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Natural Resources Committee  
January 27, 2011

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[LB27 LB31 LB32 LB366 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, January 27, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on confirmation hearings for Mark McColley and Michael Thede and LB366, LB27, LB31, and LB32. Senators present: Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: Chris Langemeier, Chairperson.

SENATOR SCHILZ: (recorder malfunction)...just past 1:30 so we'll go ahead and start the hearing for the Natural Resources Committee for today, January 27. This is my first time running a meeting so bear with me and we'll see if we can't get through this without too much trouble. First thing I'd like to do is introduce you to committee members. To my far left, Senator Jim Smith from Papillion, District 14. Next to him, joining us later will be Senator Ken Haar from Malcolm. And next to him, joining us later will be Senator Mark Christensen from Imperial. I'm Senator Ken Schilz from the 47th District, Ogallala. Laurie Lage, our legal counsel. To my far right is Barb Koehlmoos, the committee clerk. Senator Beau McCoy from Omaha, and then Senator Tom Carlson from Holdrege, and Senator Annette Dubas from Fullerton. And today we have about four bills on the agenda and a couple of confirmations. If you're planning on testifying, please pick up a green sign-in sheet that's on the table at the back of the room. And if you do not wish to testify, but would like your name entered into the official record as being present at the hearing, there's a form on the table that you can sign and then as you sign that, that will become part of the official record. Please, if you are going to testify, fill out the sign-in sheet before you come to the table. Please print and it's important to complete the form in its entirety. When it is your turn to testify, give the sign-sheet to the committee clerk and that will make sure that it gets put into the public record. If you do not choose to testify, you may submit comments in writing and have them read into the official record. And if you have handouts, please make sure that you have 12 copies for the pages to hand out to the committee. And if you don't, give them to us and we'll make sure that we get enough copies and get them out. When you come to the stand to testify, please speak clearly into the microphone, give us your name and then spell your first and last name. And then at this point, if you would all turn off your cell phones, pagers, or any other electronic device and keep conversations to a minimum that would be greatly appreciated. We have two pages today; Kate DeLashmutt and Ian Vosburg are with us today. Thank you very much. And so at this time I think we can go ahead and go into the confirmations. And so the first one on the list is Mark McColley with the Nebraska Ethanol Board. Welcome Mr. McColley. []

MARK McCOLLEY: (Exhibit 1) Good afternoon, Senators. My name is Mark McColley, M-a-r-k M-c-C-o-l-l-e-y, I reside at 8510 North 46th Avenue, Omaha, Nebraska.  
[CONFIRMATION]

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SENATOR SCHILZ: Thank you. If you would, could you...this is a reappointment, correct? [CONFIRMATION]

MARK McCOLLEY: Yes. [CONFIRMATION]

SENATOR SCHILZ: Could you give us just a little bit of your history, why you're interested in the...serving on the Ethanol Board? [CONFIRMATION]

MARK McCOLLEY: Actually, I've been serving on the Ethanol Board since 2001. I really enjoy serving on the Ethanol Board. I think it's a great board. It brings some great economic development to rural Nebraska. You know, it's created like 1,300 jobs in the rural communities over the past ten years and about 3,000 jobs, as far as temporary jobs in the construction industry. And being the business manager of Steamfitters and Plumbers Local Union 464 in Omaha, the construction part of it really interests me because it's my people that build those plants. [CONFIRMATION]

SENATOR SCHILZ: Sure, great. Thank you. Are there any questions for Mr. McColley? [CONFIRMATION]

SENATOR HAAR: Yes. [CONFIRMATION]

SENATOR SCHILZ: Senator Haar. [CONFIRMATION]

SENATOR HAAR: Yes, thanks for coming. Part of what you have to do is educate some of us newbies on what the Ethanol Board does. Could you just tell me briefly what your...what the Ethanol Board does? [CONFIRMATION]

MARK McCOLLEY: Well, you know, the Ethanol Board's primary purpose is to promote the use of ethanol in the state of Nebraska, although the Ethanol Board is very involved nationally too. The Nebraska Ethanol Board is recognized on the national level as a very intricate part of the ethanol industry and promotes the ethanol industry. So basically our job is to try and promote more ethanol use not only in the state of Nebraska, but across the country. [CONFIRMATION]

SENATOR HAAR: Of course I'm a big supporter of ethanol and what it does for our economy. And I read the other day that perhaps the price of corn would be half of what it is without ethanol. And I'm not sure what that number is, but as we develop new fuels, and this includes wind power and solar and all those things including ethanol, there are usually some subsidies that go with that from the government and maybe I need to talk to you about this later, but what kind of subsidies do we provide for ethanol right now? [CONFIRMATION]

MARK McCOLLEY: Well there's the EPIC Fund, you know, through the state of

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Nebraska that provides subsidies to the local plants. There is some federal subsidies too that are supplied to ethanol producers. All those are kind of in flux right now because of the economy, so we really don't know what's going to be happening with those at this particular point in time. But I think the ethanol industry can survive even without the subsidies. [CONFIRMATION]

SENATOR HAAR: Okay. [CONFIRMATION]

MARK McCOLLEY: It's an important part of our industry here in Nebraska, and not only is it good for America, but it's good for the environment. It also helps with national security. The less oil we have to import from the far eastern countries the better off we are. [CONFIRMATION]

SENATOR HAAR: You bet. Okay, thank you very much. [CONFIRMATION]

MARK McCOLLEY: All right, thank you. [CONFIRMATION]

SENATOR SCHILZ: Any other questions? Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Thank you, Senator Schilz. Mr. McColley, glad to hear what you said to Senator Haar, that you felt like ethanol could survive on its own and that may be necessary, but what would you say are the key elements that need to happen either locally or at the federal level for ethanol to be really successful in the future? [CONFIRMATION]

MARK McCOLLEY: Well we were just...we just had an Ethanol Board meeting this morning and some of our things that we're going to do is we're going to try to promote the flex-fuel vehicles. And I think if the federal government would take ownership of the ethanol program and ethanol industry and start promoting all the qualities that the use of ethanol does for the country, not only for the environment, but for national security, and make people aware that they're driving flex-fuel vehicles, because a lot of people own flex-fuel vehicles and don't even know what ethanol is. And we need to promote that; we need to promote E85; we need to promote the blender pumps where they can actually dial up whatever percentage of ethanol they want for their vehicles. All those things, I think, if we can get...convince people that this is good for the country, I think it will be a thriving industry. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

SENATOR SCHILZ: Any other questions? Seeing none, thank you very much. We appreciate you coming in today. [CONFIRMATION]

MARK McCOLLEY: All right, thank you. [CONFIRMATION]

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SENATOR SCHILZ: At this time I believe I need to go introduce a bill so I'll turn it over to Senator Dubas. Thank you very much. [CONFIRMATION]

SENATOR DUBAS: Any supporting testimony for Mr. McColley? [CONFIRMATION]

LORAN SCHMIT: Whoever is chairman, my name is... [CONFIRMATION]

SENATOR DUBAS: I guess that's me now. [CONFIRMATION]

LORAN SCHMIT: Senator, thank you. My name is Loran Schmit and I appear here today in support of Mr. McColley's reappointment to the Ethanol Board. And it's kind of interesting, this is the 40th anniversary of the creation of the Ethanol Board. And I sometimes chide the folks who operate that board because they started 40 years ago with four people and today they still operate with four people. So that's not a very successful development in the way the government usually works. And so I have to also say, though, at the time when they started no one knew what ethanol was. There wasn't a gallon of ethanol burned in the United States and mixed with gasoline. Today we have about...almost 10 percent of the market. And so when you review the success of the Ethanol Board, I think it's easy to see that they've done a very good job. As you requested, where do we go next? Well we hope we can increase that market a little bit and I'm sure we can. The question was asked what would be the price of corn today without ethanol. And I guess if you would take and put 40 percent more corn on the market without a use, we would probably be looking at \$2 corn instead of what we have today. And the problems of this Legislature would be much more severe. So I'm sure ethanol has done a good job. The question was raised about ethanol's subsidies in Nebraska. In the 40 years, a total subsidy has been around \$300 million; more than half of that has come directly from farmers in the way of corn checkoffs and other checkoff programs. So the investment of General Funds was less than \$150 million. I'd like to suggest that maybe today the billion and a half bushel corn crop we have is worth \$3 a bushel more than it would be without that. And so that would translate into a \$4.5 billion impact on the economy in the state of Nebraska in just one year. Looks like it's a pretty good return for the investments that the state made. And I just think the Legislature has had a very good working relationship with the industry. And I want to say this on behalf of Mark McColley and the Local 464, the labor organizations and the urban legislators were always very supportive of the creation of the ethanol industry. And they were just very supportive; they understood the broad impact and I think it has been an excellent impact. I think we're going to see one of these days when perhaps aviation gas will be ethanol because at the present time the federal government does not like the lead in aviation gasoline. It's only about a two billion gallon market, not a big market for the oil industry, but it would be a big market for the aviation...for the ethanol industry. So there's a lot of new areas we can go; Mr. McColley talked about the flex-fuel vehicles. As more of those are produced, we'll do a better job. And I just want to commend the

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Ethanol Board and their staff and this Legislature for the support you've given the industry. It's been very successful. I'd be glad to answer any questions.  
[CONFIRMATION]

SENATOR DUBAS: Thank you very much, Mr. Schmit, you certainly are the resident expert on ethanol and we appreciate all the work that you've done. Any questions for Mr. Schmit? Senator Carlson. [CONFIRMATION]

SENATOR CARLSON: Thank you, Senator Dubas. You mentioned that it's now 10 percent of the market. Is that nationally? [CONFIRMATION]

LORAN SCHMIT: That's all, yes. It's a little less than 10 percent, but nationally, yes.  
[CONFIRMATION]

SENATOR CARLSON: What is it in Nebraska? [CONFIRMATION]

LORAN SCHMIT: I can't tell you that. [CONFIRMATION]

SENATOR CARLSON: I would be real disappointed if it wasn't a whole lot higher than that of our usage in Nebraska. [CONFIRMATION]

LORAN SCHMIT: Oh yes, yes, we have a...well you see, in Nebraska we have the 10 percent blend limit, so we produce a lot more ethanol in Nebraska than we can use. So if we produce...I think we burn around 800 million gallons of gasoline in Nebraska, and I would guess that probably 75 percent of that is blended, maybe more. But we produce...we can be totally energy self-sufficient in Nebraska if we had to be. We produce a billion and a half gallons of ethanol and we only consume about 800 million gallons of liquid petroleum. [CONFIRMATION]

SENATOR CARLSON: Well I would hope you're close on the percentage used in Nebraska. Just last week I pulled into one of the stations I go to and they were out of ethanol which is irritating, but it's a good sign, I guess. [CONFIRMATION]

LORAN SCHMIT: I guess so. I'll have to say this, Senator, that Lincoln and Omaha have been good supporters of the ethanol industry. And I can tell you, you could probably ask Steve Sorum, or maybe Mr. McColley, or Mr. Thede, but others of us could tell you that we have excellent support of the ethanol industry in urban areas. They've been a very good market for us. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

LORAN SCHMIT: Thank you. [CONFIRMATION]

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SENATOR DUBAS: Any other questions? Seeing none, thank you, Mr. Schmit. Any other testifiers in support of Mr. McColley's nomination...confirmation? Any opposition? Anyone in the neutral? Do we have any letters? Okay, no letters. All right, that will close the confirmation hearing for Mr. Mark McColley. And we'll open the hearing for the confirmation of Mike Thede to the Nebraska Ethanol Board. Want to come forward, Mr. Thede? Welcome, very nice to see you. [CONFIRMATION]

MICHAEL THEDE: Thank you. [CONFIRMATION]

SENATOR DUBAS: If you would like to state and spell your name for us and then just tell us a little bit about your experience on the Ethanol Board and your reappointment. [CONFIRMATION]

MICHAEL THEDE: (Exhibit 2) Okay. I'm Mike Thede, M-i-k-e T-h-e-d-e from Palmer, Nebraska. I farm there. And this would be my second appointment to the Ethanol Board so I've served three years. It's been a very enjoyable experience and very...and I learned a lot. And it's an exciting business to be in, especially in the last four years that I've been on it, so. I've enjoyed it very much. [CONFIRMATION]

SENATOR DUBAS: Thank you. Are there any questions for Mr. Thede? No questions. We have one, Senator Carlson. Don't want to let you off too easy. [CONFIRMATION]

SENATOR CARLSON: Thank you, Senator Dubas. I'll ask you the same question, what do you think are the essentials that occur as far as ethanol is concerned to keep it vibrant in future years? [CONFIRMATION]

MICHAEL THEDE: I think the biggest thing that's facing the ethanol industry right now is infrastructure. I think the EPIC Fund that was...that has actually been very successful, almost more successful, I think, than a lot of people thought it would be when it started and Nebraska has done a good job to develop plants in the state. And I think the next step is we need to develop infrastructure to facilitate the use of that ethanol. That within the state, that becomes a little bit difficult just from the perspective that we have a very small market in relation to the amount of ethanol that we're producing in this state. Ninety-eight percent of the ethanol that is produced in the state of Nebraska leaves the state, which is a good thing for our state. It's a value-added product and it brings, obviously money into the state of Nebraska. And so we need to, I think, lead by example developing some infrastructure in the state to advance the use of ethanol. I think Steve Sorum said at our meeting this morning in response to the question that was posed to Loran, I think he said that 74 percent of our gasoline in the state of Nebraska is blended. So, you know, we have a little room to go there as to get closer up to that 80, 90, 100 percent. There are states around us that are higher. And so there's some work to do there. But I think the main thing is infrastructure; we need blender pumps; we need a lot of education of the consumers that are driving flex-fuel vehicles and don't

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even know that. And so I think those are some of the issues that the Ethanol Board can address, especially the education side of things. [CONFIRMATION]

SENATOR CARLSON: Okay. I think I know part of the answer to this, but the EPIC Fund, what kinds of dollars are in there, not an amount, but sources? What are the sources of dollars for the EPIC Fund? [CONFIRMATION]

MICHAEL THEDE: There's the ethanol checkoff, that is paid by producers, comes in there. And then there's funding that is...I'm not for sure the exact cents per gallon, but the funding that is...the off-road gas tax refund money that there's a portion of that that is applied...or put into the cash fund for the ethanol...or the EPIC Fund. I'm sorry, that's what funds the Ethanol Board, but mostly it's all checkoff money from sales of corn and then has been cash money that's been sent over from the cash fund...or the General Fund, I'm sorry. [CONFIRMATION]

SENATOR CARLSON: What about is the total amount per year in that fund? [CONFIRMATION]

MICHAEL THEDE: Oh, you know, I don't even know...I wouldn't know the number to that. It varies monthly because there's dollars that come in and dollars that go out and so it...it's been between...well, I think at last...in December it was down to where it was in the negative a little bit if I...we discussed that at the Ethanol Board meeting this morning, I think it was...got to be a little bit negative in December. January, February are typically months where a lot of grain...corn is sold in the state and so the money that comes in from the checkoff for that brings in quite a bit of funding in those two months especially. There's been times when the state has put in some funds to bring it further into the positive so that it can meet its obligations and so at those times it's been up in the \$10 million, I think, in the fund. But, you know, like I said, last month I think it was zero at one point. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

SENATOR DUBAS: Senator Christensen. [CONFIRMATION]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for coming. What are blends...is there any blender pumps in the state yet? [CONFIRMATION]

MICHAEL THEDE: There are. [CONFIRMATION]

SENATOR CHRISTENSEN: Select the dial. [CONFIRMATION]

MICHAEL THEDE: Yeah, there's a few, very few. I don't know the exact number. The Nebraska Corn Board has run a program trying to promote and pay for...or cost-share

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some of that and they've been fairly successful with that. Last I knew it was between 10 and 20, but I'm not for sure. There's one going in locally, not too far from where I live in the town of St. Paul in the next month or few months, so there's getting to be a few more. [CONFIRMATION]

SENATOR CHRISTENSEN: Okay. [CONFIRMATION]

MICHAEL THEDE: I think that's the direction that we need to go to address some of the issues with ethanol; there are some of the people that don't want to put it in their lawn mowers or their...and just to promote ethanol and give people the choice, that seems to be the best direction. [CONFIRMATION]

SENATOR CHRISTENSEN: What besides E10, I know there's E24 and E85; I know when you go to blend then you can do what you want, but is there any other specifically blended? [CONFIRMATION]

MICHAEL THEDE: As far as I'm aware, the pumps can kind of be set up how their individual retailer wants to set them up. The ones I've been to have been E10, E20, E30 and E85. I've only ever been to two different ones and those were both set up that way. [CONFIRMATION]

SENATOR CHRISTENSEN: I run across one in Kearney that said E24. Kind of shocked me. [CONFIRMATION]

MICHAEL THEDE: Really. Okay. [CONFIRMATION]

SENATOR CHRISTENSEN: But it run great on it, so. [CONFIRMATION]

MICHAEL THEDE: Yeah. [CONFIRMATION]

SENATOR CHRISTENSEN: And it was a non-E85 vehicle. [CONFIRMATION]

MICHAEL THEDE: Yeah. I drive a flex-fuel vehicle and I've found that the E20 and E30 blends are the best mileage, so that's what I use. [CONFIRMATION]

SENATOR CHRISTENSEN: Okay. Thank you. [CONFIRMATION]

SENATOR DUBAS: Senator Haar. [CONFIRMATION]

SENATOR HAAR: Well thank you for serving. You probably get paid less that we do. (Laughter) Now some states, when we go to the gas pump and it says plus, that's 10 percent, right? Ten percent ethanol, I believe, around Lincoln. [CONFIRMATION]



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MICHAEL THEDE: Yes, what you're referring to is like unleaded...super unleaded...or unleaded. [CONFIRMATION]

SENATOR HAAR: Yes, super unleaded. [CONFIRMATION]

MICHAEL THEDE: Yes, yes. [CONFIRMATION]

SENATOR HAAR: Now in Nebraska that's cheaper and in some states it's more expensive. What...what's the reason for that? [CONFIRMATION]

MICHAEL THEDE: My sense is...I think there's various reasons, but I...my sense is a lot of it comes back to the branding of the particular station that you may be at. I know of instances even within the state where pumps that...E85 pumps that are within blocks of each other are 20 and 30 and 40 cents a gallon different in price. And I think that is a function a lot of times of the particular gas station that you're at. If it's branded, whatever the company is that is branded, a lot of those station owners have a contractual agreement to buy their product from that...whatever that brand is. And if their branded product that is E85, or even E10, is priced different to them from that supplier, they obviously have to pass that along. [CONFIRMATION]

SENATOR HAAR: Okay. [CONFIRMATION]

MICHAEL THEDE: One of the issues we deal with is you're dealing with your competitor to blend your product. And so sometimes there is some oil...some in the oil industry that don't really particularly want to have that priced so that it's that competitive. [CONFIRMATION]

SENATOR HAAR: Okay. Good. Thank you again for serving. [CONFIRMATION]

MICHAEL THEDE: Thank you. [CONFIRMATION]

SENATOR DUBAS: Thank you. Mike, I would have a question for you. You kind of alluded to it already as far as just the need for continuing education with the public about the benefits of using ethanol and I know recently when we've been hoping that the federal government was going to bump up that blender percentage and they did it for certain years of vehicles and not all. And I heard some of those same old arguments coming up again that we fought with the 10 percent as far as what it's going to do to your motor, all those different things. So if we're able to bump up that percentage or if we're trying to get more people to use the blender pumps, do you see that as one of your main responsibilities as the Ethanol Board is to bump up those educational efforts? I know you...we probably feel like we're doing the same thing over and over again, but we're hearing the same arguments over and over again. [CONFIRMATION]

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MICHAEL THEDE: Yeah, you're exactly right. On one hand it's frustrating because you feel like you've been saying the same thing and maybe nobody is listening, but it's just a continual educational process to help people to understand. And actually at the meeting this morning, we spent a segment of our meeting talking about what is going to be some of the campaign going forward with educating the public, because the message just isn't always getting through to the person that is putting the gas nozzle in their car. I think the figure was thrown out like 70 percent of the people that are driving flex-fuel vehicles don't even know they have the vehicle. You can see just in that statement what the basic education that we have to do is. Then you can get on...first they have to know they have the vehicle. Then you can start talking about why you want to use it. And so there's a big hurdle that we need to work on there. And I think that's..the Ethanol Board is a...the budget that we have is fairly small and so I think those are the things that we can work as far as trying to educate the public, educate people in Nebraska. But, as I said earlier, sometimes our biggest educational process needs to be done outside of the state of Nebraska because 98 percent of the ethanol that we're producing is leaving the state. And so, you know, we're kind of pulled in two directions there. You feel like we need to be leading by example, but...which I believe that is true, we need to lead by example. If we think that ethanol is such a great thing, we need to be showing the rest of the world that it is by using it. By the same token, we need to educate people outside of the state, because there's so much leaving the state and our gasoline use in the state is probably not going to grow by leaps and bounds, so, you know, we need to worry about some of the other states that are outside of Nebraska. [CONFIRMATION]

SENATOR DUBAS: Oh, I thank you for your efforts, and thank you, too, for your service. Any other questions for Mr. Thede? Seeing none, thank you again for coming down. [CONFIRMATION]

MICHAEL THEDE: Thank you. [CONFIRMATION]

SENATOR DUBAS: Anyone testifying in support? [CONFIRMATION]

LORAN SCHMIT: Thank you, Chairwoman Dubas. Again my name is Loran Schmit. I appear here today in support of Mike Thede's reappointment. He's just completed two years as chairman of the organization, the Ethanol Board. And during that time they've gone through some rather tumultuous times, but they've been very successful in maintaining an even keel and maintaining the enthusiasm for the industry. And I think it's important to recognize that the staff of the Ethanol Board has over, I believe, 65 years of experience. We haven't moved around a lot and I think that contributes to the success of the Ethanol Board, the fact that we have continuity. I wish we had more continuity in the Legislature, because I think there's some value to that continuity. And I just want to say in reference to the question as to the total amount of the budget per year, it's about \$20 million, about \$12 million of which is checkoff money, and the balance is General Fund money. And Mr. Thede referred to the deficit in the fund that

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was necessary to require proration of payments to those recipients this last month. There would have been enough money but, as you know, because of emergency constraints, there was some money that had been appropriated to the EPIC Fund which was pulled out for other purposes two years ago. And at that time we didn't need the money. But I'm very pleased, I believe, to what looks to be the new budget proposed by the Appropriations Committee. I think that the money will be restored and we'll have enough money to make good on those EPIC payment. Again, I want to say that when we started this industry 40 years ago, the ethanol industry was ridiculed and no other industry said we'll never, ever surrender 10 percent of our market to a bunch of farmers. Well we've done it, Senator Dubas, and I think we can take great pride in that. If we don't get too uppity, we might get it up to 15 percent one of these days. But again, it's due to the fact that a lot of people worked together. We have good people on the board, good people on the staff, and a supportive Legislature. And Mr. Thede has served very well and I look forward to seeing him do another four years. I'll answer any questions, otherwise... [CONFIRMATION]

SENATOR DUBAS: Thank you, Mr. Schmit, Any questions? Seeing none, thank you very much. [CONFIRMATION]

LORAN SCHMIT: Thank you, Senator. [CONFIRMATION]

SENATOR DUBAS: (Exhibit 3) Any other supportive testimony for the confirmation of Mike Thede? I do have a letter of support from Mr. Keith Olsen, president of Nebraska Farm Bureau in support of this reappointment. Any testimony in the opposition? Neutral? Seeing none, that will close the confirmation hearing for Mike Thede. Again, gentlemen, thank you for coming down. We will now move on to the first bill up for hearing, LB366, Senator McCoy, ready when you are. [CONFIRMATION]

SENATOR McCOY: (Exhibit 4 and Exhibit 5) Thank you, Senator Dubas, members of the committee. I'm Beau McCoy, B-e-a-u M-c-C-o-y and I represent the 39th District in the Legislature. I'm here to introduce LB366 to you this afternoon which seeks to remove the need for a motion, explanation and majority vote by the board of the Nebraska Environmental Trust to not follow recommendations of the Nebraska Environmental Trust subcommittee known as the Grants Committee. This language was introduced through LB891 in 2002. LB891 was introduced in response to an evaluation of the Nebraska Environmental Trust Board's management of the Nebraska Environmental Trust Fund conducted by the Legislative Research Division's Program Evaluation unit on behalf of the Legislative Program Evaluation Committee, now of course, the Performance Audit Committee. A number of concerns raised in the evaluation involved the Nebraska Environmental Trust Board's Grants Committee. Specifically, responsibility for awarding grants was delegated almost completely to the Grants Committee. The delegation of this responsibility to the Grants Committee was undermined because the Grants Committee was not subject to certain requirements

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that apply to the full board such as the state's open meetings laws. To address these concerns and the lack of a record or paper trail, LB891 required the full board to provide a motion and state specifically the reasons for not following the Grants Committee's recommendation. Although I agree with the intent of LB891, I believe this elevated the Grants Committee's authority and did not effectively address the need for transparency within the Nebraska Environmental Trust. LB366 attempts to further define the role of the Grants Committee and the rules they must follow to ensure transparency. Before you, you will see my proposed amendment to the green copy of LB366, which is AM122, which seeks to bring this transparency into the grant process in two ways. AM122 first requires any subcommittee established under Statute 84-15,175 which, is the Nebraska Environmental Trust, to follow the Open Meetings Act. Currently, Section 84-1409(1)(b) states a subcommittee does not fall under the Open Meetings Act unless "such subcommittees are holding hearings, making policy, or taking format action on behalf of their parent body". The Nebraska Environmental Trust Board's Grants Committee reviews, evaluates, and rates the grant applications, submitting the grant awards to the full board. For this reason, I believe that the Grants Committee falls under the provision in 84-1409. I learned this morning that the Grants Committee is following the Open Meetings Act, but I suggest that we clarify that practice in statute through AM122 and LB366. This leads to the second concern. You received a copy of the Nebraska Environmental Trust Board meeting calendar. For 2011, you will notice...it should have been a handout, I believe, that you have, for 2011, you will notice that the public hearing on the grant proposals are held the same day the grants are awarded which is April 7, 2011. Even though the board accepts written testimony prior to the meeting, the board is not able to weigh public testimony before making their decision. The hearing appears to be a mere window dressing. AM122 requires the Nebraska Environmental Trust Board to allow 30 days to pass after the public hearing before they award the grants. This would allow the board members time to consider the testimony and for the public to be involved in the process. Our Unicameral knows best...knows better than any other body in the state, I should say, that transparency and openness breed trust and this is the intent of LB366 as amended by AM122. With that I will close and take any questions if there are any. [LB366]

SENATOR DUBAS: Thank you, Senator McCoy. Questions? Senator Haar. [LB366]

SENATOR HAAR: Thank you. I don't know much about this, so I'm going to...if my questions you'd rather I defer them to Mark Brohman, that would be fine too. Did this come out of certain grants that were awarded or what's kind of the genesis of this bill or just the desire for better government? [LB366]

SENATOR McCOY: Well, as I indicated originally, through the bill in 2002, through the report, is when this was initially was put in the statute with this subcommittee, or the Grants Committee, and just through the process of going through everything that we've gone through in the last year with LR542 and the process, I know Senator Fischer has

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looked in some of these issues as well, this came to our attention and this...you may recall last year a bill that I had was on transparency in government. It was my priority bill, actually, last year, and it just seemed to me to be something that just needed to be pretty simply clarified, just to simplify the process and make sure that we have as much transparency and openness in the way these grants are awarded as possible. [LB366]

SENATOR HAAR: So it's not really kind of aimed at certain decisions that were made, but it's more of an open government kind of (inaudible). [LB366]

SENATOR McCOY: Not to my understanding, no. It's just from a broad perspective. It appears to be... [LB366]

SENATOR HAAR: Okay. [LB366]

SENATOR McCOY: ...just going forward, that this should just be clarified. And as I mentioned, it came to our attention this morning that perhaps the Grants Committee already follows at least most, hopefully all of our open meetings law and that's fantastic. It just seemed to be that we needed to clarify in statute that that...it takes place into the future as well. [LB366]

SENATOR HAAR: Okay, so really the main three points then are the open meetings law has to be followed, that there be a 30 day between the public hearing and the grant, right? And then the other point was, that the full body...explain that one to me a little bit more, the full body doesn't have to follow the Grants Committee or... [LB366]

SENATOR McCOY: Well that's the...as I mentioned, and I guess I'm not sure, Senator Haar, I'll...really we just had two points on it. But LB891 in 2002 required the full board to provide a motion and state specifically the reasons for not following the Grants Committee's recommendation if they want to override that. [LB366]

SENATOR HAAR: Okay. [LB366]

SENATOR McCOY: SO it seemed to put it...more authority than probably what was intended into the hands of that subcommittee. [LB366]

SENATOR HAAR: So that part isn't changing. That was established back then and is still in place. [LB366]

SENATOR McCOY: Correct. [LB366]

SENATOR HAAR: Okay. Thanks, appreciate it. [LB366]

SENATOR DUBAS: Other questions? Senator Christensen. [LB366]

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SENATOR CHRISTENSEN: Thank you, Chairman. Basically, this language you struck in the green copy of LB366 is just to make sure the full board has the maximum flexibility instead of maximum power in the subcommittee? [LB366]

SENATOR McCOY: Correct. [LB366]

SENATOR CHRISTENSEN: That's what I'm reading what it does. Thank you. [LB366]

SENATOR DUBAS: Other questions? Seeing none, thank you, Senator McCoy. [LB366]

SENATOR McCOY: Thank you. [LB366]

SENATOR DUBAS: (Exhibit 6) Will you be closing? Well I guess you're here in committee so you're not going to be leaving. Thank you. I'll call for supporting testimony on this and as you come up, we'd like to explain that we do use the lights. It's four minutes, correct, on the green? Four on the green, you'll get four minutes, then the yellow light comes on, that gives you an additional minute. And then when the red light comes on if you could summarize your thought, we don't expect you to stop right the minute the red light comes on. But if you could summarize as best you can, then that gives the committee a chance to ask you questions and you can further explain things were you not able to in your testimony. So do we have any supporters to come forward on LB366? No letters? No supporters? All right. Any opposition? We do have a letter of support for LB366 from the Nebraska Cattlemen signed by Chuck Folken, their president. So we do have a letter of support to enter into the record. No opposition. Is there neutral testimony? [LB366]

MARK BROHMAN: Madam Chair and members of the committee, my name is Mark Brohman, that's M-a-r-k B-r-o-h-m-a-n. I'm the executive director of the Nebraska Environmental Trust and we're here today testifying in a neutral capacity and mostly to answer questions that might come up. We weren't aware of this bill until we saw it was introduced. I have not had an opportunity to talk to Senator McCoy about it before today. I did visit with his staff and did get a copy of the amendments, the proposed amendments, this morning so that was the first time I had seen those. Our subcommittee did take a neutral position on the bill itself. Basically the only change we saw in the original green copy was on page 3 where it strikes requiring eight members to override the subcommittee. And the reason that was there was the board at the time, this was before my time on the Environmental Trust, felt that the Grants Committee, those six individuals had gone through each of those grants over a time period of about three months and spent four or five meetings discussing those grants, come up with their recommendations, and they felt that the full board needed to have a majority of the board to overrule that, and then also have a statement saying why they were overruling it. Now some people have said, well, you don't always have all 14 board members at a

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meeting, so if you have 12 board members, it still takes eight to overrule that. So they're saying that's kind of unfair, that's a super-majority. And that's right, if not all 14 board members are there. This would change it so that only...it would only require six members if you've got ten people present, or if you've got 12, it would take seven instead of eight. So it does change the number of board members to change a recommendation from the Grant Subcommittee. So that's why we were neutral because we didn't see that as a huge change. It does change the dynamics a little bit because now if you only got...say you have eight people who come to a board meeting, it only takes five to change the Grants Subcommittee that did all the work and did all the studying, so now you have six individuals that can change that Grant Subcommittee recommendation. And so we were neutral on that portion of it. We didn't have an opportunity, of course, to examine the new additions with AM122, but I did want to point out just a couple of things. We do follow the open meetings law for our Grants Committee. Because of the language that talks about making policy, taking formal actions, we knew we were kind of in the gray area, and so the Grants Committee has always followed the open meetings law. We've always had minutes, we've always published those meetings. And so it's not a big deal if we change it for that subcommittee. However, we have a Performance Review Committee, Executive Committee, Legislative Committee, and Financial Committee that we try to follow the open meetings law, but there are certain things with notice being published and it's expensive to do those things, and we change and meet at the last minute, you've got to go through certain hoops, and so we don't always follow the public open meetings law when it comes to those other subcommittee meetings that are never a quorum of the board. And so that change would have an impact on...potentially an impact on what we do. It wouldn't change the Grants Committee. Even if you want to change the language in there to just say the Grants Subcommittee, which we do already, we would have no problem with that. It is rather unfair to single out one agency. If you think subcommittees should be transparent, I think you should just go back to the language here and say all subcommittees, where it says public bodies do not include subcommittees. Just strike that and say all subcommittees if you want all government to be transparent. If it's good for the Environmental Trust, it should be good for everybody. And the other points, the change here is dealing with the 30 day notice for the grants recommendations. The way we were set up was very similar to Game and Parks and that is if they've got a hunting rule or regulation, they call a public hearing. They have a hearing, and then that same day they take an action and approve or disapprove the commission. And since the Environmental Trust was set up very similar to the Nebraska Game and Parks Commission, I think that's where that came from. I'm sure you have different agencies that do it both ways, that there is a time period between the hearing and the application...between the hearing and when those rules are adopted or an action is taken. But that's true, our grants come in in September. The Grants Committee reviews it after they've gone out to technical reviewers that are outside of our body. The Grants Committee review it. At our February meeting we release our preliminary draft list and then people can comment on that draft list in writing, and then our hearing is in April and

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then that's when the final decisions are made that day. Now we've actually looked into a way to try to come up with a better system to give more of an opportunity for people to comment because some people say, well, your mind is already made up. And we're actually discussing that now and the chairman has appointed a subcommittee to look at that issue. But to put it into state statute may be going a little bit too far, but we did not take a position on that. I'm just telling you how it operates and why some people think there should be a 30-day delay and that will either delay our granting process, we'll have to have another meeting for sure, so it will be more expensive, not a lot, but we will have to call our full board. So that's the only point I want to make is that it would include another public hearing or a public meeting to go 30 days after that decision has been rendered. But right now, we operate exactly like the Nebraska Game and Parks do with their regulations and several other agencies so it is a current practice that's used in state government. If you think it's unfair, you know, like I said, we're looking into it right now. The chairman has called a subcommittee, an ad hoc subcommittee to look at the issue of public comment. But they do have the ability to comment from the day those projects come in, in September all the way til April and they do have a formal hearing at that April meeting. And with that I'd be happy to answer any questions you might have. [LB366]

SENATOR DUBAS: Thank you, Mr. Brohman. Questions? Senator Christensen. [LB366]

SENATOR CHRISTENSEN: Thank you, Chairman. Mark, thank you. You already answered two of my questions, but have you guys ever reversed a vote on the full board versus what the committee did? [LB366]

MARK BROHMAN: Yes, there's...I've been a director for four years, and we've only had one or two in the four years I've been there. But there have been times before, I can't tell you number-wise, but there have been projects that have been eliminated or added or the amount of funding has changed at the full board meeting. [LB366]

SENATOR CHRISTENSEN: Have you ever changed any based off of public comment? [LB366]

MARK BROHMAN: Since I was not the director at the time, I was sort of peripheral to the process being an employee of Game and Parks at that time, I don't know the rationale of why they changed. I don't know if it was a board member's information or whether it was something that came in from the public, so I just don't have a good answer for you there. [LB366]

SENATOR CHRISTENSEN: Okay. Thank you. [LB366]

SENATOR DUBAS: Other questions? Senator Carlson. [LB366]



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SENATOR CARLSON: Thank you, Senator Dubas. Mark, that subcommittee that determines the grants,... [LB366]

MARK BROHMAN: Yes. [LB366]

SENATOR CARLSON: ...you said that's a committee of four? [LB366]

MARK BROHMAN: Six. [LB366]

SENATOR CARLSON: Oh, six. [LB366]

MARK BROHMAN: Right. Six of the 14... [LB366]

SENATOR CARLSON: So is that...to make their decision then, is that a majority vote? [LB366]

MARK BROHMAN: Yes. [LB366]

SENATOR CARLSON: So that would be four votes, four out of six. [LB366]

MARK BROHMAN: Right. [LB366]

SENATOR CARLSON: So if there's four there, or is it such that usually all six are there? [LB366]

MARK BROHMAN: Usually all six are there for that subcommittee, because that's such an important decision when we come down to ranking the projects. [LB366]

SENATOR CARLSON: In your recollection as the committee moves forward and makes decisions, is it typical to have a split vote, or is it majority of the time six-zero? [LB366]

MARK BROHMAN: It's mixed. Sometimes we'll have one or two people that disagree, but it's all by ranking, Senator, so even if someone likes a project or doesn't like a project, it's really not an up or down vote. They're doing a ranking and you go by the scores. So we just go by the ranking score. So it's not whether those six people, five of them want it funded and one doesn't, we go by their scores. So each person has a score sheet and we go by that rank score. But there are projects where one, two, maybe even three people are lukewarm about it, but one or two people really like it, so according to the ranked scores, that's how you get your score and how we get our rank list, our rank order list. [LB366]

SENATOR CARLSON: Okay. So that comes out as a rank score, so it's not...you look at

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those rank scores then, you're not looking at how so-and-so voted or ranked? [LB366]

MARK BROHMAN: No, we're not looking at two people ranked it super low and two people ranked it super high. We just go by the rank order list and we go how far the money goes. Sometimes we won't fully fund a project. Say a project ranks pretty high but there are aspects of that project that we don't think are such that we should be funding or that there's not enough match or partners, so maybe someone asked for \$300,000 to do something and they want \$100,000 for this, and \$100,000 for this, and \$100,000 for this, we might give them \$200,000 or at least the ranking will say we're going to rank it to be funded for \$200,000, but that other \$100,000 no matter how high or low it ranks, is not going to be part of the discussion, only the \$200,000 that we're choosing to fund. [LB366]

SENATOR CARLSON: So every application that's considered ends up with a score. [LB366]

MARK BROHMAN: Yes. [LB366]

SENATOR CARLSON: And the rest of the board then would see simply a score for a proposal, that's all they see. [LB366]

MARK BROHMAN: No, they actually see the score sheets for each project. [LB366]

SENATOR CARLSON: Oh, okay. [LB366]

MARK BROHMAN: And they see the project description and they're all sent the projects at the beginning. And some board members read every project even if they're not on the Grant Subcommittee; they go through them pretty carefully. There are some board members that raised questions at the board meeting in April that show that they've been through the grants. And then sometimes people get phone calls or a letter and they'll ask questions at that April meeting, or sometimes when the public comes, at least in the four years that I've been there, we've had the public, especially this past year, there was a Rainwater Basin project that folks came in and testified and so there was a lot of testimony given that day, as well as some general testimony in February. I'll back up a little bit. In February, we have a meeting, there's not a public hearing, but there's a time for the public to speak and we tell people not to speak about a project, but you can talk about the process or about things in general. So some constituents from your area came in and raised concerns about taxation and taking land off of the tax rolls and young farmers and things like that. They brought those issues up in February, but we asked them not to talk about a specific project. But then they came back in April and addressed the specific project they were concerned about. [LB366]

SENATOR CARLSON: Okay. But you're on the committee that is scoring on these

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projects or evaluating these project. [LB366]

MARK BROHMAN: No, I don't score, only the six board members. [LB366]

SENATOR CARLSON: No, I'm just saying pretend you are. [LB366]

MARK BROHMAN: Okay, I'm present, sure, oh, pretend I'm a member, okay. [LB366]

SENATOR CARLSON: And then I'm going to look it over. When I look it over, do I see one score for each project or do I see specifically your score as well as the rest of them? [LB366]

MARK BROHMAN: You'll see all the scores from the committee members. [LB366]

SENATOR CARLSON: Okay, of the entire committee. Well it would seem like it would then be pretty unusual for something to be overturned, but I could see maybe an adjustment or a tweaking, because if you have six people that are kind of in agreement, and there's only 14 on the board,... [LB366]

MARK BROHMAN: Um-hum. [LB366]

SENATOR CARLSON: ...to get eight votes to overturn it, all the rest of them would have to say it wasn't good. [LB366]

MARK BROHMAN: Right, or one of the board members that was on the subcommittee would say, well... [LB366]

SENATOR CARLSON: Changes their mind. [LB366]

MARK BROHMAN: Yeah. We did have a project two years ago where a board member wanted to not fund it and it was a large project and he asked it not be funded and he had two other members, one was from the Grants Committee and one wasn't, to join him so there was three votes. But even that day, I think we had 12 members present, so it would have taken seven instead of eight so this law would just change one vote. But they were only able to garner three votes. But for the most part, when I listen to my board, they say those six people put a lot of blood, sweat, and tears into reviewing those projects and they hear a lot of information during the discussion that the full board doesn't. And then, of course, at the public hearing is when the other material can come in and be put on the record. Any letters that are sent in ahead of time are presented then along with all the testimony. [LB366]

SENATOR CARLSON: Okay I'm sorry I'm asking a lot of questions, I'll ask one more and then I'll quit. Does everybody on the board want to serve on that committee, and

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how do you select it? [LB366]

MARK BROHMAN: Occasionally we've had a board member decline because their schedule is such that...you know, we have to schedule at least four, if not five meetings between the end of October and early January. And so we have had a member, at least in my tenure, that has declined to be on that committee because of time commitments. [LB366]

SENATOR CARLSON: How do you select the committee of six? [LB366]

MARK BROHMAN: It's set up with two state agency directors and then four of the citizens. There has to be one from each of the three congressional districts and then a fourth is appointed, so it's six people, two agency heads and four citizens that are, of course, appointed by the Governor,... [LB366]

SENATOR CARLSON: Okay. [LB366]

MARK BROHMAN: ...but one from each congressional district. So there's a full representation of our board. [LB366]

SENATOR CARLSON: Okay. So the evaluation committee is appointed by the Governor? [LB366]

MARK BROHMAN: No, I'm just saying the Governor appoints our citizens, nine-member citizens, three from each congressional district and I'm just saying that the Grants Committee is made up of a citizen from each of the three and it rotates every year. The Grants Committee changes every year, and so it's not the same Grants Committee members. [LB366]

SENATOR CARLSON: But how is that chosen, the Grants Committee? [LB366]

MARK BROHMAN: It's selected by the chairman of the board and also depending upon who was on it the last time so they try not to put the same person on it back to back, but yet there has to be one person from each of the congressional districts. [LB366]

SENATOR CARLSON: So it's...attempt to rotate it. [LB366]

MARK BROHMAN: Yes. [LB366]

SENATOR CARLSON: Okay. Thank you. [LB366]

SENATOR DUBAS: Thank you, Senator Carlson. Other questions? Senator Haar. [LB366]

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SENATOR HAAR: I, too, am going to ask some questions because I'm learning.  
[LB366]

MARK BROHMAN: Sure. [LB366]

SENATOR HAAR: So the Governor appoints the nine members and then where do the other five come from? [LB366]

MARK BROHMAN: They are agency heads; so the head of Game and Parks, Department of Environmental Quality, DEQ, Department of Ag, and Health and Human Services, the chief medical officer, Joann Schaefer. So whoever the head of those five agencies are, by statute they are automatically on the board. [LB366]

SENATOR HAAR: They're on the board. So if you come into a meeting with all these scores... [LB366]

MARK BROHMAN: Yeah. [LB366]

SENATOR HAAR: ...and then somebody...do you just re-score things based on that vote from your directors, or would you just...even if something was second on the list and all of a sudden you got note, do you just kick it out or do you re-score things?  
[LB366]

MARK BROHMAN: Well, typically what happens is if there is a project that's pulled that a majority, you know, eight people say we don't want to fund this, and that hasn't happened since I've been there. Like I said, two years ago there was a vote with three people that wanted to pull one out. But in the past when there's been something that's been pulled out of the list, they just drop down to the next lowest score. So let's say a project was pulled out, there were eight people who said we decide we don't want this and that was a \$200,000 project, they pull that out, they go to the rank order list, and if the next one is \$100,000 they'll fund that. If the next one below that is \$100,000 then they're done. If the next one is \$800,000, they have to decide are we just going to give them \$200,000 or does it make more sense to go to the one below it and fund it? You know, they have to look at that next in order. Or is there one above that cutoff line that we didn't fully fund for some reason and do we want to fully fund something above that line? So they don't do anything with the rank order list, but they do have to figure out...or they can just keep the money. We try not to hold more than a couple hundred thousand dollars back. We try to award everything that comes in. But we could just say, okay, we're going to keep that money in the account. But typically we would probably go down and go to the next ranked project would then be given funding. [LB366]

SENATOR HAAR: So within the group, it's almost extreme democracy the way it

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sounds. When the Grants Committee meets, does that tend to be a political process or what...how do you see that process work? [LB366]

MARK BROHMAN: Everyone scores the projects on their own and bring them into the group. [LB366]

SENATOR HAAR: Okay. [LB366]

MARK BROHMAN: And then we put the scores up and then everyone can see how the other five members voted and so then we take those raw scores and put them on a sheet. And then we do...we do them by groups. So we do the water, we do rural habitat, we do education, municipal waste, you know, we put them into categories so that you're scoring similar projects that meeting. Then the next meeting you do, you know, the water, the next meeting you do habitat. And then the final meeting we bring them all together and merge all the different groups and all the rank scores. [LB366]

SENATOR HAAR: Wow. Now you group them in groups...where do you...you just group them by those things that seem to go together? There's certain groups that you as a trust have decided, I mean like... [LB366]

MARK BROHMAN: Over the years there's always a lot of water project so we do the water together. And there's a lot of rural habitats, so we put those together. There's usually not a lot of soil or air, you know, we have five categories so there's usually not a lot of soil and air so those get combined, and education, so we usually have four groupings, sometimes there will be five. And then we'll have that last meeting to bring them all together. So usually there's at least four meetings, sometimes five meetings. But typically they're water, rural habitat, air quality, education, you know, and then we bring them all together. [LB366]

SENATOR HAAR: Now are those defined in law anywhere or are those just the way things fall out? [LB366]

MARK BROHMAN: Well by statute, you know, we had the five original categories and we pretty much stuck to those. At one time there was surface and groundwater and those got combined; and there used to be carbon sequestration and now there's not. But basically we have water and air and soil and municipal waste and habitat, those are the five categories. And every five years by statute, we have to go out and have public hearings and meetings, bring the public in and they have to tell us, do we want to keep those. And the last meeting we had two years ago in Kearney had over 100 people came and they said we think you're doing a good job, we like these categories, we tweaked the definition of water a little bit on waterways and we did a little tweaking on air quality to include greenhouse gases and that was all. We left the categories alone; we just tweaked the descriptions a little bit. [LB366]

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SENATOR HAAR: Could you send me a copy of those? [LB366]

MARK BROHMAN: Sure. [LB366]

SENATOR HAAR: I'd appreciate that. [LB366]

MARK BROHMAN: And they're in the Environmental Trust Act, the five groups are set out in the Environmental Trust Act in statute. [LB366]

SENATOR HAAR: Okay, so if those get changed at your public hearings, you'd have to come back to the Legislature and... [LB366]

MARK BROHMAN: No, the verbiage in there is that we can...those can be changed by the public through input. They've said, here are the original categories and they laid them out. [LB366]

SENATOR HAAR: Okay. [LB366]

MARK BROHMAN: So it came us some deference to what we could do after that, after the trust was established. [LB366]

SENATOR HAAR: Okay. And about how much money do you have then per year? [LB366]

MARK BROHMAN: Last year \$14.9 million; this year we're looking at giving away a little over \$15 million; and the year before that was just under \$15 million also. So between \$14 million and \$15 million. [LB366]

SENATOR HAAR: And those proceeds depend on the lottery, right? [LB366]

MARK BROHMAN: Right. They're 100 percent from Nebraska Lottery. We get 44.5 percent of the money after all of the costs and benefits and prizes have been awarded. So we get 44.5 percent of the Powerball, Scratch Ball and Mega Millions, those lottery games. [LB366]

SENATOR HAAR: So it sounds like gambling is up in Nebraska. [LB366]

MARK BROHMAN: If you look at the trend for Nebraska, it's been pretty steady, but on a slight increase; other states have been very up and down, up and down. I think Nebraska's Lottery Division under Revenue has done very well on promoting new games. The states that we have found or seen the statistics on that their numbers really jump and down are states that...they're very stale; they keep the same games. You

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always see new games coming out in Nebraska. And of course we just added Mega Millions last year. But there are some states that have shown dramatic declines in their lottery revenues and there's a number of things, either their lottery folks have not kept up with the times, casino gambling has come in, something has changed. Even the economy in some states has been blamed for less sales of some of these tickets and some of the Powerball and Mega Million tickets. But Nebraska, fortunately for us, we did have a downturn last year, one of the quarters was as low as it had been in three years, the third quarter was way down and that was a concern to us, as well as the other beneficiaries of the trust. [LB366]

SENATOR HAAR: Cool. Okay, thank you. [LB366]

SENATOR DUBAS: Other questions? Seeing none, thank you very much, Mr. Brohman. [LB366]

MARK BROHMAN: Thank you. [LB366]

SENATOR DUBAS: Other neutral testimony? Any other letters? Senator McCoy. [LB366]

SENATOR McCOY: I'll close real briefly. Thank you, Senator Dubas. Well I think as you've heard, clearly this Grants Committee goes through a very thorough process whereby they make their recommendations to the full board and I think in light of the seriousness of that, it makes sense to me that we institute just to make sure that open meetings laws are being followed and that that 30-day period just allows that public testimony, because clearly there are multiple times that the Grants Committee meets from that October to early part of the year time frame. As Mr. Brohman indicated and it would make sense to me that in light of that and the amount of money that is being awarded in these grants, that this 30-day time period will allow the public testimony...to allow the public to testify and for the subcommittee and the board to take those recommendations under consideration. And with that I'll wrap up if there are any other questions? [LB366]

SENATOR DUBAS: Thank you. Any other questions for Senator McCoy? Seeing none, thank you again. [LB366]

SENATOR McCOY: Thank you. [LB366]

SENATOR DUBAS: That closes the hearing on LB366. Next bill up for presentation is LB27. Ready when you are, Laurie. [LB366]

LAURIE LAGE: Okay. Thank you, Senator Dubas. Members of the committee, I'm Laurie Lage, legal counsel to the Natural Resources Committee here to



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introduce...actually the next three bills, LB27, LB31, and LB32, all three of which Senator Langemeier introduced on behalf of the Department of Natural Resources. My openings will be very brief; the bills are brief, and Brian Dunningan...Director Dunningan from the department is here to explain them in more detail. So with LB27, it would clarify what constitutes small and large capacity water wells in a permit fee statute making it consistent with other water well statutory references. The bill also adds a clarifying reference to a water appropriation application statute. And Director Dunningan is here to explain what that means. [LB27]

SENATOR DUBAS: All right. We probably will let you off the hook for questions then and invite Director Dunningan to come forward. [LB27]

LAURIE LAGE: That sounds good. [LB27]

SENATOR DUBAS: Thank you. Welcome, Director. [LB27]

BRIAN DUNNIGAN: Thank you, Senator Dubas, and members of the Natural Resources Committee. My name is Brian Dunningan, B-r-i-a-n D-u-n-n-i-g-a-n and I'm the director of the Department of Natural Resources and I'm here to testify in support of LB27. I'd like to thank Senator Langemeier for introducing this bill at the department's request. The bill seeks to accomplish two clarifications of existing statutes. The first clarification refers to the relationship between three statutes concerning appropriations for water power: 46-236 refers to approval of a water power appropriation that has an internal reference to 46-234; 46-234 is primarily about denial of an appropriation, but has a reference to a modified period to perfect an approved appropriation for water power; 46-235 is primarily about approval of appropriations. This bill seeks to clarify statutory references within the surface water laws by adding reference to 46-235 within 46-236. The second part of the bill seeks to clarify for purposes of well registration fees in 46-1224, the multiple ways that statutes address water well capacity for different purposes. All of the statutes except 46-1224 address small capacity wells in the same manner. The difference causes confusion to the public when they have a well that is rated at exactly 50 gallons per minute. The public thinks that this is a small capacity well because they do not have to get a permit from the local natural resources district to construct the well and then we charge them a fee for registering it which is the fee for a large capacity well. Well registration for such capacity wells in 46-1224 affects a small number of wells. Therefore, the clarification may result in a very small loss of revenue from permit applications, but would only apply to potential wells designed to pump exactly 50 gallons per minute. Revenue from the well permits is split between the Water Well Decommissioning Fund, DNR Cash Fund and the Department of Health and Human Services fee. DHHS is the support agency for the Water Well Contractor's Licensing Board, and DHHS is supportive of this change. Thank you for allowing me to testify on this bill. And I'd be glad to answer any questions you might have. [LB27]

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SENATOR DUBAS: Thank you very much, Director Dunnigan. Questions? Senator Haar. [LB27]

SENATOR HAAR: Well, so something that pumps under 50 gallons a minute requires no permits whatsoever? [LB27]

BRIAN DUNNIGAN: No, it would...requires fees, but what the language in different statutes have in it might be language that says, greater than 50 gallons per minute. Another statute might say, 50 gallons per minute or less. And all this does is change it so the language across all of the statutes is clear. [LB27]

SENATOR HAAR: Okay. [LB27]

BRIAN DUNNIGAN: Of 50 gallons per minute or less. [LB27]

SENATOR HAAR: Okay. And just give me an idea, what would a typical irrigation pump? How many gallons per minute are we talking about? [LB27]

BRIAN DUNNIGAN: What we would be talking about would be very small use at 50 gallons per minute, it would be very small. Typical large irrigation would be much, much greater, thousand gallons per minute or more. [LB27]

SENATOR HAAR: Okay. Thank you. [LB27]

SENATOR DUBAS: Other questions? Seeing none, thank you very much. [LB27]

BRIAN DUNNIGAN: Thank you. [LB27]

SENATOR DUBAS: Other testifiers in support of LB27? Opposition? Neutral? Okay. Laurie, are you going to close? [LB27]

LAURIE LAGE: No. [LB27]

SENATOR DUBAS: Okay. That will close the hearing on LB27 and we will move onto LB31. [LB27]

LAURIE LAGE: Thank you, Senator Dubas. Members of the committee, again I'm Laurie Lage, legal counsel for the Natural Resources Committee introducing LB31. LB31 would change supplemental flow...excuse me, supplemental direct flow, agricultural appropriations relating to the right to additional flows and how the department considers new permits. Again very short. Director Dunnigan is here to explain it further. [LB31]

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SENATOR DUBAS: Thank you, Laurie. Anyone in support of LB31? [LB31]

BRIAN DUNNIGAN: Thank you again, Senator Dubas and members of the Natural Resources Committee. My name is Brian Dunningan, B-r-i-a-n D-u-n-n-i-g-a-n and I'm the director of the Department of Natural Resources and I'm here to testify in support of LB31. I'd like to thank Senator Langemeier for introducing this bill at the department's request. It seeks to update an existing statute to better reflect all appropriate considerations in granting of additional direct flow surface water rights for irrigation. In this case, "additional" has very specific meaning in statute. State statute 46-240.01 requiring mandatory approval of an irrigation permit for additional direct flow water from a stream was passed in 1953. This statute came about because the law had historically stated that an allotment from a natural flow of a stream for irrigation should not exceed one cubic foot per second of time for each 70 acres of land irrigated. Prior to the late 1930s, the department's predecessor had approved all such permits in an amount not to exceed one cubic foot per second for 70 acres. However, in the late 1930s, 1940s, and 1950s the department had a policy that gave less amounts of water to lands in the eastern part of the state and greater amounts of water in the western part of the state based upon predicted needs due to differences in average rainfall. For example, many permits from the era were granted at a rate of 1 to 140, which is half as much water as the maximum the law allowed. The original section, 46-240.01, sought to grant prior appropriators who had received less than the 1 to 70 rate the use of additional natural flow waters to bring the appropriation up to the 1 to 70 ratio. Any application filed under this provision was required to be approved. The department believes that 58 years later, granting of an additional natural flow water as a matter of right is not appropriate, especially in areas that have been determined to be fully or overappropriated, and that multiple factors should be considered in order to determine whether a grant of additional water is possible. This bill deletes the portions of 46-240.01 that define a right to additional diversion amounts and allows the department to process all natural flow applications for irrigation water in the same way. Since the 1960s, the rate of diversion for new irrigation projects across the state have been issued using the 1 to 70 ratio which is the maximum allowable for a new appropriation. This bill would not change that; nor does the bill affect rates of diversion on any existing appropriations. This bill would allow the department to consider the same factors for granting all irrigation permits, including whether there is unappropriated water available. The department believes that the bill should have ample support as a prudent safeguard of the state's water resources. I want to point out what I believe to be a drafting error in the green copy. Section 2, added by the bill drafter to harmonize statutes, strikes 46-240.01 from a list of eligible appropriations for transfer under 46-290. This was not the department's intent and I recommend striking Section 2 of the green copy entirely, as it is misleading. The department's intent is still to consider applications for additional appropriations, just not as a matter of right, and for any granted additional appropriations to be eligible for transfer. Thank you for the opportunity to present on the bill, and I would be happy to answer any questions you might have. [LB31]

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SENATOR DUBAS: Thank you very much, Director Dunnigan. Senator Carlson. [LB31]

SENATOR CARLSON: Thank you, Senator Dubas. So if that is done, then the bill itself is just what's on page 2? [LB31]

BRIAN DUNNIGAN: Yes. [LB31]

SENATOR CARLSON: And this applies to new applications? [LB31]

BRIAN DUNNIGAN: If an existing appropriator wanted to up their rate, they could still apply. It just would go through the normal permitting process. And the way the bill...the way the statute currently is, it has to be granted. The way the bill proposes would be that we would look at it to see if it should be granted. [LB31]

SENATOR CARLSON: So where a permit already exists, it has no effect on. [LB31]

BRIAN DUNNIGAN: No. [LB31]

SENATOR CARLSON: Okay. Thank you. [LB31]

SENATOR DUBAS: Other questions? I would have one for you, Director. Very simple, definitional, explanation, I'm fairly certain I know what it means, but I just want to make sure. And when we're talking about changing the supplemental direct flow ag appropriation, what are we talking about? [LB31]

BRIAN DUNNIGAN: We're talking about a rate that would be in the appropriation...the standard is one cubic foot per second per 70 acres irrigated. So if you had a field that was 140 acres, you would get a 2CFS appropriation for that. [LB31]

SENATOR DUBAS: Okay. All right, thank you for that clarification. [LB31]

BRIAN DUNNIGAN: Sure. [LB31]

SENATOR DUBAS: Any other questions? Seeing none, thank you. [LB31]

BRIAN DUNNIGAN: Thank you. [LB31]

SENATOR DUBAS: Additional testifiers in support of LB31? Anyone in opposition? Anyone in the neutral capacity? That will close the hearing on LB31 and we'll proceed onto LB32. Welcome back. [LB31]

LAURIE LAGE: Thank you. Senator Dubas, members of the committee, I'm Laurie

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Lage, legal counsel to the Natural Resources Committee. And I apologize, I did forget to mention with the previous bill that I did speak with the department about that amendment and that's something that we've taken care of. So I'm sorry about that. [LB31]

SENATOR DUBAS: Thank you. [LB31]

LAURIE LAGE: Here to open on LB32. LB32 would remove the current requirement that approval of a water appropriation for storage and approval of dam plans under the Safety of Dams and Reservoirs Act be issued simultaneously. Again, a very simple cleanup bill. And I would be happy to answer any questions that you would like. [LB32]

SENATOR DUBAS: All right. Anybody have a question for Laurie? Seeing none, thank you. Anyone in support of LB32? Thank you, Director. [LB32]

BRIAN DUNNIGAN: Finally, good afternoon. Senator Dubas and members of the Natural Resources Committee, my name is Brian Dunnigan, B-r-i-a-n D-u-n-n-i-g-a-n and I'm the director of the Nebraska Department of Natural Resources and I'm here to testify in support of LB32. The current Safety of Dams and Reservoirs Act went into effect as enacted by LB335, introduced at the request of the department in 2005. That bill addressed changes from a total revamp of the then current statutes on dam safety and was designed after the national model developed by the Association of State Dam Safety Officials in conjunction with the Federal Emergency Management Agency. The bill before you removes the requirement that approval of surface water appropriations for storage and approvals of plans of dams under the Safety of Dams and Reservoirs Act are issued simultaneously. Such timing was considered appropriate at the time because one permit may not be perfected without the other. Several issues have arisen since the passage of this requirement in 2005. The first is that because there is no statute currently that requires the application for a storage permit and the application for approval of plans to be filed simultaneous, individuals can file for a storage permit and obtain a potential priority date. The other issue is a matter of practicality. Why should applicants pay for a final set of plans of a dam necessary for a dam permit application before the applicant knows whether it is possible to obtain the water appropriation? I believe this is a legitimate concern. By removing the requirement for simultaneous approval, the department can allow for persons to file and go through the water appropriation process. If a storage permit is obtained, application for approval of plans of dams and the plans must be filed within six months of the date of the approval of the water appropriation to comply with the statute on filing maps that currently exist. Thank you and I'd be glad to answer any questions. [LB32]

SENATOR DUBAS: Thank you, Director Dunnigan. Any questions? Seeing none, thank you very much. [LB32]

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BRIAN DUNNIGAN: Thank you very much. [LB32]

SENATOR DUBAS: Anyone in support of LB32? Welcome Mr. Edson. [LB32]

DEAN EDSON: Thank you, Senator Dubas, and members of the committee. My name is Dean Edson and I'm representing the Nebraska Association of Resource Districts and we supported the bill; improves the process. And I'd be glad to answer any questions you may have. [LB32]

SENATOR DUBAS: Okay. Any questions for Mr. Edson? Senator Smith. [LB32]

SENATOR SMITH: Thank you, Senator Dubas. Is the issue a matter of cost or time that it takes to file them simultaneous? For example, what you're looking to do is to be able to determine if you have the appropriations available, then the site and then to go forward with the construction of the site. [LB32]

DEAN EDSON: It would be a matter of both. [LB32]

SENATOR SMITH: Okay. [LB32]

DEAN EDSON: If you find out you don't have the appropriations available, it would save us money going through the whole process then, and so we could just find out pieces and part of this. [LB32]

SENATOR SMITH: Do you have any idea of what the cost is of the two components of that? The permitting. [LB32]

DEAN EDSON: Well it would vary depending on the size of the project. [LB32]

SENATOR SMITH: All right. [LB32]

SENATOR DUBAS: Any other questions? Seeing none, thank you, again, Mr. Edson. [LB32]

DEAN EDSON: Thank you. [LB32]

SENATOR DUBAS: Oh, wait, Senator Carlson. [LB32]

SENATOR CARLSON: Thank you, Senator Dubas. Wouldn't it be fair to say that the cost of a project is pretty substantial? [LB32]

DEAN EDSON: Yes. [LB32]

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SENATOR CARLSON: Yeah, so there would be all kinds of variations, but almost anything would be substantial. [LB32]

DEAN EDSON: Yes, I mean, you would go through your engineering studies, etcetera, but if you're talking a small reservoir versus a large reservoir, costs will vary. But you would have some similar fixed costs, but if you could find out some of the answers early it might help you address them earlier and then modify your project as you go through. [LB32]

SENATOR CARLSON: Thank you. [LB32]

SENATOR DUBAS: Thank you. Any other questions? Seeing none, thank you very much. Any other testimony in support of LB32? Any opposition? Anyone in the neutral? That will close the hearing for LB32. And I believe that closes our hearings for today. Thank you everyone for attending. (See also Exhibit 7.) [LB32]