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Natural Resources Committee
February 23, 2017

[LB448 LB547]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 23, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB547 and LB448. Senators present: Dan Hughes, Chairperson; Bruce Bostelman, Vice Chairperson; Joni Albrecht; Suzanne Geist; Rick Kolowski; John McCollister; Dan Quick; and Lynne Walz. Senators absent: None.

SENATOR HUGHES: (Recorder malfunction)...this committee to order. Welcome to the Natural Resources Committee. I'm Senator Dan Hughes. I am from Venango, Nebraska, and represent the 44th Legislative District and I serve as Chairman of this committee. The committee will take up bills in the order that they are posted. Our hearing today is a public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the reserved seats in the front row that are labeled the queue if you wish to testify next. Introducers will make initial statements followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the committee clerk or to a page. This will help us make a more accurate public record. If you do not wish to testify but want your name entered into the official record as being present at the hearing, there is a separate white sheet on the tables that you can sign in for that purpose. This will be part of the official record of the hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered. If you have handouts, please make sure you have 12 copies and give them to the page to distribute to the committee. When you come up to testify, please speak clearly into the microphone, tell us your name, and please spell your first and last name to ensure that we get an accurate record. If you fail to do this, I will stop you and ask you to do that. We will be using the light system today. How many people want to testify on bills today? Can I see a show of hands? It looks like we have about ten-fifteen, so we will have five minutes. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining and the red light indicates your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves beginning on my far left.

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

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SENATOR GEIST: Suzanne Geist, District 25, here in Lincoln, east Lincoln and north to Waverly.

SENATOR QUICK: Dan Quick, District 35, Grand Island.

SENATOR WALZ: Lynne Walz, District 15, all of Dodge County.

SENATOR HUGHES: And on my right.

SENATOR ALBRECHT: Hi, I'm Joni Albrecht from District 17, it's Thurston, Dakota, and Wayne County.

SENATOR BOSTELMAN: I'm Bruce Bostelman, District 23. That's Sarpy...Sarpy. Saunders, Butler and Colfax County. (Laughter)

SENATOR HUGHES: To my left is committee counsel, Laurie Lage, and to my far right is committee clerk, Mandy Mizerski. Our pages for the committee today are Heather Bentley from Miller, Nebraska. She's a freshman at UNL studying agriculture and economics. And Lee-Ann Sims from Lincoln. She's a sophomore at UNL studying political science and global studies. So with that we will open our first hearing on LB547. Senator Watermeier, welcome to the Natural Resources Committee.

SENATOR WATERMEIER: Thank you, Chairman Hughes, it's a pleasure to be here. Members of the Natural Resources Committee, I am Senator Dan Watermeier, W-a-t-e-r-m-e-i-e-r. I represent District 1 in the southeast corner of the state. I'm from Syracuse, Nebraska, here to introduce LB547. LB547 is an extension of legislation that our Legislature passed last year. LB824 removed a public power district's authority to use eminent domain to take over renewable energy generation projects. At the time, I wondered why we were only doing a carve out of the protection for renewable projects only, which is why I'm here today offering this bill that would remove public power's authority to use eminent domain over all types of privately owned and operated electrical transmission and generation in the state of Nebraska. I want to make it perfectly clear that this bill does not touch public power's ability to use eminent domain to build its own generation and its transmission. The primary reason to support LB547 is for economic development. It seems wrong that the threat of eminent domain should force private capital to look outside of our state for electric generation projects. If, for instance, a private company that wants to build a natural gas facility in our state, and it's pushed out of state, then that state would have the construction jobs for that facility, that state would have the permanent jobs of that facility, and that state would have the property taxes generated from the facility, and obviously,

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the income taxes as well. It has been said that Nebraska already produces too much electricity and we don't need anymore electricity generation. It would appear that the Southwest Power Pool differs with that notion. It is the Southwest Power Pool, which I will refer to now as SPP, that determines how much generation through its transmission system can handle, and if more transmission is needed to accommodate additional generation within the 14 state territory. This is not public power's decision anymore. The reality is that world has changed. It's my understanding that the SPP currently has about 45,000 megawatts of pending generation with inner-connection requests. This is about six times of the megawatt generation that the entire state of Nebraska has right now. Obviously, the SPP is willing and welcoming of additional generation within the SPP footprint. It is my hope that Nebraska doesn't lose out on those kinds of economic opportunities with the jobs and taxes that they would bring to our state. If other states do not have impediments or barriers such as the risk of eminent domain, those states will be a much better business friendly place to build generation facilities. It seems our state policy is at cross purposes with our state, often stated goal, of helping bring economic development to our state. Some say that preventing additional electricity generation from being built in Nebraska will somehow protect public power's current generation fleet in the competition market...competitive market. However, because the SPP now operates in integrated market, any new generation outside of Nebraska would still be in competition with public power's generation in the integrated market. There's no way that Nebraska can prevent this new generation from happening in other states. And as long as the SPP is still allowing new generation, it's Nebraskans who are losing out on this opportunity for jobs and economic development. Even if new generation is not built in Nebraska, if additional generation will have negative impacts on Nebraska public power or Nebraska ratepayers, those negative effects are still coming and there is nothing we can do to stop that. In terms of oversight of any private generation or transmission that might be built in Nebraska, that regulation would come from SPP and local communities just as it does now. The SPP does not allow generation projects to be built where there is no available transmission to move that new power. Regarding LB547's exemption from approval by the Nebraska Public...excuse me, Power Review Board which I'll term as PRB, Nebraska Public Review Board, this step is merely a formality by updating our statutes. Since the SPP analyzes all new generation for transmission issues in the 14 state footprint, it serves no purpose for the additional step of NPRB approval, except to impose just another potential barrier to new jobs, new investment, and new tax revenue in our state. Unlike with public power, the private developer for all new generation in transmission projects bears all the financial risks without any cost to the citizens. For these reasons, I urge you to favorably look at LB547 and I'd be glad to try to answer any questions if I can. Thank you, Mr. Chairman. [LB547]

SENATOR HUGHES: Thank you, Senator Watermeier. Are there any questions? Senator Albrecht. [LB547]

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SENATOR ALBRECHT: Okay. I heard what you said, but now I just need you to help me out here. Okay, and thank you, Chairman Hughes, for the opportunity to ask a question. Senator Watermeier, thanks for your testimony. Now I would like to understand, are you saying if somebody came in and wanted to put wind or solar somewhere in our state, they have to go through the Public Power District to be able to do that? [LB547]

SENATOR WATERMEIER: Well, they would have to have a partnership with somebody to receive the power, but they can build it today without a threat of or the fear of eminent domain. So today the renewables have been excluded. As of last year, the renewables have been excluded from the eminent domain. [LB547]

SENATOR ALBRECHT: Okay, but do you...so you're also saying in this bill that if it's a county and somebody wants to come in and put a windfarm or whatever, that the windfarm people could just come in and with eminent domain and be able to do what they want to do? [LB547]

SENATOR WATERMEIER: No, I'm sorry. [LB547]

SENATOR ALBRECHT: Or are you saying that the county or the public power district, who has the eminent domain power? [LB547]

SENATOR WATERMEIER: Right now, we're taking...the bill that I'm suggesting, the LB547, and I apologize if it's unclear, but we're not giving new eminent domain authority to anyone, no county, no anybody, no new power generations. The eminent domain stays with the public power and that is still the, I would say, the competitive advantage that public power will have and always has had, is that they will still be able to use eminent domain to go and build new generation. The only thing that we're going to do in this bill is take away the eminent domain ability to take away something that's currently being operated or going to be constructed. So the difference is a private developer could come in and build a project without the threat of public power taking over that project and then running it as their own. So there's a big difference in that regard is the eminent domain still stays a public power but it would be for a new project that they would feel like they would need and they would still have to go through with their regulatory efforts as far as doing that. [LB547]

SENATOR ALBRECHT: Okay. I'll sit and listen and then I'll probably have more... [LB547]

SENATOR WATERMEIER: And we can talk about it off the mike as well, but just the key to it is, is now there's the ability...really the eminent domain argument that I'm getting at is a twofold threat from the public power. One is that they could use it for an existing project. If it was built

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and they liked it they could in and take it over and operate it just as it was, or they can use the eminent domain to come in on something that is not built and build it themselves. That part of the eminent domain will stay with public power. We're not going to take that away from them. And in my mind, that's what I believe eminent domain should be used for is something for the public good, something that's not currently there, whether it's a road construction project or water or energy. If we think that's in the public good or the public benefit, then they should have that ability to use eminent domain to build a project. But I just believe it's wrong for them to be able to step in and take over an existing project. [LB547]

SENATOR ALBRECHT: Well, maybe, and here's just another quick question. Would the public power...if these people want to come in and put whether it be solar or wind or whatever, do they have to hook into public power? [LB547]

SENATOR WATERMEIER: Well, they have to hook into...they have to have...first of all, they would have to have permission or...the terminology escapes me, but they would have to have, SPP will have to grant that ability for them to hook up to their transmission. SPP is not really involved in generation as much as it is transmission. The Southwest Power Pool is what they call an RTO, a Regional Transmission Organization. And when that change happened in 2009, that's what really changed the landscape in Nebraska because that environment right there was at that point in time turned over to the SPP. They really decide who generates it, by the way they allow transmission. That's the simplest way I could describe it. [LB547]

SENATOR ALBRECHT: Okay. Very good. Thank you. [LB547]

SENATOR HUGHES: Senator Geist, got a question? [LB547]

SENATOR GEIST: I do. Thank you. [LB547]

SENATOR WATERMEIER: This committee is very formal. I appreciate that. (Laughter)
[LB547]

SENATOR GEIST: Thank you for your testimony and I just need a little clarification. And I, too, am going to have to sit back and listen a little bit more, but you said that they will not be under the Nebraska Power Review Board, correct? [LB547]

SENATOR WATERMEIER: That's correct. [LB547]

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SENATOR GEIST: Would they currently be under LB824? Would that have left them under the purview of the Nebraska...? [LB547]

SENATOR WATERMEIER: I believe it would have, yes. The Power Review Board still has statutory authority for what we changed last year. Really the only simple change we made last year was specifically to renewable projects. Everybody talks about it just for wind, but it was actually on solar and wind projects to where the eminent domain would not be able to be used for a new project that a private developer would want to come in. I believe, and I could be wrong, that that step as far as the Power Review Board was not addressed at that point in time. But, and I addressed it a little bit in my opening, the role of the Power Review Board has somewhat changed today. When that as born and when public power was born, the only things we needed to worry about in Nebraska was discussions, what you might say arguments, about who...which public power entity had boundary disputes. So the Public Power Review Board is really an entity for the public power to settle disputes inside of its organizations. So what today's environment with everything being controlled by the SPP, they are really making that decision about is there enough generation, is there enough transmission to move projected new generation. So those regulatory, those decisions about analysis of whether there's enough room really happens inside the SPP today. [LB547]

SENATOR GEIST: Does that also protect the public safety? [LB547]

SENATOR WATERMEIER: Well, the Power Review Board really...I could be misquoting here, but I would say that's not about the public safety. It's more about how much regulation is, about how much is being generated and where it's at. And I hate to get into the weeds too awful far on the Power Review Board because they serve a role that is quite different than what I understand and maybe could explain, but it's more about the disputes between one public power district and another one about boundary disputes. It's not really anything to do with safety unless I could be wrong, but I don't think it has anything to do about safety. [LB547]

SENATOR GEIST: Okay. Thank you. [LB547]

SENATOR HUGHES: Okay. Senator Bostelman, you have a question? [LB547]

SENATOR BOSTELMAN: Yes, thank you, Mr. Chairman. Senator Watermeier, has any...has this eminent domain been used that you know of by a public power on a private generation facility? [LB547]

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SENATOR WATERMEIER: Not that I'm aware of, no, unless you go back into the '30s and '40s when public power was born. [LB547]

SENATOR BOSTELMAN: And is there any threat for that to happen now? I guess, I'm wondering why if it's never happened before, if there's something out there that, you know, that we need to look at this again. [LB547]

SENATOR WATERMEIER: Well, certainly with that in the statutes and if you look at what I define as eminent domain as for a public good, something that is new, something that would be a new suggested project, certainly eminent domain should have its place. But when you talk about something that would be existing and just the idea of the fact that nothing has probably been proposed or suggested, or actually built, no, probably not, but as long as that's on the books, the capital will not flow into Nebraska. It's just not going to be possible for a company that would be willing to invest gets up to speed and then have it turned right over with the potential because you could never get...I mean, in my business, I could never get financing for that in my farm to finance something and then had it swept away, you know, as soon as it was profitable. [LB547]

SENATOR BOSTELMAN: Okay. Thank you. [LB547]

SENATOR HUGHES: Okay. Senator Kolowski. [LB547]

SENATOR KOLOWSKI: I think it was answered. I was moved on to it... [LB547]

SENATOR WATERMEIER: Oh, it couldn't be, not by me. (Laughter) [LB547]

SENATOR HUGHES: Senator Quick, you have a question? [LB547]

SENATOR QUICK: Thank you, Chairman Hughes, and thank you, Senator Watermeier. My question is, was on...you know, you saying that the power districts now if they want to bring in new power, or do they have to get permission from the Southwest Power Pool, is that what you're saying, or...? [LB547]

SENATOR WATERMEIER: They would. You mean the public power in existence today? [LB547]

SENATOR QUICK: Yeah. [LB547]

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SENATOR WATERMEIER: Yes, they still would have to make the same request to the Southwest Power Pool and they would determine, even across state lines now, they would determine inside of Nebraska, yes, you have the transmission ability to do that. That has to have their stamp of approval today, as I believe it still does with the Power Review Board. But the Power Review Board really is trumped, if you would say, they would be trumped higher by the SPP because the SPP is the hammer that determines the transmission load in the state. [LB547]

SENATOR QUICK: Okay. [LB547]

SENATOR HUGHES: Okay. Additional questions? Senator Kolowski. [LB547]

SENATOR KOLOWSKI: Come back at this time. Thank you, Mr. Chairman. Senator, the...I'm trying to see...who has an advantage then the way your bill is written and if it comes out that way, and you're trying to build more economic opportunity in the state. But our...what...whose turf is being protected by what you're suggesting, or I'm trying to peel back the pages and understand, you know, the depth of this rather than just the superficial layer. [LB547]

SENATOR WATERMEIER: If I could do it as simply as I could define it the way it is today, public power would have two modes of eminent domain over entities in the state of Nebraska. One, an existing project, and one, if they had a brand new one they could use eminent domain in the same factor. They would have to go through the court system to do that. But if my bill were to pass, public power still has the trump...I would say they have the higher authority in the fact that they could use eminent domain to go out and build a brand new project where a private developer could not do that. If it was in a spot in which they had a huge push back, the private developer would not have that ability to, you know, to get eminent domain. They would have to buy all those rights, buy all those pieces of the puzzle where the power still resides in the public power because they would have that ability to use eminent domain that the private industries would not be able to. If that gets to what's your point. Like I say, peeling back the onion, today eminent domain has...the public power has eminent domain in two ways. After the bill, they're going to have it in one way, but the private industry will have none, have actually no use of eminent domain. They will not have that in their portfolio at all use. [LB547]

SENATOR KOLOWSKI: Okay. [LB547]

SENATOR WATERMEIER: Does that make sense at all? It's a complicated issue, it is. [LB547]

SENATOR HUGHES: Senator Quick. [LB547]

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SENATOR QUICK: Thank you, Chairman Hughes. Another question I have is then I know you're talking about public power would have that advantage but wouldn't the bill last year, or the previous bill to allow more wind generation to be constructed by a private company in order for...because public power didn't have the advantage of subsidies. So it allows them to get into wind generation, be able to buy wind generation or the electricity from them. So, really in some cases they are at a disadvantage, public power, probably because they don't get the subsidies on it. [LB547]

SENATOR WATERMEIER: That would be a correct analogy that the public power cannot qualify for subsidies that a private industry could. But last year, there was nothing to do with subsidies. That production tax credit rolled off the federal level and I actually ran away from renewable projects in the last ten years that I've been involved with the power. Through ethanol and different things I've been involved with, I've never been a huge supporter of wind. I mean, I've been on record stating that. I've never been a big supporter of, because I believe it all needs to stand on its own. But what got me involved last year was strictly the one issue that someone could come into the state of Nebraska, build it at their risk, all their capital with their good intentions, and have someone else take it away. If you think about what eminent domain means and what eminent domain was really built for the public good, I just don't get that connection. That was a struggle for me as far as a regulation issue, as far as just a business issue, that was a struggle for me. And it just really carries over into this bill today and that's as simply as I could define that, so. [LB547]

SENATOR QUICK: Thank you. [LB547]

SENATOR HUGHES: Additional questions? I just have one on the eminent domain. I understand the generation part because that's a relatively small footprint, so you know if some private developer wanted to come in, you know, buy the land, that would be one issue. But the transmission part side, I do have a little heartburn with that portion if they're going to be, you know, building lines and have the ability to cross country... [LB547]

SENATOR WATERMEIER: Yes. [LB547]

SENATOR HUGHES: ...or, you know, down the right of way or whatever to get power from their facility to hook into the grid somewhere. I mean, they're going to have to hook into public power at some point. [LB547]

SENATOR WATERMEIER: Yes, that's correct, I would say, yeah. [LB547]

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SENATOR HUGHES: So I guess I just...possibly if we could separate the generation from the transmission part of that, is that...I mean, is that...am I making sense at all, or...? [LB547]

SENATOR WATERMEIER: I see where...I think I see where you're headed but even if you think about a power...a new generation is more likely going to have to have some sort of transmission even if it's a quarter mile or 14 miles to the municipality that's trying to be involved in that. So we could certainly discuss that. I mean, I'm open for discussion on this bill, just as we were last year and I can get your concern. But keep in mind that the private developer is not going to invest in a generation unit somewhere knowing that they'd have trouble getting it to where the major transmission lines are. There's an obstacle between here and there and they don't have eminent domain, that's going to scratch their project anyway. So I'd be willing to talk about the transmission side of it, but I think you might box the whole process out with that thought process. I mean, I could talk about it with you. I never really did in that regard, but that's a potential. [LB547]

SENATOR HUGHES: Okay. Thank you. Are there other questions? Senator Walz. [LB547]

SENATOR WALZ: Thank you, Mr. Chairman. Can you just explain to me what you mean by they can come in and take it away, like...? What does that mean? [LB547]

SENATOR WATERMEIER: Well, the power of eminent domain is that if I own a farm here in this part of the section and a pipeline or an NRD or a public entity of some sort, whether it's a school or a power district, decide they need to have a piece of my ground, they can come in and use eminent domain to take that over, or a part of my ground, because it's a good or the betterment for the community or the betterment for the state. What public power has the right to do with eminent domain, specifically to public power, is they have the right to take over a generating facility that's up operating and producing power and they look at that and they have the ability to take over that at whatever via...I don't even know how we come to the point if it's through the court systems, they would come to a point in which they could take that over and take over ownership and operation of that power, generation, and transmission. [LB547]

SENATOR WALZ: Okay. Thank you. [LB547]

SENATOR HUGHES: Senator Kolowski. [LB547]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. And then, Dan, your bill would not let them do that, the second part of which you talked about? [LB547]

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SENATOR WATERMEIER: Them? [LB547]

SENATOR KOLOWSKI: The public power to come in and have eminent domain over an existing facility built by someone else. [LB547]

SENATOR WATERMEIER: That's exactly right. The only part that we're taking away is what is an existing generation, existing transmission. If they want to go out using the domain on some bare piece of dirt or a highway or something they have to use, if they feel like it's in the best state, they'll put together their proposal, put together all the financing of it and look at it and then they'll have to go to SPP as well and say, we plan on building this. It's going to be 80 megawatts, whatever it is. SPP will look at what's already in the generation system and if there's room for it, and they'll say yes or no basically based on the transmission of it. [LB547]

SENATOR KOLOWSKI: Okay. Let's ask the historical question. Has this happened in a number of situations? [LB547]

SENATOR WATERMEIER: No, not that I'm aware of. [LB547]

SENATOR KOLOWSKI: So, theoretically, it could happen. [LB547]

SENATOR WATERMEIER: Exactly, correct. Yeah, I mean, that's a barrier that financial organizations would look at first and foremost. They're going to put a lien on this thing and if there's no way to make sure that they're covered on their assets, you know, they aren't going to invest money in it. You just wouldn't build to raise capital to do that. [LB547]

SENATOR KOLOWSKI: So if public power wanted to come in and take over a generating station, who decides the accuracy of the cost that they want to charge for that? Does it go to court? [LB547]

SENATOR WATERMEIER: That I don't know. There's an eminent domain proceeding process. I think maybe you've seen that through the NRD work you've done. I have seen it several times. It's a court process. It's very lengthy, very...I can't even tell you that last time that public power has used eminent domain. It may have been years, but they have been very good about using their eminent domain on new projects. I'm sure of that, so. [LB547]

SENATOR KOLOWSKI: Well, to do that, you certainly don't make friends and influence people to come in and take over existing power station. [LB547]

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SENATOR WATERMEIER: No, no, that would not. No, that wouldn't be. It would be something new, obviously, but just that...I mean that piece of the puzzle has to fit inside the financing mechanisms of any business, so. [LB547]

SENATOR KOLOWSKI: Thank you. That helps. [LB547]

SENATOR HUGHES: Okay. Additional questions? Seeing none, thank you, Senator Watermeier. Are you going to stay around to close? [LB547]

SENATOR WATERMEIER: All right. Thank you, Chairman. Yeah, you bet. [LB547]

SENATOR HUGHES: Okay. So we will begin with proponents of LB547. Welcome. [LB547]

MICHAEL MATHESON: (Exhibit 1) Good afternoon, Chairman Hughes and members of the committee. My name is Michael Matheson, M-i-c-h-a-e-l M-a-t-h-e-s-o-n. I am president of Grain Belt Energy and a registered lobbyist. I'm here today to testify in support of LB547. I testified last year in support of LB824 that removed the ability of public power to use eminent domain on renewable projects. My testimony stated it was a good start, but did not completely resolve the issue Nebraska has with eminent domains since it only exempted renewable projects from public power's ability to seize private generation. For the government, in this case public power, to be able to seize a private companies' assets is more about citizen rights than public power. LB547 completely resolves the issue of public power being able to seize private generation and transmission by finishing where LB824 left off last year. All generation and transmission in the Southwest Power Pool, SPP, 14-state footprint, which includes Nebraska, is operated and controlled by the Southwest Power Pool. If you see the attached map on the back of my testimony, what you'll notice in this Southwest Power Pool territory, is there's no state boundaries. The SPP does not treat building nonrenewable generation any differently than renewable generation, so why should Nebraska. It doesn't matter if the generation is located in Nebraska, Kansas, or the Dakotas since it all goes into the same SPP transmission grid and the electricity market. Public power having the ability to use the power of eminent domain to take private generation is keeping economic development out of Nebraska. Other than for renewable projects, thanks to LB824, no generation is being built in Nebraska because all of the threat of having it taken by public power. As a result, nonrenewable generation can be built across the state line in Kansas or South Dakota that impacts the market price the same as if the generation was built in Nebraska. The only difference in building generation in Kansas or the Dakotas, instead of Nebraska, is that Nebraska does not benefit from any of the economic benefit that goes along with constructing a new power plant in Nebraska. The arguments for removing the ability for public power to use eminent domain for any type of private generation are identical to the ones used last year for renewable generation. Public power testified in the neutral position for

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LB824 so they should also be neutral for LB547 for the same reasons. Nonrenewable generation has less of an impact on market prices than does renewable generation. Public power states that Nebraska has excess generation so new generation should not be built in Nebraska. This is not an accurate statement. What they mean is that NPPD and OPPD have excess generation. Generation and transmission is controlled and regulated by the Southwest Power Pool and the market is based on supply and demand, not NPPD or OPPD. The Southwest Power Pool currently has about 30 percent more capacity or generation than it needs to meet the load requirements in the SPP footprint. Market conditions in the Southwest Power Pool's requirements determine if and when new generation is built in the SPP footprint. The SPP does not tell a private, or public for that matter, that it has excess generation and new generation can't be built. Excess generation does not exist in a competitive SPP electricity market. Unlike with public power, when generation is built in Nebraska using private capital, the citizens of Nebraska do not bear the financial risk that goes along with building a project. LB547 does nothing to prevent public power from building their own generation or transmission. LB547 should be approved to remove the barrier in Nebraska that prevents private companies from bringing economic development and opportunities to struggling rural communities. The public power districts with generation in Nebraska chose to join the Southwest Power Pool, not the Legislature or any other state agency. If public power wanted to keep their monopoly protection, they should have considered that prior to joining the Southwest Power Pool and began competing in the regional electricity market that has no state boundaries. With overwhelming support last year, the Legislature passed LB824 by a 34-10 vote. I urge this committee to advance LB547 to finish what LB824 started. Thank you. I'd be happy to answer any questions. [LB547]

SENATOR HUGHES: Thank you, Mr. Matheson. Are there questions? Senator Quick. [LB547]

SENATOR QUICK: Thank you, Chairman Hughes, and thank you for your testimony. So this isn't about renewable energy, or this is more about building strategy, whether you go to natural gas plant or coal plant or nuclear plants, right? [LB547]

MICHAEL MATHESON: That's correct. [LB547]

SENATOR QUICK: Okay. All right. Thank you. [LB547]

SENATOR HUGHES: Senator Bostelman. [LB547]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Thank you, Mr. Matheson, for being here this afternoon. First question, same one I asked Senator Watermeier is, can you tell me where eminent domain is being used currently on any power generation facility? [LB547]

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MICHAEL MATHESON: To my knowledge there has been no use of eminent domain with power...by public power. [LB547]

SENATOR BOSTELMAN: And do you know, is there any threat that public power has made to any generation facility that would...to use eminent domain to take over their facilities? [LB547]

MICHAEL MATHESON: The threat is the ability to finance such projects because you cannot build it. So just having that threat prevents any private generation from being considered in Nebraska. [LB547]

SENATOR BOSTELMAN: As a public power owner, that we all are as residents of the state, is it fair to the transmission's REAs and that to transmit...or transfer the power that's generated by a private company to distribute through the state, or should they develop their own distribution system to meet...to go to wherever their customers are that they have to develop? I'm not sure if public power...if we want to take public power out of the picture on generation, then shouldn't we take public power out of the transmission end of it as well? [LB547]

MICHAEL MATHESON: The transmission system is regulated at the federal level by the Federal Energy Regulatory Commission and they establish the requirements and one of the requirements is open access to the transmission system, so. And furthermore, then the Southwest Power Pool also regulates transmissions, so it's not at the local level that controls who can and cannot use the transmission system or determine if it's fair or not. I mean, that's a federal requirement. [LB547]

SENATOR BOSTELMAN: Okay. Thank you. [LB547]

SENATOR HUGHES: Additional questions? Seeing none, thank you, Mr. Matheson. [LB547]

MICHAEL MATHESON: Thank you. [LB547]

SENATOR HUGHES: Next proponent. Welcome. [LB547]

PHILIP YOUNG: (Exhibit 2) Thank you. Chairman Hughes, and members of the Natural Resources Committee, my name is Philip Young, P-h-i-l-i-p Y-o-u-n-g. I'm a registered lobbyist for Americans For Electricity Choice and appear here today in support of LB547. I want to address the part of this bill that deals with Nebraska Power Review Board, or NPRB, oversight. The NPRB was created when Nebraska was an energy island with public power controlling its own generation and transmission. It's become obvious that this is not the case with the Southwest

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Power Pool controlling these issues today. The NPRB has little to do now that the SPP has taken over its primary duties. The NPRB had a significant function when Nebraska controlled its own generation and transmission, but since 2014 that really hasn't been the case. The NPRB's own Web site states: "Another primary function of the Board is to approve the construction of new electric generation facilities in Nebraska and the construction or acquisition of transmission lines or related facilities carrying more than 700 volts." This simply isn't true anymore. The SPP controls what generation it will accept into its transmission grid in every other state. Having the NPRB approve generation and transmission projects is an unwarranted barrier to stop projects from going forward even if they are determined to be acceptable by the SPP. But our state laws are out-of-date, so the NPRB still has the authority to stop any projects that Nebraska Public power doesn't like. Nebraska law in this area needs to be repealed so that the SPP can do its business of maintaining reliability for all Nebraskans. One reason this bill and others that have been introduced moved to the authority of regulating electricity away from the NPRB to the Public Service Commission is because that is where the regulatory responsibility lies in every other state. It is an unusual regulatory construct to have a separate board that regulates public power and has no other authority. It seems odd that public power has former employees as members of a board that regulates it. Two members of the NPRB are former NPPD employees and another is a current Grand Island city councilman who has a provincial interest protecting the future of Grand Island's city-owned power plant. Those three are a majority of the five-member NPRB. The executive director of the NPRB said in testimony last week that he wanted NPRB control over any reorganization of the electric system in Nebraska. He stated that because of the relationships the NPRB has developed with rural electric associations and public power districts, it made them the better body to regulate those entities. Those cozy relationships would be the very reason why we would oppose any oversight by the NPRB. We're not surprised that public power wouldn't want NPRB oversight rather than the public service commission. Whenever you have a 3-2 vote, majority on any vote, I'm sure you'd like that kind of control. This is like the fox watching the henhouse. It should come as no surprise that public power wants to have the NPRB regulate other power interests so it can, for instance, stop the city of Beatrice from building its own natural gas plant. The PSC members in Nebraska are independently elected officials with a full-time job without any outside employment interests. PSC members also have knowledge that comes from regulating natural gas and telecommunications, two similar utilities to electricity. The PSC is the proper body to regulate electricity. I would ask the members of the Natural Resources Committee to vote LB547 out of committee and send it to the floor for full debate. I'd be happy to try to answer any questions you may have at this time. [LB547]

SENATOR HUGHES: Thank you, Mr. Young. Are there questions? Senator Bostelman. [LB547]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Mr. Young, is there any other state that's completely public power? [LB547]

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PHILIP YOUNG: That's 100 percent public power? Not to my knowledge. [LB547]

SENATOR BOSTELMAN: Okay. Thank you. [LB547]

SENATOR HUGHES: Additional questions? Seeing none, thank you, Mr. Young. [LB547]

PHILIP YOUNG: Thank you. [LB547]

SENATOR HUGHES: Welcome. [LB547]

GARY AKSAMIT: (Exhibit 3) Good afternoon, Chairman Hughes and members of the committee. I'm Gary Aksamit, G-a-r-y A-k-s-a-m-i-t, chairman of Americans for Electricity Choice. I'm here today in support of LB547. I'm here as a proponent because I see a need for opening the state up to private capital stepping in and financially back-stopping Nebraska's underperforming power plants that are becoming an extreme financial burden to Nebraska ratepayers in the Southwest Power Pool's integrated market. NPPD and OPPD are carrying a combined nearly \$4 billion in bonded debt, and their power plants are liabilities that nobody wants to buy. And, as you know, according to Nebraska's Constitution, the state cannot borrow money to bail out some of the mismanaged power plants that our public power owns and operates, nor should it. Public power's threat of eminent domain authority prevents private capital from entering the state and financially backstopping public power's assets. Public power will bring up the concern about what to do with their stranded assets if more competition enters the SPP integrated market in which case competition will put more pressure on their existing generation assets. That is a very good question, and one that we think should be dealt with sooner than later. Waiting too many years could make this problem much more expensive and difficult to deal with. Other states have dealt with this issue successfully. The SPP integrated market placed further financial pressure on Nebraska's expensive generation fleet in 2015, when North Dakota, South Dakota, and part of Montana joined the Southwest Power Pool which added cheap generation to the SPP's integrated market. The wholesale power price at the northern node of the SPP dropped significantly when those states joined the SPP's integrated market. In conclusion, I know the stranded asset issue isn't directly tied to LB547 issue, but since it's likely to come up from opponents of the bill in later testimony, as it came up in last week's testimony on bills unrelated to stranded assets, it would definitely be a topic to study if the committee considers a bill for the interim. Thank you. I would be willing to answer any questions. [LB547]

SENATOR HUGHES: Thank you, Mr. Aksamit. Are there questions? Seeing none, thank you for your testimony. Additional proponents? Seeing none. We have no letters. We'll begin...how many opponents do we have? One, two, three, four, five, six. Okay. Opponents. Welcome. [LB547]

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JOHN McCLURE: (Exhibit 4) Thank you. Chairman Hughes, members of the committee, my name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm vice president and general counsel for Nebraska Public Power District. I'm testifying here today in opposition to LB547 which proposes to overturn more than 75 years of sound public policy in Nebraska. It's part of an effort led by a handful of individuals who you've heard from designed to bring retail choice to our state. The bill has two basic components. It allows private nonrenewable generation and private transmission to be built without any proof of need. It also eliminates an eminent domain provision which has protected our customers' public power assets since the 1930s. LB547 opens the door for unneeded generation and transmission that could strand public power investments already built to serve the electric consumers in this state. It also eliminates important safeguards to protect the public interest by authorizing construction of privately-owned power plants and transmission facilities with minimal public notice, no public input, and no reasonable regulatory oversight. Since its inception in 1963, the Nebraska Power Review Board has been authorized to determine whether certain generation and transmission facilities should be approved based on criteria such as, is there a public need for the facility and should we...is there any duplication of existing facilities that should be prevented? As many of you know, the electric industry is the most capital intensive industry in the U.S. Overbuilding or underbuilding utility infrastructure can have significant adverse financial impacts on customers. And just to point out a number, in the Southwest Power Pool the minimum load is 20,000 megawatts. The maximum load is 50,000 megawatts. Today, there is 87,000 megawatts of generation in the footprint. The Power Review Board is also required by state law to monitor long-term power supply. The latest analysis from July of 2016, indicates Nebraska has an adequate generation supply to meet forecasted electric demand for the next 20 years. Most states have electric infrastructure approval processes, whether it's a public service commission, a public utility commission, or a corporation commission that functions very similar to the Power Review Board. Its need has not been eliminated in any respect due to the existence of the Southwest Power Pool. Beginning in March of 2014, several Nebraska utilities, like most other utilities in SPP, began selling their energy and buying their energy on a daily basis in what's called an integrated market. That market only trades on the fuel costs and some very (inaudible). It is not attempting to recover all of the fixed costs associated with the power plants. The utilities in each of the states do that and collect those costs from their customers. In fact, even though you've heard that Nebraska's utilities aren't competitive, we are net generators. Nebraska generators sell more into the market than we need for our own customers. Our generators are valued by this market and that's why we sell far more than we buy from the market. However, as more generation is added, the basics of supply and demand, transmission constraints and other factors can reduce the amount of generation needed from facilities that have already been built to serve Nebraskans. LB547, by authorizing private generators to build, would duplicate existing facilities and would most likely make Nebraska's power generation assets less valuable. LB547 eliminates the right of eminent domain for public power districts to acquire certain private utility assets. And there's a history here. It goes back to the 1930s when public power districts were authorized by this Legislature, there were actually

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investor-owned utilities in the state. And we were given the authority to take those utilities over. There were both federal actions and state actions that contributed to that happening. Was one ever actually condemned? No. They were purchased through a negotiated process but that has been in place to protect public power assets on behalf of our customers, because remember, we borrow money from all over the country from investors when we issue revenue bonds. Institutional investors, private citizens in Nebraska buy these bonds and they have invested in our infrastructure. If we make that less valuable, they will be impacted by it. It will also impact the cost of future financings if the rating agencies and the investment bankers do not see Nebraska as secure as a place to issue revenue bonds as it is today. With that, I see I have a red light and I would be more than happy to answer questions. [LB547]

SENATOR HUGHES: Thank you, Mr. McClure. Are there questions? Senator Geist. [LB547]

SENATOR GEIST: Thank you. Thank you for your testimony. Just for clarification, when eminent domain is exercised over someone that has property or a generation station or whatever, a price is negotiated with that individual and for instance, your electric company. So you're not taking it over with a zero...? [LB547]

JOHN McCLURE: Absolutely, it's a fundamental principle of law in this country when an entity, whether it's a governmental entity or private entity that builds transmission, pipelines, etcetera, takes public property. There has to be due process. And due process means that that individual...first there has to be shown that there's a need, and then secondly, that individual is entitled to just compensation. They are to be fairly compensated and we have a process in the state that starts in the county courts. It can be appealed from there, but it is a tried and true process for assuring that in those limited instances where an entity does in fact exercise eminent domain, that the owner of the property, whatever the nature of the property is, is justly compensated for what has been taken from them. [LB547]

SENATOR GEIST: Okay. Thank you. [LB547]

SENATOR HUGHES: Additional questions? Senator Quick. [LB547]

SENATOR QUICK: Thank you, Chairman Hughes. My questions kind of goes back to when I asked them, the proponents about what role the Southwest Power Pool plays in building additional generation. What kind of role do they play? [LB547]

JOHN McCLURE: The Southwest Power Pool has absolutely no decision making authority as to whether generation is built. No one makes an application at the Southwest Power Pool and says,

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I want to build this power plant, approve this power plant. What the Southwest Power Pool approves, in most cases, someone wanting to build that power plant goes to the...again, the Regulatory Commission in the state and says, I want to build a power plant. And in many of the states you have to show there's a need for it. In some states, you don't have to do that for renewables and that's one of the reasons last year, LB824, happened. But the rest of the generation sector is significantly different. How it's approved is typically going to a body such as the Nebraska Power Review Board. What the Southwest Power Pool decides is, can this generation be integrated into the grid at a particular point and then secondly, if that generator wants to deliver it to a load that's located elsewhere within the footprint, is there adequate transmission to deliver it if they choose to have a firm delivery of a generation asset to a particular source. So, again, Southwest Power Pool doesn't make decisions about whether generation can be built. That is a state authority and it's an authority that you should hold on to. [LB547]

SENATOR QUICK: Thank you very much. [LB547]

SENATOR HUGHES: Okay. Senator Walz. [LB547]

SENATOR WALZ: Yeah, one of the things...thank you, Mr. Chairman. One of the things that really caught my attention was that you said, it eliminates important safeguards to protect the public interest, minimal public notice, no public input in your...can you explain the process to me if public power wanted to construct another power plant, or how does that work? [LB547]

JOHN McCLURE: Well, in earlier testimony it was stated that the Power Review Board really has no existence to...no reason to exist anymore with respect to generation or transmission facilities because of the SPP. That is absolutely incorrect. If you want to build a transmission line in this state of a certain size and certain area that it might cover, you have to go to the Power Review Board. You have to file a notice, you have to file an application. That is noticed to interested parties. The public, that's affected by that has an opportunity to come in and participate in a proceeding over that. What they're suggesting now is, basically it would be very short notice. You could have a transmission line stretching across the entire state if LB547 passes, put in by some private entity, and there would be no notice of it other than maybe 30 days, this thing is coming. It wouldn't be the opportunity for meaningful public participation to ask questions. So this is a very dramatic change in the law we have today that allows for public input. And the executive director, general counsel of the Power Review Board is here and I wouldn't be surprised if he testifies, he can tell you more about these issues. [LB547]

SENATOR WALZ: All right. Thank you. [LB547]

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JOHN McCLURE: But I have practiced in front of that agency for over 30 years and I know that there are full opportunities for interest to participate in the process and you can't just sneak something through the Power Review Board. [LB547]

SENATOR HUGHES: Okay. Additional questions? Senator Albrecht. [LB547]

SENATOR ALBRECHT: Thank you, Chairman Hughes, and thank you, Mr. McClure. Can you enlighten me again, why did we get into this Southwest Power Pool? [LB547]

JOHN McCLURE: Sure. [LB547]

SENATOR ALBRECHT: Just in a couple sentences. You don't have to give me a lot of history with it. To purchase... [LB547]

JOHN McCLURE: There's been federal policies since the 1990s to promote more regional exchange of power. We've always done that in Nebraska, but by being in a power pool, as we're in now, we've been in power pools before. We used to be in the Mid-Continent Area Power Pool that was headquartered in the twin cities and involved Iowa, the Dakotas, and Minnesota. But now we're in the Southwest Power Pool and one of the functions of a power pool is to plan transmission on a regional basis and to try to get the lowest cost generation available for the utilities to buy and utilize in that power pool. One of the other advantages you get in a power pool is to have scale, and so the number of...the size of the reserves you need, the power plans that need to be available to take over if a power plant shuts down, if there's a malfunction or whatever and those things happen, you can have smaller reserves in a larger pool, because it's ably done as opposed to being a little island utility case. [LB547]

SENATOR ALBRECHT: Okay. So would this Southwest Power Pool have any authority over the state of Nebraska for...and do they have any request for eminent domain in our state? [LB547]

JOHN McCLURE: They have no eminent domain authority and for transmission to be built in this state, the Power Review Board has to approve it. [LB547]

SENATOR ALBRECHT: They still have to approve it. Thank you. [LB547]

JOHN McCLURE: The Southwest Power Pool can recommend and they do, in fact, recommend because they're planning on a regional basis and all the users are paying for it on a regional basis, but then each state has to do the permitting. [LB547]

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SENATOR ALBRECHT: Very good. Thank you. [LB547]

SENATOR HUGHES: Additional questions? Senator Bostelman. [LB547]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Couple of questions. Is the barrier more the need for power than it is eminent domain for new private generation? [LB547]

JOHN McCLURE: I think that's a lot of it. Again, we heard...and most of the expansion for generation in SPP has been renewables. That's why it was accommodated last year with LB824, but if you think about the nonrenewable sector, and someone else raised this question earlier, what is it at this point? It's nuclear. Do you think a private entity is going to come in and build a nuclear plant in Nebraska? It's coal. They're not going to come in and build a coal plant, and now we're down to one thing, gas. And so, the question is, do we need that and what are all the downsides of doing that? I don't think the eminent domain issue is the block. I think the real question is when you have 87,000 megawatts, and a peak of 50,000, how much more is going to get built? [LB547]

SENATOR BOSTELMAN: Follow on with that is, does NPPD...are there any private generators right now that this would affect it that potentially, NPPD or OPPD or LES would have eminent domain over? And if so, is there any actions that you know of that any of the utilities are taking to against these generation zones? [LB547]

JOHN McCLURE: There are no private generators in the state today other than the renewable generators who are exempt. And it wasn't just last year. We actually...the Legislature passed legislation five or six years ago that if you had a PPA with a wind facility, that facility could not be subject to eminent domain. [LB547]

SENATOR BOSTELMAN: Could you speak a little bit more on LB824? And the question I have is what I heard you say a little bit ago was there was negotiations when LB824 came...was brought in the bill and as was written, and part of that negotiations what I'm hearing was, was there was an agreement that this eminent domain would not be brought up or be a part of that. Could you speak to that? [LB547]

JOHN McCLURE: Well, I actually skipped my LB824 testimony, but since Senator McCollister is here, I'm delighted to comment to your question. When LB824 was negotiated, public power agreed that we would not exercise eminent domain over any renewable facilities built in the state whether they were to be used internally or they were for export. That was part of the deal. But we also had language in LB824 that's stricken in this new bill that says, the renewable generation

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facilities cannot be used to provide retail service. Well, this bill tries to change that. Had public power known that others would come in and try to take all the work that was done in LB824 and extend it to completely destroy public power potentially, then, no, we would not have been supportive of what we did last year. [LB547]

SENATOR BOSTELMAN: Okay. Thank you. [LB547]

SENATOR HUGHES: Additional questions? Seeing none, thank you, Mr. McClure. [LB547]

JOHN McCLURE: Thank you. [LB547]

SENATOR HUGHES: Next opponent. Welcome. [LB547]

TOM RICHARDS: (Exhibit 5) Thank you. Chairman Hughes and members of the Natural Resources Committee, my name is Tom Richards. I'm the manager of Governmental Community Relations for the Omaha Public Power District. I'm here today in opposition to LB574. OPPD's power generation... [LB547]

SENATOR HUGHES: Mr. Richards, would you please spell your name? [LB547]

TOM RICHARDS: Oh, I'm sorry. T-o-m R-i-c-h-a-r-d-s. [LB547]

SENATOR HUGHES: Thank you. [LB547]

TOM RICHARDS: It's the first time I've testified this year so I got to get back in...(Laughter) OPPD's power generation today is very competitive in the Southwest Power Pool. Opening Nebraska to out-state electricity generators, and introducing competition, may sound like a good idea, but in reality, it has serious consequences and downsides. Allowing private generators in Nebraska would weaken public power's structure by impacting its ability to fund investments and maintenance of existing infrastructure such as OPPD's Nebraska City station and its Cass County power plants. The unneeded generation would reduce public power's revenue and the cost to maintain generation facilities and infrastructure would not be recovered resulting in stranded assets. The cost of stranded assets would be paid for by the customers. Simply put, private generators would be able to cherry-pick the best customers from the existing utilities, most likely commercial and industrial customers. Because public power is not-for-profit utilities, they would be forced to spread costs across a smaller number of customers, possibly impacting residential customers the most. The public power model is a cornerstone in Nebraska and is a model that continues to serve customers with reliable, affordable, and environmentally sensitive electricity.

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Private generators have introduced a package of legislative bills this year, two of which you heard last week. There is little existing data that supports making changes in the electrical generation that would benefit customers. If the proposed changes in LB547 are enacted it's very difficult to return to a model that equally benefits all customers. For those reasons, OPPD asks that the committee indefinitely postpone LB547. I'd answer any questions that you might have. [LB547]

SENATOR HUGHES: Thank you, Mr. Richards. Are there questions? Senator McCollister. [LB547]

SENATOR McCOLLISTER: Yeah, Mr. Richards, could you describe OPPD's commitment to wind energy development? [LB547]

TOM RICHARDS: OPPD currently has in its portfolio 800 megawatts of wind energy; 400 of them come from Grande Prairie, which just recently went on-line; 200 come from Grande Prairie Breeze, and the other 200 come from a variety of different locations from around the state. With those 800 megawatts, that's 30 percent of our retail sales which is wind generated. Yesterday there was a discussion that you don't see wind generators in Nebraska. If you go to Holt County, if you go to O'Neill, if you go to central Nebraska, Petersburg, Flat Water down on the Missouri line, you'll see lots of wind turbines. They're not along the Interstate but they're in the areas of Nebraska that have the best winds. We have a request for a proposal out right now for another 100 to 400 megawatts in wind energy. We move forward with those because that's what the customers and OPPD service territory that are demanding. That's something that we are working away with LB824 and other legislation to incorporate them into our utility. [LB547]

SENATOR McCOLLISTER: So you're saying 30 percent of your power sources are from renewable sources? [LB547]

TOM RICHARDS: Today, that's exactly right. And with that 100 to 400 megawatts that we're out for requests for proposals, it could be upwards of 50 percent of our renewable...our energy sources will be renewable energy. And there is a reason. Customers are demanding it and it is in the Southwest Power Pool and it is relatively cheap. And that's why we're working towards incorporating that into our portfolio of energy mix. [LB547]

SENATOR McCOLLISTER: Some of your economic development projects related to the renewable energy, power generation that you've put on-line. [LB547]

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TOM RICHARDS: Currently ones in the pipeline are highly leveraged to wind energy. There was some discussion yesterday about, you know, that the customers aren't coming to Nebraska because of our high cost. I just thought I'd write down a few examples of what we've had in our service territory the last few years. Midwest Farmers Co-op down in Syracuse has a \$30 million grain facility and a \$5 million fertilizer plant. Fidelity Insurance, Senator Albrecht will remember, Fidelity Travelers, Yahoo, CoSentry, Rotella's Bakery, Oriental Trading, AAA Call Center, HDR's new headquarters, Aflac, Graepel Manufacturing, CLAAS Caterpillar, Case New Holland, Novozymes, and Oxbow. Those are big energy users that I've located in our service area because the rates are what they want to pay for the energy. And in the pipeline there are more projects that are of that magnitude and a lot more. [LB547]

SENATOR McCOLLISTER: Thank you, Mr. Richards. [LB547]

TOM RICHARDS: Thank you. [LB547]

SENATOR HUGHES: Okay. Just one question. Senator Kolowski. [LB547]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Richards, you described wind and would you talk about solar, what your future looks are there? [LB547]

TOM RICHARDS: So yesterday you heard a lot of testimony about solar. Solar, we've been focused on wind and we are looking at solar at the pace of value of business. So recently we are in the process of starting a stakeholder process. We do not have solar development like some of our brethren in the business do, but we are just now in the process of starting a solar staple to process where we're going to hear from stakeholders and how they want to do wind or solar at OPPD. So we're just at the beginning stages of that. We probably have a billion dollars worth of contracts in wind and we've been highly focused on those and solar now, will become a priority as we move forward. [LB547]

SENATOR KOLOWSKI: The...you're optimistic then about the solar as far as the amount of sun we have in Nebraska? [LB547]

TOM RICHARDS: I've heard our CEO talk about solar. He's interested in doing solar on a utility grade scale, bigger projects. I know there's a lot of emphasis on community solar and solar gardens, but from our standpoint we're looking at a utility grade which would be significantly more megawatts of solar energy. So I'm optimistic. It's just going to take a while for us to get there. [LB547]

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SENATOR KOLOWSKI: Would you describe what you've done at the north Omaha plant as far as the cleanup there? [LB547]

TOM RICHARDS: Yeah, that was mentioned yesterday in some testimony. North Omaha has five turbines and three of those turbines have been converted to natural gas and that was done last year. So units one, two and three have been shut down from coal and converted to natural gas. Units four and five still run on coal but they have a long term...I won't say long term, a short-term deadline that they'll be converted to natural gas too. We need the natural gas, we need the base-load units to supplement our capacity factor for our customers. You can't have wind and not have the capacity to cover it when the wind is not blowing. [LB547]

SENATOR KOLOWSKI: Thank you. Sir, is that natural gas North Dakota original or where did that come from, across the whole supply chain? [LB547]

TOM RICHARDS: That comes from the Metropolitan Utilities District in Nebraska. (Laughter) As soon as we build a pipeline to get it all there. [LB547]

SENATOR KOLOWSKI: Thank you. [LB547]

SENATOR HUGHES: Senator Bostelman. [LB547]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Thank you, Mr. Richards. Back to the bill at hand. Could you explain to us a little bit more about stranded assets? [LB547]

TOM RICHARDS: Stranded...I was thinking about that this morning how to describe. It's kind of an all-or-nothing proposition. You as rate payers have made a decision that you wanted a public power. Public power has made investments on your behalf to cover power plants, transmission, administrative costs, all the regulatory costs. We have made efforts to cover the cost of what it takes to run a utility. In exchange for that, we've had protections that allow us to do that. Stranded asset means that you're going to allow somebody else to come in and provide generation or service to our customers. Somebody is going to have to pay for the difference when we lose that customer. That's a stranded asset. [LB547]

SENATOR BOSTELMAN: Oh, thank you. Just one other question for you. What would be the safety concerns or are there any safety concerns in this situation that's been testified...spoken before that say someone who is able to build a widget power plant out in say, Blair, north of Blair. They want to put in...they've got ground, they're going to build a widget power plant. What type of challenges would that bring to OPPD? [LB547]

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TOM RICHARDS: Well, the issue is, I think Nebraska law would probably allow self-generation to serve a customer that wants to do it itself, like that widget power plant. I think if they wanted to build their own power plant to serve that customer, they could probably do that. It's when they want to serve other customers that it becomes the problem, so. [LB547]

SENATOR BOSTELMAN: So is there a safety thing? I've heard 30 days so they could, you know, is there a safety issue with bringing a power plant on line outside of the Power Review Board's, I guess, I don't know if it's permission, but just of their oversight to make sure that we don't have power generation going, you know, at X point where, you know, there's some transmission issues... [LB547]

TOM RICHARDS: I think...yeah, to answer your question, you kind of answered your own question there. The safety issues would be in the transmission system to make sure whatever is being added to the system cannot cripple the system by...it's a balanced process to keep a transmission system running, and power on, power off, power that's being lost during storms, it's a question of knowing what's on the system. I don't think it would be a safety issue. You could integrate it into the system, but it creates challenges to do that. [LB547]

SENATOR BOSTELMAN: Okay. Thank you. [LB547]

TOM RICHARDS: Thank you. [LB547]

SENATOR HUGHES: Any other questions? Seeing none, thank you, Mr. Richards, for your testimony. [LB547]

TOM RICHARDS: Thank you. [LB547]

SENATOR HUGHES: Next opponent. Welcome. [LB547]

CHRIS DIBBERN: Good afternoon. Senator Hughes...Chairman Hughes and members of the committee, my name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n, and I'm the general counsel to the Nebraska Municipal Power Pool and MEAN, the Municipal Energy Agency of Nebraska. You've been talking to some larger utilities. I want you to think small now. We are 200 small utilities in the Midwest and we oppose LB547. LB547 erodes the future and the value of public power for ratepayers. They use the term eminent domain in the bill and I really think it's a red herring. You've heard that we've not utilized them in eminent domain. It is a right under the Fifth Amendment. You ask great questions. Where did it come from, how is it used? You heard a definition about it. It's a due process clause in the Bill of Rights that says it has to be for public

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use, it has to be just compensation, and only certain entities get to use it. You have to use it for roads, for bridges, for pipelines, or transmission lines. So it's a narrow use, it should be used narrowly, but it's a red herring in the bill because really this bill is about private generation in the state. I want to give you an example. Stranded costs or an example of how it impacts small towns. We belong to Public Partners Generation Agency in Hastings, Nebraska. It's a brand new 220 megawatt power plant owned by five entities, Hastings, Grand Island, MEAN, Nebraska City, and Heartland out of South Dakota. Public entities built the power plant, went to the Power Review Board, asked permission, and said we need to have this power plant for the next 40 years. So it was not a short-term investment we made, we bonded that power plant. LB547 would allow private generations to strand stranded costs, strand that power plant and while unfairly competing against it. Our bonding counsel asked good questions of us. Moody's, Fitch's, Standard&Poor, they asked us if we would face retail competition in the state. They asked us if we would face competition in service territories. They asked us if some competitor would have not local control but no regulation. So they're asking the very questions that you're facing in this committee. If this committee moves forward with these types of bills, it would lower our bond rating and that would raise cost for ratepayers. And not just for one year but for continually eroding. I mean, keep that picture in your mind. You asked great questions about renewables. Why did Senator McCollister push LB824 so hard last year? Why were we neutral on it? Because renewables are different. Renewables did have some impact to the state that we thought had some value and we were neutral on the bill. And you're going to hear a little more about that, but not this bill. There's also something about merchant generators. You see merchant generators in states but they don't get a bypass about whether or not the Power Review Board, Safety, Parks and Games, transmission planning, so this is a pretty open bill. You also asked questions...there was some statements made about the Power Review Board. Members who sit on the Power Review Board have to be out of the industry for four years. That's a long cooling-off period. Members of the Power Review Board, there are five of them and they're very dedicated. I've seen these members for 25 years give of their time to serve on the Power Review Board. There's an attorney, an engineer, an accountant, and two lay people. And usually the lay people are very good too. They...only three can serve from the Governor's party, so who...so it's not meant to be of one party. They get paid \$60 a day. I know you don't get paid much either. (Laughter) Thank you for your service, but they give their time to help govern public power. It's a good model in the state. It has worked very well and I think they're fair. They're fair to ratepayers as much as the industry. I'm just pleased about the generosity of their time that they give to run this...to help us manage public power. And lastly, there were questions about what do small towns do? You know, we don't have big windfarms, but we buy out of NPPD's farm, we buy out of a waste management in Iowa. We have some small hydros in Colorado. We have one community and not all of our communities are like this, but Aspen, Colorado, is 100 percent renewable. So everything they have in their portfolio is a renewable product. So when some towns do as much as they can, some towns buy out of our renewable pool and say, just give me the cheapest power

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you can give. I see my time is up. I tried to answer the questions I heard, but do you have anything else? [LB547]

SENATOR HUGHES: Okay. Thank you very much. Are there questions? Seeing none, appreciate it. [LB547]

CHRIS DIBBERN: Thank you for your service. [LB547]

SENATOR HUGHES: Welcome. [LB547]

SHELLEY SAHLING-ZART: (Exhibit 6) Good afternoon, Chairman Hughes and members of the Natural Resources Committee. For the record, my name is Shelley Sahling-Zart, S-h-e-l-l-e-y S-a-h-l-i-n-g-Z-a-r-t. I'm vice president and general counsel for Lincoln Electric System, the municipal utility serving here in Lincoln. We serve 200 square miles in and around Lincoln and Waverly. I'm here in opposition to LB547 on behalf of both Lincoln Electric System and the Nebraska Power Association. The Nebraska Power Association is a voluntary association representing all 166 public power systems in Nebraska including municipalities, public power districts, public power and irrigation districts, and rural power districts and cooperatives. We are here united in opposition to LB547. It's not lost on me that the three proponents of LB547 were also the proponents on the two bills we heard a week ago today, LB657 and LB660 dealing with unbundled billing and retail choice. I submit to you the three bills are likely connected. They all make sense. They kind of go together and they're all intended to undo public power, except I would also submit to you I think they have grossly failed to make a case for why anything needs to be changed here. They have not clearly demonstrated a problem that needs to be fixed; they've thrown around a number of alternative facts that I think we've done a pretty good job of putting the real facts on the table. What else is wrong with LB547? You've heard enough about LB824. We spent a lot of time on LB824. We spent weeks as Senator McCollister will attest to. Committee counsel was also involved in that. We spent a lot of time trying to come to a compromise on that. And I will tell you, public power was worried at the time that this very thing would happen. We didn't think it would quite happen before the ink on the bill was dry, but here we are. And again, it was done specifically for renewable generation because of those federal tax credits. Private entities are uniquely situated to take advantage of those. It made sense. It does not make sense to open it further. The statutes don't contemplate private utilities. There is no oversight for private utilities by the Power Review Board and some things because it was never contemplated. The statutes were intentionally not designed for that. They were designed for a public power state. And I'm going to try not to repeat some of the other things, but one of the big things that hasn't been mentioned that this bill repeals from last year, is last year is part of the agreement with the wind developers. We put in language specifically prohibiting the renewable generators from providing retail service, meaning serving (inaudible) customers. This

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bill proposes to eliminate that language. That's a big problem. That would be direct competition which is why I tell you I think that bill is connected to LB660. We don't think that's a good idea. We think we demonstrated that last week. We think our customers are not asking, they're not asking for retail choice, they're not asking for other providers. We think they're happy. You've heard that somebody needs to come in and backstop our generating resources. Why? We're not asking them to backstop anything and we're not in trouble. Look at the ratings from the rating agencies for public power. We enjoy some of the highest bond ratings in the country. Read the write-ups on the large utilities. They're not concerned and if they were, we would know it. We would have lower bond ratings, we would be on watch. They aren't. They're very high bond ratings with very good commentary. No oversight by the Power Review Board. This bill would propose that they get very, very minimal oversight of any kind. Nothing, virtually, yet when we go in--Mr. McClure alluded to it a little bit--when we go in with generation or transmission applications, there are criteria we have to prove up. We have to prove up there's public convenience and necessity. There's no showing of need in this bill. We have to do that. Public convenience and necessity. We have to prove there's no duplication of facilities, and lastly, we have to prove that whatever application we're coming forward with is the most economically feasible alternative. Private entities under this bill would have none of that to do. In addition, I handed out to you the Load and Capability Report that the Nebraska Power Association does annually to illustrate to you that we do a lot of planning. That's not contemplative with this bill either. The generation that would go in under this bill not included in that. This is a statutorily required report that we prepare annually for the Power Review Board. It takes a look at our forecasted demands, our customer demands, and we'll add those up for the state. We project those out for about 20 years. We look at the generation resources we have in place to meet that load. And we look at when we're going to need new generation. That report says it's about 2035. So we are looking at that because as load-serving entities in the Southwest Power Pool, we are required to bring capacity to the market. We're required to do that. We're required to meet our high...our high demand load plus 12 percent reserve. That's why that generation is there and that's why generation will continue to be there for public power. But at the end of the day, we're about accountability. There's no accountability here. There are no consumer protections. Folks that don't like our power plants or our transmission lines can come to our public open houses and our public meetings and they can tell us about it. There's no provisions for that in this bill. And I see I'm out of time, but I encourage you to indefinitely postpone this bill. Any questions?
[LB547]

SENATOR HUGHES: Thank you very much. Are there questions? Seeing none, thank you very much for your testimony. [LB547]

SHELLEY SAHLING-ZART: Oh, I got off easy. (Laughter) [LB547]

SENATOR HUGHES: Next opponent. [LB547]

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JOHN HANSEN: Mr. Chairman, members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. We are strongly opposed to LB547. We have been intimately involved in all of the bills and the legislation that have been involved in wind energy development. We've also been an active player and stakeholder in the development of our public power system. And why did we do that? Well, because rural Nebraska was literally left in the dark by the private sector, too many miles of wire and not enough customers. And so they wanted to go someplace where there were fewer miles of wire and a lot more customers. And so our public power system, and we've made that decision that we're a public power state. And so when I hear folks who complain in the private sector about how, gosh, in Nebraska you can't do this or you can't do that, I say, welcome to Nebraska. We are a 100 percent public power state. We do things differently than they do in private sector states and, by golly, it works for us because we are a low population state. We have a lot of miles to serve and the entire comprehensive integrated system of public power works for our state extremely well. We have very low rates, we have excellent service, and when we get a tornado and we get an ice storm, I would take issue with the characterization by one of the proponents that public power is the cult, I would say, it's more like a family. And while we might fight back and forth a bit from time to time as any good family should, (laughter) and does, when we're in trouble we all work together. So the efficiency of our entire comprehensive system kicks in and folks move and share resources and expertise and labor and trucks and we get things rebuilt and we get folks back on line and we provide service. You've got to remember at the end of the day our public power system is designed for one primary reason and that is to work for the ultimate, integrated advantage of the stakeholders that they serve, whether you call them customers or owners or however you want to think about it. So we're not looking to make a buck and then make a few folks rich. We're talking about ultimately serving the best interest of the state of Nebraska as a whole and we have and we do. So when you start on bundling and dismantling the system, there are huge costs that are involved. So when we look at...when I look at LB547, LB657, and LB660, they are a package of bills designed to allow private sector folks to be able to come, compete, build, generation, in an unregulated way and directly compete with our public power system. That is a fundamental mistake. To correct the record a bit relative to eminent domain, and we were very much involved in that, we dealt with eminent domain in LB629 in 2007 when we first made sure that we could do this private public partnership. That was the result of six weeks of hard negotiation between a wide range of stakeholders in order to get to that common understanding and ground relative to the use of eminent domain. We further expanded that and clarified it in LB1048 in 2010. And then we again updated it in LB824 in 2016. That is fundamentally different than what this bill purports to do. This breaks faith with all of those negotiations because we dealt with eminent domain in a very specific way in order to accommodate the renewable energy potential of our state that works to the advantage of our state, but we did it with a clear understanding that we were going to do everything we could possibly do to protect and defend the integrity of our public power system. This, on the other hand, undermines the integrity of that system and relative to eminent domain if you think about

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cutting out of the public review, the Power Review Board out of the process from get to go, it makes no sense to do that because even if public power has eminent domain, you're condemning a plant that was never needed in the first place. So the beauty of the public review process and the Power Review Board is that we keep our system lean, efficient, we don't over bill, we don't build stuff we don't need and that we have a very logical integrated comprehensive system that fits together that doesn't have excess capacity or excess other things in it which costs money. So, with that I would end my comments and be glad to answer any questions if I could. [LB547]

SENATOR HUGHES: Are there any questions? Seeing none. [LB547]

JOHN HANSEN: Thank you very much. [LB547]

SENATOR HUGHES: Any additional opponents? Welcome. [LB547]

CURTIS KAYTON: Thank you, Chairman Hughes, members of the committee. I'm Curtis Kayton, C-u-r-t-i-s K-a-y-t-o-n. I'm the general manager of Southwest Public Power District located in Palisade. We serve about 6,200 customers in all our parts of Chase, Hayes, Dundy, Hitchcock and Red Willow Counties, the southwest corner of the state. Opposed to this legislation for a lot of the reasons that have been presented already. I won't belabor those, but I do want to point out specifically there are physical reasons and physical reasons...physical properties of this legislation that do damage the integrity and the...just the ability for us to serve our customer. The Southwest Power Pool has been mentioned numerous times. It's 30,000 megawatts long in real generation. The accommodation of LB824 last year to open to utility scale wind, let anybody that wants to come in and build wind, okay, it happened, it's here. It hasn't come to the Sandhills. That's the other point of physics also goes with economics. Market prices are so low. You have all of this generation and everybody is vying for what little load out there is at times to serve, adding more supply is going to damage the reliability of our transmission system and premature mothball real power plants. If Nebraska didn't have anything right now, just dirt and needle wires and generators and substations, then perhaps something like this should be looked at in deeper. But as a matter of supply and demand, we're adequately served, this only puts upward great pressure on Nebraska's ratepayers in the form of stranded assets. You pluck 400 megawatts of coal or 400 megawatts of anything in the state of Nebraska right now, you are going to displace Gentleman Station, you're going to displace Hastings, Grand Island, you're going to displace Cooper. It's a physical effect. Okay? And it's just not needed. Nebraska is a net exporter of electricity now and for all of the reasons that I was opposed...felt very strongly against LB824 last year, gave the wind a pass, now we come back with this to apply to anything and with nothing more than a 30-day notice. Planning takes way more than 30 days. We're adequately served now. I would implore the committee to indefinitely postpone this bill. I would take any questions. [LB547]

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SENATOR HUGHES: Thank you, Mr. Kayton. Are there questions? Senator Kolowski. [LB547]

SENATOR KOLOWSKI: Thank you, sir. Part of your discussion as to the amount of power generated and all the rest, aren't we also talking about on a national scene expansion of the grid and how that operates and work, electricity could go and where it could be used and pulled up in different places. I mean, we have limitations because of geographical boundaries and contracts and many other things that many offers have spoken to. Don't hedge your bet with us. You know, tell us the bigger picture, how this could be resolved into a different world because it is changing. It's going to change, it's going to continue to look different at different times and we have to adjust to that as different things are designed and built. [LB547]

CURTIS KAYTON: Sure, and I...it's a great question. Again, managing the transmission grid with the RTOs, Southwest Power Pool, okay, transmission resources, generation resources. NPPD, their resources are bidding. They're bidding...they're playing in the market everyday. Okay. So our resources are competitive, but I will suggest that the utilities scale, renewables, wind and solar, they get preferential treatment, they get the federal tax credits. Those displaced...not only Nebraska generating assets but they displace other fossil assets, generating assets, within the footprint of the SPP, okay. That ramping up, ramping down, it's hard on power plants. Really hampers...it will come a day when we'll hamper the ability to keep the lights on because of instability. How do we meet those challenges of a changing marketplace? I think it's premature to enact law when we're 30,000 megawatts long on generation and don't have a real problem with the generation right now. I do feel it is premature to enact law that would mandate something like this certainly on a potential 30-day moment's notice and now flows are going to come from here, not through the way they always have been. [LB547]

SENATOR KOLOWSKI: So who's doing the thinking on a national scale so we have a better plan, a better preparation, or better design in the future that will transfer power, whenever we need it, from wherever it's being generated and meeting our needs across the entire country? Is there discussions of that at the national level taking place, or are we just a bunch of territoriality freaks that take care of their own zone? [LB547]

CURTIS KAYTON: I won't try to answer that in its entirety. A lot of that happens above my pay grade, too; but I will say, yes, the Southwest Power Pool, the electric industry, okay, that's what we do, is plan. We plan for serving loads, we plan for flow seasonals, summertime loads come up, wintertime loads come up, they sag in the fall. The electric industry is who does that, okay. And through the SPP, through the generators, I mean, NPPD, OPPD, they all meet with SPP, talk about planning, what do you expect, what's going on in ag markets, what's the petroleum market doing. Gosh, five years ago, you know, oil was at \$100 and corn was at \$7. We were ran over with having to build facilities and planning for that load that was from people that were

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converting their diesel irrigation motors to electric ones. And that's hard to plan for. In the generation standpoint, we were still long and...generation was never a worry. Okay? So I will say the industry, the industry does do it through SPP, through federal Energy Regulatory Commission. I have faith in what's in place now, to hold utilities accountable so that they're planning in their generation and their assets are being built in order to serve the customer in the most cost effective way nationwide. [LB547]

SENATOR HUGHES: Okay. Senator McCollister. [LB547]

SENATOR McCOLLISTER: Yeah. Thank you for your testimony. You're located in the southwest part of the state? [LB547]

CURTIS KAYTON: Southwest corner, yes, sir. [LB547]

SENATOR McCOLLISTER: I do see farmers are switching their pivots to electric power. [LB547]

CURTIS KAYTON: Uh-huh. [LB547]

SENATOR McCOLLISTER: Will that create additional demand? [LB547]

CURTIS KAYTON: Oh, sure, it does. We have...our peak loads is about 85 megawatts and about 65 of that runs for about 100 days out of the year. [LB547]

SENATOR McCOLLISTER: It's a great business isn't it? [LB547]

CURTIS KAYTON: It's hard and heavy when it's there, yeah. [LB547]

SENATOR McCOLLISTER: Yeah. Have you ever had difficulty supplying the power? [LB547]

CURTIS KAYTON: No. [LB547]

SENATOR McCOLLISTER: And you get all of your power from the Southwest Power Pool? [LB547]

CURTIS KAYTON: Through NPPD, yes. [LB547]

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SENATOR McCOLLISTER: Okay. And you have no access to the power pool that's in Colorado and New Mexico? Apparently close geographically. [LB547]

CURTIS KAYTON: The east-west grid, we neighbor. Our neighbors to the west are on the west grid, we're on the east grid. We're the furthest west system on the east grid. [LB547]

SENATOR McCOLLISTER: And could you connect to them or is it a different kind of...?
[LB547]

CURTIS KAYTON: Yeah, we could and we actually do have a tie in Imperial, but we would have to...we're out of phase with that grid. So we would have to shut off and pickup from the west from a...pickup from black or cold load pickup, it's called. [LB547]

SENATOR McCOLLISTER: Well, thanks for the information. (Laughter) [LB547]

CURTIS KAYTON: Yeah, physics. There's physics involved here. (Laughter) [LB547]

SENATOR HUGHES: Any other questions? I do have one and I don't know if you can answer this or not, but we talked about the excise generation in the Southwest Power Pool. [LB547]

CURTIS KAYTON: Yeah. [LB547]

SENATOR HUGHES: I'm assuming there's probably excess generation in most every power pool or electric grid system in the United States. I mean, we don't...very rarely do we ever hear of a brownout or a blackout. Is that a fair statement that there is excess generation throughout the country? Would that...? [LB547]

CURTIS KAYTON: I would like to think that, just at the advent of the amount of renewable generation that's been built. But I don't know, so I would rather decline to give a definitive answer. [LB547]

SENATOR HUGHES: Okay. Any other questions? Seeing none...oops. Yes, Senator Bostelman. [LB547]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Mr. Kayton, you mentioned Gerald Gentleman, you mentioned Cooper. [LB547]

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CURTIS KAYTON: Yeah. [LB547]

SENATOR BOSTELMAN: How many jobs would be lost if we lost Gerald Gentleman? How many jobs would be lost if we lost Cooper? How many jobs would be lost if we lost Nebraska City 1, Nebraska City 2? How many jobs are we talking about then? And then if we compare that back to say, renewables, what's the comparison of the jobs gained, the jobs lost? Do you have any thoughts on that and pay scales as well? [LB547]

CURTIS KAYTON: I would rather not try to put a number on jobs. John certainly can tell you that. He'd be happy to tell you that, but certainly there are...they're 24/7 operative plants. This shift goes through the day, this shift goes through the night. Yes, it would be massive. [LB547]

SENATOR BOSTELMAN: Talking of hundreds upon hundreds more... [LB547]

CURTIS KAYTON: That's fair, yes. [LB547]

SENATOR BOSTELMAN: We're talking extremely well-paying jobs, I would say, for the most part. [LB547]

CURTIS KAYTON: Yes, I would agree with that, yes. [LB547]

SENATOR BOSTELMAN: And those people are probably trained in paramedics, EMT, all sorts of disciplines and then go out into the communities and serves their communities in voluntary fire departments and local hospitals and local schools wherever that may be. [LB547]

CURTIS KAYTON: City boards, yes, they do. [LB547]

SENATOR BOSTELMAN: And so there's another benefit that's not necessarily in rate paying that we benefit from by having facilities, generation facilities throughout the state. Would that be accurate? [LB547]

CURTIS KAYTON: I would agree with that, yes. [LB547]

SENATOR BOSTELMAN: Okay. Thank you. [LB547]

SENATOR HUGHES: Any additional questions? Seeing none, thank you, Mr. Kayton. [LB547]

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CURTIS KAYTON: Thank you. [LB547]

SENATOR HUGHES: Additional opponents? Welcome. [LB547]

DARREL HAYEK: (Exhibit 7) Welcome. Thank you. Good afternoon. My name is Darrel Hayek, D-a-r-r-e-l H-a-y-e-k. I'm the founder and vice chair of Saline County Wind Association and I think we can learn a little bit from what California has done. California has a big and growing glut of power. The gas Californians pay has nearly doubled and plants that were built to last 30 to 40 years are being shut down at year 13, 14, 15, because they're no longer profitable. They opened the business in 1998 and by 2003 they were already being told we need to cut back. Californians pay an average of an additional \$60 a year for the residential power bill. In the last eight years, California rates have increased 12 percent while prices elsewhere in the country have declined by 3 percent. Another reason we're against this bill is because of the lack of protection for the landowners on the decommissioning for the turbines. These turbines, wind turbines, solar farms are all on leased ground so the decommissioning money does not kick in until year ten. If something would happen before that, and they go bankrupt, the landowners are going to be the ones hung out to dry. If somebody gets hurt because these are an attractive nuisance if they're sitting out there. You've seen kids paint on the side of water towers, nothing to say they ain't going to be up there trying to paint on the side of these. And somebody falls down and gets hurt or killed, who they going to sue? The company is gone, the landowner is going to be the one sitting there. The new turbines, the monopoles are made out of concrete so the salvage value is nothing. So I guess that's all I have and will take any questions. [LB547]

SENATOR HUGHES: Thank you, Mr. Hayek. Senator McCollister. [LB547]

SENATOR McCOLLISTER: Yeah. You testified last week on some bills. I didn't get a chance to talk about the salvage value or lack of salvage value for a wind turbine. And you told me that these turbines are filled with concrete. Right? [LB547]

DARREL HAYEK: The new monopoles are made out of concrete. They're going to that right now. [LB547]

SENATOR McCOLLISTER: Well, I checked that out and that's not so and they are not made out of concrete. And if you'll leave me an e-mail, I'll be happy to give you information of that fact. [LB547]

DARREL HAYEK: Next speaker has the information from the North American Windpower magazine that shows the monopoles made out of concrete. [LB547]

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SENATOR McCOLLISTER: Well, let's get a conversation going on this sometime later and we can talk about that to both of our benefits. [LB547]

DARREL HAYEK: Okay. You bet. Thank you. [LB547]

SENATOR HUGHES: Any additional questions? Seeing none, thank you, Mr. Hayek. [LB547]

DARREL HAYEK: Okay. Thank you. [LB547]

SENATOR HUGHES: Additional proponents? Welcome. [LB547]

DAVID VAVRA: (Exhibits 8 and 9) Thank you. Good afternoon, Senator Hughes and the---I'll disband with the Litany of Saints. (Laughter) My name is David Vavra. I am the chairman, board chairman for Saline County Wind Association. [LB547]

SENATOR HUGHES: Excuse me. Would you spell your name, please? [LB547]

DAVID VAVRA: Oh, I'm sorry. David, D-a-v-i-d, Vavra, V-a-v-r-a. And I've just kind of handed out some bullet points that I was going to cover. I'll elaborate on a little bit. We've already talked about the renewable energy sources being removed. One of the concerns that we have is the Landowner Organization. We have over 400 members in Saline and Fillmore County. And it's always been a challenge when we've negotiated contracts as the decommissioning portion. I need to give you a little bit of history on how wind development works in Nebraska. One statement I want to make that was talked about earlier is about a lack of capital wanting to come in. Of all of the windfarms that have been developed and built in the state of Nebraska, except for MEAN's windfarm at Sidney, and Nebraska Public Power's windfarm at Ainsworth, all of them have been built by private funds. So to say that unless we get rid of the eminent domain, we're building windfarms all the time by private companies. So nearly all developers from outside the state of Nebraska, to comply with state law, they form an LLC in the state. Then the funds are transferred to the LLC from the parent developing wind company. Now, the funding for decommissioning isn't required until the tenth year. Well, that's fine but when you don't have a PPA, you kind of lose the guarantee that you're going to have some income. This morning in a power...PPA is a power purchase agreement. This morning or at noon I checked from the SPP Web site the power energy being sold at the North Nebraska Port, SPP North Hub here in Nebraska at 12:00, and this is the local market price was \$9.73 per megawatt. Not \$22, not \$25, but \$9. And after the public, or the production tax credit is gone, that's going to be a losing situation. In the western part of the state it was a minus \$2. You had to pay \$2 in for every megawatt. So, without protection for the landowners there's a possibility of wind facilities being abandoned. If you don't

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have a PPA, you don't have a guarantee to purchase that to sell that power, you're at the whim and will of the market. Almost all wind turbines are placed on leased agricultural land, which poses another problem for the landowners because insurance is nearly impossible to get because it's now considered commercial. You cannot use your farm umbrella insurance to protect your liability. Local authorities, and we had that discussion last week about, well, the problem was fixed. Local authorities now have the ability to set decommissioned. Most local authorities don't have the knowledge, don't...unfortunately to understand it properly and they're reluctant to enact anything because then the wind developers say, you're going to kill our project, and now the commissioners are afraid of losing a potential project and they'll go across the county line. You think about it in a way that we do our state roads. We set up state standards even for county roads. We do that. Why not let the counties decide themselves, but we set up state standards so everybody is protected, everybody has the same type of road guidelines to go with. So if you had a failure of a wind project before the tenth year as LB824 last year covered, there would be no landowner protection for abandoned wind turbines. They say, well, somebody will pick up the loan maybe. Well, we've had a few ethanol plants that were cut out and gone, and now we've got scrap heaps where those ethanol plants stood. You know, if the companies owned the wind turbines or owned the land, that would be different but where they're leasing the land and they can disappear, because you've got an LLC, at the tenth...nine month, or ninth year and tenth month they could close up shop, pull their money out and there's no money left. And that's why there needs to be something more in protection for the landowners. I know we're talking a lot of eminent domain but this was also part of that bill. New turbine configurations include concrete monopole and, Senator, we had that discussion and I provided from the last issue of North America Wind Power that is being built just right over in Iowa. They are now using the concrete. I'm not saying they're going to go totally to that, but we have to look at technology as it's changing. They're also looking at going back to the lattice structures in which they would wrap them with plastic. My time is up. I'll answer any additional questions as you need. [LB547]

SENATOR HUGHES: Thank you, Mr. Vavra. Are there questions? Senator McCollister.
[LB547]

SENATOR MCCOLLISTER: Mr. Vavra, tell me about the Saline County Wind Association. Are you a developer or are you a county group that's opposed to wind development? [LB547]

DAVID VAVRA: We are neither. What we are is, we were approached by a wind developer that wanted to come into the area and start leasing the land. Darrel Hayek, my vice chairman, called together a few people and said, wait a minute, if we're going to do this, let's come together as an organization so we make sure that everybody gets the same deal, nobody gets cherry-picked, and everybody pretty much is on the same level playing field. Since that time, we've organized, we've assessed dues, we've negotiated three successful contracts. We worked on four failing contracts that the developer then used to take forward--not the failing ones, the successful ones--took

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forward to the landowners and the landowners knew that they were protected. Decommissioning is one of those things that we fought very hard but instead of decommissioning we concentrated on the liability issues. Some of the contracts that are here in the state of Nebraska, the liability is 50-50 for the landowner and the developer. Now if I lose a cow, that's not too much of a cost, but if I have a stroke while I'm operating my tractor and I run into substation and destroy a transformer and the transformer is out for a year, that's millions of dollars. Fifty-fifty, does that sound fair? No. In our last contract all of the liability was taken on by the wind developer, and our landowners to sign that contract are protected. And that's not all...that's not always the case. [LB547]

SENATOR McCOLLISTER: So you developed some of which you would consider good wind contracts? [LB547]

DAVID VAVRA: I believe we have some very good wind contracts and we didn't do it alone. John Hansen was very instrumental in helping us. We're not going to take all the credit, but we did work very hard. [LB547]

SENATOR McCOLLISTER: How many turbines do you have in Saline County? [LB547]

DAVID VAVRA: We have none at this time. We have a developer that's trying to...say he's going to be putting stuff up. We also have another contractor that is now signing land and is already into the SPP DISIS study for 300 megawatts and they're looking to build sometime in 2018. [LB547]

SENATOR McCOLLISTER: Yeah, the fact that the power companies, our public power in this state utilize developers or third-party persons enables that group to take advantage of the credits. You know, public power can't really take advantage of those credits. [LB547]

DAVID VAVRA: There was a quirk in the law, Senator, originally that the public power was allowed a certain amount of funds and that's why...and I can't speak totally for NPPD, but I used to be an employee for them and that's where I got my interest. There was an allowance for that but it was never funded by Congress. And so for public power to get involved it was...there was no advantage, no tax advantages and that's why we went the direction. I as involved with LB1048 in allowing private industry to be able to build their windfarms in the state and sell the power to major...like NPPD, OPPD, LES, and MEAN. [LB547]

SENATOR McCOLLISTER: Well, thank you for your appearance. We've got more to talk about... [LB547]

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DAVID VAVRA: Okay. And I look forward to visiting with you, Senator. [LB547]

SENATOR McCOLLISTER: Thank you very much. [LB547]

SENATOR HUGHES: Senator Bostelman. [LB547]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Mr. Vavra... [LB547]

DAVID VAVRA: Yes. [LB547]

SENATOR BOSTELMAN: ...how tall are these new towers? [LB547]

DAVID VAVRA: Well, that's a good interesting question. They can be anywhere...the hub height, which is the center, about 100 meters. With some of those that are going to be larger, they can even be taller. You could go all the way to the tip right now, 440 foot is normally the tip of the rotor blades because they want to remain below the FAA demands or requirements of 500 feet for aircraft. But if you want to go with the larger, you could go up to 660. You can see them a long ways, not from here, but... [LB547]

SENATOR BOSTELMAN: That would be probably... [LB547]

DAVID VAVRA: Taller than the Capitol. [LB547]

SENATOR BOSTELMAN: ...100 to 200 feet...150 feet taller than the Capitol, above the Sower. [LB547]

DAVID VAVRA: Yes. It would be... [LB547]

SENATOR BOSTELMAN: So now what you're saying with an LLC coming in, they leave, and I'm the landowner and I've got this 600...potentially 600-foot tower stand there, how am I going to get that down? [LB547]

DAVID VAVRA: That's a good question. Just to bring the truck in it's 18 semi-loads, just to bring the crane in is over \$60,000, just that...you're not setting it up, you're not erecting it. You're not taking it, you're just bringing the crane on the property. When I worked for NPPD, the NPPD had a problem with a couple of the gear boxes and they shut those turbines down for a couple of years because of the cost of bringing that crane in. [LB547]

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SENATOR BOSTELMAN: Sure. [LB547]

DAVID VAVRA: That's anecdotal evidence on my part. I'm not saying that for John. [LB547]

SENATOR BOSTELMAN: Understand. Understand. How do you say our utility rates compare to Iowa? [LB547]

DAVID VAVRA: You know, it depends on which scale that you want to look at. Iowa and some of their rates are less. And I'm not an expert on it but I have looked at it. Iowa is rated less. Ours is little bit higher, but they have a lot different market than we have because they have been able to capitalize on the heavy loads in Chicago. In Illinois, they're able to capitalize on the extra wind turbines that they're putting up because they have a market for that to go. So they can put up more wind generation and lower their cost. [LB547]

SENATOR BOSTELMAN: My understanding from that, I think it's EIA or whatever, Nebraska is actually less overall on wind...on power generation than what Iowa would be. [LB547]

DAVID VAVRA: And I'm not an expert on that, Senator, so I'd like...depending on which table you look at. So, but I'm fairly confident that the public power has done a good job here. [LB547]

SENATOR BOSTELMAN: Right and I guess a final question, I would have you talk about subsidies. [LB547]

DAVID VAVRA: Yeah. [LB547]

SENATOR BOSTELMAN: And your fear is that when subsidies go away here in a few years, especially when we're talking about wind generation, what's going to happen? [LB547]

DAVID VAVRA: What happens...kind of a quick side story. My son was stationed at Twentynine Palms, California, and we were there visiting almost 15 years ago. And where I was getting gas at a gas station...and this is an anecdotal story...but I made a comment to the gas station attendant--that was when they still pumped gas for you--I said, man, your electricity must be cheap here because look up and down the valley, I mean everywhere you looked there was wind turbines. He said, you'd better take another look at them again on what's...you know, if you looked at them, one-third of them weren't running. I said what's the problem? He said, well, when California subsidies disappeared, they quit doing maintenance and they starting banning the wind turbines. And so wind turbines had pieces and parts falling off of them and that's why I have such a strong feeling for the decommissioning. Livingston, Montana had a wind farm put

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up in 1986. Beautiful against the Rocky Mountains, the Union Pacific had one of their calendar pictures showing that beautiful scenery. I was there in '93 and one of the turbines was missing its blade, the other two were not running because they had been abandoned. And that's my fear...I mean, we always talked about...you can Google this thing. There's 14,000 wind turbines abandoned. I don't know if that's right or not, but I don't want to see them abandoned in Nebraska because we didn't go the extra step in worrying about what's going to happen 20 years from now. [LB547]

SENATOR BOSTELMAN: Thank you. [LB547]

DAVID VAVRA: You're welcome. [LB547]

SENATOR HUGHES: Okay. Any additional questions? Seeing none, thank you, Mr. Vavra. [LB547]

DAVID VAVRA: You're welcome and have a good afternoon. [LB547]

SENATOR HUGHES: Additional opponents? Welcome. [LB547]

DON GOEBEL: Don Goebel, D-o-n G-o-e-b-e-l, Fairbury. I can't add a thing to the testimony that's already been offered in opposition. The only thing is while I was looking this over, it occurred to me that I don't know why this bill came up actually because I'm sure that Senator Watermeier and Senator Wayne didn't dream this up on their own. So I'm wondering where it came from and what they would benefit...what benefits they would have, whoever it is. So...but there's, you know, this big power companies from outside of the state that want to get into it that want to actually, you know, make money off this whole deal. And so you've heard all the testimony before today against it and I agree with it. I haven't heard of anybody complaining about the power bill, frankly. I mean, you hear a lot of things about how the prices of, you know, some stuff is going up every day, but actually no one has come up saying anything about electricity that I'm aware of. So anyway, basically the long and short of it is, all I want to say is I'm just in strong opposition to it because I don't see a need to it. So, and that's the long and short of it and I know you're going to hear a lot of proponents are going give you all kinds of arguments and justifications and everything else as to why this is a good deal for us. I don't see it. So anyway, just remember I would say that you need to keep Nebraska in mind and we don't need to worry about Texas or somewhere else. And I have a brother that lives in Maryland and he pays the bills there. He knows what the electricity bill is and he knows what the electricity bill is here too. And basically he told me, he says, whatever you do, don't get rid of public power, so. Anyway, I thought I'd offer that and if you have a question, that's fine. I guess I'm done, other than that. [LB547]

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SENATOR HUGHES: (Exhibits 10-19) Okay. Thank you, Mr. Goebel. Are there questions? Seeing none, thank you for your time. Additional opponents? Seeing none, we have several letters in opposition: Thomas Rudloff; Chet McWhorter; Paul Neil; Richard Ray; Rocky Weber; John Green; Mark Kirby; Bruce Vitosh; Duane Hovorka; and Bluestem Energy Systems. With that, is there any neutral testimony on LB547? Welcome. [LB547]

TIM TEXEL: Thank you. Senator Hughes, members of the committee, my name is Tim Texel, T-i-m, last name is T-e-x-e-l, and I'm the executive director and general counsel for the Nebraska Power Review Board. And as the committee is aware, the board is the agency of primary jurisdiction over the electric industry in Nebraska. You've heard something about the board already today. You heard my spiel at the beginning several times in the last couple of weeks. Due to our role as a policy implementing agency and not a policy setting agency, the board is neutral on LB547 and the board did want to point out at least one factor for the committee to consider when you're thinking about this bill. LB547 would effectively eliminate state oversight and approval for...there's certification, but it would eliminate approval for any electric generation or transmission facility constructed by private entities. And expansion of last year's LB824...LB824 did that for renewables on the generation side, but this would effectively eliminate just require the certifications, no approval from the board for generation facilities of any kind in transmission so to expand that considerably. It's common for other states to regulate private entities engaged in electric industry and often exempt public power entities from such oversight. I believe due to the independent duty of the governing entities for municipal systems and for public power districts, that that occurs and they have the local control and they have their governing bodies that you can go to, your elected official if you have an issue with that. LB547 would turn that around and have Nebraska essentially regulate public power entities, certainly require approval for their facilities and not require for private entities. And I don't see that in any other state in the Union of which I'm aware to have that type of system. We are a different state because we do have only public power on the retail side. We certainly have some private generation in the state which is renewables from primarily wind turbine at this point. But I'm not aware of any other state that would do what LB547 does and I wanted to bring that to the committee's attention. There's been a lot of testimony so I'm going to try and answer some of the questions and go through those at this point. That's the testimony that I had. And I know, Senator Walz, you had a question about the process that we would go through. When the board receives an application whether it's...and we have...I know some of the proponents talked about our cozy relationship with the public power industry. Well, that's who we primarily dealt with until recently, but we also have oversight over private entities. And when I testified last week, when I said we had a relationship, it was with the electric industry in Nebraska and entities operating in that industry, not just with public power districts and municipals and cooperatives. We work with private entities, we work with developers, we have approved windfarms in Nebraska through our normal process and we go through the same process with them we do with the public. So to say that...I guess you can characterize it as "cozy" if you want, but we deal with the public and private side right now and

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it's not limited to just public power. Historically it was public power because that's who operated in this state. But our process when we receive an application, the board determines who the interested parties are, so we have the local public power district or municipal system that has the service area and we will send a notice to them. We send a notice to any other interested party. When we're approving transmission, we recently had an application for transmission. We sent a notice to any city that's nearby the transmission line. We sent it to the local entity that holds the service area rights to that entity...or that area, and we will do a public notice in the newspaper or newspapers in the area. Obviously multiple ones for most transmission lines, usually one for a generation because it's a specific spot. And so we will choose the largest newspaper and we'll do a public notice. The public would have an opportunity to intervene and we determine if they have standing and then they can intervene and we've done that on multiple occasions. And that applies to private entities as well as public. There's no differentiations, same standard applies. And then the board will hold a hearing. On smaller transmission we don't hold a hearing. Anything over our policy is anything over 34.5 kV and above and over five miles we hold one because of the public interest in something that size. So regardless of the fact that we don't have to, we can waive it under the state law. We do hold a hearing always on that size. Right now the privates don't build transmissions but it just deals with the public power systems. So you can intervene, a member of the public, certainly a bondholder for generations can intervene if it affects them on a public power system. And then we hold a formal hearing and evidence is adduced and our decision would go to the Nebraska Court of Appeals. So that's our process. There's a lot of other information that came out but my light is on so I will just take any questions you might have about the board.

SENATOR HUGHES: Okay. Thank you, Mr. Texel. Are there questions? Senator McCollister. [LB547]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. Does the Power Review Board have any control at all on prices of electricity that the utilities charge? [LB547]

TIM TEXEL: No. We don't have any rate setting authority over those. That's given to the local governing bodies, a municipal system, and village board or the city council, the power district board and the cooperative boards. We don't have any rate setting authority over them. [LB547]

SENATOR MCCOLLISTER: We've talked a little bit about stranded assets today. Would you consider Fort Calhoun a stranded asset? [LB547]

TIM TEXEL: Well, stranded assets a lot of times are because the rule has changed and so that asset...the rules under which you operate it can't operate now and, you know, the utilities engage in very long-term planning. I think in a way, yes, because the Southwest Power Pool changed the

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system and that asset was built very long ago when it had a different structure. And now when you have that, it's happening across the country too with nuclear facilities because they're closing them because they can't ramp up and down easily. They are base-load facilities that need to operate at full capacity. And wind, with the production tax credit, typically gets dispatched first and then the gas to back it up. So the nuclear has difficulty in that type of market. So in that regard, probably yes. I'd say it's a stranded asset, although I think Fort Calhoun had other issues with the flooding and it wasn't just a market issue. So that one may have a lot more to it than just stranded assets like some other states that are closing nuclear facilities. I think more of a stranded asset. This one had a lot to do with the flooding and some of that problem. [LB547]

SENATOR McCOLLISTER: Could cost to operate that plant have also been a factor? It's simply uncompetitive with the...I think they were \$50 a megawatt or something compared to, you know, fairly low cost now. [LB547]

TIM TEXEL: We'd probably have to ask OPPD about that. Their cost to operate, I'm not familiar with. We approve it when it's built, but we don't...since we don't set rates and we don't get information on how much it cost to produce that electricity from each plant, typically those costs have been absorbed over the years where a plant has been around that long, so initially they're very high cost to build a nuclear facility. A lot of times after they've been in operation that long, they've had some of their debt paid off so they can be cost effective, but they certainly can't in the market ramp up and down. So I'm probably not the best person to address exactly how much they are and how much they can bid into the market at. I'm not sure about that. [LB547]

SENATOR McCOLLISTER: Thank you, Mr. Texel. Thank you, Mr. Chairman. [LB547]

SENATOR HUGHES: Additional questions? Seeing none, thank you for your testimony. [LB547]

TIM TEXEL: Thank you. [LB547]

SENATOR HUGHES: Is there any additional individuals who would like to testify in the neutral position? Seeing none, Senator Watermeier, you're welcome to close. [LB547]

SENATOR WATERMEIER: Thank you, Chairman Hughes and committee. This has been a good discussion. I appreciate it. We did get off to the side a little bit on some of the issues about wind generation and I think I clearly stated last year that I was not a big proponent of the subsidies involved with wind and some the conversation got involved in concrete structures, and appreciate that. Some of the conversation also got involved in 30 days you can have, see a brand new

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transmission line across the state. What...I mean, I'm going to be here to tell you that let's bring this back to what this bill talks about. This bill talks about the definition of eminent domain and what it really means and I think I clearly stated that I think the purpose of eminent domain is for the public good. Clearly in the statutes of today, the public power can take over an existing project and operate it and manage it as they see fit. And that's where I came into the energy conversation last year. And so, I'd like to just make sure we concentrate our efforts on this bill what that does. I think we also need to be mindful of the fact that the environment that energy operates in today is so totally different. It is nothing more than a commodity. It's nothing different than the corn I raise on my farm. The market doesn't care what my cost of production is. The market only cares what you're going to charge for it and what we charge for our power today has nothing to do with the cost of it, but that's coming. That storm is coming. We need to be mindful of that. And to stand in the way of generation being built or transmission being built in the state and the economics of that, I just have a hard time with that. You could build all you want in the outside of Nebraska. There's no boundary in the state of Nebraska anymore. We're not an island. We heard the fact today that there's I think 78,000 megawatts in Nebraska that we need. There's 44,000 megawatts that are proposed in the SPP today. Every single testifier that was in front of me, I believe, outside of the wind generation argument, but most...Mr. McClure, Mr. Texel, they all talked about the fact that there's an oversupply of power. That is coming and the boundaries of the state of Nebraska are not going to stop that. It's also interesting most of the argument today from the people opposed to the bill talked about my main industry. I think it's my first or second industry in my district, NPPD, OPPD, all of our facility has a nuclear plant. Nebraska City has a coal burning plant. I'm very mindful of those jobs, but the idea of stranded assets is what scares me to death. A stranded asset idea is what scares me and that's why I'm here today. We need to have this conversation. We need to have it before it's too late. Public power was borne in 1933. The Unicameral was borne in 1934. They worked together well for 75-80 years, but the environment has changed. The only single big issue that's changed inside of public power is in 2009 they signed with the SPP; in 2014 that became reality. Their market changed. It's integrated. The market doesn't care what it cost them to produce the electricity. It's strictly what they feel they can charge it. To stop development at our state boarder to me is...I can't even fathom it. This power is coming. There's 44,000 megawatts of power that are coming into Nebraska, like it or not. It's just a matter of whether we want to be a part of that. So with that I'll end and ask if there are any questions, but I really do appreciate the questions and I really am open to the discussion to continue this on, but there's no stopping what's coming to Nebraska. I really feel like we need to reach out to public power and make sure...and I firmly believe there's a place for public power in Nebraska and always will be, whether it's generation, transmission, or distribution. There's always going to be a place for public power, but the Unicameral and those of us here today better be ready to make sure that they're in a good position to be there. I'm offering today to do whatever it takes in the conversation, we need to get to the bottom of this and figure it out because the Tsunami is on its way. Thank you. [LB547]

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SENATOR HUGHES: Thank you, Senator Watermeier. Are there questions? Seeing none, that will close our hearing on LB547 today and we will open on LB448. Senator Chambers. Welcome to the Natural Resources Committee. [LB547]

SENATOR CHAMBERS: Thank you for welcoming me. I'm Ernie Chambers. I represent the 11th Legislative District in Omaha. This is about my fourth rodeo on this bill. The first time I brought it, I believe that Senator Carlson was the chairperson and the bill not only was advanced, the Legislature passed it. The Governor vetoed it, and he vetoed it especially because Cabela's put a lot of pressure on his office saying it wouldn't look good if Cabela's, who has their headquarters in Nebraska will be in a state where an anti-hunting bill, as they called it, would be enacted. First of all, this is not anti-hunting, it's anti having a hunting season for mountain lions. But anyway, I stated at that time that Cabela's is not a friend of Nebraska. None of these big companies are your friend, they suck out of you what they can, then when they're through they leave. Well, I didn't think I was a prophet or anything, but you all see what Cabela's is doing now. But that's why that bill was vetoed. If two of my colleagues had done as they said they would do on the override, we wouldn't be here today because we would have overridden the Governor's veto, there would be no hunting of mountain lions, and this time could either be spent on another bill or you all would be free to go home. Now, I have no illusions about what will happen with any bill that I bring before a committee, especially with all due respect to one presided over by Senator Hughes. This is a bill that deals with an animal that I will describe as iconic, majestic, regal, and the perfect predator. It has been described as the ghost cat of the prairies. People do not see it. There was a man who allowed some people during that first hunt that they had in about 2014, I think was the first one, let them go across his land. He said he didn't mind the mountain lions being on his land, he had been there 20 years. He knew there were lions on his land because he saw the droppings, which they call scat, he saw their footprints, but in 20 years he had never seen one. There are people who have gone into Wildcat...well, mountain lion territory, there's a Wildcat Hills where some of them are supposed to be, with the express purpose of seeing these animals, they never saw one. These animals do not like people. They do not like to be around people. No mountain lion has ever attacked a human being in Nebraska. They were exterminated. Mountain lions are native not only to Nebraska, but this part of the country, and they were everywhere. They were the descendants of the saber-toothed tiger. They're not built like the African lions or other animals built for pursuing prey and speed--running them down. These animals have heavy musculature in their hind legs, in their fore...I started to say forearms, their forepaws and they are made for ambush hunting. They blend into the terrain...I should say their habitat; they don't like to be out in the open. When people say they see them walking through their cornfields and out in the street, they're not telling the truth. These animals stay out of sight. They do not crouch in trees waiting to pounce on human beings. They do not sit in people's yards watching women while they tend their flowers. They don't sit across the road and watch little children playing; and they don't walk down the highway four abreast. The time you will see more than one of these animals is when a mother has her cubs. She will

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not have four cubs, from two to three. They will stay with her about nine months. Then they're dispersal creatures, they have to go. Mountain lions do not live in prides; they don't clump together. They're solitary, invisible animals and that's the way they like it. So when these young males, especially, are driven out, they're usually, is in that area, always there is, an alpha male. If there is a breeding female, there will be an alpha male. The male will allow more than one female, but not more males. So when the young males become aware of the big male, either they will be stupid and try to fight, like some people do me on the floor of the Legislature because I'm old (laughter), and get the worse of it or they will take warning and leave because nature builds into her creatures the instinct for survival and she does not want these animals fighting each other. So the young males disperse. If the alpha male is killed, that's when the young males become rogue and they go haywire because they don't know what they're supposed to do. If the mother is killed, it's even worse; she teaches them what their prey is. And in Nebraska, it does not include livestock. They'll eat deer, Bambi's parents, but that's nature's way of doing things; elk, other mammals. Foxes are afraid of them; racoons are afraid of them; badgers are afraid of them; even a porcupine or two might fall prey. But these are the animals who have a way of living. And if you just went out to try to hunt one, you're not likely to be able to succeed because you're not going to kill one. So when Senator Louden was prevailed upon to bring to the Legislature a bill to allow hunting, it was at the behest of some of these big game hunters, as they call themselves, who wanted the sport hunting for the sake of getting a skin. These people who have come to speak against my bill will always praise Game and Parks in terms of how they have managed the mountain lion population. The most recent estimate that we were given as the public was between 15 and 22 of these animals out in the Pine Ridge area. They are collaring some now to get more specific information, but you have to determine the resident population as opposed to the transient population. Nebraska is a pass through state. These animals will pass through Nebraska on the way to someplace else. Sometimes they may stumble into an area where there's a city. If they have the chance to leave, they will. They have not attacked people in cities, but they have been attacked. But the point I'm getting to with this little comment is that with all the praise of how Game and Parks manages these few mountain lions, why then the necessity of establishing a hunting season? Supposedly, to help Game and Parks manage these animals, the number is so small, experts from other places have been queried about having a hunting season with such a small population, they said that is insane. You cannot sustain a population as small as that in Nebraska if you allow the hunting. Animals are killed by automobiles; they are poisoned; they are killed by trapping; and I've been told that some people shoot them and bury them. And maybe they're able to use dogs and run them up a tree and kill them in that fashion, but they're such a small population that the Game and Parks using scientific standards and methods of managing would not have a hunting season. They had one and it was so vicious that even hunters objected. Fortunately, the World-Herald photographer was allowed to come along with this man and his son. His son had had terminal cancer they thought, but it was in remission, and he was allowed to be in a lottery and he drew the lucky number. He loved to hunt. About to die himself, and the greatest thing for him would be to kill something else. So

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they were allowed to use dogs. The rich man who paid \$13,500 in a lottery, or an auction, at Mahoney State Park, you had to pay \$500 to get in, then you had to bid in increments of \$500 or \$700. Ordinary guys were saying that's not fair, we're too poor; we can't even get into the auction. But he paid \$13,500 and he talked about over 50 trophies he already had in his home, but he wanted to get a mountain lion and he wanted to get one in Nebraska. That's how people in this state manage these animals. These wild creatures do not belong only to hunters; they belong to all of the people. And when people are appointed by the Governor to the Game and Parks Commission, who kowtow to the hunters, they are going to give the hunters what they want. One of the employees for Game and Parks named Tim McCoy had said one of the reason they wanted to have the hunt was to give the hunters a shot or a chance. That's what he said. Now, I have something I'm going to read because I think it will be apropos. You know what I started to do? Come here and do like I feel like doing because these animals, they have taken a hold of me in a way. I feel akin to them as Francis of Assisi did. He felt like he was kin to animals; he would preach to them, he would talk to them. And his last words were something to the effect--I have sinned against my brother, the ass. And that four-legged animal stood for all of the animals. There was some poet who said--God created birds and man invented cages. They want to kill; they want to destroy everything. In California, they have a place called Griffith Park, it's eight square miles, in the heart of Los Angeles; mountain lions live there. They give them labels and they put these collars on them. I read the article in the World-Herald. And they can keep track of them because they now do it through high tech. The collar will switch on at various periods of time, the coordinates will be determined by this high-tech equipment and they can follow every place that animal has gone by where he was when it clicked on this time, where he was when it clicked on the next time. And in the military, if I'm here and I want to get where Senator McCollister is, they call it shooting an azimuth. You look way over there and then you determine this, and then you try to find things between here and there so you'll know you're on the right path. Well, that's man trying to do so with our little weak brains compared to high tech. They have much better ways of tracking than that. And this animal has done amazing things. And I might read a paragraph or two when I get through, but I want to read from what happened before, and the last time I was before this committee. Unique things happen to me. I had one of these bills killed twice in the same session. You all know that we have two sessions to each one of these whatever you call them, two-year chunks. I offered the bill the first year and it was not killed, it was not advanced; it carried over. And I told Senator Schilz I want an opportunity to have a hearing. I can't get a hearing, so go ahead and kill the bill because that's what you're going to do anyway. So then he was able to tell the media he killed it pursuant to my request; then I offered the bill again and got another hearing. And I knew what they were going to do. But as I've done with the death penalty, I want to keep the issue in front of the public. And what you all have in this state is something that other states wish they had--a resident population of mountain lions. In California, there's a very busy highway, 101, and some mountain lions have been able...I think it may have eight lanes, they've been able to get across without being killed, others have been killed. But since they see that, there's a general area where these animals will try to cross

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the highway, they are going build an overpass, millions of dollars, for these animals that your Game and Parks wants to kill to get a little money to give these hunters an opportunity to kill for fun and their love of killing. Let me read this, and I'm speaking rapidly. "Good afternoon, Mr. Chairman and members of the Natural Resources Committee. I'm a realist, as is everybody on this committee. I'm not going to waste a lot of your time, I'm not going to waste a lot of my time. This bill has as much chance to get what I would consider a fair hearing as a lighted match has of surviving a torrential downpour. But because the hearing is conducted in a certain way, I'm going to read my statement of intent, make a few more comments and if you have questions, I'll answer them. But I face reality and I know what the reality for this bill is and this committee. The goal of this bill is to terminate the authority of Game and Parks Commission to authorize a hunting season of mountain lions." The source of that legislation was LB928 offered by Senator Loudon. And what I did, because there were people that didn't tell the truth about what was going on, they talked about all the discussion and all the issues that I was raising in my bills and had done them in. I don't believe these people and I don't trust them. So I got the transcript of that hearing. And most of the time of the committee was spent addressing an amendment from Senator Tony Fulton, who is now the tax commissioner, about using deer meat that hunters would donate to the hungry. There were agencies that would process this meat and make it available. And that's what the bulk of the hearing on the bill that Senator Loudon offered. And that amendment by Senator Fulton is what carried that bill through. It was mostly what was debated during the hearing. The bill was lobbied by people under the bill number, but it was for that amendment that would make this meat available to the hungry. But being schemers as they were, they pretended that the support was for the killing of the mountain lions. And what I did...I'm not going to read all this as I thought I would, was to get the transcript and count the number of lines devoted. Let me get this...the bill was offered in 2012 and it was printed in a book called the Session Laws. The vast majority of it was taken up with a program established pursuant to the sections listed to allow for deer donation to those operations that feed hungry people, then I copied out the transcript of the debate on that bill. The transcript of that debate comprises five pages. There were...I counted the number of lines, excluding the A bill which itself was 23 lines, there were 164 total lines of debate. Of that 164 lines, 26 were used by Senator Loudon. That's all, because mountain lions weren't even of value. So after they went through that, the chairperson...or the Speaker recognized Senator Loudon and since he was not very loquacious...let me see if I can find what he said...on the floor, the debate: President Sheehy--"Seeing no request to speak, Senator Loudon, you're recognized to close on LB928." The other debate had been on the deer. "Thank you, Mr. President, and members. And this is a collaborated effort here amongst us that we would use our sportsmen and also our natural resources to a very good use which using the amount of deer out in there that could be used for food process in Nebraska is a great deal and giving the Game and Parks authority to do something so they can have control over the mountain lion population. With that, I would ask you to advance LB928." And the discussion had been on the deer. These animals are unoffending. They were exterminated from Nebraska around 1889 or something. The next

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sighting of these animals was in 1991. And people weren't sure that what they saw was a really a mountain lion. So from when they feel the first sighting occurred in 1991 to the present, Tim McCoy...and I have the article from the World-Herald and the date of it, had said: "No human being had been attacked by a mountain lion since they were first sighted again in 1991." He also said they had not attacked livestock or chickens. So when people come up here telling all these anecdotal stories, they are not true and they do not even comport with what mountain lions do. They generally go out after dusk and at night. You catch them on these trail cameras at night. That's not to say none ever go out in the daytime, but if...there was a fire out in the Pine Ridge area at one point, trees were burned up and the mountain lions moved because they like cover; they don't like to be out in the open. So they might have been seen in places where ordinarily they weren't. When these sightings are mentioned, they're not confirmed by Game and Parks. They never confirmed that there was a mountain lion watching anybody tending a flower garden. They had never confirmed that one had crawled under a house and had seemed to be trying to dig his way into the house. These people who live in areas where mountain lions supposedly live don't even know how they live. This last...and then I'll take any questions you have, I could go on and on and on and I ought to because you all are courteous but I won't do it. In the early days, these cats were called different things. I don't even have all the names in my mind, I was going to write them down. They were catamounts, they were pumas, they were cougars, they were panthers, they were painters, all kind of devil cats, and the pioneers used to talk about the blood-curdling screams that came in the nighttime. And then these naturalists, such as John James Audubon said that in the little studying they could do in terms of actually seeing the animals they didn't make a lot of noise. You were lucky if you even saw one, and when you did, they would run. And they would write things like these ferocious beasts that had the blood curdling screams at night when you saw one it ran and it mewed like a pussy cat. When one was killed and some scientists did what they called an nacropsy (phonetic)...necropsy, whatever, but not...it would be the equivalent of an autopsy on a human being, the structure of the throat through which the sound would pass made it impossible for them to even scream like these people said that they heard. Then others from Europe said--it is amazing what these Americans say because they mentioned this devil cat, the loud screams, how ferocious it is. But those who survive either got...who survived by running away or making noise and scaring the devil cat. But then all of these myths grew up and they carry over until today. So when these hunters tell you that Game and Parks cannot manage these animals, they're not telling the truth. Right now, they are undertaking what they call a survey or a study to get information on these animals. They've collared some and they're releasing them in these three main areas where they would be found to see where they move and to the extent possible determine more precisely the numbers of the resident population. You know how they get those animals? They tranquilize them, if they see them, or they catch them in a no-kill trap; they tranquilize them in the trap. They put the collar on, they take them where they want them and release them. Now why cannot they do that to manage these animals if it's necessary. They weren't doing all that before Senator Louden's bill. He had said, don't pass the bill and have eaten your grandchildren. Mountain lions don't eat

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people. So my rejoinder when I read that, I said they wouldn't be eating his grandchildren, mountain lions have better taste than that. Even where mountain lions may have killed people, over a period of 120 years in America and Canada and everywhere else on the continent where these animals were found, 20 people have been attacked fatally by these animals and would usually be in a situation of the human beings' creating. They have hundreds and hundreds of mountain lions in California. The people love those animals. They don't have these kind of contacts that some of these people in Nebraska say that they have. There was, not too long ago, one that apparently got into this cage where there was a koala bear and there were some llamas, maybe alpacas, and the lion killed some of them. And there was outrage by the people whose animals they were and they wanted to track the animal down and kill it. They did trap it...well, not trap it, they anaesthetized it and they were going to kill it and there was such an outcry from the public that they weren't able to do it. And when an expert was asked about this killing of these animals, the expert said, well that's a lion being a lion. They want to kill an animal for being what the animal is. They want to go where the animal is not offending human beings and then somebody gets in trouble and they want to kill the animal. That man who let his little child in Disneyland, or wherever it was, go near those alligator and the alligator got the child. The alligator was being an alligator, the alligator didn't try to eat the little boy, he could of, but he didn't, so they want to kill the alligator. In Florida, they've taken a lot of the habitat of animals, so now there are these human-animal interactions, not because the animals were tracking human, it's like you back somebody into a corner that's smaller and smaller and if they cannot resort to flight, then they will fight. But as soon as they fight enough to get an opening, they will go. I like snakes. I read about them. Snakes do not hunt people. Snakes, some of them, will lie as still as they can hoping they won't be seen. If they are seen, like a rattlesnake, there's noise, so you will go away. But if you get too close, then they're going to do something in self defense and you may get struck by one of them. In India, believe it or not, there are families who have king cobras who live in their residences; and they have little children. I don't know how they do it. But they keep rats and other things away and they don't bother the people. If you have any questions, I will take them. And I'm not doing as I used to do is give all kind of information, all kind of statistics, but that won't do any good. The one that I'd like to mention, because a book was written about him, this animal left...it was either North Dakota or South Dakota, he was what they would call a juvenile and he made it all the way, I think, to Vermont and he was finally killed by a car. There were sightings of him all across the country. And at that point, they knew something about DNA and when they discovered that this DNA goes to one animal and they traced that animal's origin back to the Dakotas and he was...the DNA was being found in Minnesota, Wisconsin, Michigan, in areas where this animal would be sighted, the towns people, even if they didn't see it they would give it a name, they would adopt it. They even had Web sites for this animal. When they found out that it was killed by a car in Vermont, believe it or not, and those who hate animals, especially the big predators, would be very happy. There were actually people who got together and mourned for this animal because it had become iconic. An animal that they thought had disappeared completely, one of them had come among them. And for those

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people who were superstitious and religious they thought it was a sign, not of evil, but that maybe providence was smiling on them and that once again nature's balance would be restored. These animals have either a reputation that will make people fall in love with them in one of these very sentimental, emotional ways, like they do Bambi, or it will bring out hatred, fear, and a desire to kill it. If you have any questions you want to ask me, I will answer them. [LB448]

SENATOR HUGHES: Thank you, Senator Chambers. Are there any questions? Senator Walz. [LB448]

SENATOR WALZ: Thank you. I don't know a whole lot about the mountain lions here. So just...what areas in Nebraska do you find mountain lions? [LB448]

SENATOR CHAMBERS: Well, they...and there will be some people coming to speak against it, I'm sure, but in...mainly in Pine Ridge, because they might migrate from Wyoming or Dakota or someplace where they always stay. Then there's someplace around Niobrara and then Wildcat Hills, wherever that is. But there has to be the rugged country, cover, and that's where they usually will be found. So when the hunting season is allowed, then they have maybe three or four areas where there's a limit on what can be done. If you kill a female, the hunt is over; two males and that ends it. But if somebody is killing a mountain lion everywhere then you're going to exceed that number. Then the rest of the state you can just kill them wherever...whenever you see them, apparently. So there is a relatively discreet area where if there's a resident breeding population, they will be found. But they move around. One cat may have a territory of 50 miles and they move a lot during the day and over a period time. [LB448]

SENATOR WALZ: Okay. So is it...how many mountain lions do you... [LB448]

SENATOR CHAMBERS: Say it again. [LB448]

SENATOR WALZ: How many mountain lions do you think there are in Nebraska? Or is it very tough to tell (inaudible)? [LB448]

SENATOR CHAMBERS: I have no way of knowing, but Game and Parks had estimated between 15 and 22, and I don't know what their estimate might be now. [LB448]

SENATOR WALZ: Okay. [LB448]

SENATOR CHAMBERS: But there never was...there never were very many of them and certainly not enough to justify a hunting season. [LB448]

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SENATOR WALZ: All right. Thank you. [LB448]

SENATOR CHAMBERS: Um-hum. [LB448]

SENATOR HUGHES: Any additional questions? Senator Bostelman. [LB448]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Senator Chambers, a couple of questions. One question would be, would there be a number of animals in the state, of mountain lions, that you would see that would reach a threshold to where hunting would be permissible? [LB448]

SENATOR CHAMBERS: No, because they say the hunting is for the purpose of managing the animals. And when you say that you can take two males or one female, that's hardly a problem. That is to give these hunters a chance to kill some, but they want to leave enough to reproduce so they'll have lions to kill. And they put it in place, the hunting season, as a revenue raiser the first time around. And they did it with that auction and then the sale of the licenses, but that didn't do much because people were not allowed to use dogs. Only ones who could use the dogs was the boy who got the lottery and the rich man who got the auction. They could use dogs, but nobody else. [LB448]

SENATOR BOSTELMAN: Okay, thank you. My understanding is that you agree that Game and Parks, and I won't put words in your mouth, but do you agree that Game and Parks can regulate hunting on other animals in Nebraska? [LB448]

SENATOR CHAMBERS: That they regulate other animals? [LB448]

SENATOR BOSTELMAN: Like deer or pheasants. [LB448]

SENATOR CHAMBERS: Well, there are so many deer, there are so many pheasants that...well, like the deer, they're overpopulating now. Mountain lions were not allowed to stay in this state and proliferate; they were actually totally exterminated by the Europeans. They are just starting to kind of get a toehold. They have not proliferated to the point where they reproduce, like turkeys and grouse and pheasants and ducks and geese and all these other things they kill, and even the mountain sheep, they, I think, might auction off one, or something like that. But the mountain lions, it would take some time before they reached a level where hunting would be necessary, in my opinion, because that's what you asked for. [LB448]

SENATOR BOSTELMAN: Sure. [LB448]

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SENATOR CHAMBERS: And this is what I have to say--there are professionals among...let me use the term game warden to distinguish those who actually deal with the animals from the commissioners who determine whether there will be a hunting season. Some of them do have scientific training; they know the scientific principles of management, regulation, and some of them have been overruled. But I won't give names because sometimes there is retaliatory action taken against employees who speak out of school. And what I intend to do next session is to bring a bill to make the Game and Parks Commission an elective body. And I've already been having some maps drawn...they have to be still on the principle of one person, one vote, to divide the state into a certain number of districts. Then the whole state would be represented on the commission, and not just those hand-picked people, even though they're from districts, the Governor can pick people of the kind who want to give the big game hunters a chance. So the number you might get from somebody from Game and Parks, who I'm sure will oppose this bill. They even opposed my mountain lion plate. People couldn't understand that, editorials were written. Why would Game and Parks oppose a mountain lion plate? Well, I think Mr. McCoy disliked me so much, or his boss, that they said--go oppose that, too. Well, people on the committee wanted the plate produced. It is so more than they even estimated. I think maybe 28,000 so far...or \$28,000, and they thought it would bring \$20,000. But anyway, it's a plate that outpaced everybody's expectations, even the people in the Department of Motor Vehicles, and the plates are still selling. I had said that there are people in this state who care about these animals. And Game and Parks said, well, they love the cranes even more. But the Legislature passed the plate bill, and now the plates are selling and they're people putting letters to the editor saying--somebody who designed that plate should be the one who designed the standard plate that people buy because it's got that guy who's doing whatever he does. And some people to show you what they think, they thought Senator Kintner had posed for that statue (laughter) because it looks like...and that's what somebody said to me and here's what they did, they sent two versions because there was one sculptor who did at least three of these and the other two are even more graphic than this one. They sent them to me and they said you ought to put this in one of your "Kintnergrams" but I didn't do that. [LB448]

SENATOR BOSTELMAN: Thank you. And just for point of reference so you know, I live on a farm about 32 miles from here and on the east, west, and north side of my property within a mile of my house we have mountain lions. We have photos. [LB448]

SENATOR CHAMBERS: You've seen a mountain lion? [LB448]

SENATOR BOSTELMAN: Yes. The neighbors have, we have pictures of them. So there are...they are in the area and as you do say, they do move through. But they are in...one...I don't believe this one, but someone did say that they saw kittens. [LB448]

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SENATOR CHAMBERS: Do you believe that...do feel menaced by their presence? [LB448]

SENATOR BOSTELMAN: We are...where we're at when we go out, yeah, we're very much aware of our surroundings, we watch out for them certainly. [LB448]

SENATOR CHAMBERS: Well, I'm not talking about when you walk out...when you go home, are you worried about a mountain lion breaking into your house? [LB448]

SENATOR BOSTELMAN: Not into my house, no, but when my wife and I go for a walk or if I'm working on my farm, yeah, you watch out for what's around, certainly. [LB448]

SENATOR CHAMBERS: Well, Senator Bostelman, I live in the city and before I cross the street I look both ways, but I'm not afraid of cars. That's just prudence. [LB448]

SENATOR BOSTELMAN: That's true. [LB448]

SENATOR CHAMBERS: You're talking about prudence. Anybody would do like that. [LB448]

SENATOR BOSTELMAN: Sure. Sure. Thank you. [LB448]

SENATOR HUGHES: Senator McCollister. [LB448]

SENATOR McCOLLISTER: You're talking about mountain lion plates, do you have one of those plates? [LB448]

SENATOR CHAMBERS: Do I have what? [LB448]

SENATOR McCOLLISTER: A mountain lion plate. [LB448]

SENATOR CHAMBERS: Yes, and it says "CUGR 1." (Laughter) Well, C-U-G-R, you can only get five figures. So a lot of times it's concealed by dirt and things so you can't really get to the number. [LB448]

SENATOR HUGHES: Senator Albrecht. [LB448]

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SENATOR ALBRECHT: Thank you, Chairman Hughes. Well, thank you for coming and talking about this. I will tell you, Senator Chambers, that we have a sighting in Hubbard, which is in my district; no, they haven't, that we know of, attacked anyone. It was actually laying out in the sun sunning itself and there's an article in the Ponca paper that talks about that. We're more concerned about the silver wolf that's in the area right now. So, but definitely with livestock, we have a cow/calf operation so I think I read in here that if one were to be attacking your calves, or something like that, that it would be okay. [LB448]

SENATOR CHAMBERS: Right. [LB448]

SENATOR ALBRECHT: Or if you felt threatened yourself on the place that...if you're taking a walk and you felt there would be a need, would you be able to protect yourself there? [LB448]

SENATOR CHAMBERS: Does the statute...right, it specifically allows that. But before you can just do it, unless you're under immediate attack, you notify Game and Parks and they check to see if that is really the situation. [LB448]

SENATOR ALBRECHT: It might be too late though... [LB448]

SENATOR CHAMBERS: When Senator Adams was here... [LB448]

SENATOR ALBRECHT: ...if you're out walking. [LB448]

SENATOR CHAMBERS: Oh, excuse me. [LB448]

SENATOR ALBRECHT: Sorry. [LB448]

SENATOR CHAMBERS: The former Speaker, he told me that he got an urgent call because somebody said a mountain lion was sitting in their front yard. And so he said, well, I'm going to see if I can get over there, do you think that it will still be...he said, oh, it's been sitting here a long time. So when he got there it was a bobcat. [LB448]

SENATOR ALBRECHT: Yeah, and we do have those too. So I guess I would like to hear more of this testimony because I remember working at Hubbard Chevrolet and they had a big deal, this was quite awhile ago, seven years, probably, but remember the one that was laying in a...around 114th and Dodge? [LB448]

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SENATOR CHAMBERS: With a broken leg. [LB448]

SENATOR ALBRECHT: Just sunning itself, but it was sunning itself. [LB448]

SENATOR CHAMBERS: Oh, you mean the one that they tranquilized and took to the zoo and lived there six years or so. [LB448]

SENATOR ALBRECHT: Yeah, yeah. [LB448]

SENATOR CHAMBERS: Well, in those days they treated the animals differently because they were not trying to get a hunting thing going, so it was not viewed as a menace and they took it to the zoo, which Game and Parks could do with others. But this one that, two or three years ago, was outside of a building, it had a broken leg, they called the police. They said that Game and Parks and the Humane Society told them to do this, so they had to look like a firing squad, police with pistols and several had shotguns. And there were at least 20 rounds altogether that hit this animal. And they said there were youngsters who saw it and they were more turned off by the way they killed the animal than they were...they weren't afraid of the animal, the kids weren't, and the animal wasn't bothering anybody. But I want to make it clear, I don't think that if I came upon one of these animals and it couldn't leave that I would say I'm the one looking out for you and so on, I would try, without exciting the animal, making it feel threatened, to get away. I don't think these animals are pets. I don't think they would see me as different from anybody else that they would see. So it's not like I'm saying these are cuddly, nice little creatures, I'm saying that they're what nature made them. They had a role to play in this state. They were at the top of the food chain. And when those big predators were gone, you have the over proliferation of deer. And now they talk about the hundreds of accidents involving deer that are fatal to human beings. Sometimes the mere presence of that animal, and these wolves even, will make the deer scatter. You won't have them coming and eating all the vegetation. And in some park areas, they've actually caused the channel of a stream to change because they ate all the vegetation around the stream. The root structure that was holding that channel in place would erode and the stream would leave its channel and make changes. So, what they wanted to do was have the wolf be seen; and these animals then stopped going to these secluded areas where there were the trees. Animals learn quickly and they started wanting to stay in the open so if a wolf or another of the large predators came, they could see it and they would run. So they would control the animals, not these deer and elk, not by actually having the predators kill them, but their presence would keep them from congregating in the way they did and doing the damage that they do. [LB448]

SENATOR ALBRECHT: Thank you. [LB448]

SENATOR HUGHES: Okay. Any additional questions? Senator Kolowski. [LB448]

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SENATOR KOLOWSKI: Thank you, sir. Senator Chambers, in the past, as was mentioned, do you...talked about the natural attrition on the yearly basis, vehicles hitting mountain lions or they die of natural causes or any chance of defending your family or yourself if you feel threatened, that was a natural way that some of the lions would be taken care of and not having a season but the natural attrition on it on a yearly basis. That was...you still hold to that formula for the most part? [LB448]

SENATOR CHAMBERS: Well, that's why they haven't had a hunting season last year or this year because so many were killed by automobiles and caught in traps and the trapper said it was by accident, they didn't mean to catch the lion. And the number was exceedingly high, and four or five, maybe even six females had been killed. So Game and Parks said they wouldn't have hunting seasons. And I don't think it's because they cared about the animals, they wanted to have some more around so the hunting could occur. That's my opinion. [LB448]

SENATOR KOLOWSKI: Okay. [LB448]

SENATOR CHAMBERS: But there is an extremely heavy toll when you consider the small population that every year is taken on these animals. [LB448]

SENATOR KOLOWSKI: Thank you. [LB448]

SENATOR HUGHES: Any additional questions? Seeing none, will you stay to close? [LB448]

SENATOR CHAMBERS: I wouldn't miss it. (Laughter) [LB448]

SENATOR HUGHES: Thank you, Senator Chambers. So with that we'll open it up for proponents. Welcome. [LB448]

JAMES CAVANAUGH: Thank you, Senator. Chairman Hughes, members of the Natural Resources Committee, my name is James Cavanaugh, J-a-m-e-s C-a-v-a-n-a-u-g-h; I'm counsel for and registered lobbyist of the Nebraska Chapter of the Sierra Club, the oldest and largest environmental advocacy group in the United States. The Sierra Club defends our most precious resources in wild places. And our mission statement says: "It's our mission to explore, enjoy, and protect the planet." Having, since I was young, learned to enjoy, explore, and I hope help protect Nebraska's resources, first in the Boy Scouts and with my parent's help learning to camp and canoe and ride, I have over the course of my life, I think, explored most of the corners of this great state and seen a lot of wild things and it's beautiful. I've never seen a mountain lion alive in Nebraska. And I think that's probably true of 99 percent of Nebraskans. I've never seen a

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whooping crane. And until recent years, I've never seen a bald eagle in the wild. But they are coming back, all three species of wild animals, beautiful wild animals are coming back and that's a credit to our environmental stewardship. We have reintroduced mountain sheep in the Fort Robinson area and I think that that, again, is a credit to our environmental stewardship. I have camped out in the Sandhills and listened to coyotes at night singing with almost human voices all around and it's a beautiful thing. We have a policy here relative to responsible use of our hunting laws. And if you read this bill, everything except the mountain lion, covered by this hunting law, you can eat. And when I was first taught how to hunt, one of the first principles was--eat what you kill. Well, you can't eat a mountain lion. And I don't know anybody who has ever said, hmm, mountain lion, yum. And you can't eat a bald eagle really; and you can't eat a whooping crane. I think that we should keep that in mind as we enforce some type of a rational and environmentally responsible hunting philosophy. As far as the dangers, they are wild animals, as are buffalo and a lot of other dangerous animals; you don't want to get too close to them, you certainly don't want to corner them. But as far as their danger to the human population here, I can tell you the three biggest killers in the animal kingdom of humans in Nebraska and they are, in this order: cattle, horses, and man's best friend, the dog. Numerous cases, documented cases, recent, going back to the pioneer times of those animals killing humans in Nebraska; we don't hunt them. The idea that we protect certain animals because of their wild nature is one that goes back a long time. Teddy Roosevelt set up protection of the buffalo, which was almost hunted to extinction in this country. They outlawed the hunting of eagles and cranes because they were hunted almost to extinction in this country. And Senator Chambers, a very laudable effort here on behalf of a tiny population of endangered wild animals is a noble effort to allow our children and grandchildren to enjoy the full range of wildness that we preserve for future generations. So I see this as a good effort to extend the life of a noble creature without too much danger to anybody involved. And I'm reminded of the great Irish poet and playwright, Oscar Wilde, who said something kind of on point relative to hunting when he commented on the fox hunters in England and he said it was the pursuit of the inedible by the unspeakable. And, seriously, if you're going to go out and hunt whooping cranes or eagles or mountain lions, it's unspeakable, there's no good reason for it. We should do what we can to protect them. If they're a danger to you, you certainly have a right to protect yourself and your family and that's perfectly legitimate, but they're not. And so I would urge you to give favorable consideration to this bill. I'd be happy to answer any questions. Thank you. [LB448]

SENATOR HUGHES: Thank you, Mr. Cavanaugh. Are there any questions? Seeing none, thank you for your testimony. Additional proponents? Welcome. [LB448]

MELISSA MONEY-BEECHER: (Exhibit 1) Thank you. My name is Melissa Money-Beecher, M-e-l-i-s-s-a M-o-n-e-y, hyphen, B-e-e-c-h-e-r. I'm here on behalf...I'm sorry, this is really near and dear to my heart, but I'm here on behalf of a normal, everyday citizen. Some people might not say I'm normal, so everyday citizen is probably...probably better, but I'm asking you to do the

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right thing, and also, the thing that your people in your district would want and end this season and the senseless killing of mountain lions. Most Nebraskans are good people; they do not support a season that would kill the few solitary mountain lions that we have left in this state. I realize that there are a few self-serving people that love to kill things, and a few self-serving people that have monetary advantages for having a season, but these people are few and far between. Society and the people of Nebraska overwhelmingly do not support the killing of the few mountain lions left in Nebraska. The way the mountain lions were killed in the first and only hunt, so far, sickens me. It was absolutely appalling to read what happened and the possibility of having another mountain lion season to kill the few mountain lions left keeps me up at night. We are an advanced society and we need to stop teaching our young people that it's okay to kill for fun, not food, for fun. And it's okay to use a gun to take a beautiful animal's life for the pleasure of watching this animal die and take its last breath. It just really sickens me. This is not the type of power people need to have in place for our society and it's a perverse thinking. And frankly, it's sickening. I'm surprised there aren't more mass shootings in Nebraska with the culture being pushed on people of Nebraska by some people to kill everything and that life is not important. This culture by these few is in direct contrast of what Nebraska people believe and want. It seems that we want to push killing the prairie dogs, killing the bees, killing the buffalo, killing the wolves, killing the bugs, and harming the environment. This is going to come back and bite us if we don't stop hurting our fragile ecosystem. We need to think about our grandkids and our grandkids' kids and watch what kind of mess that we're creating. Maybe we should change Nebraska's slogan from "Nebraska Nice" to "Nebraska Kill All Animals." This would show everyone the blatant disrespect for life that we have here. And this bill will stop that. It's time to do the right thing for the people of Nebraska, the few mountain lions that are in danger of, unfortunately, being in the state that doesn't care about life and cares more about having money and making money and killing things. So let's make Nebraska a state that's caring, compassionate, and most importantly a state that chooses to do the right thing. Thank you. [LB448]

SENATOR HUGHES: Thank you very much. Are there any questions? Seeing none, thank you for your testimony. Additional proponents? Welcome. [LB448]

BILL HAWKINS: Senator Hughes, members of the committee, thank you for being here and looking at serving Nebraskans. It's not easy, especially this session. [LB448]

SENATOR HUGHES: Excuse me, could you state your name and spell it, please. [LB448]

BILL HAWKINS: Oh, my name...yeah, my name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s, I'm a lifelong Nebraskan. I am an organic farmer and I started hunting with my father when I was a young boy and that was a tradition that I grew up with where we hunted pheasants. I never was a

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deer hunter because I can't sit still long enough. But I have grown up with that tradition that you hunt and eat what you kill. I greatly appreciate Senator Chambers addressing this issue of the mountain lion. I'm a unique Nebraskan because approximately 55 years ago, in the early '60s when I was approximately 7 years old, my father and I and my other brothers went camping on the Blue River, I was born in Beatrice, to fish and camp on the Blue River. We tried field corn and learned that it was not sweet corn. We tried the clams that were on the river and learned that they weren't really edible. But towards dusk that one night, across the sand bar across the river, a mountain lion came out of the willows and turned and looked at me and I locked eyes with that animal and it changed my life. I still remember that to this day. So there have been other sightings of mountain lions in the past hundred years. That wasn't reported, we felt no fear or anything. But for the rest of my life, I've spent it out in the woods. I've worn out four teepees doing living history to schools, and spent the last six years of the state fair in Lincoln in the Heritage Village doing living history for kids and people. I marched in almost 60 parades in the state fair. And for a kid from Nebraska, that was an honor and a privilege. This is something that our state does not need to do is hunting mountain lions. I've spent my whole life in the woods, in the Rocky Mountains, and to this day I still have not seen another mountain lion. I've seen tracks of the mountain lion that was caught in Omaha. In South Bend at Camp Kitaki, the lead bridge going over the Platte River I saw mountain lion tracks. I've been up in Hahn's Peak in Steamboat Springs, Colorado, and have seen mountain lion tracks. I'm a back country skier and we were up on top of the mountain and saw mountain lion tracks and bobcats marking their territory on a scraggly spruce up on the top of the mountain. Skiing down through the chutes and through the deep powder, we experienced a mountain lion track that went straight up the mountain into the avalanche chute and still haven't seen that mountain lion. I spent time on the Laramie River where it is just a stream up in the high country and came across a deer kill with mountain lion tracks all over it. Did I feel a little worried? Yes, I did. I was out tracking moose and looking for moose antlers, but because it was deep powder and I was struggling to get around, yes, I did worry. But I wasn't scared because I wanted to see a mountain lion. And people need that ability to do that. Nobody has really discussed a hunting of mountain lion. If you watched hunting channels, it is a group of people who send a bunch of hounds that chase that cat for miles and run it until it's almost at death, til it trees itself and then they walk up underneath it and chit chat and everything and then shoot that lion down. That is not hunting; that is not sport, that is people with monetary means going out and trophy hunting. And that is not something that Nebraska really needs to stand for. So I greatly appreciate Senator Chambers putting this bill forward and I hope you would look at Nebraska, the people's real thoughts on this. And I appreciate your time and I'll ask any questions you have. And yes, we do...I live out by Branched Oak, we do have populations of mountain lions that do come through the area and they have them on trail cameras and you're lucky if you can sight them, so. [LB448]

SENATOR HUGHES: Thank you, Mr. Hawkins. Are there questions? Seeing none, thank you for your testimony. [LB448]

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BILL HAWKINS: Thank you for your time. [LB448]

SENATOR HUGHES: (Exhibits 2 and 3) Additional proponents? Seeing none, we have letters of...from Roxane Wolzen and the Nebraska Chapter of the Humane Society of the U.S. Okay, with that, opponents to LB448? Welcome. [LB448]

TIM McCOY: (Exhibit 4) Good afternoon, Chairman Hughes, members of the committee. I feel like I should introduce myself, I'm Tim McCoy. Senator Chambers mentioned me a few times during his testimony. And, yes, I'm back again and you're back again, too. I'm here today to testify on behalf of the Game and Parks Commission on this. And we are expressing our opposition to this bill. And I want to start out with the big picture of the commission's goal in managing mountain lions in Nebraska, which is to maintain those populations in the long term within the limits of available habitat. Mountain lion habitat, as Senator Chambers mentioned, is typically, fairly extreme terrain, fairly rough. The initial work that we've done looking at mountain lion...as mountain lions moved into the state, was based on some work done in South Dakota trying to identify in the Pine Ridge. What is the carrying capacity of that habitat for mountain lions? And that was part of the things we were considering as we were looking at that first season in the state. We do feel like we have the expertise to manage mountain lions, to do wildlife management in the state, and that we are the appropriate agency to make those decisions regarding management of this species. The careful management that we've used since this agency really came into the initiation at first as a fish commission right before the turn of the century, right before the year 1900, none of those species have ever become endangered. We have a great track history of managing those fish and wildlife populations. And managing those for a sustainable healthy population within the limits of the habitat and trying to balance those demands of the public. From what we're hearing today are a lot of those demands on the public; they're varying opinions on what should be done with mountain lions--how many we should have, how we should treat them. When we look at the big picture of what's going on with mountain lions in Nebraska, we are on the western edge of a very large population of mountain lions that run all the way through the Rocky Mountains, all the way to California. There's also a larger population than we have in Nebraska north of us in the Blackhills of South Dakota. Now often people will talk about our small number of isolated mountain lions in Nebraska. Mountain lions don't recognize borders. We have a part of a population of mountain lions that stretches into Wyoming and into South Dakota; and in the case of the Wildcat Hills, likely even goes into Colorado. So we know that that Pine Ridge area is where mountain lions first came back into the state. As those populations recovered, really, from where mountain lions were essentially just about extirpated across the entire west, they rebuilt in the Rocky Mountains; they've continued to expand, their numbers have been going up, and as that's happening they're moving east. We first found them in the Pine Ridge and then we had breeding in the Pine Ridge. So we knew we had a population that was likely going to stay there and grow. We've had sightings across the entire state of mountain lions. Typically, young males, but we've also had females that have moved

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across the state and in different parts of the state, and all the way east to west, all the way down into Richardson County. Missouri at this point is having more and more sightings of mountain lions in their state. Many of theirs are coming up from the south through the Ozarks, coming up through Arkansas. So, this is a phenomenon that is happening throughout the Midwest. We know we have that Pine Ridge population where we've done most of our studies and most of our work. We have an emerging population in Wildcat Hills, that's south of Scottsbluff, some sort of rough hills through there that have scattered pines. And then there's a small emerging population in Niobrara River. We did hold the single season. During that season there were five mountain lions that were harvested; three of those were harvested in the Pine Ridge. Following that season, we had an excessive amount of additional deaths of mountain lions, which was the reason in 2015 we did not hold another season. And we've not held another season since then. We've been doing more research; we've been doing more population evaluation. We did a population evaluation in 2015 that led us to believe the population of mountain lions recovered quickly from what happened in 2014 and may, in fact, be slightly higher than it was. We're going to be undertaking a similar analysis again this summer using scat studies. So from that time, we've tried to be responsible; we're trying to follow this through. And we are trying to look at conservation of mountain lions which is different than preservation. You'll hear the preservation word--that means you set them aside, you leave them alone. Our role has always been to try and conserve mountain lions, to conserve wildlife, to provide for that wise use opportunity when it's there. And that opportunity of hunting has been what's funded nearly all of the hunting and fishing and conservation activities of our agency's estate. So we do have some ties that tie back to that. Coming after me, we will have our lead biologist on all of our mountain lion research to provide you more of the specific details, especially if you have questions on mountain lions. And, really, my role here is to help answer questions that are really about these policy-level things that have approached this mountain lion issue. [LB448]

SENATOR HUGHES: Thank you, Mr. McCoy. Are there questions? [LB448]

TIM McCOY: None? [LB448]

SENATOR HUGHES: I do have a question. The current study that you have going on looking at the mountain lions, is there a time definite when you'll be finished with it? Or is it just kind of an ongoing...? [LB448]

TIM McCOY: It started in 2015. It's ongoing. As we continue to have more information come in, we'll continue to evaluate that. Initially, that study is scheduled to go through 2019. [LB448]

SENATOR HUGHES: Okay. One final question, are you planning on having a hunt in 2017? [LB448]

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TIM McCOY: We are not. If we would have, it would have been this time of the year. Typically, the time that mountain lion hunting is done, if you had a season, is about January through March. That's the time of the year that female mountain lions are least likely to have young cubs in den. [LB448]

SENATOR HUGHES: So they have cubs in the fall? [LB448]

TIM McCOY: They...well, they can...mountain lions can't...typically, most of their denning happens when there are pretty prime resources, but they can have cubs almost any time of the year. [LB448]

SENATOR HUGHES: I did not know that. Any other questions? Senator Bostelman. [LB448]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Mr. McCoy can you...do you have any information you can share with us on, say, the number of sightings, incidents as far as human/mountain lion interactions that people...either farmhouses, on trails, you know, people out and about, do you have any information on that? [LB448]

TIM McCOY: We don't have information of that realm, we do have, and I think Sam will have it with him, is the confirmed sightings that we have from across the state, those continue to go up. We don't go in the Pine Ridge anymore; we're not in the habit of going out and trying to confirm a sighting of a mountain lion. But in the rest of the state, we encourage people with trail camera pictures, with any information to share that with us because we try to confirm those sightings to see where cats are moving when we get them moving across the state. [LB448]

SENATOR BOSTELMAN: Thank you. [LB448]

SENATOR HUGHES: Okay. Senator McCollister. [LB448]

SENATOR MCCOLLISTER: Yeah, thank you, Mr. Chairman. Can a person readily tell the difference between a male and a female mountain lion? [LB448]

TIM McCOY: Not very readily. And actually, that's been one of the things that happens in some of the western states is they favor...there is some favoritism for hunting with dogs because there's the ability to, in many cases, identify a male or a female if they're up in a tree, if you have time. But just in fleeting, I think it would be very difficult. [LB448]

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SENATOR McCOLLISTER: So the one season that you had, you didn't specify hunting only males? [LB448]

TIM McCOY: We had what was called a quota system where there was...they could harvest up to two animals if we had a season that was for the two hunters that drew...one that drew the lottery and one that won the...that got the auction tag. They could harvest...they could harvest...there could be two animals harvested. But if a female was harvested, the season was over. We had a female quota. Females are very critical in the mountain lion population. Males travel larger territories; they have...there are subterritories in there where there are different females. So the female reproduction really drives the population in terms of being able to grow. [LB448]

SENATOR McCOLLISTER: Thank you, Tim. [LB448]

SENATOR HUGHES: Okay. Senator Geist. [LB448]

SENATOR GEIST: Thank you. I'm just curious if a mountain lion is spotted in a populated area, is that considered a threat automatically? [LB448]

TIM McCOY: The agency has had a mountain lion response plan since 2001 or 2002. And part of that response plan has been that mountain lions that are within populated areas in city limits and towns typically are killed, are euthanized, and that's because of the potential safety issue. [LB448]

SENATOR GEIST: Thank you. [LB448]

SENATOR HUGHES: Okay. Additional questions? Seeing none, thank you, Mr. McCoy. Additional opponents? Welcome. [LB448]

SAM WILSON: Thank you. Good afternoon, Mr. Chairman and members of the committee. My name is Sam Wilson, that's spelled S-a-m W-i-l-s-o-n and I serve as the furbearer and carnivore program manager for the Game and Parks Commission, so I'm the mountain lion biologist, is what most people refer to me as. I want to begin by reiterating the commission's stated long goal and maintaining mountain lion populations across the state, that's our long-term goal. Our deputy director stated our position fairly well regarding the bill. And I'm here to provide some information on lion biology and present status of the commission's research. And so, as many people mentioned that lions are native to the state of Nebraska. They had been gone for about a hundred years; returned in the 1990s as populations grew in neighboring states. In 1991, a female mountain lion was shot in the Pine Ridge. That was the first mountain lion documented

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through evidence in modern times. In 1995, the Legislature added mountain lions to the list of game animals under state statute, so they're protected by game law at some level since 1995. We documented our first kitten in 2007. That's the first sign of reproduction that was in the Pine Ridge area in northwestern Nebraska. And we initiated research soon after that in 2010. We held one hunting season in 2014 where five mountain lions were harvested. And we did have, as was mentioned earlier, an unusual number of non-hunting related mortalities. In 2014, including females in the Pine Ridge area in particular, and that's why the decision was made not to hold a hunting season in 2015 and '16. So our agency has shown a long-term commitment to learning more about mountain lions. We've held research projects in Pine Ridge in particular. And we've created a map of suitable habitat. Our genetic estimates allowed us to create population estimates for the Pine Ridge region of 22 to 33 total animals, somewhere in that range, which seems reasonable for the habitat there. And we've documented reproducing populations in the Niobrara Valley and the Wildcat Hills and there are, typically, a few other animals wandering elsewhere in the state. We have been capturing and collaring lions in the Pine Ridge and the Wildcat Hills area since 2015. We have a very intensive project; we want to learn as much as possible about this species including another in what we hope will be the best estimate yet for the population size, but also we want to know what impact mountain lions are having on prey species, and some are high-profile prey species that people have conservation concerns about like bighorn sheep and other high-profile species like elk and mule deer. So this research will give us the best information on mountain lions in our state and allow the commission to make well-informed decisions regarding management. And it is this careful management, as Deputy Director McCoy mentioned, that has allowed us to manage other game species like deer, elk, and turkeys in a way that's allowed them to thrive over time. And so I do want to make the point again that the commission is committed to maintaining mountain lions in our state over the long term, that's our overall goal. And reiterate the point that our population is not isolated; it's not an island population of a few of a number of mountain lions in Nebraska were connected to populations in South Dakota, Wyoming, Colorado, and on to the Pacific Ocean. And with that I'd like to thank you for your time. And if you have questions about mountain lion biology or research, I'd be happy to answer those. [LB448]

SENATOR HUGHES: Okay. Thank you, Mr. Wilson. Are there questions? Senator Kolowski. [LB448]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Thank you, for your presentation. Is there a tagging...when you're tagging and collaring and all the rest...mountain lions, do you extract DNA and is there a family line? Can you tell kind of where they've been, where they're going and how this family runs out? [LB448]

SAM WILSON: Yeah, that's a great question. We do...we do take genetic samples from every mountain lion we handle. [LB448]

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SENATOR KOLOWSKI: Good. [LB448]

SAM WILSON: We also collect genetic samples from our scat detector dogs, which find mountain lion scat, we have genetics from those animals, even animals we've never handled. But it does allow us to identify them to the individual level if they are male or female. And then, if kittens, for instance, are born in the Pine Ridge and we ear tag them as part of our project and draw DNA, if they travel elsewhere in our state or back up into South Dakota or another state, they can be recognized through that DNA. [LB448]

SENATOR KOLOWSKI: Excellent. Thank you. [LB448]

SENATOR HUGHES: Senator McCollister. [LB448]

SENATOR McCOLLISTER: Yeah, thank you, Chairman Hughes. You know the habitat in Nebraska fairly well for mountain lions, I would presume. What's the limit of that habitat to support the mountain lions? Is there, do you think, an overabundance at some point? [LB448]

SAM WILSON: Well, I'll start by saying we did create a habitat map, so it maps out suitable habitat in the state based on what lions use in other states that we would estimate lions will use in our state. And habitat in Nebraska is fairly limited, which is not surprising given it's a prairie state. But the question of what a limit is for the habitat is difficult to answer in part because mountain lions, over time, will show us the areas they can actually inhabit well and do well in. And so I would hate to throw out a number and have it not be accurate. I will state again that habitat in our state is limited, especially compared to western states that have mountain ranges and national forests. [LB448]

SENATOR McCOLLISTER: You'd agree that if the mountain lion population becomes too populated they leave. Is that a correct statement? [LB448]

SAM WILSON: That is common, yes. And to be clear, almost all young males that are born into a populations leave their natal range. So they leave by nature. But also, there is territoriality with mountain lions. And so their population numbers are controlled at some level through being defensive over their territories. [LB448]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman. [LB448]

SENATOR HUGHES: Additional questions? Senator Walz. [LB448]

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SENATOR WALZ: Thank you, Mr. Chairman. And you may have answered this question or talked about this while I was gone, I apologize, but it says here that species should be allowed if the population was large enough to sustain a harvest. How big is that? Like what's large enough? [LB448]

SAM WILSON: The...right, so we look at a number of issues. So there's the issue of what habitat can support and what population can rebound from a hunting harvest. And then there's also something the Game and Parks deals with every day which is social tolerance where, for instance, the number of deer in Nebraska could be much, much higher, but deer cause damage to crops and provide some danger in travel. And so social tolerance is lower. So I guess in answering that question, we would look at population levels, use science, make a recommendation to hunt to our commissioners and they would make the decision on whether or not a hunting season should be held. But in our previous hunting season, we estimated the population to be 20-some animals. And I should...I do want to be clear, in the Pine Ridge area alone. I'm talking about the Pine Ridge when I say "that population." We held a hunting season then. There were 20-some animals in the Pine Ridge that we knew about for sure. Lion populations are resilient and connected to the Black Hills population of several hundred animals, which you can see from the Pine Ridge. And so I guess that...that's an indication of what we've done in the past. [LB448]

SENATOR WALZ: Thank you. [LB448]

SENATOR HUGHES: Okay. Senator Albrecht. [LB448]

SENATOR ALBRECHT: One quick question; thank you, Chairman Hughes. Can you tell me, do you take the phone calls at the department if people say that there's been a sighting? And if you do, how many would you say there have been in the last year or two? [LB448]

SAM WILSON: Fortunately, we have staff across the state that take phone calls and we receive quite a few phone calls. [LB448]

SENATOR ALBRECHT: Quite a few meaning...like? [LB448]

SAM WILSON: We receive, probably, several hundred in a year. And of those, many cases of observations of mountain lions by the public are mistaken identity. In many cases, we do confirm the animal was a lion, but often it will be a deer, a dog, bobcat or something else. And so we use, when we can confirm through physical evidence that a mountain lion was there, we keep records

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of that and we use that when we're looking at trying to determine where mountain lion populations have expanded to, what habitat lions are using. [LB448]

SENATOR ALBRECHT: Thank you. [LB448]

SENATOR HUGHES: Additional questions? I have just one, are you cooperating with game and park services in South Dakota, Wyoming, and Colorado of tracking families or DNA and working that? [LB448]

SAM WILSON: That's a great question because as we mentioned, our population is connected to neighboring states. And the three-strand barbedwire fence doesn't stop lions from walking back and forth. In our own study, animals have walked into other states and back and their animals have come into our state. So we do...we have regional mountain lion meetings where experts meet; we discuss population levels and management strategies and we share information. And so I work closely with mountain lions biologists in other states. I also attend national meetings. [LB448]

SENATOR HUGHES: So are other states putting tracking collars and that type of thing as well? [LB448]

SAM WILSON: They have been, yes. [LB448]

SENATOR HUGHES: Yes, okay, thank you. [LB448]

SAM WILSON: You're welcome. [LB448]

SENATOR HUGHES: Any other questions? Thank you for your testimony. [LB448]

SAM WILSON: Thank you. [LB448]

SENATOR HUGHES: Welcome. [LB448]

SCOTT SMATHERS: Chairman Hughes, members of the committee, my name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s; I'm the executive director of the Nebraska Sportsmen Foundation and I'm here representing our 12,000-plus members around the state. You'll note...a little different capacity from what you've heard so far from the testifiers. We are here from a standpoint of management strategies, as you heard Sam and several other individuals talk about.

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We're talking about abolishing or changing a law...or a bill that's going to change a management practice that is not being used. You do not have a hunting season at present; we did not last year, we will not next year. So are we creating a bill to create...to solve what? Yes, the (inaudible) season was in 2014. It could be debated for a hundred years from now whether it was right, wrong, or indifferent. One thing that did come from it was a large amount of money raised that allowed now the Game and Parks to step up their process of managing and studying the mountain lions. The fair or unfair reality is that hunters are the world's best conservationists in many, many ways. From a financial standpoint is the number one. We paid the way. We pay the excise taxes; we pay the taxes, we pay the permit fees that allow for the biologist to do the homework on all species. So we're here to talk about the simple fact is that the Game and Parks has management strategies. There are a variety of management strategies that exist. One of those is a harvest season if needed when numbers substantiate the need to do so. You've heard about deer. Does everybody remember the EHD case that took place in Nebraska several years ago that wiped out a good portion of our deer population. Those of you on the eastern side of the state, Senator Bostelman, you're aware of it, Senator Albrecht. The Game and Parks responded as they should have as a biology in a game management organization. They lowered the number of tags within those affected areas to accommodate the lower number of species. That's what management is; low numbers--low tags or no tags. Geese are regulated every year with a migratory, water fowl is regulated, doves are regulated. The bottom line is that we're trying to remove a tool that is in the tool box that may never come out for five to ten years, who knows. Our point in our group, the Sportsmen Foundation is that we were very actively involved when this bill was brought forward. We were the creators of the Hunters Helping the Hungry program, my organization, the deer donation program, which I'm proud to say that at the close of last season topped a hundred thousand pounds of fresh venison donated to needy families around the state of Nebraska. We did not ask for it to be included in the mountain lion bill; that was a decision made by gentlemen on that side of the table, not this side. Obviously, as we worked a bill, we didn't argue because what did we want done? We wanted our Hunter Helping the Hungry bill done. It was put together, that's what occurred. We're looking at the fact of that we do represent a large economic impact to the state, it is a management tool. Eighty percent of our members, when we polled them the first time, by the way, it's appropriate that we're in February and under impending snow, it feels a bit like Groundhog Day today on this particular bill. But the first time it came around, 80 percent of our members said that they would never ever seek a tag to harvest a mountain lion in this state. Remember, we're 12,000-plus members out of 280,000 registered outdoorsmen in the state. However, they agree that the tool needs to be used for the Game and Parks. The 20 percent, okay, are they wealthy individuals? I can't answer that question. I don't know them personally. Would I personally do it? No. I do hunt for food, that's all I hunt for. As we heard earlier, I hunt to harvest to feed my family, and, quite frankly, my dogs...current snow geese, that's what feeds my dogs, to be clear. (Laughter) Because I won't eat them. With that said, this bill has been here every year. We appreciate Senator Chambers, because, quite frankly, he has risen the level of awareness around the state. The plate is, roughly,

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I think, between 5,600 and 6,000 sales, individual units at the present time so that equates to \$28,000...fair enough. We're surprised by that number; we're pleased with that number. It's all going to help fund outdoor education, so...portions of it. We're pleased that he's brought the bill; it's raised awareness within our own groups with traditional hook and bullet, non-traditional conservationist and environmentalist. We just ask...excuse me, tell me it's late, we simply ask that you leave the tool in the toolbox for when we need it. With that I'll answer questions. [LB448]

SENATOR HUGHES: Thank you, Mr. Smathers. Are there questions? Senator Walz. [LB448]

SENATOR WALZ: Thank you. I just have a quick question. [LB448]

SCOTT SMATHERS: Yes. [LB448]

SENATOR WALZ: When you talk about managing the mountain lions, is there another alternative to doing that, as opposed to hunting them? [LB448]

SCOTT SMATHERS: Well, you're managing all year long. They're doing scat studies, the collar studies, they're tracking, they're tracking the species. [LB448]

SENATOR WALZ: I mean managing the numbers. [LB448]

SCOTT SMATHERS: Managing the numbers is a natural occurrence. We talk about a certain number, whether it's 22, 30, 35, we don't know if those numbers are accurate. Those are estimates by all parties. Because as we've already heard, the mountain lion is illusive. I have several on my trail cams from some of my hunting grounds that I own; I hope I never see them in person, quite frankly. I don't want to know if it's a male or female. That's too close for me. How do we manage? We manage all day long, every day, and if there needs to be...if there's a...if a large number of mountain lions start to develop in population and throw the rest of the ecosystem, as you heard Sam say, what effect do they have as a predatory animal as a apex, the apex predator on other species? If we determine or they determine at that point in time, if there's a large number of them then maybe one lion is harvested to put things back in balance. Those are all issues for the biologist. The deer, if we don't control the deer populations, we all agree corn crops, car accidents, what's the right number? I don't know those answers. Those are done by guys with a lot bigger degrees on the wall than I do. [LB448]

SENATOR WALZ: I meant as another alternative as opposed to shooting. [LB448]

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SCOTT SMATHERS: Are you suggesting trapping them, tranquilizing and tracking them and moving them? [LB448]

SENATOR WALZ: I'm asking you, I don't know, (inaudible). [LB448]

SCOTT SMATHERS: I don't know if that would be an effective method or not. Senator McCollister asked earlier about habitat. Senator Chambers brought up the fact of the California group that lives along 101. Not exactly suitable habitat for any wildlife animal, but they do extremely well there. They have found a niche in a place that they're comfortable and they do well with. So again, management standpoint...other strategies? Okay, let's look at them. But why remove one tool for another tool that we don't even know if it will work or not? Why not add more tools? I'd rather have five or six than have just have one. [LB448]

SENATOR HUGHES: Okay. Additional questions? Seeing none, thank you, Mr. Smathers. [LB448]

SCOTT SMATHERS: Thank you. [LB448]

SENATOR HUGHES: (Exhibits 5, 6, 7, 8, and 9) Additional opponents? Seeing none, we have some letters for the record in opposition from Jenny Nguyen; Kevin Paulson; Troy Stowater; Jared Kerkman; and Kevin Werts. Okay, do we have any neutral testimony? Seeing none, Senator Chambers, you're welcome to close. [LB448]

SENATOR CHAMBERS: Members of the committee, as I stated, I could go on and on, so for my closing I brought a long article from the World-Herald, a small portion of which I intend to read and that will restrict me. But as far as the managing of these animals, what were they doing before Senator Loudon brought that bill? Game and Parks was doing their job. And I hope everybody will remember, and in case they don't, I said my quarrel, primarily, is with the commissioners. They are not out there in the field. I stated, and perhaps the term "game warden" was not correct, but I said I want to use that term to distinguish the people who are in the field who understand what's going on, who understand the science, who are conducting this survey, who trap the animals, collar them, relocate them. Those are the people that I have a lot of respect for. They are doing what is necessary to manage. But in states where they do have huge mountain lion populace, they laugh at what they're doing in Nebraska. They say you got...we'll give you...you say you might have 22 to 30 animals, let's give you 50. And you're going through all of this for 50 animals and we have hundreds and hundreds of mountain lions and we do not have human to mountain lion contacts where the humans get the worst of it. There was an article not long ago where a woman was out with her child and a mountain lion came and she just started screaming and the mountain lion ran. Mountain lion could have killed both of them, if

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that was the mountain lion's desire. They get on the back of the animal and they bite right through the spinal cord and they kill it just like that. Sometimes they'll get a grip on the throat, as African lions will do or hyenas will do. But they are the stealth, ambush predators. Although they're not built for speed and running, they have the musculature to jump a chasm that is 30 feet across. So they have a way of moving, but it's not to be a part of the ongoing struggle, they're kind of isolated. But I'm going to read this or I will talk longer than I said. The headline of this article which appeared Monday, February 20 on page 3A of the Omaha World-Herald--Tracing the Footsteps of an Urban Lion. I'm not going to read all the article. They even show a picture of this one that they wrote the article about which was in the throws of a mange infection. Then a picture next to it, after they had medicated the animal, it looks like nothing was ever wrong with it. And this, remember, is where they have huge populations of these animals, not 20 or 30. But I'll read this, and this is a reprint from the Los Angeles Times. The sub-headline: "GPS monitors celebrity predator, P-22, whose kingdom is LA's eight square mile Griffith Park. Los Angeles: The lion slinks through the chaparral, a blur of movement in the night. Head held lower than his shoulders, he scours the brush in a ravine just south of the Travel Town Museum in Griffith Park. Hind paws land where the forepaws lift. No twig snaps, no leaf crinkles. He's an ambush predator always looking for opportunity. Inside a small gray box on his neck, a microprocessor switches on to calculate and time stamp his location--12:00 hours, Dec. 2, 2016, one of 56 readings made in that week. The coordinates reveal the lion's rambling course through this island of wilderness in the midst of the city. As famous as he is, the mountain lion known as P-22 is a mystery, his day-to-day life hidden by his instincts for evasion. The National Wildlife Federation has called the species a "nearly perfect predator," and among its survival skills developed over 40 million years of evolution, is a talent for invisibility." I got to find my place. "What evolution did not prepare P-22 for is how to exist in an eight-square-mile urban park with more than 5 million human visitors a year." Five million visitors in a park with mountain lions. "Most male cats have almost 20 times that space, nearly to themselves." So 8 times 20, do the math, as they say. "On this night, his ears twitch to a distant rustling, another creature's lapse of caution. It comes from a steep gully, overgrown by willows. P-22 turns his head in advance of the quick and deadly attack to come. A few days before in November, another lion had the same intention when he broke into the unsecured pens of two ranches in the Santa Monica Mountains, killing nearly a dozen alpacas and a goat. The state wasted no time issuing a permit to kill P-45, and advocates rushed to champion the condemned cat. At a public meeting a few days later, the crowd grew contentious. When a man asked whether P-45 might be deviant or rogue for having killed so many animals in one night, the crowd booed and jeered. When a woman said, "We are here because these animals cannot speak for themselves," most in the group applauded. An online petition drew more than 1,000 signatures from the supporters..." and then it points out...oh..."as far away as Moscow and Cape Town, South Africa. The big cat was granted a reprieve. The decision reflected the opinion of the biologist who matter-of-factly explained: P-45 is a lion being a lion." Then I'm going to go over here and finish it up: "At 01:00 hours, Dec. 5, P-22's collar switches on. To the west is the Hollywood sign. He cuts southwest to Lake Hollywood and

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slips through a break in a 10-foot tall fence reaching the lake pines, deodars, toyon and laurel provide cover as he waits for deer to wander close. He has completed a seven-day circumnavigation of the park." Then this paragraph: "Many biologists feel that the success of P-22 in Griffith Park and of other lions living in or near cities throughout the west proves that the perfect predator and humans can co-exist. They want to make it easier for other mountain lions. They hope that one day a wildlife bridge will span Highway 101 at Liberty Canyon, so that lions and other species can wander among the Santa Monica Mountains and the Simi Hills and the Santa Susana Mountains. The goal is to connect these smaller enclaves with the Los Padres National Forest where there is greater genetic diversity. There is an urgency to this hope. On the second day after P-22's raccoon kill, a lion labeled P-39 tried to run north across the Freeway. A vehicle hit her and she died. Within six weeks, two of her three blue-eyed cubs had also been struck down on the freeway." They're going to spend millions of dollars to build this overpass. Millions of visitors to this eight-square-mile park, and mountain lions live there, and the lions don't bother people and the people don't see the lions because they're invisible. This is not pure sentimentality on my part. I like all animals. But I've been partial to cats because of their independence; they go their own way. They are, some people say contrary, but again cats are just being cats. Dogs have been domesticated and it's been their ruination. They're bred not to help them live a better life, but for certain appearances. And they bred Cocker Spaniels to the point where they have, I think I read, 28 ailments of their bones, their muscles, and their joints because the breeding was to produce an appearance and in obtaining that appearance, they threw off the physiology and the musculature of the animal and they get ailments that other dogs don't get. If you have any questions, I'll answer them. But I do want to say, I have no animosity toward either Mr. Wilson or Mr. McCoy, even though Mr. McCoy shares the name of a person toward whom I did have animosity (inaudible) (laughter), but it was mutual. The people who do the work are doing the work and they were doing it before the hunting season was put in place and that was a management decision...by management, I meant the people at the top and they did it to raise money. They acknowledged they did it to raise money, and that's why they had the auction, and you had to pay \$500 to even come to this function at the Mahoney State Park and the incremental bids had to be either \$500 or \$750. So it was strictly to make money. And they did clear a good bit of money. But what the people at Game and Parks know, if they needed money for the sake of properly managing these mountain lions, as long as I'm in the Legislature, they will get it. And now let me state a political reality: one of the reasons they stopped having mountain lion hunting seasons was because of the cane that I raised and I'd stated that I'll do everything I can on every bill that pertains to Game and Parks to get money I will fight it tooth and nail. And there were senators who knew it. Senator McCollister brought such a bill last year, whenever it was, and although I offered motions, I didn't go all out on that bill because I'm kind of partial to Senator McCollister. And he was acting in good faith. But that's all that I have.

[LB448]

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SENATOR HUGHES: Thank you, Senator Chambers. Are there any questions? Seeing none...
[LB448]

SENATOR CHAMBERS: I appreciate your kindness and courtesy and thank you very much.
[LB448]

SENATOR HUGHES: That will close our hearing on LB448 and finish up the Natural Resources
Committee hearing for today. [LB448]