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Natural Resources Committee  
February 20, 2009

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[LB535 LB643 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 20, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB643, LB535, and gubernatorial appointments. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Beau McCoy; and Ken Schilz. Senators absent: Ken Haar. []

SENATOR DUBAS: Everyone's attention, we'd like to get the hearing going now. So if you could find a seat and I would like to welcome you to the Natural Resources Committee hearing this afternoon. My name is Senator Annette Dubas, I'm Vice Chair of the committee. Senator Langemeier is introducing another bill in another committee so he will be joining us a little bit later. Committee members that are present: to my far left is Senator Beau McCoy; Senator Ken Haar will be joining us later; Senator Ken Schilz; Laurie Lage is the committee legal counsel; Senator Fischer will be joining us at a later time; also we have Senator Tom Carlson; Senator Tanya Cook; and our committee clerk is Barb Koehlmoos; the pages today are Melinda Frevert, from Omaha; and Justin Escamilla from Scottsbluff. We'll be starting off the hearing today with a couple of confirmation hearings. We'll allow those people to come up and kind of introduce themselves, answer any questions the committee may have and then we will have an opportunity for those who would like to come forward and either testify in support or opposition or neutral on each of those people that we will be confirming today. The same routine follows for the bills, after the introducer has done his bill introduction we'll do proponents first, then opponents, then neutral. We ask that you...there's a green sign-in sheet at both doors. If you would fill those out completely and present those to the committee clerk right before you testify. If you don't want to testify there is also a sheet at the door that you can just sign in your name and your position on the particular bill and that will go into the record. If you want your actual name in the record, though, you do need to come up to the table and state your name and your position. For the bills, we do have a light system in the community--community--in the committee, excuse me. You get five minutes to make your presentation. You'll get the green light at four minutes, the yellow light will come on, and at the end of your five minutes the red light will come on. That doesn't mean you have to abruptly stop, you may finish your thought. And you also don't have to use the full five minutes if you don't need to. You may submit your comments in writing to have them read into the official record. If you do have handouts the pages will help distribute those handouts. You'll need at least ten copies. If you don't have enough of those let the pages know and they can help you get that taken care of. We also ask that when you come up to speak that you state and spell your name clearly for the record. That just helps the committee clerk should she have any questions and need to get in touch with you. At this time, I would ask that you please turn off any cell phones or pagers. These are not only a distraction for those who are speaking, it can interfere with our recording devices. Also I ask that there's no public displays of support or opposition. We would like everybody to feel comfortable in their

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presentation and what they have to say and that we are as open and unbiased as we possibly can be. I think with that, did I cover everything? All right, with that, we will move into our confirmation hearings and I believe the first person that we have to come and visit with us is former Senator Patrick Bourne. Welcome, Senator. []

PATRICK BOURNE: (Exhibit 1) Thank you. Good afternoon, Senator Dubas, and members of the Natural Resources Committee. My name is Pat Bourne, B-o-u-r-n-e, seeking your approval for my joining the Power Review Board. I served on the Nebraska Legislature for eight years and I was one of the first...I was the first class that was term limited out. And what I enjoyed most about the Legislature was my service to the public. It certainly wasn't the salary, but I did enjoy serving and I feel strongly that we all need to give back to our communities. When I was in the Legislature, I took particular interest in public power and issues relative to the power industry, had introduced several bills and had worked on a number of initiatives relative to public power. And when I saw that there was a position on the Power Review Board, I thought that was a way that I could continue my service to the state. With that, I'd answer any questions you may have and simply ask for your support of my appointment.  
[CONFIRMATION]

SENATOR DUBAS: Thank you very much, Senator. Do we have questions for Mr. Bourne? Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Senator Dubas. Senator Bourne, what's the best thing and the worst thing about public power in Nebraska? [CONFIRMATION]

PATRICK BOURNE: I think the best thing about public power is that it is...it provides...my time in the Legislature, at least, the power generated here in Nebraska was the lowest cost power pretty much in the entire country. And I think that it's a, that's, probably the best thing to the citizens of Nebraska. I think it's also...I think it's kind of the standard of how power should be delivered in the country. It's an excellent model for others to follow. And probably the worst thing, you know, if you subscribe to Senator Brashear's theory, he had introduced a bill or had proposed several times an initiative that would take public power and privatize it and there would be a lump of money that would be there. I was always opposed to that, but again, I think the lower rates are probably the best thing to the Nebraskans, for Nebraskans. [CONFIRMATION]

SENATOR CARLSON: One other question. What committees were you on in the Legislature? [CONFIRMATION]

PATRICK BOURNE: When I started in the Legislature I was on the Judiciary Committee for three years. At the same time I served on the Banking, Commerce, and Insurance Committee. That was the first three years. I spent a year, a year and a half on the Appropriations Committee. And then for my last...let's see, I was Chair of the Judiciary

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Committee and on the Education Committee. So a fairly well-round experience, I thought. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

PATRICK BOURNE: Thank you. [CONFIRMATION]

SENATOR DUBAS: Other questions. I would have one for you, Senator. How do you see the Power Review Board's abilities to help promote the renewable energy development in the state? [CONFIRMATION]

PATRICK BOURNE: I think renewable energy is very important to the state of Nebraska. I think we absolutely have to explore ways to eliminate our dependence on fossil fuels and that. And so, I'll be honest with you, I'm a little uncertain how the Power Review Board could assist in that endeavor but I think we absolutely have to explore renewable energy sources. [CONFIRMATION]

SENATOR DUBAS: Thank you. Other questions? Seeing none, thank you very much for coming today. [CONFIRMATION]

PATRICK BOURNE: Thank you very much. [CONFIRMATION]

SENATOR DUBAS: Appreciate that. Support for the nomination? Do we have anyone who would like to come forward in support? Anyone in opposition? Do we have any neutral testimony? Seeing none, that closes the confirmation hearing for Pat Bourne. Our next nominee is Stephen Lichter, for the Power Review Board. Would you like to come forward, please? Welcome. [CONFIRMATION]

STEPHEN LICHTER: (Exhibit 2) Good afternoon. Thank you, and welcome. Stephen Lichter, L-i-c-h-t-e-r. I'm here to ask for your support for my nomination to the Nebraska Power Review Board. I'm a business owner in Omaha. I own several businesses as it relates to engineering, construction, controls automation, and actually biomass. I've been very involved in development not only in Nebraska, but around the country as it relates to projects in not only renewable energy but food, pet food, food processing and I think that my experience with those developments and with large organizations that use power that need to have a way to produce or generate their products at least-cost alternatives is a very important part of bringing businesses to Nebraska and that's why I want to be on the Power Review Board, is to continue to push the low-cost alternatives for energy as it relates to the state of Nebraska. [CONFIRMATION]

SENATOR DUBAS: Thank you. Do we have any questions for Mr. Lichter? I would have...Senator Carlson. [CONFIRMATION]

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SENATOR CARLSON: Senator Dubas. Mr. Lichter, what is Bioadvanced Technologies?  
[CONFIRMATION]

STEPHEN LICHTER: Bioadvanced Technologies is a company in Nebraska that is a biotechnology firm. The owner of that company is a veterinarian and a Ph.D. nutritionist and Bioadvanced has actually developed several different products for livestock feed additives that are actually able to take waste streams from either dry corn ethanol or wet corn milling and convert those into usable products--value added products--for those markets. [CONFIRMATION]

SENATOR CARLSON: Okay. In your initial statement you mentioned biomass.  
[CONFIRMATION]

STEPHEN LICHTER: Correct. [CONFIRMATION]

SENATOR CARLSON: I thought maybe Bioadvanced was related to that, so.  
[CONFIRMATION]

STEPHEN LICHTER: No. Advanced Biofuel Systems is one of the companies that I own that has developed a biomass technology as it relates to acid-hydrolysis for ethanol, and as it relates to biomass use in power generation. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

STEPHEN LICHTER: You're welcome. [CONFIRMATION]

SENATOR DUBAS: Other questions? I have one for you, sir. What do you see as the biggest challenge that Nebraska faces in respect to developing renewable energies?  
[CONFIRMATION]

STEPHEN LICHTER: The biggest challenge with any project is how do you develop that project so that it not only provides the energy for the people of the state of Nebraska but also being able to do it at a low-cost alternative. When you look at the current sources of renewable energy out there, most of them exist only because they're subsidized by the government. And that will continue to be a challenge as we look to continue to provide renewable energy at a low-cost solution for the people. [CONFIRMATION]

SENATOR DUBAS: Thank you. Other questions? Seeing none, thank you.  
[CONFIRMATION]

STEPHEN LICHTER: You're welcome. [CONFIRMATION]

SENATOR DUBAS: Do we have anyone who would like to come forward and speak in

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support? Any opposition? Anyone in the neutral capacity? Seeing none, we thank you for coming and visiting with us today and that will close the hearings, the confirmation hearings. And our committee Chair has returned so I will let him step back in.  
[CONFIRMATION]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Moving on on our agenda, Senator Schilz is here and ready and eager to go. We'll open the hearing on LB643. Welcome to that chair in the committee. [LB643]

SENATOR SCHILZ: A little different perspective. Good afternoon, Senator Langemeier and members of the committee. Thank you for taking the time and energy to once again sit in those seats and hear testimony. Today I'm here to introduce LB643 and LB643 would increase the minimum number of days required to give notice to an owner of a utility infrastructure prior to road construction near electric lines from 30 days to 180 days. This would further extend the notice requirement to one year. The infrastructure in question would be impacted by Federal Aviation Administration regulations impacting relocation within a protected area, and would expand the area of impact within 10 feet of an electrical infrastructure. And current Nebraska statute requires 30 days' notice to the owner of a utility infrastructure prior to any road construction, widening, repair, or grading projects within six feet of any electrical transmission or electrical distribution line, pole, or anchor. The 30 days' notice requirement in current statute is inadequate and does not allow sufficient time for proper planning and implementation, especially on projects that would require relocation of a power line. In addition, the six feet rule in current statute is not enough to ensure that the structural integrity of lines, poles, and anchors are not compromised. And then there's no language in statute to authorize a natural resource district to provide notice when working on altering a road structure, grading or moving earth for flood control or recreation which would require the relocation of the utility infrastructure. LB643 would provide that authorization with the same timelines for counties. And I introduced this bill on behalf of the Rural Electric Association and Kristen Gottschalk and they were...they wanted to get this in the record and get it going. I think that they're working on some things to make sure that we can move forward with this maybe not this time around, but maybe at a later date. So if there's any questions, I'd be happy to answer them now and I'm sure we've got some folks that will be here to testify. [LB643]

SENATOR LANGEMEIER: Okay. Are there any questions for Senator Schilz? Senator Carlson. [LB643]

SENATOR CARLSON: Senator Langemeier. Senator Schilz, it sounds like in this memo that you'd like to work together on this bill over the interim on language to which everyone can agree. So are you not expecting the bill to go out of committee? [LB643]

SENATOR SCHILZ: Well, and I think of what we've come up with in talking to the

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parties that are involved is that they would like to get together and discuss this, and so yeah, that's what we're saying is that I would be okay in holding this bill through the interim to where we can have those discussions. [LB643]

SENATOR CARLSON: Okay. [LB643]

SENATOR SCHILZ: And then bring it back but that's the point, yes. [LB643]

SENATOR CARLSON: Thank you. [LB643]

SENATOR LANGEMEIER: Are there any other questions? Seeing none. Thank you very much for your testimony. Further testimony in support of LB643? Welcome. [LB643]

KRISTEN GOTTSCHALK: Thank you, Senator Langemeier and members of the Natural Resources Committee. My name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and registered lobbyist for the Nebraska Rural Electric Association. I'm here today representing our 35 rural electric members. First of all, I want to thank Senator Schilz for introducing LB643 and it was meant to address the issue of how much time is actually needed to notify an electric supplier if some form of roadwork or other resource development would be requiring the utility to move those poles and wires. And this comes up time and time again. Currently statutes, as Senator Schilz mentioned, require counties and townships--that's the only ones covered in statute right now--to provide at least 30 days' notice if any work they were doing would actually require moving of the infrastructure. Now depending on what needs to be moved, how large a section of line it is, on occasion 30 days might be enough time. Sometimes all that would be required is if they're doing ditch work that we need to shore up the poles while that work is going on and then they come back in and the line doesn't move. But if we actually need to move a large section of line, that timeline becomes more cumbersome or not enough. And actually, the statute does say at least 30 days' notice. And what I want to emphasize in my testimony is that in an overwhelming majority of circumstances, the counties, the townships, and the power districts are already talking and very rarely do they go to statute for guidance on what to do. They've already got that worked out, they know what's going on. But there are going to be times or situations where you have a staff change or, you know, maybe there is an area of disagreement that you need to go to the statute for guidance on what to do next. And that's where we need to make sure that that guidance is appropriate. So even though it wouldn't be used all the time because that communication is already there, we need to make sure that it's appropriate when it is needed. And this could be in situations also where there isn't a county roads superintendent. Oftentimes in counties when they don't have that, then the county supervisors take that requirement on themselves for their areas, and the statute needs to be appropriate in that situation as well. What we need to be certain is that in this process that it's not just appropriate for the power suppliers, but

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it's also appropriate for the others doing work that, you know, we need to coincide with. So we looked at that, we did talk to the counties since the statute initially just referenced counties and townships and they too agreed that, yeah, 30 days probably isn't right but what is that right number of days? And then the question came up what if there are special circumstances? And in a recent case we did see where the infrastructure move was in an area impacted by the FAA, the Federal Aviation Administration, and approval to reconstruct poles and wires in that same airspace might take a considerable amount of time. So what do we do in those situations? And then another situation, well, it was actually the same situation where the road is no longer the county's, it's now part of an NRD structure development and there was no process in statute for the NRD to make that notification and then went through the county and it seemed appropriate to give NRDs that authority in the process as well. So we opened up that discussion to the NRDs and the counties and decided that one, this is an education process; and two, we want to make sure whatever's put into statute is something that's workable by all involved. And that's why we're asking you to hold the bill over the interim, allow us to work together and make sure that the guidance is absolutely the appropriate guidance, and we should bring something back to you next year that's agreed on by all parties. [LB643]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? I have one. So are you hoping to come...when you say next year, are you hoping to come back with an amendment for this bill or just a new bill next year? [LB643]

KRISTEN GOTTSCHALK: Oh we would just bring back an amendment to this bill is what the thought was. Maybe with no disagreement maybe it could go through early in the process. [LB643]

SENATOR LANGEMEIER: Okay. Seeing no other questions, thank you very much for your testimony. [LB643]

KRISTEN GOTTSCHALK: Thank you. [LB643]

SENATOR LANGEMEIER: Further testimony in support of LB643? Seeing none. Do we have letters? Nope. Testimony in opposition? Seeing none. When you ask to hold your bill that really helps, doesn't it? Any testimony in a neutral position? Welcome. [LB643]

LARRY DIX: Good afternoon. Senator Langemeier, members of the committee, my name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials, appearing today in a neutral capacity. The...and initially, I would tell you NACO opposed this bill as written but certainly through what you've heard today, I just want to make sure we're on record so that everybody knows, we're involved in working through the process. We're certainly...I think we can say 30 days may not be right, but I also think we would say 180 days isn't right either. And so one of the things

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that we suggested over the summer, we'll have a Highway Department workshop with a number of our folks from across the state and we'd like to have the opportunity to really to negotiate, talk through that process with our highway superintendents who work on it throughout the whole period of time. And so that's one of the reasons why I think we came to the agreement and we certainly appreciate Senator Schilz understanding our position in it. And so with that, I just wanted to be on record and so that everybody knew the counties were a part of the negotiation, and we'll work together and get this resolved. And just as Ms. Gottschalk had mentioned, our plan is to come back, have something in an amendment form, and quickly move the bill through the process next year. We certainly hope we can come to that agreement. [LB643]

SENATOR LANGEMEIER: Okay. Are there any questions for Mr. Dix? Seeing none, thank you very much for your testimony. Further testimony in a neutral position? Mr. Miyoshi, welcome. [LB643]

JOHN MIYOSHI: Thank you, Senator Langemeier, members of the Natural Resources Committee. My name is John Miyoshi, J-o-h-n M-i-y-o-s-h-i. I'm the general manager of the Lower Platte North Natural Resources District located in Wahoo. My testimony today is in behalf of my NRD along with the Nebraska Association of Resources Districts. And we're very similar to Larry Dix's comments that we support the bill that we do not think 30 days is enough for the public power districts, and we want to go on record as being part of coming up with the proper days that are needed. [LB643]

SENATOR LANGEMEIER: Okay, thank you. Are there any questions for Mr. Miyoshi? Seeing none, thank you very much for your testimony. Further testimony in a neutral position? [LB643]

CURT SMITH: Good afternoon, Senator Langemeier, members of the committee. My name is Curtis Smith, S-m-i-t-h. I am the executive director of the Associated General Contractors of Nebraska. And I am similar position as Mr. Dix. When I first read the bill I was thinking, well, 180 days is extreme. In my 40-plus years of experience in the highway industry, utility relocation has been a concern for contractors for many of those years and is ranked high as one of the main concerns in surveys with the NDOR and one thing or another, whether it be on major road construction projects or county road construction projects. And I want to come...we're not really particularly upset now that I've heard more information since I have read the initial bill. I know that the short notice causes problems for utility contractors. It causes...I've gone to preconstruction conferences for projects on major road construction projects and relatively small bridge projects on county projects and the first time a utility company hears about it, they say is right at the preconstruction meeting when construction is ready to start perhaps in the next two weeks. And I know that's a problem. It's perhaps as much a communication problem in the past as anything else. But regardless, it is a problem. We are here and would like to be a part of the process if we can, offer advice, opinion, and I'm not here to



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rant about anything. But like Larry said, 30 days may not be enough, but 180 is maybe too far down the road the other direction. Some compromise and improved communication we think would help the process extremely, so. Is there any questions, I would feel free to try to answer them. [LB643]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Smith? Seeing none, thank you very much for your testimony. [LB643]

CURT SMITH: Okay. [LB643]

SENATOR LANGEMEIER: Further testimony in a neutral capacity? Seeing none. Senator Schilz waives closing, so that concludes the hearing on LB643. And the next bill is LB535 and Senator Stuthman is here. So we'll open the hearing on LB535 and Senator Stuthman, you are recognized to open when you're ready. Welcome. [LB643]

SENATOR STUTHMAN: Thank you, Senator Langemeier. Chairman Langemeier and members of the Natural Resource Committee, for the record my name is Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District. I am here to introduce LB535. LB535 attempts to change several provisions relating to natural resource districts and the Natural Resource Commission. LB535 changes the number of Nebraska Natural Resource Commission from 16 members to 28 members. Currently, the membership of the board consist of one representative from each river basin which makes up 13 members. These members are selected for four year terms at the individual caucuses of the NRD directors. The Governor appoints the remaining three members, one of each representing the surface water users, groundwater users and municipal water users. These members will serve at the pleasure of the Governor. LB535 would increase the number of members that the Governor appoints by 12 members. These 12 members would represent the business community. LB535 also adds to the requirement for programs and projects. These additions include that all programs and projects of the NRDs shall have to be shown to be wanted by the majority of the residents of the watershed, if the general program or project or the project area is a special program or project. If approved by the residents, surveys may be used for general purposes or projects to determine potential utilization of the program or project. Any surveys used shall be consistent with the state and federal agency's statistics and shall not include the same population areas to justify more than one of the same kind of projects within a 50-year period of time. All projects shall be bid in total, not by part, and all expenses shall be included when determining the rate of return on and for a project. LB535 also adds a requirement for the use of eminent domain. Currently, each district has the power and authority to exercise the power of eminent domain when necessary to carry out its authorized purposes within the limits of the district or outside its boundaries. LB535 adds a provision that eminent domain power shall not be used until all the requirements for the dam and any other improvement projects have been complied with. LB535 also changes the provisions related to bonds. Currently, bonds

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shall be authorized by the majority vote of the board, and the board shall determine the manner and place of their execution. LB535 would require that the authorization of bonds shall be decided by the majority vote of the residents of the watershed but still allows the board to determine the manner and place of their execution. Those are my opening comments and I would be glad to try to answer any questions. [LB535]

SENATOR LANGEMEIER: Are there any questions? Senator Stuthman, I have a couple. [LB535]

SENATOR STUTHMAN: Yes. [LB535]

SENATOR LANGEMEIER: You talked about in here about surveys, and you know, in the political world we live in a world of surveys. You use them when they work for you, you don't use them when they don't work for you. What if we put a provision in there, and typically it's a problem of getting surveys back, you know, people that on one side or the other usually it's the supporter side that don't send them back...or it's usually people that are on either ends of the spectrum on an issue actually send them back. What if we put in there the provision let's say, and I'd think you'd want to do a population count within this watershed and so you'd send out x number of letters, 1,000 surveys to 1,000 landowners or residents within a basin. What if we put a provision on there that says that we would deem all those that not returned as support in the total count? So you actually got 1,000 back, you'd have some results whether they sent them back or not. [LB535]

SENATOR STUTHMAN: And what I'm understanding, Senator Langemeier, is that you would consider all those that were not returned as in favor of the project? [LB535]

SENATOR LANGEMEIER: Sure. Put them in a default mode of...that way if you didn't want to be in favor of it you would return it. [LB535]

SENATOR STUTHMAN: Uh-hum. Um-hum. Well I think this is something that I'd be willing to work on them. [LB535]

SENATOR LANGEMEIER: Okay. [LB535]

SENATOR STUTHMAN: I'm willing to get ideas on this bill. I'm also willing to work on an amendment. [LB535]

SENATOR LANGEMEIER: I'm just trying to think outside the box. [LB535]

SENATOR STUTHMAN: I have... [LB535]

SENATOR LANGEMEIER: Oh, I'm sorry go ahead if you had more on that one. [LB535]

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SENATOR STUTHMAN: No. [LB535]

SENATOR LANGEMEIER: My other question is on here you talked about taking this to a vote. And, you know, we go back to local control, we assign certain responsibilities to certain groups. This happens to be an NRD function. As we start to just keep pushing the trend, and we see it in other bills, is to continue to push it down from the NRDs down to the public whether it's in the Papio NRD or it's that. And there was some discussion out there with fully appropriated, maybe we don't need NRDs anymore. Is it your thought we don't need them? We should push everything down to just the public voting and DNR sends out the memo and says... [LB535]

SENATOR STUTHMAN: No. It is not my intent to eliminate the NRDs, that is not my intent at all. My intent is so that when projects are, you know, needed in an area and they're supported by a community and the residents there, you know, then projects should be performed and gone ahead with. If there are projects that are just because of an idea of several people, you know, to put a project in and the majority of the residents and the people that are paying for the...that are taxed for it, you know, maybe do not support the project. [LB535]

SENATOR LANGEMEIER: Sure. [LB535]

SENATOR STUTHMAN: But I have no intent to eliminations of NRDs or NRDs towards anything. The next thing that I wanted to comment on after I drafted this bill, I'm a little bit concerned about the number on the board of increasing that much. That has a fiscal impact and I would be willing to work to hopefully tone that back a little. [LB535]

SENATOR LANGEMEIER: Okay. Very good. Other questions? Senator Dubas. [LB535]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Senator Stuthman. What is your rationale behind the number that you had picked for increasing the board size? [LB535]

SENATOR STUTHMAN: Well, the reason I picked that is I wanted to get, you know, more individuals from the business community to be on the board, but then, you know, this is what I thought would be a good number. But when I look at the total number of the 28, to me a 28-member board is way too big. [LB535]

SENATOR DUBAS: So are you just feeling there's not enough representation from the business perspective? [LB535]

SENATOR STUTHMAN: From the business side of it. Um-hum. Um-hum. [LB535]

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SENATOR DUBAS: Okay. All right. [LB535]

SENATOR LANGEMEIER: Any other questions? Senator Carlson. [LB535]

SENATOR CARLSON: Senator Langemeier. Senator Stuthman, how would you define the business community? Who is in the business community? [LB535]

SENATOR STUTHMAN: In my opinion, the business community would be people that are owners of businesses in communities. And I'll give just an illustration. Let's say that up in my district, you know, Lindsay, maybe there'd be a project in that Lindsay area. Business members from that area, but the total area of that NRD, and that might be business people in Greeley, there might be a business person up in another community, there might be a businessperson from Columbus that's in that NRD, you know, that should serve on that board. [LB535]

SENATOR CARLSON: Well is a commercial feeder or a farmer a business? [LB535]

SENATOR STUTHMAN: Yes. [LB535]

SENATOR CARLSON: Okay. So that isn't meant to restrict agriculture in any way. [LB535]

SENATOR STUTHMAN: No. No, not at all. Not at all. And the reason I have this appointed by the Governor, you know, it would be people that, you know, that would, you know, their name would surface and then the Governor would appoint these individuals to serve on that from the business community. Or like you stated, you know, farming, agriculture is a business also. [LB535]

SENATOR CARLSON: Good. Thank you. [LB535]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much. [LB535]

SENATOR STUTHMAN: Thank you. [LB535]

SENATOR LANGEMEIER: You have heard the opening on LB535. Now the floor is open for those who want to testify in support. Come on up. Welcome. [LB535]

MYRON FRANZEN: (Exhibit 3) Chairman Langemeier and senators of the committee, first of all I have some information to pass out to the senators. Okay, while that's going on shall we continue? [LB535]

SENATOR LANGEMEIER: You have to go ahead and state your name and spell it for

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me. [LB535]

MYRON FRANZEN: Myron Franzen, that would be M-y-r-o-n F-r-a-n-z-e-n. I live at 142 North Parkway, Columbus, Nebraska. I am also a member of the Platte County Board of Supervisors, but I am here today as an individual. I am here to ask that you support and advance LB535. My experience has been with the Lower Elkhorn Natural Resource District, LENRD for short, more specifically the dam at Leigh. When the dam at Leigh was in the early planning stages, a printed community survey was taken which showed 83 against, 27 in favor, and 37 neutral for the project, over three votes against to every one in favor of the project. The LENRD just ignored the feelings of the majority and proceeded to move forward with the project. I always thought in a democracy the majority would prevail. As the project was developed we were told that the State Comprehensive Outdoor Recreation Plan, SCORP, would be the information used to determine the internal rate of return of 3 percent. SCORP is put together by surveys done by colleges and Game and Parks Commission. To me, survey data is about how a person feels on a given day and a poor basis for spending tax money. The final application for the Leigh Dam shows a 25 mile recreation market area around the project from which the people will come to use the recreation area. This RMA includes the city of Columbus and the city of Norfolk. The SCORP book says that 41 percent of the residents in the RMA will fish, yet Nebraska Game and Parks Commission says that only around 11 percent of the population buys a fishing license. That information is in your packet. As I looked at the Leigh Dam RMA, I saw that it included Lake North in Columbus and Maskenthine Lake at Stanton. So I wrote to then-director Ann Bleed at the natural resources district and asked how many of the population in the RMA were credited to Lake North and how many to Maskenthine Lake. One of her staff members replied, "All the estimated 49,767 recreation days mentioned in the calculations are attributed to people using the" dam at Leigh. In other words, there won't be any local people going to the other two lakes. This got me to thinking, I wonder what towns are included in the RMAs for the lake at Stanton and the lake at Pierce. I requested and received copies of those two RMAs. Both lake projects include the city of Norfolk. So if 41 percent of Norfolk's population fishes at Leigh, 41 fishes at Stanton, and 41 fishes at Pierce, this means 123 percent of Norfolk's population fishes. Not too realistic. When we started and stopped this project in 2004, the value per recreation day was \$5.74. After the 2006 update of SCORP, the recreation value per day went to \$7.03. The update of SCORP was to cover the years from 2006 to 2010. When the engineering firm recommended the LENRD accept the bid for dirt work and signed the construction contract, their letter stated that the internal rate of return had fallen to 2.59 percent. Later in the same letter it states that if the value per recreation day was raised to \$7.55 it would bring the rate of return above 3 percent. Not long ago I checked at what rate of per day recreation value was being used and was told it was \$7.55 per day. I asked for an itemized list of income and expenses with amounts for each item so I could see how the internal rate of return was calculated. I'm still waiting for that list. I guess if you never disclose what items and numbers you are using, you can always say it meets the

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internal rate of return. In September of 2007, the LENRD went to bid on dirt work for the Leigh Dam. The bid did not include the recreation part of the project. If the dirt work is done for nearly \$3.4 million plus \$1.2 million for land cost, I believe the NRD will continue to finish the project regardless of cost, push ahead even if it does not meet the 3 percent rate of return. I believe the whole project should be bid at the same time so no surprises come later. I attended the LENRD meeting where an additional \$60,000 was approved for an engineering firm expenses in their trying to obtain the 404 permit. This still did not achieve the objective of obtaining the permit. Soon thereafter in the LENRD expenses, checks were being sent to a law firm in Colorado and a law firm in Washington, D.C. At a later meeting I asked at which board meeting the hiring of these law firms was approved. One director replied that the hirings were an administrative decision. Over \$80,000 was spent with these two law firms to obtain the 404 permit, thus an additional \$140,000 in expenses. I asked a staff member of the Department of Natural Resources how much the \$140,000 would change the internal rate of return. His response was they don't have to include that cost in their calculation for the ratio. The NRD should not be allowed to use eminent domain powers for these projects until they have all their permits. My wife and I were in court for eminent domain proceedings on February 20, 2007 for this project. That's exactly two years ago today. The Section 76-714 of Nebraska Statute states, the condemnor shall not dispossess the condemnee until the condemnor is ready to devote the property to a public use and such title in interest as the condemnor seeks to acquire shall not be complete until the property is put to the public use for which taken. This use of eminent domain was 20 months before the 404 permit was issued, from February, 2007 to November, 2008. My wife and I lost two years of farming this land. I believe that the directors of the Nebraska Department of Natural Resources board should be comprised of the same number of outside people as NRD people. This would give the board a better balance for evaluating all projects if the resources board has only NRD people it's hard to say no to family. A final thought, why not make the NRDs use the same process as school districts, cities, and counties for large wanted projects. Eliminate state funding for those projects, have each NRD develop their project plans, have the voters of that NRD say aye or nay to the plan. If the voters say yes, the NRD can then issue bonds to pay for the project and the taxpayers of that NRD would be taxed to repay the bonds. If the voters say no, the NRD could make improvements to the project and ask for another vote a year later. This would eliminate much of the present smoke and mirrors tactics used to justify spending state and local taxpayer dollars. Thank you very much. [LB535]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Franzen? Seeing none, thank you very much for your testimony. Well done. [LB535]

MYRON FRANZEN: Thank you. [LB535]

SENATOR LANGEMEIER: Further testimony in support of LB535? Welcome. [LB535]

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SCOTT JAPP: (Exhibit 4) Good afternoon, Senator Langemeier, committees, and counsel. My name is Scott Japp, S-c-o-t J-a-p-p. My support for LB535 comes from my background in the construction business and my current position as a director of the Papio-Missouri NRD district. I'm not speaking on behalf of the NRD board. I assumed my position in January of this year. For the past 30 years I have been involved in the construction industry in one form or another. After graduating from the University of Nebraska, I worked 12 years with my father in the soil conservation business working closely with the NRD constantly. After I decided to leave my family operation, I was a project manager building golf resort and residential projects throughout the world. Three years ago I decided to return, where I work for a civil engineering firm as a project manager and a construction observation. Long before my election to the NRD board, I have followed the workings of the NRD system in my business and as a constituent. You can say that I have a wish list of how the NRD should operate. While I wasn't familiar with Senator Stuthman's concept or his presentation of introducing LB535, when I first saw it, it had addressed some of my concerns and major points. I have three of them today, please feel free to ask my any questions at any time. First concern is, Senator Stuthman has met on the most pressing need for improvement of record keeping, fiscal reporting, and the availability of detailed information for the public and from the NRD. Specially, the information records of the NRD must be tied to projects and contracts. On June, 08 of this year, the NRD finished a large dam in Omaha, Nebraska, called dam site 13. As a new board member I wanted to educate myself and become more familiar with the process. I requested weekly all contracts, pay applications, and change orders regarding this dam. The NRD staff provided me with some of the information but not all of the information. In our last monthly meeting in February, the staff stated to the board that they do not have all the contracts or change orders. I also was told that our engineering inspection firm, which was HDR, wasn't giving these contracts. How can one perform their duty properly if they don't have the proper information? It greatly concerns me when we can't properly account for projects that was completed months ago. Going along with that, contracts for all projects should be readily available. While this seems to be a normal business practice for public entities, my constituents and myself effort to obtain information from the NRD has shown it to be difficult and it requires much persistence. I've even sent e-mails stating I have requested information using the statement of the Nebraska Freedom of Information Act and I get no response. Reporting of income and expenses in a format which is in accordance with the accounting principal is an important part of transparency. My top letter in the packet I gave you was the NRD said it was filed with the state auditor. It was our auditor, or our bookkeeper that submitted that letter to the state auditor and it's the disclaimer of fraud at risk assessment. A key element in obtaining a buy-in for the NRD project is its effort to clear a means of tracking income and expenses by project. It is customary in the construction industry to have a summary spreadsheet about which goes out and what comes in on apparent projects. Figures that balance should give the public confidence that dollars are spent wisely. Unfortunately, with many projects and some projects broken down into several

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subprojects, it may be very difficult for the layman to figure out where tax dollars are spent and the ultimate cost of the project. LB535 addresses these fiscal issues by adding members to the Natural Resource Commission which already has powers and oversights because many awards funds for the NRD projects. By broadening the membership of the commission, the bill encourages the commission members to be watchful, ask questions, and demand fiscal accountability in the exercise of its duty. LB535 amends existing law and gives the commission additional guidelines for the NRD operations of fund. This would create an oversight board that would justify a broad spectrum of projects. This board could question projects that come up with the NRD. My NRD in my area has acquired over 550 acres in the state of Iowa for unknown reasons. We have 400 acres in the county of Burt with no unknown reasons and no public access. The commission could have justified some of these questions, the NRD...my NRD is building a dam called the Pigeon Jones Creek in Hubbard, Nebraska. Due to the statistic the gentleman before me said, a statistic that they're using to justify their cost benefit ratio is in my area there's a population base of 150,000. The statistic says that 83 percent of the people will visit that recreation site eight times out of the year. I really think that is highly overestimating. And it's also estimating that 56,000 horses will visit that site within a year when they only have 24 parking stalls for horses. The next critical statement that Senator Stuthman's bill recognizes the public interest meant by adhering to a bidding system for contracts for services and good. At the top of this paragraph, page 5 of your copy of the bill, Section 2-3229 is amended to require, and I quote, "All projects should be bid in total, not by part and that all expenses shall be included when determining the rate of return for the project." Again, the same project in Hubbard, Nebraska, that my NRD is trying to do, there are 15 water quality dams that are proposed to help assist in the water quality above stream of this structure. However, in the cost analysis none of those structures were included in it. The third thing that LB535 does is to address once again the cry for reigning in the NRD's power of eminent domain. You've probably heard plenty of this already, but there is another element to eminent domain use which enhances the value of this bill, the NRDs' actions. Taking land from people by means should never happen without a need study first. I have an example of how a farmer's land was lost and yet the public has gained no viable benefit since it has not had public access. North of Blair is a project that the NRD used eminent domain to acquire over 200 acres of land. It's called California Bend. The NRD entered into agreement with the Army Corps of Engineers to dig a bypass channel which was approximately 500 feet away from the main stream of the river. As of last year, where this new bypass channels was at your pictures will show the bank sloughing into the river and that they just dug. And they've tried to stabilize this by placing in 2,000 tons of rock which didn't do it, sloughed into the river. Ultimately, I requested, being on the board, that they come in and give us a study of what's wrong. They did the study and you have the study from the geotechnical firm that says that the ground is unstable for this project, basically. They needed to be at a slope rate of 20 to 1, which means that the bypass channel they dug needs to be moved back into the original river again.

[LB535]



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SENATOR LANGEMEIER: Mr. Japp, I need you to summarize, we're past the time limit. [LB535]

SCOTT JAPP: In closing, it would be an understatement to say that this committee has heard changes on the NRD operation and oversight for several years. LB535 is one by which we have the powers to improve the way the NRD serves the public interest. I request that the committee gives it support for this effort to increase the controls in time to increase financial stress. It makes sense to require justification in public by and for this agency. Thank you very much and if you have any questions. [LB535]

SENATOR LANGEMEIER: (Exhibits 5, 6, and 7) Very good. Very good. Are there any questions for Mr. Japp? Seeing none, thank you very much and taking the time to come testify. Further testimony in support of LB535? Seeing none. Testimony in opposition to LB535? And while we're waiting for them to come up, I have a number of letters. Marty Grate with the city of Omaha, John Winkler with the Papio-Missouri Natural Resources District, and Ken Winston with the Nebraska Sierra Club is in opposition to LB535. Welcome. [LB535]

STAN STAAB: (Exhibit 8, 9, 10) Thank you. Good afternoon, Senator Langemeier and members of the Natural Resource Committee. My name is Stan Staab, spelled S-t-a-a-b. I'm general manager of the Lower Elkhorn Natural Resource Districts and I appear today before you in opposition to LB535 on behalf of my board of directors and also the Nebraska Association of Resource Districts. We believe if this bill is passed as written, it would be very unnecessary and inappropriate. The present membership of the Nebraska Natural Resources Commission is very adequate and effective. The 16-member commission includes several NRD board members representing the 13 river basins across the state. In most cases, these rural citizens bring many years of experience and knowledge of soil and water conservation to their positions. Other members are appointed by the Governor representing ground and surface water as well as municipal water use and they must also be very informed on these issues. The commission is charged with evaluating statewide NRD projects and programs and distributing various Department of Natural Resource funds, for example the Resource Development Fund, to carry out these projects. The members bring a fair-minded approach to this difficult task as these projects are in various stages of planning and construction as they go forward. Many of these projects are related to flood control and are quite large. Our NRD has utilized these funds since 1972 to plan and construct multipurpose flood control dams with recreation components. As with other NRDs, we have constructed major flood levees for several communities, accessed the Soil and Water Conservation Fund providing best management practices for land improvement including tree planting. Other smaller funds address small watershed projects, sealing thousands of dangerous old wells, groundwater quality, and more recently the Integrated Water Management Fund to assist both surface and groundwater future

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planning. As an advisory board, the commission is a statewide group which meets six times a year. Appointing 12 new members would in effect be adding another layer of state government. And when expenses such as travel, per diem, etcetera are factored in, this just does not make sense, especially in these economic times. NRDs are working in partnership with the commission, they continue to provide valuable flood projects while protecting lives and property across the state. Recreation benefits associated with these projects are enjoyed by thousands of our citizens. Locally elected NRD boards serving four-year terms are very dedicated and committed to serving the public. LB535 would impose unnecessary and unrealistic public surveys that would, in effect, judge each program and project similar to a popularity contest based upon the mood and prevailing attitude of the residents affected. This is not representative government. This is why elections are held. Power is vested with our voters. The commission is time proven and works very diligently to provide funds to many state projects. They deserve to be supported in their present form. Thank you for the opportunity to testify. Also included in my packet today, the recent newsletter from DNR which includes some information on the back pages about the commission and the funds they appropriate or administer. The Soil Water Conservation Program, there's an update for you there. There's a little survey on the six basin caucuses that are held and I think that's a good summary for you to consider. This is a very good report, especially for the newer senators. This is the 2008 Biennial Report on the Nebraska Resources Development Fund. If you have not seen this, I would encourage you to take a look at it. A good explanation in the front of how the commission works, how they report to the Governor and the Legislature. The Resource Development Fund itself was created in 1974. They have put in many, many projects over the years across the state. You can see from the map where the red dots are. I think these are pretty evenly, fairly, distributed according to population and that sort of thing based on the resources that are out there. And it's a good summary of the projects including pictures. So with that, I would answer any questions if you have any. Thank you for your time. [LB535]

SENATOR DUBAS: Thank you very much, Mr. Staab. Do we have questions? Senator Carlson. [LB535]

SENATOR CARLSON: Senator Dubas. Stan, would you want to comment on the statement about this land purchased in Iowa? [LB535]

STAN STAAB: I don't know much about that. That would be something with the Papio-Missouri NRD board. That's a different district. I've heard of that, but beyond that I'm not aware of it. [LB535]

SENATOR CARLSON: Okay. Thank you. [LB535]

STAN STAAB: I'm sorry I can't comment. [LB535]

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SENATOR DUBAS: Other questions? Seeing none, thank you. [LB535]

STAN STAAB: Thank you very much. [LB535]

SENATOR DUBAS: Any other opposition? Anyone in neutral? Seeing none, that...oh, closing, excuse me. I didn't mean to cut you off there. [LB535]

SENATOR STUTHMAN: I know the feeling. Thank you, Senator Dubas. In listening to the opposition, you know, there was a real concern of the directors, the amount of directors and the individual felt that there was sufficient directors. Like I stated in my opening, you know, I am willing to work on that part of it. I also think, you know, there's a chance that we don't need to add that many additional directors to it, and I'm willing to work on that. The other issues in my opinion that are...that I had surfaced in my opening, you know, as far as the process of making the dam, of building the dams or the projects or anything like that, and costs of the projects, those are the issues that I have a real concern with. So, you know, I would like to have the committee look at this. Like I says, I am very receptive to the fact to, you know, tone down the membership part of it but I would like to address some of these other issues that I brought forward, so. [LB535]

SENATOR DUBAS: Thank you very much. [LB535]

SENATOR STUTHMAN: I'd be willing to answer any questions. [LB535]

SENATOR DUBAS: Questions for Senator Stuthman? Seeing none, thank you. [LB535]

SENATOR STUTHMAN: Thank you very much, you bet. [LB535]

SENATOR DUBAS: And now that concludes the hearing for the Natural Resources Committee today. (See also Exhibit 11) [LB535]

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Disposition of Bills:

LB535 - Held in committee.

LB643 - Held in committee.

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Chairperson

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Committee Clerk