BLOOMFIELD: I see you're wearing a red shirt. [LB106]

LINUS SOLBERG: (Exhibit 8) There you go. I want to thank you for letting me come down here. My name is Linus Solberg, L-i-n-u-s S-o-l-b-e-r-g. I'm from Cylinder, Iowa, in the northwest part of the state. I raise purebred Hampshire, Yorkshire, and Duroc hogs for over 50 years. I am also a Palo Alto County Supervisor. I think they call some of them down here commissioners. I came here to talk about your consideration of the livestock matrix for the state of Nebraska because I have a passion to treat people fairly and with respect. From the perspective of an Iowa hog farmer and a county supervisor, the legislative bill, LB106, is a joke. I'm guessing that when each of you run for office, you campaign on making Nebraska a better place to work, a better place to live, and I'm sure many of you campaigned on a platform of local control. If you vote for LB106, you'll be breaking those promises. It is difficult to imagine that anyone who normally supports a provision in this bill can go to bed and sleep at night or go to church on Sunday morning and walk out a proud legislator. I understand the problem. To understand the problem, I'd like to discuss the rules of Iowa where we already have a matrix. The Iowa matrix does not stop anyone from putting hog buildings right on top of their neighbors. Corporate hog buildings have been built less than 1,250 feet from their neighbor's home. I live a half a mile from our neighbor's pigs and they stink during the spring, summer, and fall. There have been times when we've had guests at our farm who had to leave because of the stench on a Fourth of July. We've also had mechanics and electricians on our farm who work on our equipment who have been forced to leave because they can no longer stand the smell when our neighbors were spreading manure 60 feet from our house. Many local leaders in Iowa have been fighting for local control. In fact, community leaders have pressed the EPA, our governor, and lawmakers to have a moratorium on new hew hog buildings and asked for greater local control. Do you actually understand what this bill does to your state? You are taking local control of livestock buildings from your county commissioners. It will put more of your independent pork producers out of business. Iowa had 90,000 pork producers in 1994. Today, they have less than 5,000 pork producers that actually own their own pigs. If you allow these hog buildings to be built right next to each other with no local control or other distance requirements, you increase the risk of diseases being spread all over your state. Even the pork clan understands this risk. In our state, the corporations are putting their hog buildings more than a mile from any other hog buildings to prevent diseases. In contrast, they have no problem putting hog buildings less than 1,250 feet from their neighbors' houses. That makes it clear they're more interested in pigs than they are in people. So what is the solution? One state has solved the problem with local control. Minnesota has true local control, not by each county, but by each township within the county and that would be a great approach for here in Nebraska. Our county has another solution for your

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

consideration. We adopted a Good Neighbor Policy in 1997 that requires that all hog buildings must be placed a half mile from any residence, unless the resident provides a waiver. Unfortunately, it's not a state law, so it's not legally enforceable by the DNR or anyone else. Other counties in our state have not followed it, but have adopted it because some of...but have not adopted it because the corporate pork clan ignores it. Despite the fact that it's not mandatory, the Good Neighbor Policy works. Ninety-six percent of our pork producers have complied. It has not hurt our pork production in our county. We currently have 209 manure management plants, 215 counting the overlap in neighboring counties. In 1994, we had sites that held over 270,000...can I finish? I got a little bit more or do you want me to quit. [LB106]

SENATOR MURANTE: Well, let's see if we have any questions from the committee. Does the committee have any questions? Senator Groene. [LB106]

SENATOR GROENE: You're compassionate enough, so would you please finish for me. [LB106]

LINUS SOLBERG: Sure. In 1994, we had sites that held over 273,000 pigs in Palo Alto County. Today, we have building sites that hold over 750,000 hogs. If you consider that those hogs can be cycled through those buildings at a rate 2.5 times a year, that means our annual population in our county is over 2 million hogs. That gives us a ranking of 8th in the state of Iowa, 17th in the United States. Those numbers make it clear that our Good Neighbor Policy has not regulated pork production out of our county. In fact, many corporations have told us they love having buildings in our county because they know that they...it lowers the risk of litigation and other actions by neighbors if they abide by our policy. Here's my recommendation for Nebraska. You should pass a law that prohibits building any hog building less than a mile from homes, cemetery, lake, town, recreation area without permission. Further, law should prohibit spreading manure less than one-quarter mile from any home, cemetery, lake, town, recreational area. You should allow your counties to have local control. Overall, the supervisors and the citizens of Palo Alto County have been pleased with the effectiveness of our Good Neighbor Policy because people would rather negotiate than litigate. It is proven how corporations and people can deal with the problem and then agree with solutions and make everyone happy. We are not anti-livestock. We support economic development in our county. It is a priority. We support having livestock buildings in our county if they follow the rules. In conclusion, I want you to ask yourselves an important question: Who do you represent? Is it the corporate pork clan or is it the Nebraska citizens who voted you into office? I can assure you that anyone standing up here today giving testimony trying to sell you on this terrible bill do not personally live 1,250 feet from someone else's hog buildings or have someone else's manure spread ten feet from their house. That's what's happening in Iowa. Do not let it happen here. And thank you very much for letting me finish. [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR MURANTE: Let's see if we have any additional questions. Any additional questions? We do. Senator Bloomfield. [LB106]

SENATOR BLOOMFIELD: With the population you have there of livestock, have you seen any water contamination? [LB106]

LINUS SOLBERG: Well, that's a great question because the state of Iowa...the Des Moines Waterworks is suing, and you probably know that, three counties in our state. We have two townships in Palo Alto County that are going in there. We think we're in the Des Moines River, West Des Moines River, and we think we're next. And they're having trouble getting the pork producers, the Farm Bureau, and somebody taking the lead on this to defend these people. They don't have any money; they're just like us. So you're absolutely right, that's what happens next. [LB106]

SENATOR BLOOMFIELD: The answer would be yes. Thank you. [LB106]

LINUS SOLBERG: That's what happens next, right. [LB106]

SENATOR MURANTE: Are there any additional questions? Seeing none, thank you very much for coming down. [LB106]

LINUS SOLBERG: Thank you for being so kind, I appreciate it. [LB106]

SENATOR MURANTE: Additional opposition testimony to LB106. And welcome to the Government Committee. [LB106]

TANNA WIRTZ: (Exhibit 9) Thank you, Senator Murante and senators...committee. My name is Tanna Wirtz. I'm planning administrator for Washington County. It's T-a-n-n-a W-i-r-t-z. I have a letter from the Washington County Board of Supervisors. It says: Dear Senators of the state of Nebraska, Washington County is opposed to the advancement of LB106 in the present state. There are many aspects to the legislation that we think need refinement. Livestock production is vital to the economics of Nebraska. There is a need for consistency throughout the state when addressing the confined feeding operations without compromising local control. The one-size-fits-all approach presented will not work as each and every county is unique. Based on topography, soil types, water resources, floodplain management, and population base they differ from county to county. The Washington County Board of Supervisors will not support LB106 as proposed. We have many questions about its current language and how it will affect the public in general, and more specifically, current and future livestock producers within the county. It is our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

opinion that the refinement of the bill is necessary before it moves forward. And so, basically, the bill is welcomed; however, the matrix is something that the county feels should be included in the bill so they have a...the matrix to show setbacks, the matrix to show numbers and those type of things so that the bill isn't just out there open ended, so that there's something tangible which would alleviate some of the questions about having large facilities constructed next to your home and those type of things. It, basically, alludes to a value scale, and the question was, whose value scale? Does the livestock siting permit, is that a term that's going to replace "confined feeding operations," "livestock feeding operations," that type of thing? Those were questions. As far as if the regulations expire in two years, does that mean the counties will have to readopt their regulations? And, you know, just what exactly is grandfathered? Are our livestock facilities that are permitted now, are they grandfathered? And then define agricultural use only. We have so many zoning districts that do allow agriculture, agricultural activities; however, they're not just agriculture only. So that could really eliminate a lot of areas where these could be located. And so that's all I have today. [LB106]

SENATOR MURANTE: All right. Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. Still on opposition testimony to LB106. And welcome to the Government Committee. [LB106]

DANNY KLUTHE: Thank you, Senator Murante and senators for the Government Committee. I'm Danny Kluthe, D-a-n-n-y K-l-u-t-h-e. I'm a hog farmer from Dodge and I've been on the Colfax County planning and zoning for, oh, probably a dozen years, and I'm currently chairman. And when I read LB106 the first time, I thought, you know, it's almost unreal that the state would want to try to overrule local control. The state of Nebraska is a vast state and it differs from one end to the other. I think the local body is better designed to decide what's right and what's not for the county. And local zoning is a comprehensive plan. And if livestock producers meet the comprehensive plan, they're in. In Colfax County, we had a young farm couple want to put in a hog operation. We showed up for the planning and zoning that evening and there was standing room only, 200 people were on a petition to stop this. But they met the comprehensive plan. It took us three hours to listen to do 15 minutes worth of work, but they were in. And that's what local zoning is all about. It doesn't make any sense that we should be trumped or even looked over by the state when I think a comprehensive plan spells everything out. Everybody knows what is needed. And to do the comprehensive plan, the counties have input from all the citizens, including homeowners and farmers. Livestock operations is economic development. I own a hog operation and I will tell you, them livestock buildings pay big taxes. So livestock is economic development to no end. And I'm...I know that the zoning and planning commissions know that. And they want to see livestock happen. They also know that ownership rights of owners has a lot to do with being neighbor friendly, livestock friendly. Just overall...the plan for LB106 is just not really a plan that I think we want to go down, a road we want to go down. I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

think let's keep it local. And can I answer any questions? But right now, I think to the best of my knowledge, nothing is broke that needs to be fixed. Thank you. [LB106]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?
Senator Groene. [LB106]

SENATOR GROENE: Danny and I grew up together about a mile apart, in fact, his hog farm is my old home place, but...and I know it does smell. But in Nebraska, I heard about hog farms smelling, the ones I've seen lately, they don't smell, do they much, in Nebraska? I mean really, that I've seen. I have a brand new one put in three miles from me where I have a place now, and I was against it, but I have not smelled it and it's got 7,000 to 8,000 head...more than that in it, I think. [LB106]

DANNY KLUTHE: You know, the buildings now are state-of-the-art. They are designed for the livestock to be raised, you know, friendly. And you're right, you know, the deep pits, the air control, the time that producers take to make things neighbor friendly...you can't get away from the, you know, when you have any kind of livestock, you're going to have some odor. You can't get away from that. But the hostile odor that, you know, that is betrayed on the livestock industry, for the most part, you know, there isn't that much that I know of. [LB106]

SENATOR GROENE: Thank you. [LB106]

SENATOR MURANTE: Thank you, Senator Groene. Any final questions? Seeing none, thank you very much for coming down today. [LB106]

DANNY KLUTHE: You're welcome. [LB106]

SENATOR MURANTE: Additional opposition testimony to LB106. Welcome to the Government Committee. [LB106]

JIM PAPPAS: Thank you. Mr. Chairman and committee members, my name is Jim Pappas, representing ICON, Independent Cattlemen of Nebraska today opposing LB106. To clarify a couple things on Nebraska being...not being classified as... [LB106]

SENATOR MURANTE: Could you spell your name for the record, please. [LB106]

JIM PAPPAS: P-a-p-p-a-s. [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR MURANTE: Thank you. [LB106]

JIM PAPPAS: ...livestock friendly, in the last 25 years the number of feedlots of over a thousand-head capacity has doubled. So a thousand-head feedlot would be very comparable, if not more so than a fairly large dairy operation. So I don't think we can classify Nebraska as being unlivestock friendly. The one thing I'd like to point out in the bill that would make my testimony real brief is the matrix they set up, which I think has some good philosophy behind it, but the one thing that's just not there is what point system they're going to put on each one of the matrix points. And where this comes in is where the bottom line is going to be if there's a hundred points to start with, with all the matrix. If 90 is required to approve, you know, what happens if everything...somebody applies, everything meets all the matrix points except the one about the proximity to neighboring residents and public use areas where the public doesn't like it, if they fail on that one, but they pass all the rest of them. You know, is that going to be enough to deny the permit? The other thing I might point out is, a long time ago...the state of Nebraska has a law that says busing...school busing that if you live over four miles away from the school that the school board either has to provide busing or give you money in return. And at that...there was a time when a bill was introduced to do away with that. And the school boards came down and...school board members and testified in favor if they wanted local control. But then after the hearing was over, all the school board members would go to their senators and say, we don't want local control; we don't have to make that decision until somebody...they're going to have to haul their own kids to town. Now the same thing could happen here. You could have the county commissioners saying, hey, you know, this feedlot or dairy can come in and provide a lot of property tax relief. But, you know, on the other hand, the community doesn't want it. Now what we can do, we can deny the permit and the community is going to love us. But then again, using the matrix system and the board, they're going to come in and overrule us so they're going to get it anyways. And this is one of the problems that could occur where you have an incomplete matrix system spelled out yet. I said I'd be brief. [LB106]

SENATOR MURANTE: All right, mission accomplished. All right, any questions for Mr. Pappas? Thank you very much for your testimony. Additional opposition testimony. [LB106]

DON GOEBEL: I'm Don Goebel, D-o-n G-o-e-b-e-l, from Fairbury. And, basically, I just want to say I'm opposed to the bill. I think the gentleman from Iowa has a good example of what could be wrapped up in this matrix. And Senator Bloomfield pointed out the "ifs," "ands" and the "buts" in there that have some effect, and I agree with that. Then the construction of the matrix, you know, has been presented as a scientific, nonemotional vehicle and it's just that, you know, science is not really all that black and white when you can make it into a lot of things. So there's a lot of judgment involved in it and there always will be. And we want to make...I just want to make sure that the...we do not let the local boards overridden in any sense. So I think it should just stay local and not somehow creep into some sort of central planning vehicle. So, basically,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

that's it. And, personally, I'm not really concerned about the smell of things so much because I've had some experience. We had some hog operations down there on the farm and everything. I've had some effluent put on a few hundred acres and that really gets pretty ripe out there for a few days, but it's gone. But as far as the ongoing facility, it doesn't really seem to be that much. I think the testimony that they said that they control the odor is pretty good and I believe they do. However, that's doesn't mean there's not opposition, there is. And people want to make real sure that this doesn't get to be a problem. But it will all come out in the local hearings. And I think that's the place where it should be. So, that's...I don't know what to say other than that. [LB106]

SENATOR MURANTE: Okay. All right. Well, thank you very much for your testimony. Any questions? Seeing none, thank you very much for coming down today. Still on opposition testimony to LB106. And welcome to the Government Committee. [LB106]

ORVAL STAHR: (Exhibit 10) Thank you, Senator. My name is Orval Stahr, O-r-v-a-l S-t-a-h-r. I'm president of Stahr and Associates. It's a county planning and zoning and economic development consulting firm in York. In the last, approximately, 50 years we have consulted with small cities and counties in seven different states, including 25 counties in Nebraska. And believe you me, we understand or we know what the issues are when it comes to livestock and livestock siting and zoning. The issue that LB106 tries to address is the lack of consistent standards between counties as far as zoning standards which is a real problem. The lack of easily measurable standards and clarity of interpretation of those rules. And occasional failure on the counties themselves to follow their own rules which is another one. The bill's attempt to look at...to follow what Iowa has done, using the matrix, in the end creates a problem, as you heard from the gentleman from Iowa. The challenges the counties have faced from their own citizens because of the state's siting regulations have resulted in numerous lawsuits. It indirectly led to a challenge of the Right to Farm Act in Iowa which the Iowa Supreme Court agreed that the act was unconstitutional. The U.S. Supreme Court refused to...well, let that ruling stand which now leaves the farmers in Iowa substantially open to lawsuit from impacts. When it comes down to it, our experience in these 50 years of zoning in counties and livestock, there's three issues that have to be addressed. The first and most important one is odor impact. The second one is the potential for negative and environmental impacts. The third one is the concern or impacts on county roads and bridges at the taxpayers' cost. Fortunately, in Nebraska, like Minnesota, we have what is known as the odor footprint tool. It was developed by the biological engineering department at UNL; was modeled after a system in Minnesota. In that tool, which is when we talk about scientific basis, it is a scientifically accurate way of predicting odor impacts from different types of livestock operations based on, basically, size of number of units, number of animal units or animals; two, type of manure-handling system; and three, prevailing winds, which is another reason why a matrix is going to have to be tailored if you do it. You got to tailor it for different parts of the states because they are different. The problem is, when it comes to cattle production, we don't have that tool available. People are never going to agree, at any type of a public hearing,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

state or local, if they don't have some scientific proof the fourth happens, that they will not be unduly impacted. We utilize in the zoning regulations we write, we use the odor footprint tool at the 96 percent annoyance-free standard, meaning that only 4 percent of the time would any neighbor be unreasonably impacted with odor from that operation. We desperately need that kind of scientific data for open-lot feeding or cattle feeding, if you will. We do not have that at this point, although it's desperately needed. The other issue we need, because livestock development is critical to our economy and critical to the survival of a number of rural counties, we need to have the economic data of the positive impacts of livestock production produced at the county level, because we found that once people understand at the county level the impact of that is positive and they understand that the zoning standards in their county will protect them from unreasonable impact, the problem just disappears. We're suggesting, simply, that the matrix, if you have one, would be three items: odor, environment, and financial impact. The rest of it is irrelevant. And I might point out that even in Madison and Pierce Counties, I think if you go back and check the record, even though they had a producer meet the minimum point standards of matrix, it was still denied. Thank you. [LB106]

SENATOR MURANTE: All right. Thank you very much for your testimony. Are there any questions? Senator Groene. [LB106]

SENATOR GROENE: Right now where does the county go to get advice on zoning? [LB106]

ORVAL STAHR: (Laugh) There are approximately five different consulting firms in Nebraska. [LB106]

SENATOR GROENE: What about the Department of...I mean, the University of Nebraska, Ag Department, do they...? [LB106]

ORVAL STAHR: They have an organization within called A-FAN who provides direct information and various helpful information to counties with regard to zoning standards and to livestock producers. [LB106]

SENATOR GROENE: Do they use those three...? [LB106]

ORVAL STAHR: No, because the county standards...a lot of those were developed...and I say this in public, very few of the consultants who develop the regulations have any kind of agricultural background. So what they're responding to, when they draft those regulations, is the NIMBY syndrome, not in my backyard. And that's where the lot of big very high separation standards came from because we don't have the data. We do have it now for poultry and hog and,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

for the most part, for dairy. We don't have that standard for open-lot feeding that is dependable, that's scientifically documented. [LB106]

SENATOR GROENE: How about hog barns? [LB106]

ORVAL STAHR: Hogs, we do. And I'll say this: the hog producers, the poultry producers, and the dairy producers, their use of technology in terms of controlling odor, which is the big one, has been very substantial and they have basically solved the odor problem. It's not that easy to do when you're dealing with open-lot feeding. But we need to have that data so that we can use it in siting operations. I have no problem at all...I think you would find counties...if this were done properly and we do it in a way that makes sense, would actually be...it's part of their economic development program would be identifying particular sites within their county for livestock production. [LB106]

SENATOR GROENE: Thank you. [LB106]

ORVAL STAHR: I know of one county, York County, where I'm from, is actively recruiting livestock facilities. [LB106]

SENATOR GROENE: For certain locations? [LB106]

ORVAL STAHR: Yes. [LB106]

SENATOR GROENE: Thank you. [LB106]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Seeing none, thank you very much for coming down today, much appreciate it. [LB106]

ORVAL STAHR: Thank you. [LB106]

SENATOR MURANTE: Additional opposition testimony to LB106. And welcome to the Government Committee. [LB106]

JOHN HANSEN: Mr. Chairman and members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union and also their lobbyist. We are here to appear in strong opposition. This particular proposal that you've heard today is the result of a group of like-minded folks getting together

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

with NACO and analyzing the situation and coming up with their version of how they help agriculture and in particular, livestock. We have four general farm organizations in the state; there was one included, there were three that were not. Nebraska Cattlemen was included, Independent Cattlemen of Nebraska were not. And so you can go down the list, there is a difference of opinion as to what it is, is the problem relative to livestock production. And there's also a difference of opinion as to the best cure. And so in the view of a good half of the community that was not included in this task force, it all goes back to the economics and the markets. And so if you want to help livestock, fix the markets. The groups who are after local planning and zoning and corporate restrictions do not work with us to help fix dysfunctional markets. Markets decide whether or not folks stay in business, folks decide whether or not they're going to get into business. And so the business of whether or not those markets are healthy and functioning is, in our view, the primary cause of whether or not folks are in or out of the livestock sector. So we have an honest difference of opinion. I am familiar with the matrix. I am from Madison County. It is a local matrix. I have been involved in this particular issue as a public official or the head of a state farm organization for 40 years. I helped lead the effort to get Madison County zoned in the mid-'70s. So I'm familiar with not only Madison County, but my organization stepped in and helped those counties who wanted to get planning and zoning when it became clear that they needed it. And the state of Nebraska would not give them any financial incentives to hire consultants or do other things to help them. So we helped them. We helped...for five years, we helped counties get planning and zoning. We took the best plans from the best consultants, we laid out a menu of options to counties and said--based on what you want in your county, you have different things to pick from. And we support strong local planning and zoning. We have to remember at the end of the day there's three kinds of decisionmaking when it comes to government for the most part: there's federal, there's state, and there's local. And each one has a strength and each one has a weakness. And in the case of planning and zoning, it is where the rubber meets the road. And is local decisionmaking perfect? Absolutely not. I would just encourage the committee to remind themselves that state and federal decisionmaking is not perfect either. The advantage of local control is that if you get it wrong, you actually live with it. You're going to live with the outcome of your own decisionmaking and if you got it wrong, you're going to need to do those things in order to be able to fix it, because you have a vested interest because you live there. And so of all the different kinds of decisionmaking, when it comes to planning and zoning, local is, far and away, based on the fact that they know what's going on in their community, what their values are and where they want to go, it is the best, in my view. Of the 40 years I've been doing this, this particular bill is the most heavy-handed state directive mandate that undermines local planning and zoning of any single piece of legislation I've seen in 40 years. It is significant. It changes the rules of the games so...so...how it is that you measure and load the matrix, so how it is that you load the outcomes. It is as simple as that. The difference between the state and the local matrix, at the local level, the local folks were not in a position where the state was going to overrule them. And if their local matrix wasn't working,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

they'd fix it. They've had one denial in 12 years. Thank you. I'd be glad to answer any questions if I could. [LB106]

SENATOR MURANTE: Thank you very much. Senator Bloomfield. [LB106]

SENATOR BLOOMFIELD: Thank you. Mr. Hansen, I think you said that...I know you said this is the most heavy-handed thing you've seen in 40 years. [LB106]

JOHN HANSEN: Relative to this...relative to planning and zoning...of all the things I've seen relative to planning and zoning, this is the most hurtful to local control. [LB106]

SENATOR BLOOMFIELD: What would be next, because I agree with you, I think this destroys local control. What have you seen recently, if anything, that even comes close? [LB106]

JOHN HANSEN: Oh, down through the years? [LB106]

SENATOR BLOOMFIELD: I don't want to hold you down, I've seen you go half an hour, I'd like to hold you to a couple of minutes. [LB106]

JOHN HANSEN: Down through the years, we've done some things, but it's not been as a result of this particular legislation. It's been the result of things that we've done through the promulgation of rules and regs relative to livestock waste regulation and/or those kinds of things that have had impacts. But in terms of structure, we've kind of left...you know, once we created the system and the authority for counties to do what they do, we, for the most part, left them pretty much alone to develop their own resources. We have asked in the past for more help and guidance for counties. The state didn't want to invest those dollars. So, I'm sorry that they didn't, but they didn't. [LB106]

SENATOR BLOOMFIELD: Okay. Thank you. [LB106]

SENATOR MURANTE: Thank you. Any final questions? Seeing none, thank you very much for your testimony. [LB106]

JOHN HANSEN: Thank you very much. [LB106]

SENATOR MURANTE: Are there any remaining opponents wishing to speak? Welcome to the Government Committee. [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

DEAN JOCHEM: (Exhibits 11 and 12) Thank you for the opportunity. My name is Dean Jochem, spelled D-e-a-n J-o-c-h-e-m. I feel my major qualification for being here is that I am a zoning administrator. And I'm a zoning administrator that didn't even know this bill was in existence until it was introduced. And it really upset me because something of this magnitude should have been presented to every zoning administrator in the state. We have what we call e-mail, you know. So it wouldn't have been that hard to say, we are considering this, do you have any input? We have a lot of varied qualifications amongst zoning administrators. Some of them are first year; some of them are double duty, carrying several jobs at the county. And then there are people like me that have been a zoning administrator for 15 years in a livestock county. We have never become a livestock friendly county because we're a livestock dependent county. We have, for the size of Brown County, a lot of livestock development, swine. The only thing we don't have is dairy. And there's a reason why we don't have dairy out in that area. You got to have a place to haul your milk to. And so it's not that we don't want dairy there. But during my time we have never turned down a livestock siting permit. What you have to do...and not everybody loves them. Let's face it. So what you have to do, you have to have a planning commission and you have to have a zoning administrator that understands the rules and that is willing to do the work necessary to satisfy the majority of the people. And you're not going to make them all happy all the time. Ainsworth, Nebraska, is a good example. There's a large feedlot that butts right up against the city limits. It was there before they had zoning. But it makes a good reminder of the fact that odor and survival mix quite often out in the country. And if you want to do away with these odors, well, all you got to do is do away with them, you won't be there to smell them anyway. When you get out there, that is our survival. But this bill and the few sheets that I gave you, if you'll read them, explain why I think that this is a bad bill; that it takes away the local control. Zoning was started as a county...like county...in fact, not all counties in Nebraska have zoning. And now all of a sudden, we're going to make it a state-run institution. And at whose request did we ever...where did NACO ever buy into this? And then I came up with, surprise, Farm Bureau bought into it. I'm a Farm Bureau member and a zoning administrator. I would have liked to have been involved with that conversation. But I didn't get an opportunity to. So all I would ask at this point is if you have questions and I would ask you to please don't bring this bill out of committee because it's a bad bill. Thank you for your time. [LB106]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today, much appreciated. [LB106]

DEAN JOCHEM: Thank you for the opportunity. [LB106]

SENATOR MURANTE: Are there any remaining opponents wishing to speak on LB106? Seeing none, is there any neutral testimony? Seeing none, Senator Watermeier, you are recognized to close. [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR WATERMEIER: Thank you, Senator Murante. I appreciate the discussion today and, really, it was good discussion. I think we heard some comments from both sides and the opposition even that makes sense. And I had actually gotten a letter from the engineer, Orval Stahr, and I appreciated a lot of the comments he made. And he had made reference to needing to have three things in there: the odor, the environment, and the infrastructure. And he's dead on and he's right. I really had a closing comment here and I thought I'm not going to even go there. I do want to answer a couple of questions. There was some emotional testimony here from the Iowa situation, what happened over in Iowa. And they actually bypassed, exactly bypassed what we are doing here today. They did go straight to state control. They don't have public hearings, I don't believe at the local level, and they had no local control at all. What we are trying to do is reassure that this stays right here at the counties that they are involved in each and every one of these processes. And there was another question that was brought up, there's no way to overrule. Today there is a way to overrule if the local zoning commission would deny a permit, there is a way to overrule it, but it's so ineffective. You basically take the variance board, which is still the same zoning board and you go back to them and you reapply. If you get the same result there and you're not satisfied with that, you can take it to the district court. What this is going to do today, is put in place a matrix system to the local county committee, or the board, and they will have that as another tool in their toolbox to use to make this decision. If they deny that permit, the producer would have the opportunity to then go to the oversight...excuse me, the siting board and get their opinion, which is brought together from environmental issues, ag issues, and the Governor appointments. If that's denied yet and they still want to do it they can take it to the district court. So there's that same mechanism today in place with the zoning issue, but it would not have the variance committee, which is, basically, the same one that's set up today with the zoning committee. But my main point was to answer the question about the Iowa situation. It's just totally different situation. The state did come in and, basically, bypass the counties. And they took over the control of that. And that's exactly what I'm trying to do is to make sure it stays right in this...in the local control because I do fully believe in the local control. So that answers those questions, unless there was other ones about the testimony. Senator Bloomfield. [LB106]

SENATOR MURANTE: Senator Bloomfield. [LB106]

SENATOR WATERMEIER: I'm sorry, Senator. (Laughter) Bypassing here. [LB106]

SENATOR BLOOMFIELD: Senator Watermeier. [LB106]

SENATOR WATERMEIER: Yes. [LB106]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR BLOOMFIELD: From what I've seen and read, I think you may be mistaken on how the Iowa thing was handled. I will get more information and give that to you and to this committee. [LB106]

SENATOR WATERMEIER: I appreciate that. I will, too, because we never really studied the Iowa situation with it. [LB106]

SENATOR BLOOMFIELD: Understandable. [LB106]

SENATOR WATERMEIER: We were looking at what was going on right in-house in Nebraska. [LB106]

SENATOR BLOOMFIELD: Understandable. Thank you. [LB106]

SENATOR WATERMEIER: Okay. The one thing I would add, and I didn't want to read my closing comments is, imagine yourself today on the zoning board, or if they don't have zoning board and they use their county committee...county commissioners, what you saw today was a typical example of what happens in a hearing. You heard testimony in the opposition that's he's never seen anything worse than this in 40 years. Can you imagine what that does to people that don't have something in their hands to defend any argument for or against it? What we're trying to do is put science in the place of that. We've got things in place with this bill that's going to use the university, or if we decide some other mechanism that meets to create this matrix, that's fine, we're open to that. But there's mechanisms in place to do exactly what I would like to do is keep the local control. Thank you. [LB106]

SENATOR MURANTE: (Exhibits 13, 14, and 15) Thank you, Senator Watermeier, for bringing this to our attention. With that, I believe we have a couple of letters which is under a stack of information we have...here we go, we have three letters of opposition: one from Matt Connealy, Burt County Supervisor; another, Jocelyn Nickerson, from the Humane Society of the United States; and the other from Jeri Kuchera, representing herself. So that closes the hearing on LB106. Which brings us to our final item on the agenda for the day, LB492, Senator Morfeld. (See also Exhibits 16, 17, 18, and 19) [LB106]

SENATOR MORFELD: Where's everyone going?

SENATOR MURANTE: (Laughter) This was not deliberate. It would appear the interest in the Government Committee has waned. (Laughter)

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR MORFELD: I usually clear out rooms. (Laughter)

SENATOR MURANTE: It's not us, it's you, is that what you're saying? Okay, go ahead.

SENATOR MORFELD: Okay. Senator Murante, members of the Government Committee, my name is Adam Morfeld. For the record that's A-d-a-m M-o-r-f-e-l-d, representing the "Fighting 46" Legislative District in northeast Lincoln, here today to introduce LB492. LB492 relates to the register of deeds document and recording fees and strikes a January 1, 2018, termination date enacted by LB14 enacted in 2012, that provided funding for preserving, maintaining and modernizing public records in the county register of deeds offices. LB14 was introduced in 2012 to provide much-needed funding for the preservation and modernization of records filed in the register of deeds offices. County officials, the realtors association, and the Secretary of State supported the bill. It was categorized as a user fee paid by filers rather than property taxpayers subsidizing technology and preservation of records. LB14 also increased the fees paid to the Secretary of State for recording documents under the Federal Lien Registration Act and Uniform State Tax Lien Registration Act. The fees are collected when instruments such as deeds, wills, and other instruments are filed with the register of deeds. The cost for filing is \$10 for the first page and \$6 for each additional page. Of that fee, \$2.50 for the first page and 50 cents of the \$6 fee for the remaining pages is earmarked for the preservation and modernization fund. These filing fees are separate and distinct from the Documentary Stamp Tax. The fees cannot be substituted for expenditures from the county general funds, so counties continue to support existing records preservation and maintenance measures. The fees provide funding for projects that would otherwise be funded through property tax dollars. The bill would also clarify that the fees are used...are to be used exclusively for the register of deeds' records when that office has been consolidated with another county office. As mentioned earlier, LB492 would strike a January 1, 2018, termination date on the fees. The sunset was included in LB14 in 2012 to provide a point to evaluate the uses and continued need for the funds. There will be somebody following me here today that will present data showing the amounts collected, how the funds have been used, and the wish list for future funds. If the sunset is not removed, the fees would return to pre-2012 levels of a \$5 per page fee for recording a document, plus 50 cents for indexing each lot and single block without lots and platted areas, and 50 cents for each section in unplatted areas. Needless to say, the 50-cent calculation was confusing to filers. And the register of deeds often needed to follow up and collect more money or to return overpayments after it was paid. I urge your favorable consideration of LB492 and would be happy to answer any questions with the caveat that there are probably people behind me that know a little bit more and have experience on the execution of this law. [LB492]

SENATOR MURANTE: Sounds good. Thank you, Senator Morfeld, for your opening. Are there any questions? Seeing none, thank you very much. [LB492]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

SENATOR MORFELD: Thank you. And I'm going to waive closing, but I want to stick around for a little bit here. [LB492]

SENATOR MURANTE: God bless you for it. (Laughter) Are there proponents wishing to testify on LB492? Welcome to the Government Committee. [LB492]

DIANE BATTIATO: (Exhibit 1) Thank you. Thank you, Senators, for giving me an opportunity to speak this afternoon about the importance of LB492, the preservation and modernization technology bill. My name is Diane Battiato, B-a-t-t-i-a-t-o, and I'm the Douglas County Assessor, Register of Deeds, and also the Nebraska NACO register of deeds committee member. Senators, I don't have to tell you that we live in an age of rapidly changing technology or that technology has become the lifeblood of our business. We experience it in nearly every aspect of our lives. But this astounding life-changing aspect in technology use that we use is worthless if it's not current. That's why LB492 and its predecessor, LB14, are so valuable. They enable us to use technology in a manner that makes our businesses more efficient and more effective. Why? Because they provide the funds that we need to purchase, maintain, and update our computer systems, and preserve our historical records. Three years ago, most of the state's register of deeds offices only dreamed about buying computers and related equipment to use in their offices, or even preserve their historical documents. Even though this equipment was needed and would improve efficiency, budgets were tight and improving technology was not high on the priority list. But all of this changed when the technology bill, LB14, was passed. Two important things happened at that passage. Number one, a separate, independent source of funds was created dedicated solely to the preservation and modernization of register of deeds land records and their technology systems. This meant now the smallest county to the largest county would have an opportunity to acquire and/or improve its technology and/or protect and preserve its historical documents. For example, Antelope County has placed their deeds on-line. Brown County has upgraded computers. Dawson County has been able to even purchase computers and a printer. Lancaster County has purchased computer hardware, software, and provided technical support. And we in Douglas County, we have scanned our records and we're in the contract stage to purchase a lands record management system which will allow us to get off a very archaic mainframe. This project is going to use up all of our existing technology funds. None of this would have been possible without that passage of original LB14 which created that Preservation and Modernization Fund. Now I said two important things occurred. The second thing is that half of this technology fund goes to the county general fund. For example, if my additional revenue for preservation and technology modernization is \$500,000, my county general fund gets half of that increase which is \$250,000, just like that. It enables Nebraska counties to have extra funding for technology as long as this fund exists. I know that the Douglas County administration has already used its share of the fund for enterprise systems and technology and is planning to use also the fund for future projects. It's a very important part of their budget. So far, the Douglas County register of deeds office has received a little more than \$700,000 through the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

fund. You have gotten excerpts of our county's modernization and preservation fund totals for the last two years. And you'll also have another copy of how the individual counties have used that fund and what their wish list is for future funds. In Douglas County, you might think that \$700,000 is a huge amount of money, and it is, but it's not overly large for a county of our size and the cost of all of our needed projects for a county that has over 215,000 parcels. We must have this cost for needed projects not only now but in the future. Yes, smaller counties do get less funds, but the important thing is, is that now everyone has dollars to purchase technology or use preservation services for their historical documents that they could not afford before these bills were passed. Some of the items on the wish list that you might not have an opportunity to read through throughout the state are scanning index books, putting information onto the computer, restoring their historical books that go back to 1854, microfilming their records, purchasing computers for public access, vault renovation, and preservation of survey records. I strongly urge you, senators, to pass LB492. It's a win for all of us, register of deeds, county administration, and of course, the users of our property records. Thank you for your time and I would love to answer any questions. [LB492]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today, much appreciate it. Continuing with proponent testimony to LB492. [LB492]

DON CLARK: And probably the last person for the day. [LB492]

SENATOR MURANTE: It's an honor. And welcome to the Government Committee. [LB492]

DON CLARK: Senator and committee members, thank you for allowing me to testify. My name is Don Clark, D-o-n C-l-a-r-k, very simple. I am the county register of deeds for Saunders County. I'm going into my 37th year; lots of elections. I've worked on this LB14 for 30 years trying to get a preservation fund. It finally came about when Dave Heineman, who is from Wahoo, and I'm from Wahoo, I threatened him not to sign the bill, and he did call me and said, 5 to 12 that day, I signed your bill, go to work. And we did. And I'll tell you what, when you work with a budget that's only \$5,000, except salaries, you don't have a lot. And the preservation bill so far, I've spent \$80,000 which I owe my county because I don't collect that much. But they gave me the money ahead of time to do the microfilming. We went back to 1859 and did all the microfilming; we're still doing it. They're coming again next month to do some more. What we're allowing to do is when people call for documents, you got to remember, our books are 40 pounds and they're big. And before, you take them out, you put them on the copying machine because they're bound books. You push a button and, you know, you have to charge them. Right now if you call Saunders County or Wahoo, we've built up a system already, pretty well, where you push a button, comes up, you're e-mailed. We don't even charge them for that because it's a...and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

I really look forward to getting everything on the books, because it's so important. You know, when I came to office in '78, the fees were like \$3. In '86, our last fee increase was \$5...went to \$5. Now, it's \$10, but it took 30 years to get it to \$10. I mean, so you can see the big difference there. And right now, you're talking \$4 to file a deed...\$4.50 more to file a deed. We certainly want to continue this. I've got to pay my county board some money here and I want to leave my office (inaudible). So I don't have anything more, but I do appreciate the time and I hope that you pass this bill along. We really need to have it. Thank you very much. [LB492]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you for coming down. [LB492]

DON CLARK: Thank you. [LB492]

SENATOR MURANTE: Before we proceed, I'd like to recognize Senator Larson has joined us, before we close our hearings for the day I wanted to acknowledge his presence here. Welcome, Senator Larson. And welcome to the Government Committee. [LB492]

KORBY GILBERTSON: Thank you. Chairman Murante, members of the committee, for the record my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as registered lobbyist on behalf of Nebraska Realtors Association in support of LB492. There's just a few points I want to make. First of all, I want to thank NACO for reaching out to us and Senator Morfeld for reaching out to me regarding this legislation and changes that were made before it was finally introduced. The realtors have been involved in this issue since its inception and we see the benefit of having the increases and fees and therefore support eliminating the sunset. Furthermore, we support the language that ensures that all of these funds follow the records. And that's especially important for those counties in which offices have been combined so that we make sure that these funds don't go to either the general fund of the county or for other records which we believe should be funded by other methods. So with that I'd be happy to answer any questions. [LB492]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down this afternoon. [LB492]

KORBY GILBERTSON: Thank you. [LB492]

SENATOR MURANTE: Mr. Dix, welcome back to the Government, Military, and Veterans Affairs Committee. [LB492]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2015

LARRY DIX: (Exhibit 2) Good afternoon, my name is Larry Dix, L-a-r-r-y D-i-x, I'm executive director of the Nebraska Association of County Officials being here today in support of LB492. We certainly thank Senator Morfeld. We enjoyed the relationship that we have working with the Realtors Association. We worked very close on this bill a number of years ago. I would tell you, you know, I guess it started, I don't know how many years ago. I was up here and a senator sort of got after me about...well, it was a public records issue and the senator was saying, well, why in the world aren't there more records available...being made available via the Web. And that's what sort of got us thinking about putting together some type of funding mechanism so that the public can sit at home, realtors can sit in their office and have access to the public records. And that's what you're starting to see happen through LB...the funds were created by LB14. And we know we're not there yet in all the counties. But we're slowly, but surely, getting there. You can go to a Web site and you can see deeds from a number of counties. Now keep in mind, some counties have to make the decision, are we just going to move forward and when time allows it to sort of go back in time and some counties are doing that. But you're starting to see a pretty nice picture of what happens with property ownership through their deeds and you're able to access those records via the Internet. I would tell you this would have never happened, never, ever happened without this. And if we don't continue this, we run the risk of it not continuing to be able to put those records up and being able to make sure we keep the preservation side of it. Land records, permanent, we take those very, very serious in our jobs as register of deeds. We know we have to do whatever we can to preserve those records because there are a number of people that rely on those for a number of different things. So with that I'd be happy to answer any questions anyone would have. [LB492]

SENATOR MURANTE: (Exhibits 3, 4, 5, 6, and 7) Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. Are there additional proponents wishing to speak on LB492? Seeing none, are there any opponents? Are there any neutral testifiers? Senator Morfeld continues to waive closing. That ends our...oh, before we close our hearing on LB492, I have letters of support from Joann Fischer, Knox County Clerk; Janet Reed, Otoe County Register of Deeds; Sherry Schweitzer, Seward County Clerk; Rebecca Grimes, the Hayes County Deputy Clerk; and Deb Finn, the Wayne County Clerk. With that we close the hearing on LB492 and end our hearings for the day. Thank you very much for joining us today. (See also Exhibit 8) [LB492]