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Natural Resources Committee
January 26, 2012

[LB743]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 26, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB743. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to start off our day by welcoming everyone that's watching us on the closed-captioned television, as well as those that watch on the Internet, and those that are here with us within the hearing room. We welcome you. I'd like to start off by introducing our committee members. I'm going to start to my far left or your far right with Senator Jim Smith from Papillion; we have Senator Ken Haar from Malcolm; Senator Christensen from Imperial will be joining us; and Senator Schilz, Vice Chair of the committee, will be joining us shortly. We have Laurie Lage, who is the legal counsel for the Natural Resources Committee; to my immediate right we have Senator Annette Dubas from Fullerton; we have Senator Tom Carlson from Holdrege; and then we have Senator Beau McCoy from western Douglas County in the Elkhorn area, from Omaha. And then at the end we have Barb Koehlmoos, who is the committee clerk for the Natural Resources Committee, and she will be helping us keep an accurate record. We do have two pages that help in the Natural Resources Committee this year. We first have Brian Eulie, who is from Omaha and is a student at UNL, and then we have Alex Wunrow, who is from Los Angeles, California, and is here in Lincoln as a student at Southeast Community College. Today, if you are going to testify, in the corners of the room you're going to see a little green piece of paper. We ask that you fill that out in its entirety and as you come up to testify, if you would give that to Barb, our committee clerk, it helps us keep an accurate record of today's events. Also if you're here and you don't care to testify, but you want to be in the record as being here, there's kind of a spreadsheet form in the corner that you can write your name and address on there whether you support or oppose the bill before us today. So with that, as you come up to testify we ask that if you have anything to hand out, we ask that you have 12 copies. If you know right now you're short, raise your hand and one of the pages will help you get that up to 12. Also if you're going to hand something to the committee, if you give it to us we are going to keep it for the record. So if you have a family photo or something that you want back, just show it to us from the testifier's stand. Don't hand it in because we will keep it for the record. When you come up to testify, we ask that you spell your name. The first thing you do is say and spell your name. It helps us keep an accurate record of today's hearing. Also at the table you'll see there's a light bar up there. You get five minutes to testify in the Natural Resources Committee. You'll get a green light that will come on, and the yellow light will come on when you have one minute left. And when the red light comes on, we'd ask that you stop your testimony and allow yourself

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available for questions. So with that, we'd ask that everybody look at their cell phone right now and make sure that's in a vibrate or an off mode so we don't disrupt those that care to testify before us today. So with that, we have Senator Schilz is here with the one bill for the day, and welcome to the Natural Resources Committee. [LB743]

SENATOR SCHILZ: Thank you, Senator Langemeier. Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I represent the 47th Legislative District. I bring LB743 before you today on behalf of the natural resources districts. The intent of this legislation is to enable natural resources districts to assess a fee for requesting a variance from the existing district rules or regulations to cover the administrative costs for the consideration of the variance request. This includes, but is not limited to, the costs of copying records, legal expenses, publishing a notice in a legal newspaper of general circulation in the county or counties of the district, radio announcements, or other means of communication deemed necessary in the area where the property is located. Unless otherwise provided by law, the NRDs may grant a variance from their rules and regulations based upon a showing of good cause. Since the interest of adjacent water users may be affected by granting a request for a variance, the districts provide a wide variety of public notice methods to give those water users notice of a variance that they may have an opportunity to participate in the variance hearing. This bill would make those persons that are requesting that variance pay for the process. And with that, I respectfully ask for your support of LB743, and I would be happy to try to answer any questions you may have. I do see that Rod Horn is here from the South Platte NRD and maybe some others and they...I'm pretty sure that they will testify and they will be able to answer other questions. Thank you very much. [LB743]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Schilz? Senator Dubas. [LB743]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Senator Schilz for bringing this and I certainly understand why this would be a concern, but when you look at the fiscal note, it says that the Lower Platte South already has a nonrefundable fee of \$100 that they use for variance requests. So, I guess, if some are already doing that, why is it that we need to have this bill? [LB743]

SENATOR SCHILZ: Well, right, and they have a set fee there. Most of what I've seen in the research that we've looked at in preparing to introduce this bill, and the information that came from the South Platte, that \$100 doesn't cover it completely. More closely, on average, it's around two hundred fifty bucks. And so that's what we're trying to get at is to make sure that we are getting those costs covered so that the property taxpayers don't have to take that over for somebody that wants to put that in place. [LB743]

SENATOR DUBAS: So, I guess, what I still am not quite understanding, do they just not

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have this authority legally yet? Is that what we're trying to achieve through this bill, or...?
[LB743]

SENATOR SCHILZ: You know, I think that what it is, is that we want to make sure that all of the costs are considered and not just a flat fee because those costs may change over time. But, Mr. Horn may have a better... [LB743]

SENATOR DUBAS: Okay. All right. Well, I certainly understand what you're trying to do. I guess that's just what I wanted to understand if they really don't that authority yet, or we need to be more clear on the type of authority that they have. [LB743]

SENATOR SCHILZ: Yeah. Right. And I'm supposing that they don't have that authority, but if they do, then maybe we could just tweak that. [LB743]

SENATOR DUBAS: All right. Thank you. [LB743]

SENATOR SCHILZ: Thanks. [LB743]

SENATOR LANGEMEIER: Are there any other questions? Senator Schilz, I do have one question. [LB743]

SENATOR SCHILZ: Yes. [LB743]

SENATOR LANGEMEIER: When you talk about expanding that cost, and as Senator Dubas talked about an application fee, you're hoping to expand the cost of doing the whole... [LB743]

SENATOR SCHILZ: Right. Public notice. [LB743]

SENATOR LANGEMEIER: The whole thing, and you talked about a neighbor might get hurt from giving a variance. I mean, is...would there be compensation to that neighbor for something in those fees? [LB743]

SENATOR SCHILZ: Well, here's what...no, and as I see it, and as I see it, the burden lies upon the person that could be affected. And so what this makes sure is that the public notice is out there. If that person never comes forward or never sees that it's happening, then he could be affected and then he may not have any recourse. As I understand it, that person needs to come forward at the time of the application to prove that he would be harmed. And so that's why it's important to get it all out there. [LB743]

SENATOR LANGEMEIER: Okay. Any other questions? [LB743]

SENATOR SCHILZ: And somebody may correct me on that, but I'm pretty sure that's

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the case. [LB743]

SENATOR LANGEMEIER: Very good. No other questions, thank you very much. You have heard the opening on LB743. We will now move to proponents, those who support LB743. [LB743]

ROD HORN: (Exhibit 1) Good afternoon, Chairman Langemeier and members of the Natural Resources Committee. I am passing around the testimony that I will read for the record. For the record, my name is Rod Horn, R-o-d H-o-r-n, and I'm the general manager with the South Platte Natural Resources District based out of Sidney. I'm presenting testimony in support of the bill on behalf of the South Platte NRD and the Nebraska Association of Resources Districts. The South Platte NRD encompasses three counties in the southern portion of the Nebraska Panhandle. I want to thank Senator Schilz for introducing LB743. Last year during Nebraska Association of Resources Districts' annual conference, the delegates approved a variance fee resolution. In addition, on January 24, 2012, the NARD delegates reaffirmed their support during this legislative conference. The purpose of this legislation is to enable natural resources districts to assess a fee when a person requesting a variance to cover the administrative cost for the consideration of the variance request, including, but not limited to, costs of copying records, legal expenses, and the cost of publishing a notice in a legal newspaper of general circulation in the county or counties of the district, radio announcements, or other means of communication deemed necessary in the area where the property is located. A variance, as we define variance, means the written approval by the district of any act which is contrary to existing rules and regulations of the district. This definition comports to the variance definition in the Nebraska Ground Water Management and Protection Act. Unless provided by law, the NRDs may grant a variance from its rules and regulations based upon a showing of good cause. The NARD and the South Platte NRD believe it is important to notify the public and is in the interest of adjacent water users who may be affected by granting a request for a variance, and to allow them an opportunity to participate in the hearing on the variance if they choose. Presently, the costs to administer the variance are paid by the district. We believe taxpayers should not be responsible to pay for the entire cost of an individual requesting a variance. I want to close, but leave you with an example of a public notice prepared to inform the public of a variance request meeting, which resulted in the recommendations that could have an impact on adjacent property owners. In this situation, the South Platte NRD's Variance Advisory Group, made up of citizens with various water use interests, met on August 17, 2011 to review the variance request and made a recommendation to the board. The name and legal descriptions in this example have been altered. And so with the variance request from Mr. Large, his request was to transfer approximately 85 certified irrigated acres from three tracts to the Northwest Quarter of Section 20, Township 15, Range 57, of Kimball County, to form a new pivot. Mr. Large requests to move approximately 37 irrigated flood acres from Section 7, Township 13, Range 57, approximately 11.7 irrigated acres from the Section 17,

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Township 16, Range 57, and approximately 36.5 pivot irrigated acres from Section 20, Township 16, Range 57, it almost sounds confusing, even reading it, by removing the last span of existing pivot. The new pivot would receive water from existing irrigation well. All tracts fall within the floating township clause of our rules and regulations, but these acres have not gone through a full allocation period. We made a public notice of this particular variance request on our local radio station and three county area newspapers and the notice was listed on our Web site in accordance with the SPNRD board's policy. The total expense in this example was \$245. Staff time for preparing the request, public notices, etcetera, is not included in the expense. The South Platte NRD has had about 85 variance requests since 2007 with an average of 17 requests per year, ranging from 30 in 2009 to 6 requests in 2011. I thank you for your time and support of this legislation, and we strongly encourage you to advance LB743 to General File. I'd be happy to answer any questions. [LB743]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Horn? Senator Dubas. [LB743]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Horn, for making the trip from Sidney. My son lives out there so I know it's not just a little, nice, leisurely drive, but we appreciate you coming down. [LB743]

ROD HORN: Thank you. [LB743]

SENATOR DUBAS: And I'll ask you the same question I asked Senator Schilz. It looks like there's already an NRD that maybe has a deposit that's required. So do you just not have the statutory authority you feel you need right now to assess this fee, or does it just need to be clearer? [LB743]

ROD HORN: I'll concur with Senator Schilz in that, you know, we're trying to get more of the actual costs. But in our attorney's opinion, we do not have that authority. [LB743]

SENATOR DUBAS: Okay. I mean, I certainly understand why you would want to cover this cost and I think the person who is asking for it probably should be responsible for it. So, I just wanted to make sure I was understanding where the problem comes from. [LB743]

ROD HORN: Sure. [LB743]

SENATOR DUBAS: Thank you. [LB743]

SENATOR LANGEMEIER: Are there other questions? Senator Carlson. [LB743]

SENATOR CARLSON: Thank you, Senator Langemeier. Rod, you've got a current levy

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that you operate under. Have you employed the occupation tax? [LB743]

ROD HORN: No, sir. [LB743]

SENATOR CARLSON: Okay, so... [LB743]

ROD HORN: We're not...we're in that situation what's available to us now, we can work with that in addition to other grants and that kind of thing. But that has not been imposed at this time in our district. [LB743]

SENATOR CARLSON: Okay. So is the practical purpose of LB743 just to cover costs, or do you get some nuisance requests that you'd like to kind of discourage, or is it a combination of both? [LB743]

ROD HORN: I think it could be a combination. It may be a deterrent in a way if it's not a real serious request, that it may be a deterrent to, you know, file that variance request. And then I might add too, our board is very sincere in how they approach this and wanting to receive public information. We have various advisory committees all over the place, but we have groundwater advisory committees, as I mentioned in the testimony. From those advisory committees we have a variance advisory group, which is a group that's made up of an individual from each of the five groundwater advisory committees and three of our directors. And it's just the body to make recommendations. And it's very important that we try to notify the public the best we can. We've talked about this quite a bit within the district board as to try to have those people come forward, even though we feel pretty comfortable in water situations, that sometimes the adjacent neighbor may have additional information we're not aware of. And so that's what we're really trying to pull out is, you know, those individuals, if there is a problem, to come forward and be part of that discussion. [LB743]

SENATOR CARLSON: Now, you've been charging \$100? [LB743]

ROD HORN: No, sir, that's, I believe, with the Lower Platte South has that in their policy. [LB743]

SENATOR CARLSON: Okay. So you haven't been charging anything? [LB743]

ROD HORN: No. No, sir, because we did not believe it was our attorney's opinion, our opinion, that we did not have that, so we've been absorbing these costs. [LB743]

SENATOR CARLSON: Okay. And the only...the only hitch that I could see would be in the wording that there's not a specific dollar amount mentioned, so it would be...it's a matter of how you manage and how you come to those decisions on what your costs are. And I guess if that would seem to be a problem, then you're going to have

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constituents that are complaining about it and you'd have to maybe rethink what you're doing because on the other hand...because it's not a specific amount spelled out, it could change with the time; otherwise it can't. Is that your thinking? [LB743]

ROD HORN: Yeah, correct. It allows that flexibility, I think. The Legislature a few years ago in the lienholders bill did not put a cap or ceiling in that. And that would be an example. I know other legislation like chemigation, well permits, those kind of things, there is a dollar amount there. I think looking at that lienholders bill, I think in 2009, there was not a dollar amount specified in that legislation or that was adopted into...within the Ground Water Management and Protection Act. And...but it would allow, you know, that flexibility that, you know, that we don't maybe have to come back to the Legislature to ask, okay, these costs over time are increasing and, you know, if we were to meet that cap, you know, can that be expanded or increased? [LB743]

SENATOR CARLSON: Okay. All right. Thank you. [LB743]

SENATOR LANGEMEIER: I do have a couple questions. My first one is, in reading here, your testimony here you talked about you put it in three county papers and you put it on the radio. Do you have a standard policy that you've adopted that says, we're going to do 14 radio spots and we're going to do three newspapers, or...? I mean, how do you...? [LB743]

ROD HORN: Yes, sir, and I didn't make copies but I can sure make copies of that, and this is... [LB743]

SENATOR LANGEMEIER: You can just tell us about it. That's fine. [LB743]

ROD HORN: Can I just read this a little bit to you? [LB743]

SENATOR LANGEMEIER: Sure. [LB743]

ROD HORN: It's not very lengthy but the district policy regarding notification of adjacent landowners and operators that may be impacted by variance requests may involve the following, and again, this is after several months of my board discussing this and debating of it: (a) public notice, the meeting date, time, at least a week prior to a meeting, notice to the publisher no later than Monday at 5:00 prior to the Thursday publication date, and the reason for the Thursday publication date is the next Thursday then is when we hold our regular variance advisory group meetings. Published on the Thursday prior to the meeting date in three area newspapers, Sidney Sun-Telegraph, Chappell Register, and The Western Nebraska Observer out of Kimball County. Public notices include legal description of variance request, locations, brief description request, and give real rural location description of variance request, for example, north of Potter eight miles and four miles east. The SPNRD Web site and I might add that tonight I

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need to get back to Sidney because we'll have a variance meeting and you'll see, if you look on our Web site, we'll have that posted on the front page of our Web site, this meeting for tonight. Create a public notice section on the Web site detailing the request and corresponding maps. Radio ads have three 30-second ads read on KSID from 6:00 a.m. thru 6:00 p.m. for four consecutive days before the variance meeting. Language will be similar to public notices sent to the paper, so. [LB743]

SENATOR LANGEMEIER: Let me rephrase my question. I appreciate that. But, I guess, I should have said, do you do the same amount of advertising, the same... [LB743]

ROD HORN: Oh, I'm sorry. [LB743]

SENATOR LANGEMEIER: ...obviously, you do the same ads, you do the same amount of radio for everyone. So when this example is \$245, if I'm asking for a variance in your area, I pretty much can count on it's going to be two hundred forty-five bucks or something close to that. [LB743]

ROD HORN: Well, or it could be a little bit less. Like this one this evening, it's in Deuel County and so we advertised only in The Chappell Register. [LB743]

SENATOR LANGEMEIER: Oh, so you do vary that advertising policy. [LB743]

ROD HORN: Yes. And pretty much, you know, the radio spots you're looking at probably 180 bucks for those radio spots. They're 15 second, 30 second spots throughout the day or throughout the week to try to, you know, any listeners may pick that up. But we can vary that and if it's a landowner that crosses over, you know, in two counties, you know, we'll pick up those two papers in public noticing. [LB743]

SENATOR LANGEMEIER: And then do you do a written notice to the adjoining landowners, or are they...I mean... [LB743]

ROD HORN: That...that's a good question. That was part of the discussion, but just because of the cost of individual letters going out, staff time to research that, there may be a chance we could miss somebody, you know, so the board really went away from that even though it was discussed. You know, looking at a model and, you know, for example, in the city of Sidney and zoning, if you rezone, you know, what is it, 300, a radius of 300 feet or something like that, the individual requesting a change has to give notice. We did look at that model and the board really chose, in our situation, to look at this method here. [LB743]

SENATOR LANGEMEIER: Okay, because I know if I go in and get a zoning change, whether it's a community or a county, I'm required to provide that list within 300 feet, so

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I've got to get a title company to do that. [LB743]

ROD HORN: And just about... [LB743]

SENATOR LANGEMEIER: And I think that's an effective way to notify versus hoping they hear it on the radio. [LB743]

ROD HORN: Sure. And about three years ago we purchased some lots that are around our current building in case there was any expansion that we didn't have to move out and we didn't get landlocked in there. We had to do the same thing, provide notification to those landowners prior to hearing on that. And so that was something that was discussed at some length. [LB743]

SENATOR LANGEMEIER: Okay. Very good. Seeing no other questions, very good. Thank you, Mr. Horn. [LB743]

ROD HORN: Thank you, Senator. [LB743]

SENATOR LANGEMEIER: (Exhibit 2) Further testimony as a proponent to LB743? Seeing none...do I have a letter? I have a letter from the Nebraska State Irrigation Association as a support letter for LB743 signed by Lee Orton, executive director. Is there anyone that would like to testify now in opposition or opposed to LB743? Seeing none, is there anyone that wants to testify in a neutral capacity? Seeing none, Senator Schilz, would you like to close? Senator Schilz waives closing. With that, that concludes our hearing for LB743. We'd like to thank everybody that participated and that concludes our day. Thank you. [LB743]