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Natural Resources Committee
February 05, 2016

[LB887 LB897]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 5, 2016, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB887 and LB897. 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 Committee hearing for Friday...lost a paper up front, we'll get it figured out...you're fine, don't worry, it's a Friday, it's okay. I'm Ken Schilz, the Chairman of the committee, from Ogallala; I represent District 47. We have numerous...I think...yeah, all the committee members are here, so we'll start to my far left with Senator Kolowski to introduce himself.

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, and part of Hall County.

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

SENATOR HUGHES: Dan Hughes, District 44, Perkins, Chase, Dundy, Hayes, Hitchcock, Frontier, Red Willow, Furnas, Gosper, and Harlan Counties.

SENATOR SCHILZ: Here we go...and today with us Kellie Wasikowski, a sophomore from UNL; she's our page today. Today we have two bills on the agenda, LB887 and LB897. And so if you are planning on testifying today, please pick up a green sign-in sheet that's on the table at the back of the room. And if you do not wish to testify, but would like your name entered into the official record as being present at the hearing, there's a form on the table that you can sign. And this then will become part of the official record. Please fill out the sign-in sheet before you

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testify. Please print and it's important to complete the form in its entirety. When it's your turn to testify, give the sign-sheet to the committee clerk and this helps us make a more accurate public record as well. If you do not choose to testify, you can submit comments in writing and they will be read into the official record. If you have handouts, please make sure you have 12 copies. And the page will take those and hand those out to everyone. When you come up to testify, please speak clearly into the microphone. Tell us and spell your first and last name, even if it seems like an easy one. Please turn off your cell phones or anything else that might distract folks while they're testifying here. And if you need to have a conversation, please take that to the hallway if you don't mind. We don't allow any displays of support or opposition to any bills in front of the Natural Resources Committee. And so we would appreciate you giving the testifiers the respect they deserve by not making any overt positions on bills known. We do use the light system in the Natural Resources Committee. Five minutes; four minutes on green, one minute on yellow, and then when the red light comes on, it will turn red and then we'll ask you to kind of sum up and finish your thoughts. So, with that...with that we will turn and open up on LB887 and I'll turn it over to the Vice Chair, Senator Friesen.

SENATOR FRIESEN: Thank you, Chairman Schilz.

SENATOR SCHILZ: Good afternoon, Vice Chairman Friesen, and members of the Natural Resources Committee. For the record, my name is Ken Schilz, it's spelled K-e-n S-c-h-i-l-z and I represent District 47 and live in Ogallala. LB887 would extend the active dates of the Petroleum Release Remedial Action Cash Fund in Nebraska. This fund is set to expire in June of 2016 and we seek to extend the date to June of 2020. This fund exists to assist with cleaning up and remediation of leaking underground storage tanks. It currently contains approximately \$6 million, and that current allocation is already claimed for existing and upcoming projects before the June 2016 expiration. Money in the fund may be spent for reimbursement for the cost of remedial action including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred. Payment of any amount due from a third-party claim, fee collection expenses incurred by the state fire marshal, direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act, other costs related to fixtures and tangible, personal, interest payments is allowed, and claims approved by the state claims board, and the direct and indirect costs incurred by the department in responding to spills and other environmental or emergencies related to petroleum or petroleum products. Following me will be experts in the petroleum industry to explain why the fund continues to be necessary. And with that I would stop and open it up for any questions. [LB887]

SENATOR FRIESEN: Thank you, Chairman Schilz. Senator Schnoor. [LB887]

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SENATOR SCHNOOR: Senator Schilz, I guess, first question, only question I have is where is the revenue...what is the revenue source, do you know...or the folks behind you...? [LB887]

SENATOR SCHILZ: The folks behind me can tell you. I could make a pretty decent guess, but let's get it right from the folks that know for sure. [LB887]

SENATOR SCHNOOR: Okay. Thank you. [LB887]

SENATOR FRIESEN: Thank you, Senator Schnoor. Any other questions from the committee? Seeing none, thank you, Chairman. Are there any proponents who wish to testify? Welcome. [LB887]

MARK WHITEHEAD: Thank you. Acting Chairman Friesen, and members of the committee, thank you very much for the opportunity. For the record, my name is Mark Whitehead, that's M-a-r-k W-h-i-t-e-h-e-a-d. I'm a petroleum marketer here in the city of Lincoln; have been for longer than I care to admit. And I'm here on behalf of the Nebraska Petroleum Marketers and Convenient Store Association in support of LB887. I would like to thank Senator Schilz for bringing this forward. And would also like to comment that the Nebraska Bankers Association likewise informed us that they were in favor of this as well. I'm going to...brevity is somewhat of a virtue, but I guess...I wanted to comment a little bit on...give you a little bit of background on the history of where we are today, why the fund is there, and how we got there. And, likewise, possibly some of the dilemma that we have moving forward as well. This is funded by the industry for the industry's problems; funded by a fee on gasoline and diesel fuel, as well, moving forward. The average balance is right around \$7 million, and that gets regulated by the Department of Environmental Quality. At that particular level they use a method called RBCA, which is risk-based assessment moving sites on and off that list as a matter of priority. And so they've done an incredibly effective job of doing of it. They've done this...I think RBCA has been in place for at least the last 20 years or so. But to give a little bit of background even further, and I, unfortunately, was around during the early-mid '80s when the dilemma first came available. Prior to that...up to that particular point, if you were in the industry and the underground storage tank leaked, you replaced the tank, the problem solved. There really wasn't a method or mechanism to clean up afterwards and really wasn't thought of until the mid-'80s that technology changed significantly with underground storage tanks. Likewise, people began to experiment with what we do with that stuff in the ground after it's leaked out. And, by golly, the industry ought to take care of that. That wouldn't be a...as much of a problem if they required the problem from that particular tank or release to be taken care of at that point, but they wanted to go back and clean up the entire history of the industry's problem on a case-by-case basis as that became available. So I...it became the "wild, wild west," I guess I would describe it in our industry for about seven years from the mid '80s to the early '90s when all states, basically, came in and did a

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system very similar to Title 200. And underground...during that seven-year period, underground storage tank insurance was not available. And...but yet...and likewise, technology to clean up was not available either. I mean, it hadn't been...even been invented, but by golly the industry was going to do that. Since then the industry has learned a great deal about that. We've moved forward. And a fascinating thing about RBCA is that as sites became prioritized as to availability of funds, and that sort of thing, a funny thing happened on the way to clean up. An awful lot of sites that were listed and had come on afterwards, all of a sudden, they found out that natural occurrences in the bacteria in the soil actually took care of the problem in and of itself. So that's where we are today. Part of the dilemma we've got to sunset this is this is an insurance put on by the industry for the industry's issues. Speaking personally, I think we pay about \$300,000 into the fund every single year. Is private insurance available? It very well may be and industry will end up addressing this. I also serve on the...our national association, I can tell you that every state is dealing with these kinds of issues. It wouldn't be a problem on the private insurance or as much of a problem on the private insurance if you weren't paying into the fund and at the same time paying for private insurance. So right now the list is going down of underground storage tanks. And given this will work itself out, we are confident as an association this will work out as these backlog tanks continue to go down. The technology is there that is not as much of a problem with all tanks, basically, put in since 1998 with cathodic protectant, double-walled tanks and that sort of thing. I've got the red light. I'd be happy to answer any kind of questions you might have. [LB887]

SENATOR FRIESEN: Thank you, Mr. Whitehead. Are there questions from the committee?
Senator Schnoor. [LB887]

SENATOR SCHNOOR: Okay, you said the revenue comes from gas and fuel sales, so there's, essentially, a tax on the fuel? [LB887]

MARK WHITEHEAD: Right. [LB887]

SENATOR SCHNOOR: Do you know how much? [LB887]

MARK WHITEHEAD: I think it's nine-tenths, I think, on gasoline and less than that on diesel, I believe. [LB887]

SENATOR SCHNOOR: Okay. All right. If this sunset date isn't extended, what's going to happen with the money that's presently there? [LB887]

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MARK WHITEHEAD: It will be eaten up in fairly short order. This relies on a constant revenue stream coming in. And again, it is...this is a fee, again, put on by the industry for the industry's issues. But as these particular tanks continue...there's continual outgoing of funds and it will not take long for the balance that's currently on there to go away based on backlog and active sites that are already on the list. Again, this is continuing to go down. The list that I've got shows as of December 31, 1,332 total known sites, whether they're backlogged or active. Even as of September, that was about 150 tanks higher than that, or sites higher than that. So the number continues to come down. But, again, the dilemma falls with this, basically, insurance and for the amount of money that individual tank owners are putting into it right now, it can't...it's unrealistic to pay both private insurance and to do the contribution...or the fee for Title 200. [LB887]

SENATOR SCHNOOR: Okay. Who...then who is this money available to? I mean, let's say a farmer has an underground tank, because there are some out there, is this money available to him should there be some kind of a spill or contamination? [LB887]

MARK WHITEHEAD: I cannot speak to that specifically. I can tell you from the tank owners of retail sites and that sort of thing, we've got criteria; we need to be in compliance with underground storage tank regulations in order to qualify. I need to pay into the fund to be able to pay out...to get back...to get the money back out of it. Exposure is up to \$25,000 for the site owner with protection up to a million dollars. It's a phased in sort of scenario. Non-retail, private, I cannot...I apologize, but I don't know. [LB887]

SENATOR SCHNOOR: Okay. And then, you said--pay into the fund. But is this a tax that...that everybody that purchases fuel is paying... [LB887]

MARK WHITEHEAD: Right. [LB887]

SENATOR SCHNOOR: ...or that the retailer is paying? I mean, obviously, he gets, you know, money in and money out, but... [LB887]

MARK WHITEHEAD: Right. [LB887]

SENATOR SCHNOOR: ...for every gallon of fuel or gas... [LB887]

MARK WHITEHEAD: For every gallon of gas sold, there's...I believe it's nine-tenths of a cent. [LB887]

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SENATOR SCHNOOR: Yeah. And I guess when you said that, I think three-tenths of a cent for diesel fuel comes to mind. [LB887]

MARK WHITEHEAD: I believe so. [LB887]

SENATOR SCHNOOR: They have to pay that...that's automatically paid to this...for this... [LB887]

MARK WHITEHEAD: Right...right. [LB887]

SENATOR SCHNOOR: Okay. Thank you. [LB887]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator Kolowski. [LB887]

SENATOR KOLOWSKI: Yes, thank you, Mr. Chairman. Mr. Whitehead, what are the protections on the new tanks, you said, since 199...? [LB887]

MARK WHITEHEAD: Since 1998. [LB887]

SENATOR KOLOWSKI: Eight? Thank you. [LB887]

MARK WHITEHEAD: 1998...April 15...well, it wasn't April...anyway, I can remember the day... [LB887]

SENATOR KOLOWSKI: That's okay. [LB887]

MARK WHITEHEAD: ...exactly at the time because we had ten years to, basically, put...replace every single tank that did not have cathodic protection if it was a steel tank or a fiberglass tank or replace it with a fiberglass tank, one or the other. But it needed to be... [LB887]

SENATOR KOLOWSKI: What is the longevity on those? [LB887]

MARK WHITEHEAD: ...but they needed to be protected. It depends on the sacrificial anodes, those need to be tested and changed on an ongoing basis. But as you learned from your physics experiments in high school, it's basic...it's sacrificial anodes that...cathode and anode acts as a

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battery, basically, and the electrons are what actually decay the tank. And the sacrificial anode on the tanks does get eaten away and so those do need to be monitored and... [LB887]

SENATOR KOLOWSKI: About how long would they last? [LB887]

MARK WHITEHEAD: I don't know, that depends on the situation. [LB887]

SENATOR KOLOWSKI: So there is...there will be ongoing digging and repairing and all the rest in the future. [LB887]

MARK WHITEHEAD: Not to the extent of leaking tanks. [LB887]

SENATOR KOLOWSKI: Right. [LB887]

MARK WHITEHEAD: But because there are...and those regulations continue to increase much more so with double lining, as well as...of the tanks. [LB887]

SENATOR KOLOWSKI: Thank you. [LB887]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator Johnson. [LB887]

SENATOR JOHNSON: Thank you. Thank you, Senator Friesen. Thank you for coming in, Mark. I was in the business and back when...those seven years, I was in the business when we put... [LB887]

MARK WHITEHEAD: Wasn't that fun. [LB887]

SENATOR JOHNSON: Yeah. And there was some things going on that people would pull up tanks and hope grass grew on top once they pulled them up and were not registered. Are you still finding some of those locations or are we pretty well passed that where you've got underground contamination and you go out and find out there's an issue out there? Are you still finding some of those or are we pretty well past that? [LB887]

MARK WHITEHEAD: Of the information that we got from the department, of those 1,332 tanks, those are broken down: 506 of those are active investigations; 360 of them are backlogged, and 428 of those are orphan sites. [LB887]

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SENATOR JOHNSON: Okay. [LB887]

MARK WHITEHEAD: And then 38 are pending classifications. [LB887]

SENATOR JOHNSON: Thank you. [LB887]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator McCollister. [LB887]

SENATOR McCOLLISTER: Yeah, welcome, Mr. Whitehead, good to see you. [LB887]

MARK WHITEHEAD: Good to see you as well. [LB887]

SENATOR McCOLLISTER: That's the best explanation of sacrificial anodes that I've ever heard. (Laughter) So well done. What's the status of the...is there a continuing backlog in the number of tanks to be handled or remediated? [LB887]

MARK WHITEHEAD: No, I mean, again, since the '98 we haven't had nearly the problems of leaking underground storage tanks as they come in. As you know, all tanks needed to be out of the ground by '98, of the old technology. As some of these backlogs continue to come to the top, as I stated in my testimony, reoccurring or natural bacteria in the ground has taken care of a substantial number of those sites. I'll speak personally for us, we've had 36 sites or so and...retail sites, and as of the middle of this summer we anticipate not having a single remediation site. [LB887]

SENATOR McCOLLISTER: That's remarkable. [LB887]

MARK WHITEHEAD: And again, based on some of those past experiences, when they come to the top, you do an...as it comes to the top of the list, you reinvestigate the groundwater where your...where the site is and measure the current situation. And, lo and behold, in a substantial number of those cases, there's no longer an issue. [LB887]

SENATOR McCOLLISTER: That's wonderful. So the nine-tenths of a cent that's being charged on the fuel...diesel fuel and gasoline is sufficient? [LB887]

MARK WHITEHEAD: Diesel is less. Yes, it is. In fact, actually the department, because of RBCA, has been able to maintain that level in the...roughly the...average of about \$5 million. They do that...if I can be non-politically correct with the members of the Legislature here, there

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was a while back that the Legislature helped balance the budget and they used some funds from Title 200. The department has...because the department had built up a substantial balance in there and it became an attractive alternative. And so this is a fund designed specifically for the industry, paid into by the industry, for the industry's issues. To the Department of Environmental Quality's credit, they recognized that as well, so they have actively maintained the site or to pay, basically, an average balance around \$5 million. And it's working sufficiently from, I think, our industry's perspective and the department's perspective. And, likewise, there are an excess of funds in there as well. [LB887]

SENATOR McCOLLISTER: Well, no matter how you look at the program, you have to say it's an unqualified success and it's done exactly what we needed to do. So I salute you and the industry for the hard work and often the expense incurred to do things right. [LB887]

MARK WHITEHEAD: Thank you very much. [LB887]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Kolowski. [LB887]

SENATOR KOLOWSKI: Thank you, Senator Friesen. I wanted to ask you about the crews that you hire and send around the state for the digging or the removal. Are they done geographically or do you have certain crews that you just move around the state because they're so good at it and they have the right equipment or right machinery and all the rest? Or how do you go about doing the decision on that? [LB887]

MARK WHITEHEAD: It's a specialized industry. You need to be certified. And we do not...we utilize outside contractors to be able to do that. [LB887]

SENATOR KOLOWSKI: Different areas of the state, different geographies. [LB887]

MARK WHITEHEAD: And you've got people like Olsson and Associations who've got an environmental division that do the engineering part of it. And then in our case, General Excavating does the actual excavating. Again, they need to be licensed as well. [LB887]

SENATOR KOLOWSKI: When they find dirty spots, do they extract the dirt as well and the materials in that area and do something with that? Or is it (inaudible) process? [LB887]

MARK WHITEHEAD: There's protocols, that's part of the licensing requirements of knowing exactly what to do when they get to different phases of it. Yes, there are consequences for trying

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to sweep anything under the carpet or to the side. That's precisely why those procedures are in place. [LB887]

SENATOR KOLOWSKI: Thank you. [LB887]

SENATOR FRIESEN: Thank you, Senator Kolowski. Any other questions from the committee? One question, Mr. Whitehead, that I'd have, is...you...I believe you said the...currently, there's probably about \$7 million in the fund. Is there any cap on it or it just continues to grow? If you start running out of projects before expiration of the program, it just continues to grow funds or what happens? [LB887]

MARK WHITEHEAD: No, and I probably could have done a better job of explaining that in my testimony, but again, sites...of the 1,300 sites, basically, those are brought to the top of the priority list based on RBCA which is risk-based assessment. And so, consequently, they are able to regulate that on an average balance of roughly about \$5 million. It ebbs and flows a little bit. When monies are available, it brings another site up to the top of the list...to the active list. [LB887]

SENATOR FRIESEN: But at some... [LB887]

MARK WHITEHEAD: So we've got 506 active investigations, backlogged are 360, so as money becomes available, some of those, of the 360, get moved to the top of the list and remediation is activated at that point. And so they're able to regulate the overall fund balance. [LB887]

SENATOR FRIESEN: At some point in time, we'll run out of sites to do. At that point the fund will continue to grow if we have not reached expiration? [LB887]

MARK WHITEHEAD: That's right. And then that's where we, hopefully, we get into where I kind of opened up to where the...either the private insurance can take over and the Title 200 can go away at that point. [LB887]

SENATOR FRIESEN: Do you have what an average cost of a cleanup would be? [LB887]

MARK WHITEHEAD: According to the department, the average cost is...what is it, \$95,000 total. [LB887]

SENATOR FRIESEN: Okay. [LB887]

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MARK WHITEHEAD: And of that, the site owner would take care of the \$25,000 of that \$95,000. [LB887]

SENATOR FRIESEN: Okay. Thank you, Mr. Whitehead. Any other questions from the committee? Senator Schnoor. [LB887]

SENATOR SCHNOOR: Thank you. Senator Friesen kind of leads me to another question. How long does this need to be funded before that department runs out of money? If there's only so many sites that are left to be inspected...not inspected, but the cleanup and stuff being done, how long until the money is gone? [LB887]

MARK WHITEHEAD: Well, the revenue source is not based on that. Revenue source is on gallons pulled and sold. So that's where the revenue source is coming from. As the sites continue to get cleaned up and the backlog is eliminated, then the expenses...then at that point the expenses go away and we can see a sunset. [LB887]

SENATOR SCHNOOR: Because you said there's how many sites yet? [LB887]

MARK WHITEHEAD: The top two...the active investigations right now the department has at 506; backlogged is 360. And as I stated earlier, from September 30 to December 31, they've cut maybe 140 sites off of that 1,332. [LB887]

SENATOR SCHNOOR: And you said it costs an average of \$95,000 per site? [LB887]

MARK WHITEHEAD: That's the department's estimate is...the way they put it--estimated liability of known and future sites. [LB887]

SENATOR SCHNOOR: Okay. [LB887]

MARK WHITEHEAD: Oh, excuse me, \$95 million, I apologize. I misread that. I misread that. Total liability of estimated...so that does answer your question...\$95 million exposure is what they're estimating. [LB887]

SENATOR SCHNOOR: Ninety-five million dollars will cover the remaining sites. [LB887]

MARK WHITEHEAD: I apologize, I misread those notes. [LB887]

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SENATOR SCHNOOR: And there's presently...five...did you say \$7 million in the fund?
[LB887]

MARK WHITEHEAD: Yeah, roughly. The average...currently today it's \$5 million. That's about where the average is. [LB887]

SENATOR SCHNOOR: All right. [LB887]

MARK WHITEHEAD: And that fluctuates based on activity. [LB887]

SENATOR SCHNOOR: Okay. Thank you. [LB887]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator Kolowski. [LB887]

SENATOR KOLOWSKI: Sure, that would mean about 35 sites? [LB887]

MARK WHITEHEAD: What's that? [LB887]

SENATOR KOLOWSKI: That you would clean up about 35 sites then...the \$95,000 was not an accurate figure you... [LB887]

MARK WHITEHEAD: No, that was not an accurate figure. I only missed the decimal point by three. (Laughter) I misread my notes. The estimated liability of known and future sites is \$95 million. [LB887]

SENATOR KOLOWSKI: And there's \$7 million in there right now? Approximately? [LB887]

MARK WHITEHEAD: No, no, oh, I'm sorry, \$7 million, yes. [LB887]

SENATOR KOLOWSKI: Seven million (dollars) in there right now? [LB887]

MARK WHITEHEAD: Yeah. And again, that...that will vary as to...they keep an average of about \$5 million in there. And it's sometimes...on this sheet it goes as high as about \$7.8 (million) and it went down to as low as \$2 million over the course of 2010 to current day. [LB887]

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SENATOR KOLOWSKI: So you're telling us that money is going to be used and it would have to last for a long time yet. [LB887]

MARK WHITEHEAD: And again, well again, that fluctuates as a matter of priorities. And they've moved sites on and off the list based on funding. They measure a site...the risk-based assessment is based on the health risk, safety risk, and that sort of thing of that particular site, as well as available funds. If a site is exceptionally bad in terms of risk, that's going to be moved to the top of the list immediately. Those that can be put on the backlog reasonably are done so and that's the way the department is able to regulate the total balance of the fund. [LB887]

SENATOR KOLOWSKI: Thank you. [LB887]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator Schnoor. [LB887]

SENATOR SCHNOOR: Sorry, I keep coming up with more questions. What is the annual revenue that is brought in? [LB887]

MARK WHITEHEAD: I can't tell you that? I would if I could. [LB887]

SENATOR SCHNOOR: Okay. [LB887]

MARK WHITEHEAD: I do not know. Total reimbursements since 1989 have been \$142 million. Leaking sites closed have been 5,831. But total revenue, well, average revenue per month...I guess we can figure it out this way, average revenue per month fluctuates just a little bit over a million dollars per month. So yeah, about \$12 million. [LB887]

SENATOR SCHNOOR: Good enough. Thank you. [LB887]

MARK WHITEHEAD: You bet. [LB887]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator Johnson. [LB887]

SENATOR JOHNSON: Just a point, going back to when I was in the business, at one point in time, there was such a demand and severity of some of those that there was no funds available. I mean, it got down that low and that's been several years ago right after the terrible seven. Yeah, and where we didn't have any money to do cleanups because the demand was so high and that was before we learned all the technology. [LB887]

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MARK WHITEHEAD: And therein lies...the first few years of Title 200, they ran into that and they realized that this was not a sustainable scenario. And that's where the risk-based assessment came in. And thank goodness for the fund because I don't know that...there was no limit to how much the Department of Environmental Quality or the EPA would make us spend money back in the late '80s. There was no cap; there wasn't...they couldn't even define "clean" at that particular point. It didn't make any difference that preexisting conditions that were actually worse than what they expected to clean it up to. It was a horrible scenario at that point. And that's why, basically, became uninsurable by the insurance industry. And so, again, it came in, I think, basically, '92; Title 200 came in, I think; and then by '94 or '95 that they introduced RBCA. [LB887]

SENATOR FRIESEN: Thank you, Senator Johnson. One other follow-up kind of question is when we go back to the average cost of a site cleanup, you don't really have a number of that? It wasn't... [LB887]

MARK WHITEHEAD: No, that was...I apologize, I misread my numbers. But I can give you a long story when you're drinking, but I'll try to make it brief. Metro areas like Lincoln and Omaha, the cost of cleanup is substantially less because we're dealing with a non-drinking water supply. Three different classifications: known drinking water supply, potential drinking supply, and a RAC-3 is a "never has been, never will be" drinking water supply. So there you're just dealing with a scenario where public safety and that sort of thing, hey, which is a much lower standard of cleanup in terms of doing that. So I would estimate in metro areas the cost of cleanup would be around \$75,000 or so which is...that's been my own personal experience, but I have not seen an industry average on that. And again, up to \$70,000, the property owner pays \$25,000. [LB887]

SENATOR FRIESEN: Okay. Now are there a number of companies that do this cleanup work that you can contract with or how do you go about choosing someone to do the cleanup? [LB887]

MARK WHITEHEAD: The Department of Environmental Quality can assist on finding contractors. In fact, they've got a list because they recognize that there are a lot of first-time people have never done this sort of thing before. But, certainly, the industry is, unfortunately, familiar with people who are willing to assist. (Laugh) Just from past experience. [LB887]

SENATOR FRIESEN: Fair enough. Any other questions from the committee? Thank you, Mr. Whitehead, for your testimony. [LB887]

MARK WHITEHEAD: Thank you so much, Senator. [LB887]

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SENATOR FRIESEN: (Exhibits 1 and 2) Any others wish to testify in favor of LB887? I see none. We have one letter from Dean Edson from the Nebraska Association of Resource Districts in favor. Oh yeah, Robert C. Andersen, Nebraska Cooperative Council. Are there any who wish to testify in opposition to LB887? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, Senator Schilz waives closing. I will turn the hearing back over to Senator Schilz. [LB887]

SENATOR SCHILZ: Thank you, Senator Friesen. And Senator Lindstrom, you are welcome to open on LB897. [LB897]

SENATOR LINDSTROM: (Exhibits 1 and 2) Thank you, Chairman Schilz and fellow members of the Natural Resources Committee. My name is Senator Brett Lindstrom, L-i-n-d-s-t-r-o-m. I am bringing LB897 for your consideration. LB897 would allow certain public power districts to participate in hedging as a risk management tool. Hedging is commonly used in the electrical industry to mitigate market risk by locking in prices of fuel, power, and energy commodity futures. LB897 only applies to generation public power districts that are part of a regional transmission organization, Nebraska's being the Southwest Power Pool. The authority to enter into a hedging transaction needs to be authorized by the governing body of the power district. Power districts participating in hedging can only use 5 percent of their annual gross revenue averaged over the three preceding calendar years for such an investment. In essence, LB897 provides a way for generating public power districts to limit the effect of a volatile energy market on prices. By entering into a contract, the price is locked in to buy or sell at a future point in time should they chose to do so and they are guaranteed to get that price. Our power districts will be able to be less reactionary to market changes and will be able to proceed with more certainty than they are currently able to which will allow them to keep prices low. I'm bringing an amendment, which was passed out, for your consideration as well which will replace the bill. It further clarifies that the security interest in commodity futures contracts will be a foreclosable security interest and as the governing body of the power district may adopt or authorize an agreement to participate in hedging activities. Thank you. I'd be happy to answer any questions. [LB897]

SENATOR SCHILZ: Thank you, Senator Lindstrom. Any questions for Senator Lindstrom? Senator Friesen. [LB897]

SENATOR FRIESEN: Thank you, Chairman Schilz. Senator Lindstrom, you know, in the little sheet which I haven't had time to read yet you talk about hedging and things like that, so I totally understand, I think, what you're going after here. So in respect to how the power industry might use hedging, would they use it strictly to purchase fuel? Or would they be selling power industry

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or selling futures of delivery of electricity? Is there other markets for that? Or is it strictly to hedge fuel costs? [LB897]

SENATOR LINDSTROM: Well, there are different markets for different commodities. It would be what they participate in. So say NPPD couldn't go and put a future on something that they don't participate in. It would be strictly to their market...buy and sell. [LB897]

SENATOR FRIESEN: So if they wanted...okay, so they could also be selling future delivery rights to electricity? [LB897]

SENATOR LINDSTROM: Could, yes. [LB897]

SENATOR FRIESEN: Okay. So when you...some of these markets are not available on the board of trade, are they? Or are they all...all these types, or are they... [LB897]

SENATOR LINDSTROM: It depends on the exchange. There's three exchanges that particularly...are normally used. You have Chicago Board of Exchange, CBOE; the New York Mercantile Exchange, and then there's an international exchange as well. So, the different exchanges will have different commodities on which you can buy or sell future contracts. [LB897]

SENATOR FRIESEN: Okay. And so, again, I guess is...would the main focus of this to be buying fuel supplies like natural gas or coal or...? [LB897]

SENATOR LINDSTROM: That would be the intention of it, yeah. This is not a speculation. If myself or any other person wants to go and speculate, this is strictly hedging. So it would be natural gas, fuel, things that NPPD and the other power districts participate in in their normal day-to-day business. [LB897]

SENATOR FRIESEN: So are there any limits in how much they can go out and hedge? I mean, I as a hedger am allowed to go out and it's limited to my ability to raise so and so many bushels. And if I start to exceed that, if I raise 200,000 bushels, but I've got 400,000 marketed on the board of trade, obviously, I'm speculating. [LB897]

SENATOR LINDSTROM: Yeah. [LB897]

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SENATOR FRIESEN: How does...is there some assurance here that someone can't go out and purchase more than a year's supply or a two-year supply of fuel or something like that to where you would be considered a speculator versus what you use? How many years are you allowed to go out? [LB897]

SENATOR LINDSTROM: Well, there's limitations on the amount which is set at 5 percent of the annual revenue over a course of three years. So the average of that. [LB897]

SENATOR FRIESEN: Of gross revenue? [LB897]

SENATOR LINDSTROM: Right. [LB897]

SENATOR FRIESEN: Okay. [LB897]

SENATOR LINDSTROM: Right. So it is limited on how much...going back to your point with speculation, this is strictly hedging versus speculation. [LB897]

SENATOR FRIESEN: Okay. Thank you. [LB897]

SENATOR SCHILZ: Thank you, Senator Friesen. Any other...Senator Schnoor. [LB897]

SENATOR SCHNOOR: You do this for a living. I shouldn't say you do it, but you manage and advise people, so you understand there's probably...more than me for sure. [LB897]

SENATOR LINDSTROM: Well, conceptually, I will...I'd say managed futures is not something that I do on a day-to-day basis, but I am licensed with the...31. [LB897]

SENATOR SCHNOOR: Okay. How is this going to be...how do these agencies, how do they finance this? [LB897]

SENATOR LINDSTROM: Well, they would open up a brokerage account through any, I mean, one of the big names. I forget who they clear through, typically, when they're doing a bond. I think D.A. Davidson was mentioned at one point. But they would just open a brokerage account and then fund it with cash and then buy the futures in those exchanges. [LB897]

SENATOR SCHNOOR: And now are they going to have to hire somebody that's specifically trained in this? [LB897]

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SENATOR LINDSTROM: They would, yeah, unless they have somebody on staff or go through a third party which might be a good question for someone behind me. But you would want somebody that knows what they're doing on this. [LB897]

SENATOR SCHNOOR: Are there any other public entities that do this already? [LB897]

SENATOR LINDSTROM: Not in the state of Nebraska, but in other states, yes; and part of the Southwest Power Pool. [LB897]

SENATOR SCHNOOR: You know, because people hedge commodities all the time. I don't do it. I don't understand it enough. I understand enough to get me in deep trouble, so I stay out of it. But, you know, you always hear people talking about margin calls and having to come up with money for that. How is that all handled in a....when we're dealing with public dollars? How is that going to work? [LB897]

SENATOR LINDSTROM: Well, that might be a question for the (inaudible), but this is not a margin account. There would not be margins, because we're not leveraging taxpayer money. [LB897]

SENATOR SCHNOOR: Okay. [LB897]

SENATOR LINDSTROM: It's strictly buy and sell, cash available in a brokerage account. So there's no...like I said, no hedge...I'm sorry, margin or margin calls. [LB897]

SENATOR SCHNOOR: Okay. That's why you know more about this than I do and that's why I don't do it. But anyway, thanks for explaining that. [LB897]

SENATOR LINDSTROM: Sure. [LB897]

SENATOR SCHILZ: Thank you, Senator Schnoor. Any other questions? Senator Friesen. [LB897]

SENATOR FRIESEN: Thank you, Chairman Schilz. Going back to the margin call, I mean, currently they probably require like one day service on a margin call, but you would be paying on a margin call, is that correct? [LB897]

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SENATOR LINDSTROM: Well, you...it's a cash settlement each day, so you would have to have cash available to facilitate the trade. [LB897]

SENATOR FRIESEN: That's correct. [LB897]

SENATOR LINDSTROM: For the contract that day. But if you have enough assets or cash in the account, then it would be able to settle that day. [LB897]

SENATOR FRIESEN: Correct. So going back to the dollar amount you're talking about here, so the total could never exceed 5 percent of whatever your gross revenues are. [LB897]

SENATOR LINDSTROM: Correct. [LB897]

SENATOR FRIESEN: So if you wanted a...if you thought right now that natural gas prices at their 50-year lows and you want to go out as far as you can and purchase natural gas, how far out can you go? [LB897]

SENATOR LINDSTROM: That might be a question for the individual behind me. I don't think you would want to go too far out. I mean, if it's a record low, but we didn't put any restrictions in the date in which you could lock in a price. [LB897]

SENATOR FRIESEN: So I guess I'm trying to come up with how much revenue might be involved in that. If it's 5 percent of one year's and so then you're going out three years, is it 5 percent of each year's potential revenue that you can lock up in hedging? [LB897]

SENATOR LINDSTROM: It would be 5 percent of whatever the annual average over three years. So whatever that number is. It could be one year... [LB897]

SENATOR FRIESEN: So that would cap your total hedging ability? [LB897]

SENATOR LINDSTROM: Right. [LB897]

SENATOR FRIESEN: Okay. Thank you. [LB897]

SENATOR SCHILZ: Thank you, Senator Friesen. Any other questions? Seeing none, thank you Senator Lindstrom for your opening. We'll now take proponents for LB897. Good afternoon, sir. [LB897]

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TOM KENT: (Exhibit 3) Good afternoon. Chairman Schilz, members of the committee, my name is Tom Kent, T-o-m K-e-n-t. I'm vice president and chief operating officer for the Nebraska Public Power District. I've over 25 years of experience in the electric utility industry. I'm a registered professional electrical engineer in Nebraska and I sit on the Southwest Power Pool members committee. Originally, our chief financial officer was planning to testify today. However, she had a death in her family and is unable to be here. I'm testifying on behalf of Nebraska Public Power District and the Nebraska Power Association in support of LB897. NPPD operates an integrated electrical utility system including facilities for generation, transmission, and distribution of electric power and energy sales at wholesale and retail. The nature of NPPD's business exposes it to a number of risks inherent to energy markets. These risks include volatile energy prices, variability between forecast and actual load and resource mix for NPPD and the region, and extended unplanned power plant outages to name a few. NPPD develops and implements strategies to proactively manage these risks. The objectives of these strategies are to hedge the risk of significant adverse impacts to cash flow in any one calendar year. Hedging is a common practice for risk management in the electric utility industry. Private utilities and many public power utilities with generation assets have the ability to hedge for risk management. Hedging is like buying insurance to help mitigate risk. Currently under Nebraska statute, public power districts are authorized to pledge revenues to secure payment for indebtedness. However, a public power district has no authority to grant a security interest or a lien on its property. Security interest is a legal claim on collateral that has been pledged. Generating power agencies in Nebraska include utilities such as Nebraska Public Power District, Omaha Public Power District, and the Municipal Energy Agency of Nebraska. These generating power agencies buy and sell power and energy in one or more regional transmission organizations such as the Southwest Power Pool. They would like to open a brokerage account to hedge the future uncertainty of energy prices and manage the risk of adverse impacts of cash flows by locking in future fuel or electricity prices, financially, do this to achieve improved customer rate stability. The proposed legislation would allow generating power agencies to grant a financial security interest for the limited purpose of securing a brokerage account for entering into financial positions related to fuel or electricity. In the case of a brokerage account, it is the margin that is pledged to securitize the transaction that the brokerage account provider would have a legal claim on. NPPD executes its energy risk management strategies in a non-speculative fashion. In other words, NPPD has policies that prevent it from speculating and any transaction designed to generate income based on expectations on market movement are prohibited. The proposed legislation imposes a limit of 5 percent of annual gross revenue over a three rolling-year average to be used as for the brokerage account nominal limit exposure. As an example, approximately 70 percent of NPPD's 2015 sales were to contracted wholesale and retail firm requirement customers. The remaining 30 percent was sold to serve the requirements of the Southwest Power Pool Integrated Market. The reason we can do this is that we are required to have generation capability to serve our peak load plus reserve requirements to fulfill our reliability obligations. For the many hours where our load is not at peak levels, this provides us

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with the opportunity to sell additional low-cost generation into the market. The difference between the price received from the Southwest Power Pool Integrated Market for the additional energy sold and our marginal cost to generate the energy is used to help reduce the rates to our Nebraska wholesale and retail firm requirements customers. These market prices can be volatile and by using financial hedging we can obtain more predictable and sustainable margins from NPPD's additional energy sales. This predictability is important in our being able to sustain stable and competitive rates. The use of futures and options will allow NPPD to manage volatility in market prices and allow NPPD to better serve our existing Nebraska customers. NPPD's trading and hedging activities are conducted to achieve greater customer rate stability. Thank you for the opportunity to provide testimony today. And I'll do my best to answer any questions you may have. [LB897]

SENATOR SCHILZ: Thank you, sir. Any questions? Senator Kolowski. [LB897]

SENATOR KOLOWSKI: Just within the ballpark, Mr. Kent, I wanted to ask you, do you know what your savings would be in a normal year as far as using the techniques that you've described or anything that would be enhanced by this bill? [LB897]

TOM KENT: Our savings would be hard to estimate. I would talk about it more in terms of our ability to protect what we hope to get for revenue. So for example, if we set up our yearly budget with an expectation that we want to be able to get \$30 or we hope to get \$30 a megawatt hour out of our market sales. We would use these transactions to help protect that revenue and ensure that we can manage the risk around that because the market prices may go up or down around that. So if we're concerned that the prices may fall, we would sell a contract at \$30 or better if we could in the future. And then use that contract; if prices fall, that contract protects that revenue. [LB897]

SENATOR KOLOWSKI: Thank you. [LB897]

SENATOR SCHILZ: Thank you, Senator Kolowski. Senator Friesen. [LB897]

SENATOR FRIESEN: Chairman Schilz. Thanks for coming, Mr. Kent. Couple of questions, when you mentioned in your testimony that you were probably going to use options or futures accounts straight out, so when you enter in some options contracts and depending on which side of an option you're on, i.e., either had unlimited risk or you know exactly what your risk is, do you see being able to use both sides of an option strategy? [LB897]

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TOM KENT: Whether we use futures or options, we will always be doing it as a hedge. So we will be doing it to manage risk. We're prohibited from doing speculative transactions. So we're always going to be on the side of the transaction where we're trying to manage our risk exposure in the energy market where with fuel purchase for our power plants. [LB897]

SENATOR FRIESEN: So if you're hedging account and say you're getting up to the maximum amount that you're dollar-wise that you're allowed to have there and suddenly you have a large futures position move against you and do you have to divest yourself of some positions or how will you...what will you do if you reach that limit? [LB897]

TOM KENT: I'm not sure I can give you the most accurate answer on that, but we can follow up further, but if we're at the end of our account, we would have to divest ourselves and unwind those positions to stay within our limits. [LB897]

SENATOR FRIESEN: Okay. Thank you. [LB897]

SENATOR SCHILZ: Thank you, Senator Friesen. Any further questions? See none, thank you for your testimony. [LB897]

TOM KENT: Thank you. [LB897]

SENATOR SCHILZ: Further proponents? Any proponents? Okay. Are there any opponents? Any opponents? Seeing none, are there any neutral testimony? Seeing none, Senator Lindstrom had to go to another hearing to introduce a bill, so with that, that will close the hearing on LB897 and close the hearings for the day in the Natural Resources Committee. Thank you all very much. [LB897]