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Natural Resources Committee
February 18, 2015

[LB208 LB394 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 18, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB208, LB394, and gubernatorial appointments. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Rick Kolowski; Brett Lindstrom; John McCollister; and David Schnoor. Senators absent: None.

SENATOR SCHILZ: Good afternoon, everyone, and welcome to the Natural Resources hearing. My name is Ken Schilz, I'm the Chair of the committee. I represent District 47 from Ogallala. At this point, I'll go ahead and give some introductions here of the committee members. We'll start over here on my far left with Senator Kolowski.

SENATOR KOLOWSKI: Rick Kolowski, District 31, southwest Omaha.

SENATOR McCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR SCHNOOR: Dave Schnoor, District 15, Dodge County.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR FRIESEN: Curt Friesen, District 34, Hamilton, Merrick, Nance County, and part of Hall.

SENATOR JOHNSON: Jerry Johnson, District 23, Saunders, Butler, and Colfax Counties.

SENATOR SCHILZ: And Senator Hughes from Venango is...I would guess he's introducing bills in other committees or just hasn't quite made it here yet, but I expect he'll be here at some point. We also have with us today Barb Koehlmoos, she is the committee clerk; and Laurie Lage who is the legal counsel for the committee. And Jake Kawamoto who is a sophomore from UNL with majoring in political science. Today we're going to have two appointments, confirmations: Owen Palm for the Natural Resources Commission, and David Bracht for the State Energy Office director. And then we also have two bills, LB208 and LB394. And if you're planning on testifying, please pick up a green sheet that's on the table at the back of the room. If you do not wish to testify, but would like to have your name entered into the official record as being present at the hearing, there's a form on the table that you could sign as well. This will be a part of the official record of the hearing. Please fill out the sign-in sheet before you testify; please print, and it's important to complete the form in its entirety. And when it's your turn to testify, give the sign-in sheet to the committee clerk and this will help make a more accurate public record. If you do not choose to testify, you may submit comments in

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

Natural Resources Committee
February 18, 2015

writing and have them read into the official record. If you have handouts, please make sure you have 12 copies for the pages to hand out to the committee. And when you come up to testify, please speak clearly into the microphone. Tell us your name and spell it, both first and last names, even if it's an easy one. Please turn off your cell phones, pagers, or anything else that makes noise. And please keep your conversations to a minimum or take them out into the hallway. We don't allow any displays of support or opposition to a bill, vocal or otherwise, none of that is allowed in our public hearings. We do use the light system in the Natural Resources Committee. You'll be given a total of five minutes to make your point to the committee. Lights will start out green, four minutes on green; then you'll have...then it will turn to yellow, that's a minute on yellow. And then it turns to red, and once that happens we expect you to finish your testimony. And with that, today we'll start out, we've got our first confirmation is Mr. Owen Palm, and I think he will be coming on the line here pretty soon. He's going to be a phone-in call. So we will wait just a second until he gets on the line. So we will stand at ease for just a moment. Thank you.

SENATOR HUGHES: My apologies, Mr. Chairman. [CONFIRMATION]

SENATOR SCHILZ: You're just fine. Good afternoon. Mr. Palm? [CONFIRMATION]

OWEN PALM: Hi, this is Owen Palm. [CONFIRMATION]

SENATOR SCHILZ: Owen, good afternoon. This is Ken Schilz. How are you?
[CONFIRMATION]

OWEN PALM: I'm good, Ken. And you? [CONFIRMATION]

SENATOR SCHILZ: Very good. Thank you for calling in, we appreciate it.
[CONFIRMATION]

OWEN PALM: Hey, no problem, thank you. [CONFIRMATION]

SENATOR SCHILZ: Great, we have the committee here with us and we would ask you to please spell your name for the record and if you wouldn't mind, give us a little bit of your history and why you are interested in serving on the Natural Resources Commission. [CONFIRMATION]

OWEN PALM: (Exhibit 1) Sure. Again, that's Owen Palm, O-w-e-n P-a-l-m and I live in Scottsbluff, Nebraska. We've been in Scottsbluff since 1987. When we moved to Scottsbluff, I began employment with the Western Sugar Company and was with Western Sugar ending there, actually, as their CEO in the year 2000. In 1996, a couple of friends and I invested in a John Deere dealership in Alliance, Nebraska, that we named 21st Century Equipment. And we have grown that single store in 1996 to 17

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

Natural Resources Committee
February 18, 2015

locations now in northeastern Colorado, western Nebraska, and most recently we've moved to Torrington, Wyoming. And so I've been responsible for that organization since the year 2000, which, again, is the year we purchased the Ogallala dealership there from L.D. Walker. So that's really the extent of my business experience in the last 25 years. I went to school at the South Dakota School of Mines up in Rapid City and have a degree in geological engineering and spent some time in the military after that...after an ROTC commitment was fulfilled there. And spent about ten years in the oil field services business prior to moving to Scottsbluff. My goals for being on the committee there are, you know, probably two or three come to mind there. I certainly want to provide solid input that protects the long-term interests of agribusiness, which is the sector that I'm representing. I certainly, coming from western Nebraska, always am worried about equal distribution of funds across Nebraska and that's one of the stated directives of the 1098 there. And I certainly want to make sure that that happens and that our fair share comes west of Lincoln. And probably just understand the innerworkings of the DNR. It's always been kind of a mysterious organization to me. And the impact that it has on our water resources within the state are significant. The water resources of the state are significant to me from a sustainability of the business that we've built. And so giving my time and energy to this committee is of extreme importance to me from a business continuation standpoint, quite frankly. So anything else, Ken? [CONFIRMATION]

SENATOR SCHILZ: Very good. Well, Mr. Palm, thank you for that. And I know you've been involved in some new technology and some new things on the irrigation side too. Would you be willing to share or can you share any of that with the committee here today? [CONFIRMATION]

OWEN PALM: Sure. We identified...we identified irrigation water and the availability of irrigation water as a significant threat to our business back several years ago, probably in the 2005, 2006 time frame when the Republican River Compact was really starting to heat up. We kind of took a, I guess, an interest in water at that point, invested in a couple of pivot companies. We have a couple of pivot dealerships in Scottsbluff and in Sidney, Nebraska, and really tried to start understanding what opportunities there were in irrigation water management. And so we were one of the first companies in western Nebraska...well, actually, probably in the U.S. to put together a true variable rate pivot, actually managing the water nozzle by nozzle back in about 2009. And have since sold several of those systems and perfected that technology kind of hand in hand with Valley. We've also aggressively pursued soil moisture probes and promoted the concept of soil moisture management and have been fairly successful in that endeavor. I think we deployed about 250 probes last year. And part of our service is weekly conference calls with the people that are utilizing those probes in terms of, you know, just helping them understand what the probes are telling them--can we shut the pivot down for an extra couple of days before we actually start, you know, creating harm to the crop that might be irreparable? Probably our biggest foray into irrigation management has been

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

Natural Resources Committee
February 18, 2015

stepping into subsurface drip irrigation. We have now installed that technology on about 3,000 acres; have probably 1,500 acres ready to go this summer. This is, of course, was burying irrigation tape in the ground about 15 inches deep on 60-inch centers, most typically. And being able to grow all types of our typical western Nebraska crops from sugar beets to dry beans to corn and wheat with significantly less water, probably about 25 percent less water than the most efficient center pivots used and, certainly, about 50 to 75 percent more efficient than flood irrigation. Typically, these installations are going into flood-installed fields where you got irregular shapes; they're smaller than 60, 65 acres that a pivot might...a single-swing pivot might more efficiently...or efficiently from a cost standpoint serve. But a lot of this North Platte Valley flood ground is the target for this subsurface drip irrigation, although, we've certainly replaced a number of pivots where we've got wells that have tapered off over time. So, yeah, we're pretty involved in the irrigation water space out here in western Nebraska and transferring a lot of that knowledge that we've picked up there now down to northeast Colorado.
[CONFIRMATION]

SENATOR SCHILZ: Very good. I think that that's going to be key as we move forward and what part of the Natural Resources Commission in the future is going to be dealing with. And that kind of knowledge is going to be crucial for that group to understand. So I think you're going to be a great fit for that commission. Thank you, thank you, Owen. Does anybody else have any questions? Anyone? Senator McCollister.
[CONFIRMATION]

SENATOR McCOLLISTER: Hello, Owen. John McCollister, I just want to express my gratitude of your willingness to serve. I know of your stature and great knowledge of Nebraska's resources and I'd just like to say thank you. [CONFIRMATION]

OWEN PALM: Well, thank you, John. And congratulations on your election there.
[CONFIRMATION]

SENATOR McCOLLISTER: Thank you, Owen. Look forward to seeing you in Lincoln occasionally. [CONFIRMATION]

OWEN PALM: Yeah. In fact, it so happens I'm going to end up there tomorrow. (Laughter) I just...this call was scheduled before I knew that trip was going to take place.
[CONFIRMATION]

SENATOR McCOLLISTER: Look me up; look me up, I'm good for a cup of coffee.
[CONFIRMATION]

OWEN PALM: I'll try to do that. [CONFIRMATION]

SENATOR SCHILZ: Well, that's government scheduling for you, huh; always a day off.

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

Natural Resources Committee
February 18, 2015

Thank you, Senator McCollister. Anybody else? Well, Mr. Palm, it looks like we're done with all of our questions here. So thank you very much for taking the time to get with us. And we very much appreciate your service. Thank you and have a good day.
[CONFIRMATION]

OWEN PALM: Same to you, guys. Thank you. [CONFIRMATION]

SENATOR SCHILZ: Okay. Do we have any supporters of Mr. Palm? Supporters? Any opponents of his appointment? Opponents? Anyone speaking in the neutral capacity? Seeing none, that will close our hearing on Mr. Palm. At this point we will move on to Mr. Bracht. Good afternoon, sir, and welcome to the Natural Resources Committee. Congratulations on your appointment. [CONFIRMATION]

DAVID BRACHT: (Exhibits 2 and 3) Well, thank you. And thank you for having me here today. Good afternoon, Chairman Schilz, and members of the Natural Resources Committee. Good to see you again. My name is David Bracht, that's spelled D-a-v-i-d B-r-a-c-h-t. Governor Ricketts appointed me as the director of the Nebraska Energy Office effective on January 8, 2015, at the beginning of his administration. My broad experience in business, government, and energy law will help me to meet the diverse challenges facing the Nebraska Energy Office. During the last ten years, I helped to start and co-lead the renewable energy practice groups at two law firms. First, at Husch Blackwell in Omaha, and then more recently at the Omaha office of Stinson Leonard Street. In that role, I advise clients in the renewable energy sector, and especially in the development of ethanol and wind projects, concerning state and local permitting, financing issues, and corporate law issues. I've also been a frequent speaker at state and national ethanol and wind conferences talking about issues that were important to the industry. During the early 1990s, I was a political appointee during the administration of President George H.W. Bush. And I was the third ranking executive at USDA's agency providing insurance coverage to farmers and other ag producers in all 50 states. Just to put that in a time reference, that was when Clayton Yeutter was Secretary of Ag. In that role, I was responsible for the promulgation of regulations and oversight of the compliance and appeal sections for federal crop insurance. While not always recognized, energy policy is very important to Nebraskans. First, the availability and cost and reliability of Nebraska's energy sources impact the quality of life and cost of living of every citizen and the competitiveness of Nebraska's farmers, businesses, and manufacturers and the products they produce and sell. Second, the energy industry is a significant source of jobs, not only from the existing jobs in our traditional and historic energy sector, but also in new areas such as the biofuels industry. Nebraska has established itself as a leader in that industry and is second of all states in ethanol production now, as you may know. In the fledgling wind industry, we've also started to develop the state's ample wind resources in recent years. Nebraska is also unique as the only state in which 100 percent of the electric power is provided by public power entities resulting in a regulatory regime that's unlike that of any other state in the United

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

Natural Resources Committee
February 18, 2015

States. Nebraska will face many challenges related to energy in the coming years. New environmental regulations will add additional costs for Nebraska's public power entities, potentially requiring additional rate increases and further impacting the competitiveness of Nebraska businesses and cost of living of our taxpayers. Nebraska also has a tremendous wind potential that offers economic development opportunities that we should consider as well. With changing markets, Nebraska's businesses and citizens have recently enjoyed lower natural gas prices in recent years. But some areas of the state may need additional gas pipeline capacity for that to develop. On a personal note, I'm originally from West Point, Nebraska, in northeast Nebraska; and my wife, Susan Schumacher, of 30 years, is from the Columbus, Nebraska, area. Sue and I live in Omaha and have three children. My son, Tom, is an aerospace engineer and lives in the Los Angeles area. My daughter, Tori, is a junior at the University of Michigan, Ann Arbor, studying computer science and engineering. And our youngest daughter, Theresa, is a junior in high school in Omaha, and she plans to study chemical engineering. I'm sure you'll note that none of them have chosen to be lawyers, but I'll let you make your own comment about that. (Laughter) I would be honored to use my experience in the energy industry and my really love for Nebraska to aid in helping develop Nebraska's energy policy. This concludes my testimony and I'd be glad to answer any question you have. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Mr. Bracht. Any questions? Senator Schnoor.
[CONFIRMATION]

SENATOR SCHNOOR: Thank you, sir. Couple of questions I have; you and I have had a few discussions already on the issues that you've been here testifying, more in a neutral position, but just testifying. You're new to this. A bunch of us are new to this, and we've all got a lot to learn. My question is, you know, public power is a huge entity here in the state of Nebraska that's very important. And there could be some people that may want to see that disappear. There's a lot of people that think we need to all...add to that through different renewable energy sources. But I guess...so my question is are you always going to look at this and see what's best and most economical for the state, you know, even though there's going to be huge pushes one way or the other? It's all... you know, it's all about the scales of economy and one thing may come up, it may be the best thing going, or that's the sales pitch, but economically it could be one of the worse things that happens, so. [CONFIRMATION]

DAVID BRACHT: So the very short answer to that question is, yes, we will always. And I'll endeavor to try and use and hope to use my experience to help make sure that we're looking at...at all sides of issues. And that's in part and form that during my career starting out with a dozen years in the banking industry and then now more than that in the legal industry, over 20, or just approaching 20 years as a practicing lawyer, I can say without question, and this isn't, you know, literally without question..and that the energy industry is one of the most complex industries that I've ever worked in. And I

Natural Resources Committee
February 18, 2015

think that that, at times, that provides or makes for...it's difficult for us...and perhaps even a little bit because of our ag state, because in the energy industry you have extremely long planning periods, it takes a long time to think about building something. In fact, I think tomorrow you'll be hearing from...about the renewable energy import study and one aspect of that, they'll say, is that the planning period for transmission is 8 to 15 years. So in other words, utilities are having to think that far into the future just to decide to build something. And then once they build it, they're incredibly long-lived assets that, you know, just build it and run according to what it's expected to run in the first place, an electric generation plant would be 30, 40, 50 years; a wind farm is like it should run for 20 or 25 years without repowering. So these are very complex issues because of the time frames, and then how interrelated they are, even more so now in our changing market place where when public power was formed, it was really focused on Nebraska. And it's had to change, and has changed a great deal already to accommodate the changing marketplaces. So I think that the complexity of the issues are what's most challenging. And particularly again, when you think about...and I come from a farm background and if you think about a typical farmer's planning horizon, he thinks about what hybrid he's...he might start thinking about what hybrid he's going to plant when he's harvesting, but he's going to make that decision around the first of the year and he plants in April or May and he harvests in October. And depending on who he is, he may have that crop marketed by December. So start to finish, he's done in a year. And I think that's one of the challenges as we look at things from a policy standpoint coming from an environment where many of the stakeholders and the people that are buying electricity, they're used to those kind of planning horizons and we're having to deal with issues that have, you know, decades-long planning horizons and where those impacts are. So I think it's a complex thing and I would endeavor to always try and make the Energy Office a place where we can have really good information that's well founded, that can be useful to you as policy makers. [CONFIRMATION]

SENATOR SCHNOOR: Okay. Thank you, sir. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Schnoor. Senator Friesen. [CONFIRMATION]

SENATOR FRIESEN: Thank you, Chairman Schilz. I noticed in your testimony you talked about working with the ethanol industry in the past. And I was curious as to what your thoughts were in the future of ethanol and how it might...do we have room for expansion, how it might fit into our renewable fuels energy program? [CONFIRMATION]

DAVID BRACHT: So, and I'm glad you asked that, because I do think that at times we tend to think about energy in sort of small, succinct areas. And, perhaps, because it impacts everybody, we think about energy and we start to think about electricity. And yet, Nebraska has a real success story when we look at biofuels, yet another form of energy. As I said, Nebraska is the number two producer of ethanol today. Looking forward, and certainly the ethanol industry, like all ag-related industries is commodity...is

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

Natural Resources Committee
February 18, 2015

affected by commodity markets and it sees ups and downs that go with that. And certainly the ethanol industry has experienced that. I think there is opportunity for growth on the horizon, even just in, as we're seeing our national regulatory policy change, you may be aware, and other members may be aware that while today, and depending on pricing, and probably now with pricing as oil prices and gas prices have gone up, it's, in all likelihood, there's 10 percent ethanol in almost all the gas that's being sold simply because...when I filled up this morning, I paid \$1.52 for E85 and the E10 was \$2.19 and the E0, which wouldn't have had any ethanol in it, was, I think, E36. So at that price break, the fuel companies want to blend ethanol because they're able to make money on it, actually pretty good margins. About in 2012, the Environmental Protection Agency approved use of E15. E10 is a blend of 90 percent gas and 10 percent ethanol. E15 is, as you might guess, is a 15 percent blend. There's a variety of kind of policy and environmental issues that go with that. Today, in Nebraska, during six months of the year, any vehicle that is built after 2001, it would be permissible to put E15 into it. However, we're having to work to try and build that market...get the marketplace so it would fill that. During the summer months, at this point, we're not able to do that. But that would be an area that I'd like to work in with the office. And, in fact, have had some meetings with people that I knew in the ethanol industry, how could we try and accomplish that? Because if you could just go from a 10 percent blend to a 15 percent blend, obviously, that offers some very significant opportunities. And, candidly, Nebraska has not had a stellar record in our overall blending rate. I think the last time I saw a number, we were probably at about 7.5 or 8 percent ethanol on average. And there's some surrounding states that have mandates of 10 percent. And, certainly, I'd like to see us to get closer to that 10 percent because of the support it gives to what's really an important industry in our state. [CONFIRMATION]

SENATOR FRIESEN: Thank you very much. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Friesen. Senator Johnson. [CONFIRMATION]

SENATOR JOHNSON: Thank you, Senator Schilz. Incentives that we've seen...I've been involved with the ethanol business a few years, and in business when I was in the coop system, and there were incentives in order to build up the industry. We've seen incentives brought to us in the last few years with wind. There's all kinds of things out there. How important do you feel it is for public power to reflect those incentives or is...if we're giving incentives...giving money to the industry to change, is that a responsibility of public power to fund that, or is that a broader picture? [CONFIRMATION]

DAVID BRACHT: Incentives are, you know, and certainly have played a role in the development in an understandable and a useful role when you're talking about new technologies, because, ultimately, and I think best, is if we have businesses that are out there making those decisions, because they're going to be able to figure out how to do it. And yet, those businesses are having to commit capital and talk with bankers, and

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

Natural Resources Committee
February 18, 2015

sometimes it takes some incentive to help start a fledgling industry. Going, specifically, to looking at the way...well, to close that, though, is I think that incentives, however, also has to be recognized that sometimes they have some distorting impacts. And, frankly, I think that we've seen that in the way the federal incentives have happened with the wind industry. And what I mean by that is in recent years Congress has approved them on an every year basis. And, in fact, most recently they approved them in...well, it was in the, I think, November/December time frame, but just retroactively for 2014. And, obviously, that's not very useful in businesses' planning and the businesses that are serving that. Nebraska has made changes in the last five years. In 2010, there was...it was LB1048, which is still frequently referred to as that, there were changes that were made that really allowed the public power entities to acquire power under a power purchase agreement and be able to really take into account the federal incentives that were there. And I would say that as that...at the federal level that changes, we'll have to be sure that we can give our public power entities the ability to not be disadvantaged by their structure. [CONFIRMATION]

SENATOR JOHNSON: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Johnson. Senator Kolowski.
[CONFIRMATION]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. David, welcome...
[CONFIRMATION]

DAVID BRACHT: Thank you. [CONFIRMATION]

SENATOR KOLOWSKI: ...and would you share some of your thoughts on solar in our state as well, please. [CONFIRMATION]

DAVID BRACHT: It is interesting about solar, because I don't think that's something that we think about much. Ethanol is an easy think for Nebraska; that's what we do is make corn. And if you're out...most parts of the state, and certainly out where say the Chairman is from, it's windy all the time, near as I can tell, so wind makes sense. But we wouldn't normally think of solar. And yet, Nebraska has...is, when you look at total solar potential, as established by the federal agencies that look at those things, we're ninth in potential. And, actually, I think solar has some real opportunities, and in particular if I'd contrast a little bit with wind. And wind, as the markets developed, there's real economies of scale. In other words, a really large wind project is able to push some costs down. In solar projects, it really...that kind of economy of scale...size isn't as big a factor. In other words, whereas, you'll often hear about 100 and 200, which are some of the sizes of the wind farms that we have in Nebraska today, a 2 megawatt or a 5 megawatt solar array is a pretty good sized array. And you could have a 2-megawatt array in five different locations coming up with 10 megawatts and still be able to be

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

Natural Resources Committee
February 18, 2015

pretty efficient. In fact, I think that...and I think there's room for development, particularly the cost...the efficiency of solar is still improving. And we saw this with wind. Frankly, we saw it with biofuels. At first we weren't very good at making biofuels; now, we're really good at it. At first, we weren't quite as good at capturing wind energy. The cost on a per megawatt basis is, today, probably about 30 percent on a wind farm compared to what it was 10 or 15 years ago. The cost on a per megawatt basis to put in a solar farm, this is a little bit of a rough estimate because I'm not conversant with a number, but I would say that those costs have declined just in the last two to three years by...in the neighborhood of 40 percent. So, I mean, you're almost down to half of that with some more left to go. So to answer your question, I think solar has some real opportunity. And, in fact, our public power structure and the fact that we have 167 public power entities, many of them local public power districts and municipalities that might be able to use a one megawatt or two megawatt that's capturing sunlight at their peak use time might actually work. And so that would be another area that I have a little bit of experience on, not necessarily on project work, but are familiar with and hope to try and see if we can take advantage of that. [CONFIRMATION]

SENATOR KOLOWSKI: From the macro of those bigger units to the micro, talk about what your office might do to assist homeowners, neighborhoods, all those kinds of plants, factories. [CONFIRMATION]

DAVID BRACHT: Sure. So I think that in some respects, all of those...we have some existing programs that apply really specifically to a couple already. The historical programs of the Nebraska Energy Office, and you're somewhat aware of this, I know, but just to recap a little bit is the Nebraska Energy Office was started in the late '70s, kind of tied in with a couple things going on, but largely related to the oil crisis. Our programs today involve on the...we have a couple long-standing programs, one of which is our loan energy and savings program where we work with Nebraska banks to provide lower-cost loans, generally speaking, 2.5 percent loans on alternative energy and energy-efficiency projects. So a homeowner or a business, and, in fact, we're working with both on some solar projects, or I know for sure the business project, I can't say for sure on a homeowner's right now, where we would work with the Nebraska bank and help make that 2.5 percent loan available to that business as they're trying to put in some solar panels. [CONFIRMATION]

SENATOR KOLOWSKI: Take it one more step then, for individual homes of whatever age, making them tighter and more efficient, please. [CONFIRMATION]

DAVID BRACHT: So, that is the other historic and significant area that the Nebraska Energy Office has worked for years. We work through and receive, basically, our...the recipient of federal Department of Energy grant monies that is related to low income...largely related to low income home weatherization and some other...LIHEAP is the name of the program, and I'm trying to remember what the acronym stands for, but

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

Natural Resources Committee
February 18, 2015

it's a low income housing heating assistance program of some type. And the way the Energy Office works in those programs is we're the recipient of that grant, but then we have subgrantees. We work with, at this time, seven community action agencies that cover the entire state. And most of those programs have really...part of the grant is, we're supposed to get a certain amount of exposure in each and every county, and so we then work with those community action agencies, which are nonprofits. Typically, and I think almost always, those community action agencies are offering a variety of services to the clients that are, from an income standpoint, quality for programs. So they might be doing some job training, some things like that. In the weatherization, the way the process works is they'll identify a client, they have contractors or perhaps sometimes people on staff that will do an energy audit of that homeowner's house and determine if they could, by doing the weatherization, which would be, ultimately, paid by grant monies, be able to see a savings. And in fact, it has to have at least a 1-to-1 savings. In other words, if we spend a dollar on weatherization over the qualified period of time, it's going to recover that much in savings. Ultimately, that work gets done. Then we do a follow-up audit to make sure that that work is done properly. And so I think it's a pretty good example where we're taking a federal program, able to bring it here to Lincoln and make sure it's working for the state, but then able to work with community organizations that are right there in the communities to make sure that it's really fitting the needs of the communities. And our role in that is, of course, to make sure the program works well, to help those community action agencies, make sure they're complying with all the rules. We do some monitoring of their fiscal health to try and make sure that we're not...there's not risk there. And that's the way that program works. [CONFIRMATION]

SENATOR KOLOWSKI: Thank you very much. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Senator Kolowski. Any other questions? Mr. Bracht, I have just a couple for you. [CONFIRMATION]

DAVID BRACHT: Sure. [CONFIRMATION]

SENATOR SCHILZ: As you, I know you're just settling in and I know that's got to be, maybe a little bit...a bit overwhelming, you know, and having sat in this position on this committee now for the last six years, do you foresee or do you believe that the Energy Office...do you expect to build relationships with our neighboring states to talk about what opportunities there could be in working together on technology, on opportunities, those kind of things? Because we know everything now is becoming more and more regional. [CONFIRMATION]

DAVID BRACHT: Sure. [CONFIRMATION]

SENATOR SCHILZ: Can you speak...I think you know where I'm going, can you speak

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

Natural Resources Committee
February 18, 2015

to that a little bit? [CONFIRMATION]

DAVID BRACHT: So the short answer is--very definitely. And I think that comes for, you know, really three reasons: One, that you identified is many things, particularly in energy is just by, and especially in electric energy and also, say, natural gas and etcetera, and even fuels because of the pipelines, etcetera, those are regional kind of impacts. And so we're impacted by what's going on with the states around us. So, first, by the nature of it, we need and should, it seems to me, look at what...what's going on in those neighboring states because it's going to be impacting us. Second, I think that, and I'm a real firm believer in this, as proud as I am of being a Nebraskan, I've had a chance to live in a couple different places, and it is good, you do have a different perspective on things. And as an example I would use, had just started some communications with the biofuels group that's in Iowa because they've had some effective programs on how do you get E15? They've done some things. And rather than try and recreate the wheel, let's see if they've found a solution to a problem that we have too. It seems to me that that's a way to try and address some of the opportunities and obstacles that might be facing us. Third, I do think that there's opportunities for us working together to think about different things. As states, we are somewhat competitive in that we, you know, different states have different financial and tax policies and I've been active in the chambers over the years, the Omaha Chamber, just recently, and our Department of Economic Development, you know, we're always on the lookout for new businesses that can come here. But I also think there's opportunities for us to think about how our businesses tie together with other states. And again, and particularly in energy because of the scope and the nature of the way energy is. So I think that those are three ways that I would see cooperating with other states. [CONFIRMATION]

SENATOR SCHILZ: Great. Thank you. Any other questions? Wonderful. Well, I appreciate your service. [CONFIRMATION]

DAVID BRACHT: I thank you for your time and consideration. [CONFIRMATION]

SENATOR SCHILZ: Congratulations. Thank you very much. Is anyone here to speak as a proponent for Mr. Bracht? Good afternoon. [CONFIRMATION]

JOHN HANSEN: Good afternoon, Mr. Chairman, members of the committee. For the record my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union. In the 25 years that I have been president of Nebraska Farmers Union, we have had a very good and positive working relationship with the Nebraska Energy Office. In 1991, we helped work with that office to do the grant applications to...for cellulosic ethanol that brought money to the University of Nebraska to help...that became a lot of the research that has been used to help move that particular kind of energy development forward. We are a state that is a big energy-using state. But we're also a state that has the opportunity to harness a lot of renewable

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

Natural Resources Committee
February 18, 2015

energy opportunities for...to our environmental and economic advantage. So, I've had the opportunity to have a good working relationship with all of those past directors of the Energy Office. And the things that I look for are all the things that David Bracht has and that is that he has a good understanding, has a good background of the business. He comes from the business side. I think that's always, I think, a big plus when you have folks who have that background and experience of understands the policy issues, has a good and positive way with being able to engage with the wide range of stakeholders in all different kinds of energy. And so, for example, we spent a lot of time with the Energy Office, about a year ago, dealing with the availability of propane, for example. We have had different kinds of shortages of existing energy that the Energy Office behind the scenes very quietly and very effectively help problem solve. So there's a lot of work that goes on in that office. We've have had the pleasure of working with Mr. Bracht in a lot of different capacities, but especially the last seven years as we've done the wind, and then in the last two years, the wind and solar conference. He's been a presenter, he's been...his group has been a sponsor. They've been absolutely excellent to work with. They have a good reputation and David has a very nice way of being able to work with people, lots of different kinds of folks. He's a learner; he's a student. And I believe that one of the last things that you look for in this position is whether or not that person has the ear of the Governor. And I believe that he does. I think he will do the Energy Office and our state well to put him in that position and we strongly support his confirmation. [CONFIRMATION]

SENATOR SCHILZ: Thank you, Mr. Hansen. Any questions? Seeing none, thank you for your testimony, appreciate that. [CONFIRMATION]

JOHN HANSEN: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Any further proponents? Did you have a question? Oh, sorry, Senator Kolowski. Good afternoon and welcome. [CONFIRMATION]

PAT PTACEK: Good afternoon, Chairman Schilz. Members of the Natural Resources Committee, for the record my name is Pat Ptacek, that's P-a-t P-t-a-c-e-k, testifying today in support of David Bracht's nomination to the Energy Office from the Association of Nebraska Ethanol Producers. I've known Dave for a number of years. He brings a real balanced view and approach to energy issues, in particular, he's had a great relationship with our association and many of the member ethanol plants of our association. I think he understands the issues extremely well, not only from being an energy expert and helping companies comply with the various permits on the legal side, but also as a farm boy from West Point, Nebraska, who also understand the importance of the by-products of the ethanol industry for the DDGs and the feeding. And I think he can help balance that argument, sometimes, of food versus fuel, and I think he can bring a lot of sense to the table. As an advocate in the industry, I think he will be outstanding as a conduit to the Governor's office on issues like putting our fleet on E15

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

Natural Resources Committee
February 18, 2015

at some point in time in the very near future. I'd hope to see that...to something. I think his looking to a state like Iowa who has been a leader in a lot of the renewable energy efforts, like for instance, in implementing a slight decrease in gasoline taxes to accommodate for the blending requirements to keep E15 in during the summer months. They implemented that in Iowa. We don't have a lot of E15 stations yet in Nebraska, but I know that it took a while before...when I was assistant director of state Department of Agriculture, Ben Nelson put...and before that, Governors put the fleet on E10. You couldn't always find E10 out in the service stations, so we were directed to go to a Department of Roads to fill up with E10 when we were close enough to get to fill up without running out of gas. So, I do support...we do support David's nomination and I'll try to accommodate any questions this committee might have. [CONFIRMATION]

SENATOR SCHILZ: Thank you, sir. Any questions? Seeing none, thank you for your testimony, appreciate it. [CONFIRMATION]

PAT PTACEK: Thank you. [CONFIRMATION]

SENATOR SCHILZ: Any further proponents? Seeing none, any opponents? Opponents? Seeing none, anyone in the neutral capacity? Seeing none, with that we will close the hearing on Mr. Bracht's confirmation. Thank you very much for coming in today. And with that we'll move on to LB208, I believe. [CONFIRMATION]

SENATOR FRIESEN: Welcome, Senator Schilz. We'll now open the hearing on LB208. [LB208]

SENATOR SCHILZ: (Exhibits 1 and 2) Thank you, Senator Friesen and members of the committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm introducing LB208. This bill was introduced in response to a letter the Department of Natural Resources sent out in 2013 to owners and operators of surface water storage reservoirs. The letter stated that such owner or operator was prohibited from storing or using surface water until it was determined whether a proper permit had been issued and that a civil or criminal penalties could be assessed if one were to store water in violation of the notice. The letter was perceived as a sudden and drastic change to the status of these small dams that have been used for decades with the understanding that they met regulatory requirements. The committee held an interim study hearing on the matter and heard a bill introduced by Senator Carlson last session to exempt small dams built before 1973 from state regulations. This exemption would apply as long as the small dams are not used for irrigation or modified to increase their storage capacity. I have handed out to you a copy of the letter the department sent to landowners, as well as a follow-up letter from the department that explains the process it planned to use to address the matter. I know we have a representative here from the NRDs to explain the situation in more detail. And at this point I would be happy to try and answer any questions you might have. [LB208]

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Transcriber's Office

Natural Resources Committee
February 18, 2015

SENATOR FRIESEN: Thank you, Senator Schilz. Any questions from the committee? Seeing none, any proponents who wish to testify, come forward. [LB208]

JOHN THORBURN: (Exhibit 3) Good afternoon, Mr. Chairman, senators. My name is John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I'm the manager at Tri-Basin Natural Resources District in Holdrege. Tri-Basin NRD encompasses Gosper, Phelps, and Kearney Counties, and as our name implies, portions of the Platte, Republican, and Little Blue River basins. I'm here today to present testimony in favor of LB208 on behalf of my district and the Nebraska Association of Resources Districts. As Senator Schilz mentioned, two years ago I was contacted by dozens of my constituents who received notices from the Department of Natural Resources informing them that small dams that they own are not properly permitted. Most of these dams have been in place for at least 50 years. When they were built, usually with federal government assistance, landowners were motivated to construct these reservoirs because they wanted to be good stewards of the land. Their purpose is to protect their land and their downstream neighbors from soil erosion, sedimentation, and flash flooding. These enduring improvements to the land have served the purpose for which they were intended. Evidence of that benefit can be found not just on the land where the dams are located, but far downstream. Harlan County Reservoir, for instance, is silting in at a much slower rate than was anticipated by its designers thanks to the efforts of upstream landowners to reduce erosion. In most cases, these small reservoirs also provide water for cattle. Having a supplemental water supply improves grazing distribution in pastures and adds to the value of pasture land. The department's position, as I understand it, is that these small reservoirs need to either be properly permitted, altered, or removed. Permitting would, at first, seem to be the preferable option for landowners and the department has urged them to fill out the necessary paperwork to enable them to get a permit. The problem with that option is that the landowners will receive a water right with a 2015 priority date. With such a late priority date, dam owners will only be allowed to store water in very wet years. They would otherwise be required to pump out any water which accumulates behind their dam when it isn't in priority. That just isn't practical. Alternatively, landowners can modify their dams so that they store less than the statutory minimum of 15 acre-feet. That can be done, but it will likely cost many thousands of dollars. Disturbing settled vegetative emergency spillways to reduce storage capacity also increases the likelihood that dams will fail catastrophically in a heavy-rain event. The final option for landowners is to remove their dams. This, in most cases, is cheaper than modifying a dam, but it eliminates all the erosion protection and flood control benefits that these reservoirs provide. This is the difficult position in which the department has placed landowners. These small dams don't comply with the department rules because when they were constructed back in the 1950s and '60s, either the landowner or the federal Soil Conservation Service apparently didn't file copies of dam design plans with the old Department of Water Resources. It is also possible that the department's own record keeping is inadequate. Regardless of the

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Transcriber's Office

Natural Resources Committee
February 18, 2015

reason, the department has placed the burden of proof on landowners to find records and plans for these dams that were built by their ancestors or unrelated prior landowners 50 or more years ago. It would be easier for my constituents to accept this situation if these enforcement actions were being taken in a timely manner or as a result of new information. The fact is, however, that the department has been aware of the existence of these dams for many years. The department's own records show that their personnel have regularly inspected many of these dams over the past several decades and that the old DWR did a comprehensive statewide inventory of small dams in 1973. Yet now the department expects landowners to comply with their rules without delay and without regard for the impact that their tardy enforcement has on these good people. For this reason, my district and NARD support LB208 which we consider a fair solution to this new-found problem of unpermitted dams. I urge the committee to advance this bill to the floor of the Unicameral and exempt small reservoirs constructed before 1973 from state permitting requirements as long as those dams are maintained in accordance with dam safety guidelines, not altered to increase their storage capacity, and not used for irrigation. Thank you for your consideration. [LB208]

SENATOR FRIESEN: Thank you, Mr. Thorburn. Any questions from the committee?
Senator Kolowski. [LB208]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. John, just to make sure then, if this did pass, they would still be inspected on a yearly...or whatever the cycle, basis is to maintain the integrity and qualify of the dam so we don't have any downstream problems of a dam collapsing or something. [LB208]

JOHN THORBURN: Yes, Senator, what are called high-hazard dams are inspected on a regular basis. Most of these are low-hazard dams and don't need that regular inspection. But to the extent it's necessary, that can continue. [LB208]

SENATOR KOLOWSKI: What is "regular" then in the low set? [LB208]

JOHN THORBURN: I'm not sure what the state's protocol is for that. And in fact, I think it's just a spot check on...I'm not sure what their schedule is, but on a rare occasion. [LB208]

SENATOR KOLOWSKI: I know they're not hugely dangerous like tons of water behind them. But just to make sure to the public and to those downstream, but there is some kind of cycle of regular checkups, I think, would be important. [LB208]

JOHN THORBURN: Yeah, the department would have to address that issue. And as you say, individually these dams don't store a lot of water, but collectively they provide a significant benefit both in terms of sediment and flood prevention. [LB208]

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Transcriber's Office

Natural Resources Committee
February 18, 2015

SENATOR KOLOWSKI: We had this issue, of course, with the Papio NRD, as all NRDs have, not just the urban areas. So thank you. [LB208]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator McCollister. [LB208]

SENATOR McCOLLISTER: Yeah, thank you, Senator. And thank you for appearing, Mr. Thorburn. You talked about two classifications of dams--low risk and higher category of risk. [LB208]

JOHN THORBURN: Um-hum. [LB208]

SENATOR McCOLLISTER: Are all the dams registered though or will they be required to be registered? [LB208]

JOHN THORBURN: Well, when you say "registered"... [LB208]

SENATOR McCOLLISTER: Permitted. [LB208]

JOHN THORBURN: Yeah, the state has a process for acquiring a water right, a permitting process. And as far as the state knowing where the dams are and understanding how much water they store and so forth, they've done that work, the Department of Natural Resources, using aerial photos. And so they've...that was how a lot of these dams were located. [LB208]

SENATOR McCOLLISTER: Okay. Thank you very much. [LB208]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Johnson. [LB208]

SENATOR JOHNSON: Thank you. John, we had that hearing, interim study, a year and a half ago, what's happened since then? Has there been any pressure from the state, or are they waiting for us to do something, and if we don't they're going to do something? [LB208]

JOHN THORBURN: Well, I guess I'm uncomfortable with telling you what the state plans to do, Senator. I would say that there has been less pressure from the Department of Natural Resources on landowners. [LB208]

SENATOR JOHNSON: Okay. [LB208]

JOHN THORBURN: And as you recall, having attended that hearing in Kearney, we had a number of landowners there. We don't have, to my knowledge, many of them here today, part of that, of course, is because we're here in Lincoln. But on the other hand too, I think some of the landowners are getting a little discouraged that they haven't

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

Natural Resources Committee
February 18, 2015

seen their problem addressed. And, you know, I've been in government long enough, I understand the wheels of government turn slowly but surely, and so I'm still hopeful that the Unicameral can help us resolve this problem. [LB208]

SENATOR JOHNSON: We kind of left them both in limbo. [LB208]

JOHN THORBURN: Hopefully not for long. [LB208]

SENATOR JOHNSON: No, I agree. Thank you. [LB208]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator Schnoor. [LB208]

SENATOR SCHNOOR: How long has the current statute been in place? [LB208]

JOHN THORBURN: To my knowledge, Senator, I think since the 1980s, 1985, if I remember correctly. [LB208]

SENATOR SCHNOOR: Okay. Why...what...I guess why the date of 19...what was it? 1973? [LB208]

JOHN THORBURN: '73. [LB208]

SENATOR SCHNOOR: Why that particular year? [LB208]

JOHN THORBURN: Sure. In response to a failure of a dam out in Wyoming, the federal government launched an effort and had the states look for and inventory small dams around the country. And in Nebraska, as I understand it, that work was done from 1973-'74. And so, after that point, I think the department was aware that these dams existed. And yet it wasn't until 2013 that they decided action needed to be taken to get these dams permitted. So, 1973 is a useful date also in the sense that these small dams have a limited life span, generally, 40, 50 years. And after that, it's at least expected that they would silt in. Now in many cases, through good stewardship of the land, landowners have extended the life of those structures. But having a date like that and specifying that it only applies to dams that were constructed before that date kind of builds in a sunset clause, if you will. So someone going out today can't expect the same protection or the same exemption from the requirements of state law. [LB208]

SENATOR SCHNOOR: Okay. Then who determines that that was constructed in 1973 or before or after that date? [LB208]

JOHN THORBURN: Well, that's a difficult situation for a couple of reasons, Senator. The prior law would exempt dams that had a potential temporary storage up to 50 acre-feet from permitting requirements if the plans for the dam were submitted to the

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

Natural Resources Committee
February 18, 2015

Department of Water Resources, as it was at the time, for inspection. It's unclear whether this was done by the Soil Conservation Service and just not recorded, or maybe there was some sort of an arrangement between the SCS and the old DWR that certain standards...engineering standards were used by the SCS when the dams were built and the plans were kept on file at the SCS offices. Unfortunately, as the federal government periodically does, the Soil Conservation Service purged all their files in the 1980s and the early 1990s and got rid of all these plans. And so the best method we have now of determining the age of these structures would be to look at aerial photographs. And aerial photographs have been taken periodically by, again, the federal government over time. So we know there's a set from 1969, a set from 1975, '78, and so forth. You basically just look to see if that structure is in place at a given time when a photograph was taken. [LB208]

SENATOR SCHNOOR: Okay. Thank you. [LB208]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator Hughes. [LB208]

SENATOR HUGHES: Thank you, Senator Schilz. Can you give me a rough estimate of how many of these structures would be in the Tri-Basin NRD? I mean, are we talking tens or thousands? [LB208]

JOHN THORBURN: In my district, Senator, in the Republican Basin portion of my district, which is where the department has restricted its enforcement to at this point, there are 56 structures, and roughly 300 throughout the Republican Basin. [LB208]

SENATOR HUGHES: So is this just in the Republican River Basin that the Department of Natural Resources sent out this letter to the landowner, or was it statewide? [LB208]

JOHN THORBURN: As I understand it, at this time, that's where the department has focused their enforcement efforts. I would only assume that this would be a policy that they would at some point apply statewide, which would apply to several thousand dams at that point. [LB208]

SENATOR HUGHES: Okay. Is the 50 acre...I mean is that the size that they were built at or are there some out there that are larger than 50 acres that would not be exempt under this? [LB208]

JOHN THORBURN: Yes, Senator, there are dams that are larger than 50 acre feet and they, generally, do fall into that high-hazard category and so they would not be exempt. The 50 acre-foot number refers back to a prior law that did allow an exemption from permitting if those dam plans were submitted. [LB208]

SENATOR HUGHES: Okay. Thank you. [LB208]

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

Natural Resources Committee
February 18, 2015

SENATOR FRIESEN: Thank you, Senator Hughes. Any other questions? Senator McCollister. [LB208]

SENATOR McCOLLISTER: Yeah, thank you, Senator. One more question--the fact that they've directed their enforcement activities in that particular basin, does that tell you something? Is it related to the Republican River Compact? [LB208]

JOHN THORBURN: I haven't heard directly from the department, but, yeah, it's reasonable to assume that this is part of the state's efforts to ensure compliance with the Republican River Compact. [LB208]

SENATOR McCOLLISTER: So did...but they view these dams as a problem with that compact? You would think that it would help restore the water table and do a lot of other beneficial things. [LB208]

JOHN THORBURN: Senator, you're well educated on that point. These dams have multiple benefits. You're right. They provide groundwater recharge, they reduce sediment, flood control benefits are there. And the dams themselves are accounted for in the accounting process of...the water accounting of the Republican River Compact. So evaporation from those dams is a factor in the Republican River accounting process. [LB208]

SENATOR McCOLLISTER: Thank you. [LB208]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from committee? Just one question from me a little bit, and you give three things that they can do. And one of them that you mentioned is that they...if they permit the dam, then in a water-short year they're required to drain it. And what purpose would that serve? [LB208]

JOHN THORBURN: Well, yeah, Senator, if you have a water right and that water right is not in priority, then you cannot store water. And with a very junior date, especially in the Republican or Platte River Basin, a 2015 date is junior to everyone else. And so if anyone else does not get all the water that they need for their water right, you cannot store any water under your water right. So it wouldn't even be in a dry year or drought condition, but even average years, these dams could not legally store water. And when they were constructed, they were generally constructed without what's called a principle spillway culvert. There was no tube put through the face of the dam itself to allow water to pass through with a gate that you could open and close. So a landowner then, if he gets a permit, has to find a way to pass the water through. You either set up a pump down there and run the pump whenever water accumulates. You cut down the emergency spillway, the little swale that goes off to the side of the structure to protect it

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

Natural Resources Committee
February 18, 2015

from being over the top. Or you put in one of these tubes, one of these principle spillway culverts. A pump is just not a practical option, especially in our area. And Senator Hughes might be familiar with the topography of these canyon areas that they're just really tough to get access to, especially after a rain. If you dig into that emergency spillway or you dig into the dam itself to put in a tube, you're creating an opportunity for erosion; you're creating an opportunity for gophers and all sorts of rodents to get in there and start digging around and increasing the likelihood that a dam will fail. [LB208]

SENATOR FRIESEN: Okay. Well, just as, you know, since they can't be used for irrigation, they're, basically, storage. It seems rather silly to have to drain it. So I was just wondering what the possibilities of that were. So no other questions from the committee? I see none. Thank you for your testimony. [LB208]

JOHN THORBURN: Thank you for your interest. [LB208]

SENATOR FRIESEN: Are there are any other proponents? Welcome. [LB208]

MIKE CLEMENTS: (Exhibits 4 and 5) Good afternoon, Senator Friesen and members of the committee. My name is Mike Clements, it's M-i-k-e C-l-e-m-e-n-t-s, and I'm the general manager of the Lower Republican NRD in Alma, Nebraska. I'm here today to testify before you in support of LB208. And, basically, as John said, many of these structures were built back in...probably most of them back in the 1950s, maybe early '60s. They've been in place for a number of years. A lot of them are almost 100 percent silted in in some cases. They've served their purpose as far as erosion control. In our district, due to the severity of the drought the last three years, most of these structures are empty right now. There's a few exceptions to that, but for the most part, most of them are dry. I guess the concern that we've got was when the department sent the notice out in 2013, was, number one, it caught a lot of these people by surprise. And, obviously, it caused a lot of concern. I think the...and John touched upon this too, but I guess it raises some very serious concerns as far as we're concerned because, okay, how do you pass water through a small pond...and picture, when we're talking about the size of these ponds, they're small farm ponds that are primarily out in the middle of a pasture. And to be able to allow that structure to pass in-flows through, you're going to, number one, have to compromise the spillway; have to put some type of a tube in place, again, compromising the structure itself; figure out some way to pump the water out of it. And none of those options are viable. I mean they're not...even if they were viable, they're not cost effective. So probably one of the biggest concerns that I have and that our district has is...I think we need to take a step back and take a look at really why were these structure...what were they put in place for? To water livestock and for some erosion control. If you'll look, particularly, in south central Nebraska, and most of the rest of the state, the last three years what's happened to the size of these cattle herds. In our district in most cases...in a lot of cases they've been reduced by 50 percent because of lack of water, lack of grass in these pastures. And I think to turn around and force

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

Natural Resources Committee
February 18, 2015

these landowners to pass this water through and not be able to store it for the smaller herds that they've got in these pastures is really unfair. So those are the main points that I wanted to make. I would strongly urge the committee to move this bill out of committee. And I would be glad to answer any questions if I could. [LB208]

SENATOR FRIESEN: Thank you, Mr. Clements. Any questions from any of the committee? Senator Hughes. [LB208]

SENATOR HUGHES: Thank you, Senator Friesen. Mike, good to see you. Is the...are the NRDs in charge of inspecting the dams, or is that a state...when they're to be inspected? [LB208]

MIKE CLEMENTS: We do some...from the district, we will do some of our own inspections, but for the most part, when you're talking about...particularly the high-hazard structures, those are inspected by the state. [LB208]

SENATOR HUGHES: So then the state...I mean, do they send you the list that, you know, we want you to do these, and we'll take care of these, or, I guess, my real question is, does the local NRD have control over those dams or is that through the state? [LB208]

MIKE CLEMENTS: That would be primarily through the state, Senator. [LB208]

SENATOR HUGHES: Okay. They're just telling you to go do their work in essence? [LB208]

MIKE CLEMENTS: I think, more or less, making us aware of the structures and what's going on. [LB208]

SENATOR HUGHES: Okay. Thank you. [LB208]

SENATOR FRIESEN: Thank you, Senator Hughes. Any other questions from the committee? Thank you, Mr. Clements. [LB208]

MIKE CLEMENTS: Thank you very much for your time. [LB208]

SENATOR FRIESEN: (Exhibits 6 and 7) Any other proponents? Seeing none, we have one letter in support from Jay Rempe from Farm Bureau. No other supporters? I then call for those in opposition to come forward. Seeing no one, we have a letter from James Schneider, Acting Director, Department of Natural Resources in opposition. Seeing no others in opposition, are there any who wish to testify in the neutral capacity? Seeing none, we will close the hearing on LB208. Oh, Senator Schilz wants to close. [LB208]

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Transcriber's Office

Natural Resources Committee
February 18, 2015

SENATOR SCHILZ: I'll waive. (Laughter) [LB208]

SENATOR FRIESEN: Senator Schilz waives closing. (Laughter) [LB208]

SENATOR SCHILZ: I'll take my direction from the acting Chair. (Laughter) [LB208]

SENATOR FRIESEN: Okay, now we will open the hearing on LB394. [LB208]

SENATOR SCHILZ: (Exhibit 1) Thank you, Senator Friesen and members of the committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm introducing LB394. I introduce this bill to address a problem that has grown in recent years due to the availability of, and our use of smart phones, the Internet, social media, and other technology we use to communicate with each other. As you know, cyber harassment and cyber bullying is a real problem, particularly for young people and those who have been active on-line presence due to their jobs, the groups they belong to, or activities in which they participate. What is happening is that this type of intimidation and harassment is happening to people because of their association with hunting. You'll hear from testifiers today, stories about how hunters who have been harassed and threatened personally by people who are intending to scare them and who have been able to find out where they live because license information being available to the public. Current law prohibits one from interfering with someone who is lawfully hunting, trapping, or fishing. This means that a person cannot try to stop a hunter from shooting, scare away animals, disturb hunting locations, and even disrupting the travel or campsites of those who are preparing to hunt. This bill would add the prohibition of harassment or intimidation using available communication methods based on one's participation with hunting. Violation of any activity listed in 37-564 is a Class III misdemeanor which is already provided for in 37-570. I want to point out that harassment that rises to the level of terroristic threats or stalking is provided for in the state's criminal statutes. Remedies are provided for victims of serious threats or intimidation. And anyone, including hunters, should pursue relief under these statutes if they're being threatened or terrified by such conduct. I do have an amendment that rewords the language to make sure my intention is clear and that is AM425. And I believe that that amendment has been handed to you. And with that I would close and try and answer any questions you have. Thank you very much. [LB394]

SENATOR FRIESEN: Thank you, Senator Schilz. Any questions from the committee? Senator Kolowski. [LB394]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Schilz, how many incidents have been reported or recorded of this kind of behavior going on? I'm not just that familiar with it, so I'm asking... [LB394]

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Natural Resources Committee
February 18, 2015

SENATOR SCHILZ: Yeah, and I have to say, I know it's more than just a couple, but we've got folks behind us that I think have some of those statistics for you. So if you could hold your question, they can answer that for you. [LB394]

SENATOR KOLOWSKI: Kind of spins off of something that someone is going to be harassing someone who may be carrying a gun doesn't sound very bright. [LB394]

SENATOR SCHILZ: Well, nobody said they were sane. [LB394]

SENATOR KOLOWSKI: Well, just clarify. Thank you. [LB394]

SENATOR SCHILZ: Yeah. [LB394]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Lindstrom. [LB394]

SENATOR LINDSTROM: Thank you, Senator Friesen. Did this arise from...I think there was a story maybe a year ago or so of a gal out of Texas that...I forget what she shot, if it was on a reser...a refuge or reservation, it might have been antelope or something, but did this kind of arise from that incident? She was being harassed quite a bit. [LB394]

SENATOR SCHILZ: You know, I'd heard this story and this...the genesis of this could be some of that. But there were even some incidents even closer to home than that that you'll hear about. [LB394]

SENATOR LINDSTROM: Okay, okay. [LB394]

SENATOR SCHILZ: So stay tuned. Yeah, very good. [LB394]

SENATOR FRIESEN: Thank you, Senator Lindstrom. Senator McCollister. [LB394]

SENATOR MCCOLLISTER: Thank you, Senator. Senator Schilz, is this enforceable? Have other states incorporated such legislation with a positive effect? [LB394]

SENATOR SCHILZ: You know, and that's a question that we all have. Is it enforceable or not? That's a very good question, Senator McCollister. The jury is still out, literally. We don't know for sure. But it is an issue that's out there and it's an issue that I think everybody needs to take seriously. That's why I mention in here that there are other ways to address some of this that's going on. And so, so I put that in here. The main thing is, is I wanted to make sure the people under...we think...we think that there is...we think that there would be a case here, to say that this is enforceable. Is it or not? Well, I guess that's for somebody to find out. But your question is much the same as ours. We aren't exactly sure. But it's important enough that we thought we should bring it up and allow people to make that decision. [LB394]

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

Natural Resources Committee
February 18, 2015

SENATOR McCOLLISTER: Yeah, my question is: How would you enforce this against somebody using the telephone or the direct mail from another state? So here it is a Nebraska statute and how that translates into someone in another state. [LB394]

SENATOR SCHILZ: Obviously, if they don't show up, it's pretty hard to go get them. So, yeah, that's an issue. [LB394]

SENATOR McCOLLISTER: Okay. Thank you, Senator. [LB394]

SENATOR SCHILZ: Yeah. [LB394]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? I'm seeing none. We'll open the hearing up for proponents. [LB394]

SCOTT SMATHERS: (Exhibit 2) Good afternoon, Chairman Friesen, senators on the Natural Resources Committee, I'm Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I'm the executive director of the Nebraska Sportsmen's Foundation. I'm here today to stand in support of Senator Schilz's LB394 and to answer a question that was posed earlier. Our organization came to Senator Schilz at the request of the United States Sportsmen's Alliance out of Ohio and the Congressional Sportsmen's Foundation out of D.C., in direct relation in which I'll testify on some issues that have arisen over the last four years in regards to this manner. Basically, what LB394 and with the amendment, AM425, will do is to harmonize current state statute regarding harassment of hunters in the act of hunting and bring into effecting the modern day technology of electronics, telephone, social media, and/or news wires through the mass production of news through the media. The handout I've given you, the first two pages, basically, show you the economic in value on a national and a state level which has been correlated by Southwick and Associates on an every five-year calendar year period with the last report being in 2011. The remaining articles you'll see are articles that I simply pulled from either the social media sites, our own personal knowledge of national women that are on TV in the outdoor industry and the harassment cases that they have been...faced over the last five years in the social media categories as a form of knowledge for you to review so that you see that there is an incident and cases of these occurring. And I'll speak of two cases in Nebraska, one that has personally affected me as we move forward. As we all know, the use of social media has increased dramatically over the last five years and the use of social media has provided an opportunity for not only educational gains for all of us in a timely manner, not everyone in this room, I'm sure, has a smart phone or a variety of it, that allows you to receive instantly news and events that occur throughout the state. With that said, it is becoming a master tool for antigroups of any group. It's not strictly the hunters. As we all know, we've seen cyber bullying issues in regards to teenagers in schools, to sexual preference, to religious choices, to ethnicities. And we've seen that increase tenfold over the last years. The

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

Natural Resources Committee
February 18, 2015

reason that they've started to target the hunting community, the outdoor community, in particular the female gender and the teen categories is that ever since 2001 the fastest growing segment of the outdoor industry is the female population by 87 percent as participants. That's not good news for the antihunting groups in the world. It gives them a much stronger...it gives us a stronger base that it's just not only fathers and sons passing traditions on on the farm or in the rural communities or in the metro communities, but now we have families participating in the outdoor industry. And they have also chosen to attack teens because teens are now, obviously, more probably more social driven than we are sitting in this room and have a better access to it. So that's why they've started to attack those women. I am not going to go into specific details; you have those in front of you, some of the things that are said. I will tell you, that what has occurred is free speech is free speech. We support free speech, obviously, as hunters and outdoorsmen. However, where do you draw the line when free speech becomes terroristic harassment? Personal addresses and pictures of homes have been advertised and shown on the social media and the news...or not the news, excuse me, but on the Internet. Threats have been personal and death threats to not only the individuals, but also the family members. Even as little as a year ago, you talked about a Texas case, Senator Lindstrom, our own resident in Nebraska last year, Holden Bruce, from out in western Nebraska was able to draw the mountain lion permit. A 16 year old that has survived and is surviving cancer, and he received no less than 250 death threats and/or disparaging remarks via his cell phone and his e-mail account and also personal mail delivery. He's 16 years old. The personal issues that last year I was quoted in an AP article that was picked up nationally by Grant Schulte in regards to the mountain lion bill that Senator Chambers brought. As soon as that article went nationwide, within two hours I had over 5,000 e-mails in my inbox. I'm just as interested in e-mails as anybody else; not 5,000 of them. Over the next of the course three weeks I received no less than 20,000 e-mails with the majority of them being hate mail including three that were verifiable death threats--one where the gentleman sent a picture of my house, my address, my wife's work address, my work address, and both our cell phone numbers. Now, the comment was made earlier that it doesn't seem smart to threaten somebody that is well-versed in the knowledge of handguns and/or long guns. While I'll tell you my wife is a better shot than I am, however, it doesn't relieve the stress that when I'm gone three to four nights a week traveling for work, whether this individual is legitimate or left of center or not working with a full deck, I don't know, but I don't want him showing up at my house for any reason. I shouldn't have to face that nor should anybody else have to face that. What we're asking you to do...I see my time is up, I apologize. I'll answer any questions. [LB394]

SENATOR FRIESEN: Thank you, Mr. Smathers. Senator McCollister. [LB394]

SENATOR MCCOLLISTER: Thank you, Senator. Thanks, Scott. What data files or what databases exist that somebody could access...how did they...you're in the news and I understand that they can find you, but I'm...what...how about...are there hunting

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

Natural Resources Committee
February 18, 2015

licenses... [LB394]

SCOTT SMATHERS: Yes. [LB394]

SENATOR McCOLLISTER: ...readily available on the...off of the state? [LB394]

SCOTT SMATHERS: In Nebraska, hunting licenses and permit sales are public information at this present time. We have looked at, including that...to answer kind of a quasi-question is--Idaho is the only state that currently has a statute that they passed in 2010, through both houses, that also adds an electronic media and telephone transmissions as a form of harassment in the hunter harassment bills. We would be the second state to tackle this issue. So from the standpoint of databases, hunting licenses, I did, through State Patrol activity, they figured out he pulled my picture of my house from the county assessor web site because they have a photo of your property and, typically, your main residence on the county assessor's, and that's how he found me. [LB394]

SENATOR McCOLLISTER: Well, I wasn't aware that you could...there was a database through the Game and Parks that you could access hunting licenses. [LB394]

SCOTT SMATHERS: You can access the information, and Tim McCoy, the deputy director, will answer that question. I'm sure, more in-depth as to exactly what they can receive if requested. But yes, we're part of an opportunity where they can receive our information and they have, basically, everything that you put down on a permit--height, weight, color of hair, eyes, your address. I know they exclude social. So I mean, those are issues that this bill will start to address is that if we have an avenue to, at least, have an avenue for us to...when I started receiving the death threats, I didn't take it seriously until my wife informed me that I should, quite frankly. And I started to do some investigation. There was really no recourse for me to go to other than to notify local authorities and/or the State Patrol. But again, they're not going to put forth resources to sit outside my property; they can't. But I had no recourse that if he did show up at my house, other than trespassing laws on my personal property. So when we started talking with the national organizations, if this problem continues to grow, and United States Sportsmen's Alliances also created a task force with the professional hunters, Melissa Bachman and several others, to form a task force to try to put forth legislation in each state to attack a problem that's going to continue to grow. If it goes unchecked like anything else, we open the door to opportunities for unique atmospheres and attacks. And so we're asking for that account. The committee put this forth to the floor for a fair debate. [LB394]

SENATOR McCOLLISTER: Thanks for appearing. [LB394]

SCOTT SMATHERS: Thank you. [LB394]

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

Natural Resources Committee
February 18, 2015

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Senator Johnson. [LB394]

SENATOR JOHNSON: Have you followed up on anybody that's...any state, any agency that's tried to prosecute this or...what do you think, so they would have a success and what process would they have to go through? [LB394]

SCOTT SMATHERS: Well again, I think we're at the beginning stages. I know that Idaho has not had a particular case come to fruition. However, I will tell you that I don't think it's long before we see a case where there's going to be a need for prosecution, or at least arrest and conviction...or attempt at conviction. We've all watched this...the Internet and the cyber intel increase and other avenues of bullying--schools, kids. We've seen incidences where...that bullying has affected and caused suicides, has caused distress. Two of the individuals I know within the outdoor industry personally, their incomes and careers were threatened by these attacks, because sponsors pull sponsorship money and suddenly your livelihood goes away. So from a standpoint of "has there been one yet?" Not yet, in regards to the device of electronic and social media and telephone. Hunter harassment bills of harassing an individual in the act of hunting in a legal nature, yes, those have been prosecuted in other states. Those have taken place. In fact, sadly there's been some deaths involved in those incidences where the anti-hunters were the victims of somebody that didn't follow the law on their side. So I'd hate to see it go to that point. I'd like to see something in place that gives us an opportunity to track, provide an opportunity for prosecution and/or at least knowing who these individuals are in a database that they have a habit of doing this. I know that I'll never forget the individual's name that sent me the e-mail with a picture of my house. But again, whether he does anything, we'll never know. [LB394]

SENATOR FRIESEN: Thank you, Senator Johnson. Any other questions from the committee? Seeing none, thank you for your testimony. [LB394]

SCOTT SMATHERS: Thank you very much. [LB394]

SENATOR FRIESEN: Any other proponents? [LB394]

TIMOTHY McCOY: Good afternoon, Senator Friesen, members of the committee, my name is Timothy McCoy, T-i-m-o-t-h-y M-c-C-o-y. We're here, the commission supports this bill. It is, as you all know, this is very challenging because we're talking about the lines between freedom of speech and the lines of where somebody is really impacting legal activities of another person. The drawing of those lines is challenging, but, you know, as Scott identified, there are issues coming forward, especially with social media and with the use of both cell phones and e-mails that are raising questions that weren't questions we were thinking about when the original hunter harassment laws were

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

Natural Resources Committee
February 18, 2015

developed. So I think it's a good opportunity to do that. And as far as the license information, I figured that would be a question that would come up, it's a question we get frequently. Hunting permits are...we're required to release that under Nebraska Sunshine Law if someone requests the information in our permit system. We can redact. We do not provide birthdays, social security numbers, or actually the height, color, any of that personal identifying information. But we're required to provide name, address, phone number, and e-mails if we have it. E-mails have been the more recent thing, as an agency. We've been getting e-mails so that we can provide information to our customers and provide better customer service and to let them know about opportunities or to remind them that if they haven't bought their permit yet this year. All the interpretations we've been given are that because we collect that information and we have it, we must provide it. We've had some pushback that we've heard from our sportsmen, not directly related to the harassment issue, but to the issues of people have been requesting this information. We can charge a small fee for what it costs us, which this is an electronic database that we use and our law enforcement uses to make sure, you know, that people have permits. And so it's not a huge cost, but they get all that information. And we are getting some places that have taken all those e-mail addresses and done mass marketing to all the people that are in our hunting and fishing database. So there are some questions there for us. This bill doesn't address that. That is a, perhaps a...it's a tenuous issue brought up of holding back information from the public in the state. It's one that attracts a lot of attention. It is a concern of ours with e-mail addresses. The other concern that ties into this issue is we are in a position where we could be, if somebody provides us a public information request on a group of people or a group of permit buyers that we are required to provide that, and that includes their e-mail address. [LB394]

SENATOR FRIESEN: Thank you, Mr. McCoy. Mr. McCollister...Senator. [LB394]

SENATOR McCOLLISTER: Thank you, Senator. Does the state provide driver's license information to anybody that requests it? [LB394]

TIMOTHY McCOY: No, that is protected. That is not required to be distributed under the law, at least that's been our understanding, because our permit system has no connection to the driver's license databases. [LB394]

SENATOR McCOLLISTER: Why would hunting licenses be any different? [LB394]

TIMOTHY McCOY: I don't know. But we...it's not. Driver's licenses, I believe, are specifically identified in statute that they are...they do not have to be provided on request. [LB394]

SENATOR McCOLLISTER: What...if I came to you and said--you know, I'd sure like to have a list of all the hunting licenses issued in the state of Nebraska, what would you

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

Natural Resources Committee
February 18, 2015

charge me? [LB394]

TIMOTHY McCOY: I think most of the charges that we've done, I'd have to go back and ask, specifically, depending on the number you're looking for and how much processing we have to do, I think normally it runs to maybe a hundred or a few hundred dollars. In some cases, if it's a very small number, the way the sunshine laws are written, if it's a request for a small amount of information and it will only take, I think, it's a certain number of hours of time, we don't charge anything for that. We're unable to under the way the laws are set up for providing public information. [LB394]

SENATOR McCOLLISTER: How many hunting licenses exist in the state of Nebraska? [LB394]

TIMOTHY McCOY: In terms of people in our permit database, I believe...on my latest recollection between hunting and fishing permits, we have on an annual basis, I believe, we have over...I know it's over a hundred thousand. And we have a lot of people in our system that may not buy a permit every year. [LB394]

SENATOR McCOLLISTER: How many times during the year do you have people asking for the entire list? [LB394]

TIMOTHY McCOY: I don't get all those requests. I know that we've had at least four requests in the last calendar year that I was aware of for the entire list, and for varieties of purposes. [LB394]

SENATOR McCOLLISTER: Well, if you're obligated to give out the information on the people with the license, I'd like to see the people that requested the information. Could you get that list to the committee for the last three or four years? [LB394]

TIMOTHY McCOY: Yeah, I can. I know we've had requests everywhere from people running for public office to a large distributor of...a seller of...it's called Midway Arms, that does...that sells hunting supplies. [LB394]

SENATOR McCOLLISTER: Well, it's...yeah, but that's a fair question, I think. [LB394]

TIMOTHY McCOY: Yeah. [LB394]

SENATOR McCOLLISTER: So, thank you. [LB394]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions? Senator Johnson. [LB394]

SENATOR JOHNSON: Do you think their targets are high-profile people? Or do you

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

Natural Resources Committee
February 18, 2015

think they actually know that...somebody's probably got some publicity somehow and that's what triggers it. Or are they doing some of these at random, just sending out e-mails or harassment maybe? [LB394]

TIMOTHY McCOY: I believe most of this stuff going on now is coming through social media of people that are...whose names are in the news. The specific instances that I'm aware of in Nebraska fall back to the hunters that won the...one was the auction permit buyer of the mountain lion permit and the other one was the young man that Scott mentioned, Holden Bruce, from Franklin, who had drawn the mountain lion permit. I know that they were bombarded with that information. We get those same requests in those cases from the media too of what...they want that information to distribute it in their stories and we have to provide it. [LB394]

SENATOR JOHNSON: Okay. Thank you. [LB394]

SENATOR FRIESEN: Thank you, Senator Johnson. Any other questions from the committee? I just have one comment, I guess, more than anything. When I apply for a hunting license over the Internet and you request that information and I give you that e-mail, it's very unfortunate that that information can be accessed because I didn't realize that. And for me to give you my e-mail address, I mean, my intention was that we could have communications back and forth between the department and me. [LB394]

TIMOTHY McCOY: Um-hum. [LB394]

SENATOR FRIESEN: I did not want it to be used as a marketing tool. That's not the purpose of it. So I...we will...I will look into this further because I just don't think that's proper. When I have to apply for a permit to do something on my own land, whether it's a landowner permit, and suddenly that information is available to the public, I have a problem with that. [LB394]

TIMOTHY McCOY: I understand the concern. The issue on e-mails and the ability of that information to, you know, the ability at marginal costs for people to spam you with information is a lot different than anything we've dealt with, you know, up until probably really ten years ago. [LB394]

SENATOR FRIESEN: Thank you, Mr. McCoy. [LB394]

TIMOTHY McCOY: Appreciate it. [LB394]

SENATOR FRIESEN: Thank you. [LB394]

TIMOTHY McCOY: I will get back...I will bring the information back to the committee to

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

Natural Resources Committee
February 18, 2015

Senator McCollister's request. [LB394]

SENATOR McCOLLISTER: Thank you. [LB394]

SENATOR FRIESEN: Any other proponents wish to come forward? Seeing none, are there any who wish to testify in the opposition? Seeing none, are there anyone who wishes to testify in the neutral capacity? Seeing none, Senator Schilz, would you like to close? [LB394]

SENATOR SCHILZ: Yes, I would. Won't it be quick, I thought if I'd get shut out. Thank you, Senator Friesen. The questions that Senator McCollister said about the enforceability are...it's a real question...a real concern and I think that's something that we have to be mindful of. But the other questions is the same thing that I had, is the same concerns that you had, Senator Friesen, and I'm sure others have too, is that this information is out there and it's for everyone to see that knows that it's available. I will say that Senator McCoy has introduced a bill, LB30, that would make that information private. So there are things afoot to address this and take care of it. So he beat me to it by about 20 minutes to get that bill introduced. So we can look to that to see what that does. So it will be addressed this session and we will be able to debate that and see if we can find something to fix some of those gaps that are there. So with that, I will attempt to answer any other questions you have and close on LB394. [LB394]

SENATOR FRIESEN: Thank you, Senator Schilz. Any questions from the committee? Seeing none, thank you, Senator Schilz. [LB394]

SENATOR SCHILZ: Thanks. And we won't have an exec today; we're caught up pretty much. [LB394]

SENATOR FRIESEN: Okay. [LB394]

SENATOR SCHILZ: We'll try and do that tomorrow or Friday. Okay. [LB394]

SENATOR FRIESEN: Okay. Hearing is closed. [LB394]