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Natural Resources Committee  
February 04, 2015

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[LB328 LB585]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 4, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB328 and LB585. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Rick Kolowski; Brett Lindstrom; John McCollister; and David Schnoor. Senators absent: None.

SENATOR SCHILZ: Well, good afternoon, everyone. It's 1:30, and with that we will start the Natural Resources hearing for the day. Welcome, everyone. Glad you could make it here on such a nice, snow-filled day, so we appreciate that. My name is Ken Schilz; I'm the Chair of the committee. I represent District 47 out of Ogallala. We have a number of senators here that sit on the committee and I will allow Senator Kolowski to start with introductions.

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

SENATOR McCOLLISTER: Senator John McCollister, District 20, Omaha, Nebraska.

SENATOR SCHNOOR: Senator Dave Schnoor, District 15 which is Dodge County.

SENATOR LINDSTROM: Senator Brett Lindstrom, District 18, northwest Omaha.

SENATOR FRIESEN: Curt Friesen, District 34, Hamilton, Merrick, Nance, part of Hall County.

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

SENATOR SCHILZ: And Senator Hughes may show up; he may be introducing bills in other committees, so when he gets here we will be graced by his presence, I guess. I'd also like to introduce today to my far right is Barb Koehlmoos, she is the committee clerk for the Natural Resources Committee. And to my immediate left is Laurie Lage, the legal counsel for the committee. And we have...is it Jake?

JAKE KOWAMOTO: Yes.

SENATOR SCHILZ: Yeah, Jake Kowamoto here and he goes to the university and he's a sophomore studying political science, and he's our page today, so we're glad to have him. Today, we're going to discuss two bills, I believe, LB328 and LB585. And if you're planning on testifying, please pick up a green sign-in sheet, fill it out in its entirety. They're sitting over on the tables in each corner of the room. If you do not wish to testify, but would like your name entered into the record as being present at the hearing, there's

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also a form on the table that you can sign as well, and this will then become part of the official record of the hearing. Please fill out that sign-in sheet before you testify, have it ready to go, and please print. It's important to complete the form in its entirety. And when it's your turn to testify, please give the sign-in sheet to committee clerk, Barb, over there and this will help us make a more accurate public record. If you do not choose to testify, you may submit comments in writing and have them read into the official record as well. If you have handouts when you come up to testify, please make sure you have 12 copies for the pages to hand out to the committee. If you don't have 12 copies, get with the page and we'll get that fixed here. I see Senator Hughes has joined us now. Thank you. How are you?

SENATOR HUGHES: Great. My apologies, Mr. Chairman.

SENATOR SCHILZ: You don't have to apologize. If you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name, even if it's an easy name. Please turn off your cell phones or put them on silent or vibrate; whether it's cell phones, pagers, or anything else that makes a noise please...and please keep your conversations to a minimum or take them into the hallway. In the Natural Resources Committee, we have no displays of support or opposition to a bill either vocal or otherwise, none of that is allowed in a public hearing of the Legislature. And then the light system, we will use the light system. You'll get five minutes. You'll have four minutes on green, one minute on yellow, and then when it turns red, your five minutes are up and we would appreciate you to sum up your comments and please stop at that point. And then the only other thing is, just make sure that if you do come up and if I stop you, it's probably because you have forgotten to spell your name and it happens more often than you might think. So don't worry, we're not going to get upset or anything, but we just do need to have that for the record. So with that, the first bill on the agenda is LB328. And I will turn the committee over to Vice Chair, Senator Friesen.

SENATOR FRIESEN: Thank you, Chairman Schilz. Welcome.

SENATOR SCHILZ: Thank you, Senator Friesen and members of the Natural Resources Committee. LB328 is presented on behalf of the Department of Environmental Quality to expand the scope of registration fees for on-site wastewater treatment contractors and systems. As it stands, the fund established through these registration only applies to systems installed after the effective date of the act. Given the importance of these inspections in protecting the surface and groundwater adjacent to these systems, DEQ and the Nebraska Onsite Wastewater Association requested that LB328 be introduced to clear up any confusion as to the qualifications of those allowed to work on wastewater treatment systems. This would establish a fee schedule pertaining to continuing education, investigation, inspection and enforcement, as well as allow the Environmental Quality Council to create a fee schedule necessary to properly

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administer the (Private) Onsite Wastewater Treatment Act. Mr. Rice from DEQ will follow as a proponent of LB328 in order to give further background on the need for this legislation and to help answer questions on the more technical aspects of the bill. I would encourage the committee to advance the bill to the full Legislature and would be happy to take any questions at this time. [LB328]

SENATOR FRIESEN: Thank you, Senator Schilz. Is there any questions from the committee? Oh, I'm sorry, Senator Schnoor. [LB328]

SENATOR SCHNOOR: I have some, but I'll probably just defer them to the DEQ rep. [LB328]

SENATOR SCHILZ: Okay. Sounds good. I'm not going to argue with you. [LB328]

SENATOR FRIESEN: Any other questions? Seeing none, Senator Schilz, thank you. Are there any proponents who wish to testify? [LB328]

PAT RICE: (Exhibits 1, 2, and 3) Good afternoon. My name is Pat Rice, that's P-a-t R-i-c-e, hopefully an easy name to spell. And I'm here representing DEQ this afternoon as a proponent for LB328. I think there...did the page pass out those handouts? Okay. You've got some handouts there that show an example of what a lagoon system and a typical drainage system would look like. And you've got a copy of an excerpt from our annual report that details a little bit more about how our program functions. I'm the acting director of the Department of Environmental Quality. And as Senator Schilz mentioned, we asked that this bill be introduced on our behalf to address the items of clarifying the allowable uses of the funds for the Private Onsite Wastewater Treatment System Certification and Registration Cash Fund, and to clarify which professionals are required to perform work on private on-site wastewater treatment systems consistent with the private act. And that language would clarify and make it consistent with what we find in statute today. On-site or septic system registrations administered by DEQ were first enacted in 1977. It is estimated that there are approximately 220,000 on-site wastewater or septic systems in the state of Nebraska today. Since the formal registration of the on-site systems began in 2004, we registered nearly 17,800 systems. So the rest of the bulk of that 220,000 were ones that were there in place before the registration act took place. Currently, in the last fiscal year, we registered about 1,500 systems. And we range between 1,500 and 1,700 a year of registrations. And we currently have 525 certified on-site inspectors. And we have cooperative agreements with other agencies, both state and local, to help us implement the program. There are 16 certified inspectors from local governments. And we also work closely with the Department of Health and Human Services personnel to resolve health-related on-site wastewater handling issues. HHS is involved when a piece of property changes hands. They have to certify that the system...that there's a septic system there, that it's functioning properly. And if they determine that it isn't properly functioning, they'll turn

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that over to us and we'll work with the people to bring it up to code. And that's because the lenders, the bankers, want to make sure that there is a functioning septic system and the toilets are going to work in the house and the drains are going to function properly. We currently have arrangements with several counties: Lincoln/Lancaster County here, we've got Dodge, Sarpy, Saunders, and Scotts Bluff Counties that we're working with as well, where they have people that are out there working and we work hand-in-hand with them making sure the permits get issued and we have qualified professionals out there doing the work. The (Private) Onsite Wastewater Treatment System Certification and Registration Cash Fund is supported by fees that are collected from the examination and certification of the on-site professionals, and the registration of private on-site systems by those professionals who have constructed, reconstructed, altered or modified the systems. Much of the complaint and enforcement work the department is...relates to older systems, those that have been in...may not even be registered today, but as they find or they fail or brought up to code, we have to work with the contractors out there. And one of the issues that we had was whether or not the cash fund used to investigate those older systems, as it was passed when the act took place, would allow us to expend those funds for systems that weren't registered yet, could we go back to those older systems and use those funds to help us do the investigations and work with those people. So that's one of the things we're trying to clarify here to make sure that we can use that money for that purpose. And again, hopefully, the bill will simplify and clarify that so those investigations will be eligible activities under the fund. Additionally, the bill clarifies in the act that all work on private on-site wastewater treatment systems have to be performed by the certified professionals. And that could be professional engineers licensed in Nebraska, or environmental health specialists registered in Nebraska as well. This would make the language consistent with what we find in the current statute and would also add the professional engineer and licensed health professionals in there. We've been working closely with the Nebraska Onsite Waste Water Association, which is the organization that originally asked for this act to be passed in the first place on this amendment. And we believe that they're going to testify today in support of this change. They'll be testifying soon after I'm done. [LB328]

SENATOR FRIESEN: Will you wrap up? [LB328]

PAT RICE: Yep, I'll stop right there. I'll take any questions you have and if you have questions about the handouts, I'd be happy to try to answer those too. [LB328]

SENATOR FRIESEN: Okay. Thank you. Questions? Yeah, Senator McCollister. [LB328]

SENATOR MCCOLLISTER: Thank you, Senator. What are the current fees for a household? I didn't see that in the bill, nor did I see it in the exhibits. [LB328]

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PAT RICE: I think I have a schedule here someplace. Okay, currently if you...are you concerned about the household fee or what this certified professional pays for registration? [LB328]

SENATOR McCOLLISTER: Let's start with registration. Both. [LB328]

PAT RICE: Okay. The professionals are licensed every two years. Their fee is...their exam fees will be...there's a \$50 exam fee and their registration fee is \$140. So that's what they pay. There's a registration...construction permit that costs \$450. And we also work with not only individual houses, but developments that might be on a common septic system and there the fee is \$450 per proposed developed lot within that system. [LB328]

SENATOR McCOLLISTER: Where do the funds go? [LB328]

PAT RICE: They go into this cash fund to administer the cost of the program. We currently have about 3.5 FTE that work in this area. [LB328]

SENATOR McCOLLISTER: And so before a system is operational you have to approve it? [LB328]

PAT RICE: Yes. [LB328]

SENATOR McCOLLISTER: And so an inspector will come out and actually take a...inspect the site. [LB328]

PAT RICE: Yes. [LB328]

SENATOR McCOLLISTER: Okay. The regulations that you use, are they based on national standards? [LB328]

PAT RICE: Yes and no. They're...each state kind of tailors them to make sure that they fit. There's on-site waste water associations throughout the 50 states, but they're all a little bit different depending on what you...what we have out here in rural Nebraska versus, maybe, back east where things are a little more concentrated, it's a little more difficult to put systems in back there than it is out here where we've got ample land to work with. [LB328]

SENATOR McCOLLISTER: Okay. After the system is first installed, how often do you go back out to the site and evaluate it? [LB328]

PAT RICE: We typically do not. Systems can...if they're run properly, they should be there for 50, 60 years before there's any problem. [LB328]

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SENATOR McCOLLISTER: Okay. Thank you very much. [LB328]

PAT RICE: Um-hum. [LB328]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Kolowski. [LB328]

SENATOR KOLOWSKI: Thank you, Chairman Friesen. Mr. Rice, on the 525 inspectors that you have...statewide...is that correct? [LB328]

PAT RICE: Yes. [LB328]

SENATOR KOLOWSKI: How many observations or inspections do they do in a year's time; because they're only doing new ones, because you don't inspect old facilities, do you? [LB328]

PAT RICE: No, that's correct. Unless there's a complaint or it's nonfunctioning and people are, again, through, maybe, the title transfer process... [LB328]

SENATOR KOLOWSKI: Right. [LB328]

PAT RICE: ...through HHS and the bankers come to us and say--we've got a system that needs to be rehabed or replaced or whatnot. [LB328]

SENATOR KOLOWSKI: And obviously... [LB328]

PAT RICE: So right now we're doing about 1,500 to 1,700 a year inspections. [LB328]

SENATOR KOLOWSKI: So that's...I mean, just by map, that's three, three and a half per person? And it takes how long to do an inspection...of the inspectors that you have available? [LB328]

PAT RICE: I'm not sure I caught... [LB328]

SENATOR KOLOWSKI: Okay. You said you have 525 inspectors. [LB328]

PAT RICE: Correct. [LB328]

SENATOR KOLOWSKI: And they're part-time, they're not full-time workers, nothing like that, but they're licensed to be able to inspect and certify a facility. [LB328]

PAT RICE: Right. [LB328]

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SENATOR KOLOWSKI: So it's about three and a half; if you have 1,500 or 1,800 a year and so they're not extremely busy as far as being called out or is it...you don't have enough in certain zones of the state that some do 30 and some do 2? How busy are they? [LB328]

PAT RICE: Well, that's true, if you looked at the distribution of where the professionals are at and you may find areas of the state where there aren't...there isn't somebody right next door, you may have to go over to a neighboring county to find someone who is licensed to come out and work with you. They work with new home designs as well, in addition to rehabbing systems. [LB328]

SENATOR KOLOWSKI: But you have no one full time in your office that does this also? [LB328]

PAT RICE: Well, we do, but the...the three and a half... [LB328]

SENATOR KOLOWSKI: FTE. [LB328]

PAT RICE: ...we've got about two people that are professionals that go out, but they're mainly concerned with the complaint investigations. [LB328]

SENATOR KOLOWSKI: Okay. Thank you. Just trying to get a volume answer. Thank you. [LB328]

PAT RICE: Certainly. [LB328]

SENATOR FRIESEN: Any other questions? Senator Johnson. [LB328]

SENATOR JOHNSON: Senator Schnoor was ahead of me. [LB328]

SENATOR FRIESEN: Okay. Senator Schnoor. [LB328]

SENATOR SCHNOOR: Oh, a few questions. These...oh, you know, your pictures here, the older systems which we've all seen out in the country, are those grandfathered in, so to speak? I don't know if that's the right term or not, but does that make sense? [LB328]

PAT RICE: Well, they're not really grandfathered in. We know they exist, but we don't know where they're at in all cases. When we encounter those situations where we have surfacing seepage or a pipe that's discharging to a stream bank or something, that's when we go in and work with them to replace the systems. How many of the 220,000 are in that kind of shape, I... [LB328]

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SENATOR SCHNOOR: Okay. That answers my question. Does this...now your other picture, I see a lagoon and I automatically think of a feedlot. Does this...is this different than the feedlot for the NPDES permits? Is that a total separate program? [LB328]

PAT RICE: That is totally separate. They both work on the same principle, though. You have a certain loading that would be coming from the house like maybe a hundred gallons per day going in there. You have to size the lagoon accordingly, so the evaporation... [LB328]

SENATOR SCHNOOR: I understand. [LB328]

PAT RICE: ...and the seepage equal out so the lagoon doesn't overflow. [LB328]

SENATOR SCHNOOR: Yeah, okay. Now my last question is, you know, we all understand septic tanks...or I shouldn't say we all, but anybody on a farm understands the septic tank and how all that works and the laterals, but I have never seen anything like a domestic wastewater lagoon. Is that a prominent type of a facility, I guess? [LB328]

PAT RICE: Yes. [LB328]

SENATOR SCHNOOR: Is it really? [LB328]

PAT RICE: Yeah. They're not, sometimes, real popular because people don't want to see that lagoon out there. It has to be fenced and signed so...and again, you have to size it accordingly, and we've got some...especially in...people that are moving outside of the bigger metropolitan areas and building half-million-dollar houses, they don't really want to have a lagoon out there. So a lot of times they'll go with the underground. [LB328]

SENATOR SCHNOOR: Okay. All right. Thank you. [LB328]

PAT RICE: It's an option for them. [LB328]

SCHNOOR: Okay, thanks. [LB328]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator Johnson. [LB328]

SENATOR JOHNSON: Thank you. A follow-up a little bit on Senator Schnoor's comment, when I was mayor, we annexed in a community...or an area and they had septic systems and once it went bad, they were required to hook onto a city system. At what point...a system that was in that you have never inspected, it's an old one, at what point, if it goes bad, do they have to redo the whole thing? Is that how...you give some



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direction there then? And then they have to comply with the new rules? [LB328]

PAT RICE: They do have to comply with the new rules. If they want to continue on with the septic system, or maybe it's an area where there's a bunch of old individual systems that could look at an option of a clustered septic system, or hooking onto an approved wastewater treatment system of a community. [LB328]

SENATOR JOHNSON: Okay. So let's say in this diagram the building sewer, which is from the building to the tank, say that collapses. Is that enough to trigger a reevaluation of everything? [LB328]

PAT RICE: Yes. Any time there's a modification... [LB328]

SENATOR JOHNSON: Anything that has to be done. [LB328]

PAT RICE: ...that takes place to the system it has to be brought up to code. [LB328]

SENATOR JOHNSON: Okay, thank you. [LB328]

PAT RICE: Um-hum. [LB328]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator McCollister. [LB328]

SENATOR McCOLLISTER: Three questions for you. To follow up on...thank you Mr. Chairman, follow up on Senator Kolowski's questions, okay, don't we have some productivity issues here? You know, if you only do 1,500 inspections a year and you've got 500 inspectors, did we get that number correct? [LB328]

PAT RICE: Those are certified...those are certified professionals that can do the work. They don't work for us, they're independent. [LB328]

SENATOR McCOLLISTER: So they're the ones that actually work with the homeowner? [LB328]

PAT RICE: Correct. [LB328]

SENATOR McCOLLISTER: And so you're saying that your employees, and there's what, just two or three? [LB328]

PAT RICE: Three and a half. [LB328]

SENATOR McCOLLISTER: Yeah, and they're the one that do the 1,500 inspections. [LB328]

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PAT RICE: No, they don't do the 1,500 inspections. If you're a certified professional, we accept the work that they do, and then we keep track of all that stuff and locations and whatnot of where the systems are at. [LB328]

SENATOR McCOLLISTER: So what your three employees do is simply monitor the inspectors that submit reports and maybe do some quality checks on what they do. [LB328]

PAT RICE: Yes. And investigate situations where the system might be failing or no system in place. [LB328]

SENATOR McCOLLISTER: Okay. I got the impression that with over 200,000 systems in place that the statute that we're looking at here expands a number of systems subject to inspection, is that correct? [LB328]

PAT RICE: The statute that's in place did that, yes. [LB328]

SENATOR McCOLLISTER: Yeah. Okay, and so the one we're envisioning now, does that expand that...the number of systems subject to inspection even further? [LB328]

PAT RICE: No. [LB328]

SENATOR McCOLLISTER: Okay. All right. That answers my questions. Thank you. [LB328]

PAT RICE: Okay. [LB328]

SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Senator Hughes. [LB328]

SENATOR HUGHES: How long does it take to be a certified professional to install wastewater and the system? [LB328]

PAT RICE: Is that a two-part question? How long does it... [LB328]

SENATOR HUGHES: How long does it take to be certified... [LB328]

PAT RICE: To put in a system? [LB328]

SENATOR HUGHES: ...to put in a system? One of the contractors or the 525, or whatever you have that will install. How long does it take them to become certified to do that? [LB328]

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PAT RICE: Oh. They need to pass the training exams. And that's, you know, just a matter of taking the test. They need to...when they go to put in a system...I thought maybe that was what you were asking, how long does it take to put in a system, that can vary, but in a week's time you can go in with proper equipment and put in a system. [LB328]

SENATOR HUGHES: The problem that I have in my area in rural Nebraska is there's not enough of these systems being put in on an annual basis that the people who have the backhoes and the expertise don't want to waste their time going and getting certified if they're only going to use it once or twice a year. So that's...if they've got to drive a hundred miles to spend all day to take the training and maybe get the test done that day, that's how long...how many business days they were losing to get this certification that they were going to use two, three times a year, was my question. How long does it take to get certified in order to be the installer, or... [LB328]

PAT RICE: Perhaps...I know that Lee Orton who represents the Nebraska Onsite Wastewater Association will be testifying after me, they do a lot of the training for these individuals. He could probably better answer that question. [LB328]

SENATOR HUGHES: Okay. [LB328]

SENATOR FRIESEN: Thank you, Senator Hughes. Senator Schnoor. [LB328]

SENATOR SCHNOOR: Pat, I do have one more question to go along with Senator Hughes. If you have a local plumber puts in a new septic system for you and he's not certified to do that, are there provisions in place where somebody from the state can come and inspect his work before it's all covered up with dirt so to speak? [LB328]

PAT RICE: Well, the problem with that, Senator, is kind of professional liability. And if you don't know exactly what was put in, most people would probably be reluctant to come in and certify that it met code and was put in properly if it's already covered up. [LB328]

SENATOR SCHNOOR: Well, I mean before that. [LB328]

PAT RICE: Oh, before that? [LB328]

SENATOR SCHNOOR: Yeah. You know you put in your septic tank, you lay out all the laterals, it's ready to go, can an inspector come in and inspect it to cover for those times when that person is not certified? [LB328]

PAT RICE: Yeah, they have to be... [LB328]

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STEVE GOANS: Certified individuals. [LB328]

PAT RICE: Yeah, they have to be certified individuals. I don't know that there is a provision for that. If you want to hire the local plumber as opposed to someone to come in that might have to drive a ways. Is that what you're getting at? [LB328]

SENATOR SCHNOOR: Well, that could be a factor yeah. [LB328]

PAT RICE: Yeah. The way that the program is set up, you need to be a certified professional. [LB328]

SENATOR SCHNOOR: Okay. All right. Thank you. [LB328]

SENATOR FRIESEN: Thank you, Senator Schnoor. Any other questions from the committee? I think if I'm...clarify things here a little bit, the way the bill states, you have to be certified in order to even work on the system. So you couldn't go in and do repairs even if you're not certified. [LB328]

PAT RICE: That's correct. [LB328]

SENATOR FRIESEN: So my question then, you said they had to take a test. Can they just go on-line and take a test or is there continuing education going on? [LB328]

PAT RICE: There are continuing education requirements. I don't know if that's available on-line. Steve? No. [LB328]

SENATOR FRIESEN: Okay. [LB328]

PAT RICE: But we go out during the year to the various conferences that are out there where these people might be and so we go to Lee's conference and we usually offer the test at those locations at that time. [LB328]

SENATOR FRIESEN: Senator Johnson. [LB328]

SENATOR JOHNSON: Well, I'm just curious. So somebody could be a certified installer and inspect his own work. [LB328]

PAT RICE: Um-hum. [LB328]

SENATOR JOHNSON: Is there any concern on that? Has there been any issues? [LB328]

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PAT RICE: No. [LB328]

SENATOR JOHNSON: Okay. [LB328]

SENATOR FRIESEN: Thank you, Senator Johnson. Any other questions from the committee? Seeing none, thank you, Mr. Rice. Are there any other proponents? [LB328]

LEE ORTON: Good afternoon, gentlemen. My name is Lee Orton, first name Lee, L-e-e, last name, O-r-t-o-n. I'm here this afternoon not only representing the Nebraska Onsite Wastewater Association, which Mr. Rice referred to, but I want to make sure that you understand that the president of that association would have been here had it not been for the weather. Lou Bencoter, B-e-n-s-c-o-t-e-r is the president. He's from Wayne, Nebraska, and I think he decided the roads weren't good enough to be here, so I told him I would represent him. Before we go any further, I want to make sure that we clarify a term. Mr. Rice talked about inspectors. There are not 500-plus inspectors in the state. The 500-plus number is the people who are certified and those include installers and pumpers and inspectors and other categories like that. So the majority of those people are, in fact, installer people, or people who pump systems when they need to be pumped to clean them out. And they're scattered all over the state. They do have to take an examination to begin with with the process. And that examination is a fairly simple and straightforward examination. And as a matter of fact, there are some training programs available to prepare them, and it's an open-book test so that they can take the test and look up the answers if they wish to do so. And they don't have to test again as long as they maintain their continuing education requirements. So they have to have 12 hours of continuing education every two years. The association provides a great many of those training hours. As a matter of fact, we have a workshop and a convention in Kearney next week where these people will be able to get all 12 hours they need while they're at that convention. So it's fairly simple and a straightforward process. And we believe that that continuing education has made all the people who are in this business better professionals since this law went into place. Now one other thing you need to understand is that the registration of these systems occurs after the system is installed. It's a registration process, it's not a permitting process. So there's very little opportunity, typically, to look at these while they're going in. You just know where they are when they're there. And if you are a professional certified contractor, you are expected to follow the standards to put these systems in. Now, part of the problem we've had, because this is a relatively new law yet, is that there are still people out there who are operating without being certified, and occasionally they'll put systems in that probably don't comply with standards. But it's difficult to find those sometimes. And that's part of the reason why this legislation is important because it gives the department very clear direction that they can, in fact, look for these people who are not certified, and look for systems that aren't registered. That's an important process. And so we're here to support this legislation because we think this is another important step in making this system work so that we don't end up creating groundwater pollution problems because

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of systems that aren't properly installed. And that can happen. A lot of those systems that Mr. Rice talked about that were installed long before these laws were in place are still, occasionally, open pipes to the ditch or cesspools which are designed to deliberately leak into the groundwater. Neither one of which is a smart thing to do. In this day and age, we understand groundwater pollution can be a serious problem. We understand it a lot better than we used to. And that's part of this system as well. So I want to reiterate again, the Nebraska Onsite Wastewater Association, which represents the professional contractors who install, who pump, and who do inspect from time to time, are very much in support of this legislation. We think this is an important step in making the profession better, in making the systems better, and in protecting the groundwater quality. I'd be happy to answer any questions if you have any. [LB328]

SENATOR FRIESEN: Thank you, Mr. Orton. Mr. McCollister...Senator. [LB328]

SENATOR McCOLLISTER: Thank you for attending. Thank you, Senator. Does this legislation go far enough? You talked about some of the systems that were installed many years ago that are unsafe and causing water pollution. Should we expand the scope of this legislation to include some of those old systems? [LB328]

LEE ORTON: Well, I...we all hope that these old systems will get to a point where they need to be repaired, replaced, and improved, obviously. I'm not sure that there are enough people in the business to be able to cover the 200,000 systems that are out there, quite frankly, Senator. It's important that we take those steps eventually. It's important that we make people understand that the systems are mechanical at best and that they do, in fact, fail sometimes. Most people, I think, assume that if they flush the toilet and it doesn't bubble up in the back yard, everything is fine. But it isn't necessarily. So there are steps that need to be taken. We've come a long ways in that regard in the last decade already. But there are definitely systems out there that should probably be replaced. The department finds those, from time to time, because there are concerns expressed either by a homeowner or by a neighbor or by a contractor who has looked at the system and knows something needs to be done. And I think, realistically, that's probably the best way to handle this, because otherwise you would be deluged with work. There wouldn't be enough people out there to do it. And you'd have an awful lot of very unhappy citizens who don't think their system is bad. [LB328]

SENATOR McCOLLISTER: Well, you're counting on obsolescence or complaints... [LB328]

LEE ORTON: Yes, we are. [LB328]

SENATOR McCOLLISTER: ...in order to find those defective systems. [LB328]

LEE ORTON: Yes, we are. [LB328]

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SENATOR McCOLLISTER: And I'm not sure that's good enough. [LB328]

LEE ORTON: Well, it probably isn't. I agree with you completely. In an ideal world, it would be appropriate for us to bring everything up to standard. But I'm just not sure there's enough money, enough time, enough people to do that, so we take it...a piece at a time. And I say in the last decade we've made some tremendous progress. We have a long ways to go yet. [LB328]

SENATOR McCOLLISTER: You indicated there are over 200,000 systems in the ground... [LB328]

LEE ORTON: That's the number the DEQ just used this afternoon. I suspect they're pretty close to right. [LB328]

SENATOR McCOLLISTER: Do you know where those locations are? [LB328]

LEE ORTON: I haven't the foggiest idea. If you went out and looked for rural residences or even residences in small villages and communities across the state, you'd probably find a lot of them. You would find some that have been abandoned without properly being abandoned quite frankly. If a farmstead is closed down, shuttered and nobody lives in the farmstead anymore, the likelihood is there is some kind of a waste disposal system at that farmstead. Now it might be a cesspool; it might be a legitimate septic system of some kind. It might be an open ditch pipe. [LB328]

SENATOR McCOLLISTER: Might be an outhouse. [LB328]

LEE ORTON: Could be, could very well be an outhouse. There are probably a lot of them. And you might find some where these rural residences exist and there's two or three systems out there. When one wears out, they put a new one in and they don't properly decommission the old one. So there are probably a lot of them like that. [LB328]

SENATOR McCOLLISTER: When those systems were built, was there any county regulations or anything else that we could leverage to find out where those systems are? [LB328]

LEE ORTON: I don't think so. I don't think so. I know from my own experience from my family who many of whom were farmers in the countryside and a piece of property we still own in north central Kansas, which isn't subject to Nebraska laws, that the systems in those neighborhoods are there and have been, in some cases, there for a hundred years. And most of them probably don't work very well. And that's probably true also with many small cities and villages around the state where there's no central sewer

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system. [LB328]

SENATOR McCOLLISTER: You aren't reassuring me in any way. [LB328]

LEE ORTON: I'm sorry, I wish I could. I wish there was an easier answer to this, Senator, but I'm just not sure there is. I think it's something we have to...I'm going to use the word "attack" a bit at a time so that we can handle it economically. I don't think there's any other way to do that. [LB328]

SENATOR McCOLLISTER: Well, I'm going to suggest at some point the DEQ do a...set up some kind of program to review some of these systems and find a way to identify them. [LB328]

LEE ORTON: Well, this will, in fact...this legislation will, in fact, give us another step in that direction, quite frankly. I think we'll be able to make significant progress by being able to use the program we have in place now to find more of those kinds of systems. So we won't get them all, but we'll make it in steps and we'll get there eventually. I'm not sure there's a grant program available anyplace, nor enough money coming from the state's budget to be able to do it in one fell swoop. I just don't think it's economically feasible. I wish it were. You make a good point. Yes, sir. [LB328]

SENATOR FRIESEN: Senator McCollister, thank you. Senator Kolowski. [LB328]

SENATOR KOLOWSKI: Thank you, Mr. Chair. Sir, I wanted to...this takes me back to a time with the Papio NRD when we were looking for wells in the counties that were there a hundred years. And in some cases they were dangerous; in many cases they needed to be sealed up and taken apart and dismantled, and I'm assuming every one of these sites that we're talking about probably have their water source in a well on the property as well. Is that correct? [LB328]

LEE ORTON: That's a distinct possibility, yes. [LB328]

SENATOR KOLOWSKI: Not many are hooked up to a uniform system of receiving water, in most cases I'm sure. [LB328]

LEE ORTON: If you find a private water well, you'll probably find some sort of a waste disposal system in the same area, yes, sir. That's correct. [LB328]

SENATOR KOLOWSKI: And with the number of sites that we have, I know they're not concentrated like a cattle-feeding industry, some of the waste runoff that we sometimes hear about as far as controlling the pollution into creeks and rivers and all the rest, but these are significant in number themselves. I hope we can get on top of it because those wells in the Papio NRD certainly got away from us and we had to do a lot of



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searching, a lot of filling, a lot of dismantling over time to keep those from being extremely dangerous for anyone being on those properties that didn't know they were there. [LB328]

LEE ORTON: You're absolutely correct. One of the other organizations with whom I work is the Nebraska Water Well Association. And our association has been licensed and certified and systems have been built according to standards for about three times as long now as on-site wastewater. So we're somewhat ahead of that game. And part of what the Papio did there, and part of what many of the other NRDs did there was attempt to try to identify where those wells were and decommission properly the ones that weren't being used anymore. You're talking about the same kind of thing with on-site wastewater here. And we're 25 years behind the curve there because of the way the systems came about, because of the way the certification or licensing of the professionals was developed, etcetera. So we're on a line that is attacking this problem, but we're not there yet. And I think that's the point I was trying to make with Senator McCollister. I wish we could be. But what we've done with water wells is the same kind of thing we need to pay attention to here with on-site wastewater. And what you're doing here with this legislation will help us do some of that. And that's important. It's critical. [LB328]

SENATOR KOLOWSKI: Thank you. [LB328]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator Johnson. [LB328]

SENATOR JOHNSON: Yeah, I think I'll follow...I guess trying to find a way to know where all these are and their situation, and I was involved when we had...everybody had to register their underground storage tanks and I know there was a lot of backlash type of thing. Some of them got cleaned up, removed, maybe, before that certification. But if there's some way that we could get some kind of registration; and it's not a registration so that you can go out and attack them, it's just some kind of a registration to identify who has a system. And, maybe, it's just a simple question that you have one and how old is it? They probably don't want to tell you what, you know, if it's a septic tank or if it's a certified, you know, type of thing. I agree with Senator McCollister, somehow we need to start registering more of these, just so we know. [LB328]

LEE ORTON: There are a lot of people who are very protective of their own rights, their property rights. [LB328]

SENATOR JOHNSON: Yeah. [LB328]

LEE ORTON: And many people will not tell you these things because they fear that you will come out and do something to tell them they can't use the system anymore. I'm just astounded when I hear from people who tell me, well, this is just an open pipe to the

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ditch, but it isn't hurting anybody. And I said, well, does the dog that comes into the house go out and wallow in the stuff that comes out of that pipe? Well, yeah, probably. I can't imagine how people don't understand that's a problem. But there are many people who don't. So we've got a tremendous education responsibility there to help these people understand these systems need to function properly if we're to maintain their health standards and the groundwater quality that's in the area. But that's an education process that is done one person at a time, I think. [LB328]

SENATOR JOHNSON: Well, you know, with the threat of polluting the stream and the groundwater and that, to me that brings it to a little bit higher level than most people probably think it should. [LB328]

LEE ORTON: It does indeed. And once again, I will reiterate, what you'll do with this legislation will make it better and will fund it better to be able to identify those kinds of problems when they exist and do something about it. The contractors who are certified, for the most part, are good professional people. Occasionally, you've got somebody that might cross the line, but the majority of these people do a good job and try and do a good job. And it's important for them to be able to compete with people of their own kind who are also certified and are professionals. If you have someone who goes out and doesn't do the job right and cuts the price by tenfold to do it, you're precluding the ability to be able to properly install a system at that point, because the guy that's doing it right doesn't get the job. So that step has to be made and that's part of what we're doing here is to try to catch those kinds of systems and catch the people who aren't doing it right because they create an impasse to get it done properly when it should be. [LB328]

SENATOR JOHNSON: Thank you. [LB328]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator Hughes. [LB328]

SENATOR HUGHES: Back to my original question for Pat, how long does it take someone to get to be a certified...to do this? The initial... [LB328]

LEE ORTON: I say this a bit tongue-in-check. The examination is fairly simple, so it doesn't take very long. Now, some people could go in and maybe take that test without even studying, but I think everybody needs to study some to pass the test even if you know how to look it up in the book. So I would think that a matter of a few days of studying, and an hour or two of examination is all it really requires, other than having the equipment it takes to do the job. And sometimes it takes a little while to acquire the equipment as well. Maintaining that certification, once you've got it, it requires 12 hours every two years of continuing education. And we hope that the people who come in and take that test without maybe being properly qualified to do the work yet will learn some of that work responsibility by being educated with continuing education. I've been involved with the industry since it started. The original legislation was drafted in part by

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the association because we felt it was important to do these things. And I have seen significant improvement in the professionalism of the people, so I think it's working. But it doesn't take very long to get certified. And it doesn't take very much to buy the equipment it takes because you just have to have a backhoe that works and a truck or a trailer to haul it to the site to do the work. But there's also a certain amount of professionalism that has to be developed. Installing the system could take anywhere from a day to a week or two depending on what it looks like. And incidentally, the lagoons we talked about are for the most part predominantly in this part of the state where the geology of the territory doesn't let a normal system be installed. A normal system includes a tank and piping that will distribute the wastewater that comes out of that tank and it requires a certain kind of geology for that to work properly. And where it doesn't work, that's where you put the lagoon in. [LB328]

SENATOR HUGHES: You touched on another thing, the geology across the state varies considerably... [LB328]

LEE ORTON: Yes. [LB328]

SENATOR HUGHES: ...as to the infiltration properties of properly installed... [LB328]

LEE ORTON: Yes. [LB328]

SENATOR HUGHES: ...functioning septic systems. [LB328]

LEE ORTON: And that's part of the requirements for the preparation of a plan for installing a system, is to do the proper kinds of analyses of the soils to find out what the absorption rates are so that you understand what kind of absorption field you have to put in and whether you can even put one in. So the certified professional that does this work has a significant amount of responsibility in designing the system that will, in fact, work where it's to be installed. We have some parts of the state where the subsoils are so sandy that the infiltration rate is very rapid and it's tough to make the system work in those kinds of condition without special characteristics. So we have a long ways to go in that regard. There are some alternative technologies that are available that will give us all kinds of ability to do things there. They're not always used at this point in time. If you put a standard system in in some parts of the state, it isn't going to work. [LB328]

SENATOR HUGHES: Is there any consideration given in installing the system as to how far the groundwater is below the surface? [LB328]

LEE ORTON: Yes. That's part of the requirements. If it's going to get to groundwater quickly, it isn't going to do the job that it needs to do. So if you have a high groundwater level, that will change the way you design the system. [LB328]

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SENATOR HUGHES: So, I guess...kind of where I'm leading you is that one size won't fit all. [LB328]

LEE ORTON: Absolutely, that's correct. One size will not fit all. The standard rules and regulations provide for designing changes or differences, if you will, to account for those kinds of things. But there are places, truthfully, where a standard system just plain won't work. And yet there are...they may be the most scenic, beautiful place in the whole world, and so you want to build a house there, and then you figure out you can't put a septic system in. And I've seen some of those where they...where that's occurred, where they went exploring for a long ways to find a place to put a septic disposal system in because it was not suited to that kind of work. [LB328]

SENATOR HUGHES: So before this committee gets too carried away about how we need to have DEQ out inspecting all 220,000 septic systems, one size does not fit all, quote, unquote. [LB328]

LEE ORTON: Yeah. And that's the important point. Thank you. [LB328]

SENATOR FRIESEN: Thank you, Senator Hughes. Any other questions? Mr. McCollister. [LB328]

SENATOR McCOLLISTER: One more...thank you, Mr. Chairman, and I'll be quiet, thank you. Senator Johnson brought up a good point. You know, everybody feels as though they shouldn't have some government infringing upon their rights, their property rights, their freedom of choice with regard to their own property; I get that and that makes sense to me. But once something starts polluting somebody else's groundwater, I think that that goes beyond what their property rights are. I understand this is an evolutionary kind of process. This bill goes in that direction. But I'm thinking that we should challenge the DEQ to come up with a regimen so we can at least find out where these systems are. And that would add to our evolutionary process in this regard. Thank you. [LB328]

LEE ORTON: I don't think that was a question. [LB328]

SENATOR McCOLLISTER: I think it was a...yeah. [LB328]

LEE ORTON: Thank you, sir. [LB328]

SENATOR FRIESEN: Thank you... [LB328]

LEE ORTON: You make a good point. And you and I probably could talk a lot more about this because there are a lot of things that can and should be done. I guess it's just a question of how we go about doing it. [LB328]

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SENATOR FRIESEN: Thank you, Senator McCollister. Senator Kolowski. [LB328]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. I think point number two in the duo here, I think it's important...and thank you for your work, number one, I think it's really important for a state. And more importantly, I think there's a point to be made on what you're doing in a microcosm across the state in individual situations. We have a macrocosm issue in Omaha with the sewer system. [LB328]

LEE ORTON: Yes, yes, you do indeed. [LB328]

SENATOR KOLOWSKI: And I think we need to think in terms of that, you know, micro/macro, it's just a matter of degree of size. And the storm sewer situation and the human waste and the overflow systems that we have and the separation of that sewer system becomes crucial, as everything down river has its impacted on the residents in those towns and villages that use that water as well. Thank you. [LB328]

LEE ORTON: Thank you. [LB328]

SENATOR FRIESEN: Thank you, Senator McCollister. Now are there any other questions from the committee? Now it's my turn. Mr. Orton, what would a typical system cost, round numbers? I know they're going to vary across the state, there's probably, maybe, a dollar amount that you'd have for the lagoon-type system and maybe one with a lateral. [LB328]

LEE ORTON: Well, given the conversation we just had here a few moments ago about that one size doesn't fit all, it's almost impossible to give you an average or a typical, but a small standard system for a small home, probably \$4,000 to \$5,000. [LB328]

SENATOR FRIESEN: Okay. [LB328]

LEE ORTON: But it can go up significantly from there. And if you put...if you put a dwelling in a place where a standard system won't work, alternative technologies are available to accommodate those kinds of things, but you're talking in terms of tens of thousands perhaps to put a system in that will, in fact, treat the waste so that it's nearly tertiary treatment by the time it gets out of the system. It will work, but it's costly. And it takes more maintenance responsibility because the more mechanical things you put into the system, the more work it takes to take the effect. A lagoon, you're probably talking \$5,000 to \$10,000, typically, for a small residence. And those, once again, understand standard average...I'm not sure there is such a thing, but that's probably the ranges we'd be talking about in most cases today. [LB328]

SENATOR FRIESEN: I was just...I just think the committee needs to know what kind of

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dollars we're talking about, because of what you're saying basically, is when an operator or installer goes to here to fix the system and it doesn't meet compliance, these are the costs that could be associated with that repair. [LB328]

LEE ORTON: Yeah. Kind of scary, though, let me just make this point, when somebody builds a \$500,000 house and then complains about a \$5,000 septic system to go with it, it's not very good thinking. [LB328]

SENATOR FRIESEN: No, but I guess we also have a lot of these \$20,000 homes out in the country... [LB328]

LEE ORTON: Amen. [LB328]

SENATOR FRIESEN: ...that are older and they have the old... [LB328]

LEE ORTON: Yeah, and a \$5,000 system is worth more than the home is probably worth. [LB328]

SENATOR FRIESEN: They have the old septic system. [LB328]

LEE ORTON: Yeah. [LB328]

SENATOR FRIESEN: I can tell you where a lot of those systems are, I mean, unless they've been worked on, they're every home out in the country that's out there. Unless you've had it worked on since 2004...2003... [LB328]

LEE ORTON: Um-hum. [LB328]

SENATOR FRIESEN: ...those are the systems; drive around the country and find them. My next question is, the way a septic system works, and if you take and put in your typical tank and a leach field, when we're talking about contamination of your groundwater, all of your waste stays underground. We have not, that I know of, seen a contamination of anybody's groundwater because these systems, we're more concerned about keeping the water either underground or into a fenced-off lagoon. And you got to remember there are small communities that just use the open lagoon system where you'll have several thousand residents, maybe, and that's just an open lagoon, the leakage from there has the same propensity to leak into the aquifer, so to speak, if that was going to happen. So I mean, the systems are designed to keep the waste underground and the potential for groundwater contamination, at least in my area of the state, would be slim to none. When you get into the sandier soils, I don't know quite how that works, but I would say, typically, the water wells are drilled really deep. So have you run across situations where your wastewater system has contaminated groundwater, other than running right down the well? [LB328]

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LEE ORTON: Yes. Yes. [LB328]

SENATOR FRIESEN: Okay. [LB328]

LEE ORTON: Depending on what kind of system it is and what kind of soils it's been put into, obviously. What is the age-old-adage? One of these days we're going to be drinking wastewater, but the bad news is, there won't be enough of it. We have systems in Nebraska right now where the wells and the septic systems are too close together. There weren't any standards when that happened. And quite frankly, I think those people, if they're not careful, will be drinking wastewater because they will intermix and it does happen. Part of the standards are to make sure that the water that comes out of these systems doesn't reach groundwater before it has been adequately treated. And the soil does a great job of treating if it has enough time to do it. And that's part of the reason why these systems work. If it isn't done that way, it will get to groundwater too quickly and it will, in fact, cause a problem. So there are systems out there that are like that. We hope we catch them before somebody gets sick from it, but it does happen from time to time. [LB328]

SENATOR FRIESEN: So the well standards are also in place when somebody has to replace a well. [LB328]

LEE ORTON: Yes. [LB328]

SENATOR FRIESEN: Those are going to be looked at also. So you have 50-50 chance that either one of your systems could trigger protection for that groundwater. [LB328]

LEE ORTON: Yes. Water well construction standards are...have been in place for many years voluntarily. And then, of course, when the law finally passed in the mid-'80s to require the development of construction standards for water wells, they got even better from that standpoint and they continue to improve. We know how to build a well better now than we used to. And we can avoid a lot of those kinds of problems by the way we construct them. And we can, from time to time, construct a well, perhaps, closer to a septic system than it would otherwise be because we can do things with the well that makes it work properly, assuming that the septic system also works satisfactorily. [LB328]

SENATOR FRIESEN: Right. [LB328]

LEE ORTON: We've made a lot of progress. [LB328]

SENATOR FRIESEN: Thank you very much. Any other questions from the committee? Thank you, Mr. Orton. [LB328]

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LEE ORTON: Thank you very much for your time. [LB328]

SENATOR FRIESEN: Are there any other proponents? Seeing none, are there any opponents? Seeing none, are there anyone who wishes to testify in a neutral capacity? I see no one willing to come forward. Senator Schilz, would you like to close? He waives closing. Welcome back for your next introduction. We'll close the hearing on LB328. [LB328]

SENATOR SCHILZ: Thank you, Senator Friesen and members of the Natural Resources Committee. The next bill I'm introducing today is LB585. It's not a difficult bill to understand. It's actually been introduced a number of times in the past. Last time was in 2008. But before that, 2004, 2005, 2006, were all years that the same type of bill has been introduced. Given the fact that we have an opportunity here in that the director of Natural Resources is to be named here soon, I thought this would be a good time to have a conversation about the qualification for that position. LB585 as written may expand the pool of potential applicants for the director of Natural Resources by removing or having addition to the requirement that the director be a professional engineer and allow for such director to instead possess some other form of qualification, maybe a doctorate in hydrology or civil or hydraulic engineering. It would be expected that if the director were not a certified PE, that then they would work to make sure that that is...that somebody that would be PE would be in the office to help iron out technical issues faced by the DNR. Aside from this expansion, the requirements for DNR director would, essentially, remain the same. A change like this has often been contentious and it always is it seems like. And many sides have weighed in pro and con every time this type of legislation has been introduced. And rightfully so, given there are very few issues in the state of Nebraska that can be as divisive and as important as water policy and the regulation of our water resources. This is why it's essential that we as a state get the best DNR director possible to ensure that our resources are managed properly, regulated, preserved, and protected for all of Nebraskans. I brought this bill to once again explore whether or not an expansion of the qualifications would lead to a pool of quality director candidates and to ensure that the DNR continues to work to create effective leadership for the Natural Resources Department and Nebraska. And whether the answer is LB585 or some other option, that's up to the committee to decide and to have the conversation. So, with that I won't talk anymore. I would be happy to answer any questions, but I'm sure that there are some folks behind me that have some opinions on this. And that's why we're here today. So, I would be happy to answer any questions. [LB585]

SENATOR FRIESEN: Thank you, Senator Schilz. Senator Kolowski. [LB585]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator, on the...why was the original intent to have a professional engineer? [LB585]



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SENATOR SCHILZ: Well, I think it goes without saying that when the director of the Department of Natural Resources, it is a regulatory agency, that regulates the surface water of the state of Nebraska and because of that, a lot of times what happens is there's a lot of project-specific stuff, a lot of, you know, when you're looking at water rights and how those should be administered and how those go, it was just deemed...and I don't know when that came into play in history, but you can understand the need for that kind of expertise and that's...I'm sure that's why that got there. [LB585]

SENATOR KOLOWSKI: In our history of the state, sure. With the...all the other parts of the job, there's parts beyond water that a person is responsible for as a director. [LB585]

SENATOR SCHILZ: That's correct, yes. [LB585]

SENATOR KOLOWSKI: And you'd be hampered by having someone else who may be very well versed and broadly read and broadly based and even credentialed in other areas along with their PE, if that's a possibility or without it. [LB585]

SENATOR SCHILZ: Yeah, I think...I think that that's exactly why you have this conversation is to decide what the importance of that professional engineering certification is and whether or not it still applies. [LB585]

SENATOR KOLOWSKI: Thank you. [LB585]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator Hughes. [LB585]

SENATOR HUGHES: Being the oldest...the most senior legislator here, you have mentioned that this bill has been introduced several times in the past. Why has it not made it out of committee...died on the floor? [LB585]

SENATOR SCHILZ: I think...I think...and I...someone can correct me if that's the case, but I don't believe it's made it out of committee before. But I may not be correct on that for sure. But I know that it's a number of times it stalled. Obviously, it hasn't passed before so we don't have to worry. [LB585]

SENATOR HUGHES: Right. [LB585]

SENATOR SCHILZ: But I don't know how far in the process it got. [LB585]

SENATOR HUGHES: I'm just curious why...what stopped it or why it didn't pass. [LB585]

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SENATOR SCHILZ: Well, I think that in the end, every time that the question has been brought up, there has been enough support to keep that professional engineer certification in there that there just hasn't been a path for it...for the bill. [LB585]

SENATOR HUGHES: Okay. [LB585]

SENATOR FRIESEN: Thank you, Senator Hughes. Senator McCollister. [LB585]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. I think I need to have a sidebar conversation with Senator Hughes about the age situation. (Laughter) Does the engineer qualification...does it have to be a particular kind of engineer? [LB585]

SENATOR SCHILZ: All it says is just a professional engineer. So I mean, that's...if it's any more than that, somebody else can correct me. [LB585]

SENATOR McCOLLISTER: Well, a person that's a structural engineer wouldn't have any particular understanding of water issues, would he or she? [LB585]

SENATOR SCHILZ: I would guess if it's just...if it just says "professional engineer" that that would qualify as well. [LB585]

SENATOR McCOLLISTER: Would experience also qualify or would you have to have a PE? [LB585]

SENATOR SCHILZ: Well, if you're looking at the law today, you would have to have a PE to even be considered. If something like LB585 would go through, then you could take a look at other folks with differing or other qualifications that are out there. And experience could be part of that as well. [LB585]

SENATOR McCOLLISTER: And finally, with the revised qualifications, if we set anything up, apply to the new...the search going on right now? Probably would not. [LB585]

SENATOR SCHILZ: It would probably not...it would probably not be in place quick enough to do that. But you never know how long it takes to put somebody in place. So it could, but I would doubt it. You want to be careful doing that too. [LB585]

SENATOR McCOLLISTER: Thank you, Senator. [LB585]

SENATOR SCHILZ: Thanks. [LB585]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Johnson. [LB585]

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SENATOR JOHNSON: Well, when I think of where we're at right now, I would say we're trying to hire a specialist in the profession. And a specialist might be specialist in water, which maybe has been the focus. This would be, maybe, moving toward more of a generalist that would have a broader scope of skills, maybe has a feature that is very dominant, maybe that would score higher in an evaluation, but it would open it up to more of a generalist type of position. [LB585]

SENATOR SCHILZ: I don't think there's any doubt, yes, it most certainly would. [LB585]

SENATOR JOHNSON: So it covers more areas of natural resources. [LB585]

SENATOR SCHILZ: It potentially could, yes. [LB585]

SENATOR JOHNSON: Thank you. [LB585]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator Schnoor. [LB585]

SENATOR SCHNOOR: This applies strictly to the director; it does not apply to any NRDs to the... [LB585]

SENATOR SCHILZ: That's correct, strictly to the director of the department. [LB585]

SENATOR SCHNOOR: So this applies to one person. [LB585]

SENATOR SCHILZ: Yes. [LB585]

SENATOR SCHNOOR: Okay. Well, that's my first question. Is that, I guess for my information, is that person appointed by the Governor based on these requirements? [LB585]

SENATOR SCHILZ: That's correct. [LB585]

SENATOR SCHNOOR: Okay, then lastly, knowing little or nothing about the Engineers and Architects Regulation Act, does that...having that said person being a professional engineer under that act, does that put undue restrictions on, I guess, his qualifications? I don't know if undue...or unrealistic, I'm not quite sure because I don't understand that act at all. [LB585]

SENATOR SCHILZ: Well, let me...well, you got me there, Senator Schnoor, because I don't... [LB585]

SENATOR SCHNOOR: I didn't mean to put you on the spot. [LB585]

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SENATOR SCHILZ: No, that's okay, this is the first time I've heard of such an act, but there may be some folks behind me, I don't know for sure. [LB585]

SENATOR SCHNOOR: Okay. [LB585]

SENATOR SCHILZ: But if nobody answers that question, we can look that up. [LB585]

SENATOR SCHNOOR: That would be fine; that would be fine. [LB585]

SENATOR SCHILZ: I'd be happy to do that for you. [LB585]

SENATOR SCHNOOR: Thank you. [LB585]

SENATOR FRIESEN: Thank you, Senator Schnoor. Any other questions from the committee? Thank you, Senator Schilz. [LB585]

SENATOR SCHILZ: Thanks. [LB585]

SENATOR FRIESEN: Senator Hughes. [LB585]

SENATOR HUGHES: Just a clarification, when I asked about the most senior legislator, I meant in the body, not in actual years on this earth. (Laughter) [LB585]

SENATOR SCHILZ: That's scary on multiple levels isn't it? [LB585]

SENATOR HUGHES: That's why I clarified it. [LB585]

SENATOR SCHILZ: I knew you weren't talking about... [LB585]

SENATOR FRIESEN: Thank you, Senator Schilz. Are there any proponents that wish to testify? [LB585]

JIM BENDFELDT: (Exhibit 1) Good afternoon, Senator Schilz and members of the Natural Resources Committee. I am Jim Bendfeldt, J-i-m B-e-n-d-f-e-l-d-t. I'm vice president of the Nebraska Association of Resource Districts and I'm a member of the Central Platte NRD, presenting testimony in support of LB585. The Nebraska Association of Resource Districts supports expanding the field of candidates that qualify to be director of the (Department) Natural Resources to ensure that the best candidate is hired to serve as director. The past directors with engineering qualifications have served the state well. However, as time has changed with the need for more water management and a better development of water-use plans for all users, I think the time has come to update the qualifications for the director of Natural Resources. Under current law, a fire protection engineer who operated a family irrigated farm before

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college would meet the qualifications to be the director. Yet under current law, an individual with a doctorate degree in hydrology or geology with ten years of water management experience could not be considered for that position. As in the DNR, directors of other state agencies must make regulatory decisions based on highly technical data and information. Examples being those of the Department Environmental Quality, the Department of Roads, and the Game and Parks Commission. Despite the technical nature of those decisions, none of these directors is required to hold any particular professional degree or license. Those directors are selected on their individual talents and work history. The pool of qualified persons for those positions is rich and diverse, and each one, historically, preform the job in an unbiased professional manner. Perhaps most importantly is that an engineering degree no longer may be the best option for this position. The requirement that the director be an engineer has its roots in the early twentieth century when the duties of the DNR were performed by the Department of Roads and Irrigation. At that time, the director not only supervised construction of roads across the state of Nebraska, but also approved construction of surface water projects. Notably, the director of the Department of Roads, who is the state engineer, and continues to be involved in significant engineering projects, need not hold an engineering degree. Not surprisingly, most other states have abandoned the engineering requirement for similar positions. The primary role of the DNR director today is significantly different. Under Nebraska's new water laws, the director has to negotiate water-use plans developed from input of water users that represent recreation, domestic, municipal, irrigation, industrial, manufacturing, agricultural, aquaculture, livestock, fish, and wildlife interests. While accomplishing that task, the director must also keep Nebraska in compliance with state laws and interstate compacts which are legal in nature and not necessarily mathematical or irrigation related. While doing these tasks, the director also has to oversee the revamped Natural Resource Commission and administer state funds. A person that can balance all of these interests and tasks may not have the skill set that may not include having an electrical engineering degree with irrigation management experience. It's time to expand the choices for the director and give the Governor the opportunity to appoint a candidate that can meet those skill sets demanded of the job. If there are engineers that have all these skill sets, nothing will prevent them from open competition for the job. If more engineers are needed in the department for assistance and guidance, beyond those that are employed there today, let the agency director hire that person. Open competition always brings out the best candidates. Thus I would urge you to advance LB585 to General File. Thank you. [LB585]

SENATOR FRIESEN: Thank you, Mr. Bendfeldt. Any questions from the committee?  
Senator Schnoor. [LB585]

SENATOR SCHNOOR: All right. Can you answer my question about the Engineers and Architects Regulation Act? [LB585]

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JIM BENDFELDT: Not in the slightest. [LB585]

SENATOR SCHNOOR: Then I won't ask any more questions. (Laughter) [LB585]

SENATOR FRIESEN: Thank you, Senator Schnoor. Any other questions from the committee? Seeing none, thank you, Mr. Bendfeldt. [LB585]

JIM BENDFELDT: You made this too easy. Thank you. [LB585]

SENATOR FRIESEN: Are there any proponents who wish to speak? Welcome. [LB585]

DAVID COOKSON: Vice Chairman Friesen, Chairman Schilz, members of the committee, my name is David Cookson, D-a-v-i-d C-o-o-k-s-o-n. I'm here as a substitute for the members of the Nebraska Appropriated Basins Coalition. It is a new coalition formed by the NRD basins that have been designated fully or overappropriated by the Department of Natural Resources. Due to inclement weather, they were unable to make it and I was asked to step in on their behalf and allowed to testify with the indulgence of the Chair. They asked me to speak in support of this bill and this change to the law. I think Mr. Bendfeldt stated it accurately. Much has changed in Nebraska's water law in the last 15 years. But the qualifications for the director have not. The last time this section, 61-201 was changed was in 2000. And actually, there wasn't a significant change to the PE requirement, it was simply part of a broader change to our water management scheme. But since then, we have basically rewritten our entire water law management scheme to address what is the most critical issue in Nebraska, integrated management. And with that integrated management has come significant obligations upon the director to build coalitions amongst all water users: surface, groundwater, recreation, municipal, power, agriculture, in order to adopt integrated management. That is not necessarily limited to those with a professional engineering designation under the Engineers and Architects (Regulation) Act. What is critical to integrated management is a complete and thorough understanding of hydrology, hydraulics, and hydrogeology, because that is where the rubber meets the road. And so to expand it in the fashion as proposed by Chairman Schilz is appropriate at this time because it is that building of coalitions that takes up the majority of the director's time. I would point out that in Colorado and South Dakota, two of our neighboring states, the head of the Department of Natural Resources is not required to be a PE. They have a state engineer position which requires that there be a PE in that position. And this is in part a remnant of the days of the Department of Bureau...or the Bureau of Roads and Irrigation which was switched in 1957 to the Department of Water Resources which is where 61-201 becomes first enacted into law requiring the PE. I think the time has come to make this marginal change. It is not a drastic change. I think it is important to have someone who understands hydrology and hydrogeology because, ultimately, the vast majority of the department's decisions will be made based on that information. And with that I'm happy to answer any questions. [LB585]

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SENATOR FRIESEN: Thank you, Mr. Cookson. Just a point of clarification, could you explain to the committee your background and where you come from on water issues in Nebraska. [LB585]

DAVID COOKSON: Well, as of December...prior to December 31, I was the Chief Deputy Attorney General, but I was original handled...hired to handle all of the state's interstate water litigations with Kansas and Wyoming and continued to handle that through the argument before the U.S. Supreme Court in October of last year. And now I'm in private practice. I'm just a public citizen. [LB585]

SENATOR FRIESEN: Thank you, Mr. Cookson. Any questions from the committee? Senator Johnson. [LB585]

SENATOR JOHNSON: Somewhat of a hypothetical question, you probably...if we broaden this, and I don't know how many different areas of expertise the new director should have, we talked about state funds, managing funds; direction of the new commission; a negotiator, we have needs in that area; hydrology. Under the current scenario of where we're at today, at the start of 2015 and the issues ahead of us, what do you think would be one of the stronger points that this bill would allow to happen if we expanded it? Is it beyond what the engineer would have? [LB585]

DAVID COOKSON: I think what it does is it broadens your applicant pool. And having been working in interstate...in the state water issues for the last 15 years, the pool of available folks has continued to shrink simply because there's not as many people with PEs who get into water management. Originally, when the Department of Water Resources started, there was a lot of construction of irrigation works, a lot of work on flood control, and that professional engineer knowledge of structures and the works was important. We don't build as much any more, obviously. In fact, it's probably impossible to build a flood-control structure given the overreach of federal environmental agencies. But nonetheless, the management and the integrated management and the ability to build coalitions and to understand the hydrology that goes into integrated management is probably the most important. And this expands the pool into the field of people who are directly working on this, particularly in the areas of groundwater modeling, surface water modeling, integrated water management modeling. [LB585]

SENATOR JOHNSON: Thank you. [LB585]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator Hughes. [LB585]

SENATOR HUGHES: In your previous position, I think you said you had been there for 15 years. [LB585]

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DAVID COOKSON: Correct. [LB585]

SENATOR HUGHES: And you were in the...what capacity? [LB585]

DAVID COOKSON: I was in the Attorney General's Office. I started out as handling the state's interstate water fights or litigation with Wyoming and Kansas, and then became Chief Deputy Attorney General after that. [LB585]

SENATOR HUGHES: Okay. So you worked very closely with the director of Natural Resources pretty much throughout your career at Attorney General's? [LB585]

DAVID COOKSON: Correct, that's correct. [LB585]

SENATOR HUGHES: Okay. And in your professional opinion, these changes would probably benefit the state of Nebraska if the DNR had a wider variety of experience...not experience, but of qualifications to do the job? [LB585]

DAVID COOKSON: As in any position, I think when you broaden the applicant pool to people who understand the core issue before an agency, you improve the likelihood of performance. We've been lucky in Nebraska; we've had good direction at the department, and there's a lot of good, hardworking people there. But what we have seen over the years as having been through a couple of these search processes informally, it does...the applicant pool has narrowed significantly. [LB585]

SENATOR HUGHES: Okay. [LB585]

DAVID COOKSON: Just the available people who are not only capable of doing it, but doing it right. One of the...I think, one of the things that speaks best to Nebraska is, I also have interacted with the DNR directors of multiple states over my years, working on a number of interstate issues, and one of the things I've always found is not only have we been...had good management, but we've also, as a state, been way ahead of everybody else in terms of being cutting edge in doing integrated management. All you have to do is go to California and read the newspaper about the problems that they're going through now; or go to Texas and look at the fact that they, basically, have no water. Or pick up the paper in Phoenix and see that they're worried about running out of water in the next decade. We're not in that position. And we're not in that position because of the good leadership we've had both from the department and the NRDs and the Legislature in kind of pushing the state forward in integrated management in a way that no one else has done yet. And we need to be able to keep that going. [LB585]

SENATOR FRIESEN: Thank you, Senator Hughes. Senator Kolowski. [LB585]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. David, thank you for your testimony



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and for your service to the state of Nebraska. As a recovering attorney, I'm sure you have a great deal that you're into right now with your new life and wish you well in that. My question is one of...when you look at the skill set of a possible candidate for the future, they have to be so varied in so many ways, thinking about policy, personnel issues within their department, budgetary concerns, lobbying/politics, and systems, both human and natural that they'd be dealing with in this kind of area. Are there...do you know of any preparation programs so we would be looking at college-prepared individuals coming out that are working in the areas of university leadership, preparation programs to help develop people that are more than just...sometimes the blinders on them are a major area, like a professional engineer, but thinking bigger and broader than that. Do you know of any and have contact with that? [LB585]

DAVID COOKSON: Actually, yeah. This is another area where Nebraska is way ahead of the curve of everyone else. The university has developed a number of programs through its water institutes that is, again, cutting edge. We are way ahead of other states in terms of looking at the broader policy issues. And at the same time, developing the technical expertise necessary to maintain this. And I don't mean this as a slight on engineers, believe me, my father-in-law is a civil engineering professor and I'm not about to be quoted as doing that. But it does take...sometimes engineering and becoming a licensed engineer, it's like being a lawyer, you tend to get focused. You've worked very hard to get licensed and you start to get focus and sometimes you need a little bit of a broader applicant pool to make sure you have people who maybe have that kind of...not just specialization, but generalization in both policy and technical because that...it really is a marriage of the policy aspects and the technical aspects. Which is why the coalition believes that Senator Schilz's bill is an appropriate, marginal expansion of a pool of people who can marry both the policy and the technical. [LB585]

SENATOR KOLOWSKI: So you're speaking to the Water for Food programs and all the other things that the university is into. [LB585]

DAVID COOKSON: All of the...the Water Center. The university has been way ahead of the game for years. [LB585]

SENATOR KOLOWSKI: Yes. [LB585]

DAVID COOKSON: It's part of what I like to think of Nebraska's foresight in dealing with water issues. And as much as we might sometimes think we're not on top of things, we're much better than...pretty much any other state that I've examined. [LB585]

SENATOR KOLOWSKI: Thank you very much. [LB585]

SENATOR FRIESEN: Thank you, Senator Kolowski. Senator McCollister. [LB585]

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SENATOR McCOLLISTER: I'd like to echo Senator Kolowski's comments and we're grateful for your service and your well-spoken comments about broadening this application. I think you've added to the discussion immeasurably. Thank you very much. [LB585]

DAVID COOKSON: You bet. Thank you, Senator. [LB585]

SENATOR FRIESEN: Senator Schnoor. [LB585]

SENATOR SCHNOOR: Yes, thanks, Dave. My same question applies to you about this act. Are you familiar with that at all? [LB585]

DAVID COOKSON: I'm generally familiar because as Chief Deputy I had to occasionally deal with issues with people who lost their engineering or architects licenses. [LB585]

SENATOR SCHNOOR: Okay. And here's...you helped narrow down why, I guess, why I'm talking about that. You talked about, you know, where the rubber meets the road; this is about hydrology, it's about water and about, you know, how that affects us, you know, just flowing through the ground and everything like that. So we all know there's all kinds of engineering degrees out there. There's, you know, aircraft engineer, electrical engineer, mechanical engineer. Some of those which may...they are engineers, but they may not really be qualified for this type of position. So does that act help narrow that down of what type of engineer is qualified to do that? [LB585]

DAVID COOKSON: It does, in that 61-201 is always required at a minimum of five years of work in irrigation. Now, it was never clear what that meant, whether that was operating a family farm operation and being a licensed mechanical engineer or being a licensed engineer in some other field as a second profession and operating the family's irrigation system. That was one of the open questions that's been part of every discussion that we've had about changing this statute. But it does require...the statute requires a five years in irrigation work. And the state and governors past have always taken the position, that means someone who is actively engaged in either operating an irrigation system like an irrigation district or having worked for the federal government, the Bureau of Reclamation is a prime example, or the Corps of Engineers, someone who has experience in a large scale irrigation. Statute doesn't say "large scale," but that has kind of been how everyone has interpreted it since it...based on who has been appointed, based on how it was adopted in 1957. [LB585]

SENATOR SCHNOOR: Okay, thanks. One more question. Now not knowing what the qualifications or requirements are to be in charge of a natural resources district, are they qualified to, basically, move up the ladder and to fill this position? [LB585]

DAVID COOKSON: I'm not aware of anyone currently as a manager of a natural

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resources district who has a doctorate degree in hydrology or hydrogeology or hydraulic engineering, which are the, I believe, the three things that are listed in LB585. [LB585]

SENATOR SCHNOOR: Okay, thank you. [LB585]

DAVID COOKSON: I can't speak to the board members. There's probably a couple hundred board members and I'm not familiar with each of their individuals... [LB585]

SENATOR SCHNOOR: I just...that question just came to mind. I didn't know what the qualifications they had to have to even fill that position. [LB585]

DAVID COOKSON: I think the only Ph.D. I'm aware of as a manager of an NRD is one of the NRD managers has a Ph.D. in economic. And I know that because we used him as an expert in the Kansas case. [LB585]

SENATOR SCHNOOR: Okay. Thank you, sir. [LB585]

SENATOR FRIESEN: Thank you, Schnoor. Any other questions from the committee? Just a couple questions on...you've worked with several departments of resource districts in other states that you mentioned, and, typically, would you say these organization, like Nebraska included, have grown in size of their organization, the number of employees over the past 10-15 years? [LB585]

DAVID COOKSON: I would say in most of them yes. Maybe not so much as in the Dakotas, but I know Colorado has gotten bigger; Missouri has gotten bigger. And each of them are slightly different. Some of them have their parks and wildlife are within their department of natural resources. Every state is a little bit different. Yeah, generally speaking, all you have to do is notice...is look at the states that are now fighting in front of the U.S. Supreme Court in water. It's not just the western states anymore, it's the eastern states. And each of those states are now dealing with the issues of water management, water shortage, water allocation. [LB585]

SENATOR FRIESEN: Some of the work that the director does is more involved in managing people and the organization as a whole, trying to make it work more efficiently and accomplish its goal rather than specifying, like you said, building structures or things like that. [LB585]

DAVID COOKSON: That's certainly the task of every agency director that's appointed by the Governor. First and foremost they have to run an agency with a budget. And that's not an easy task. [LB585]

SENATOR FRIESEN: Seeing no other questions, thank you, Mr. Cookson. [LB585]

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DAVID COOKSON: Thank you. [LB585]

SENATOR FRIESEN: (Exhibit 2) Any other proponents wish to testify? Okay, we have Jasper Fanning from the Upper Republican Natural Resources District who...a letter of support. Okay, seeing no other proponents, are there any opponents wish to testify? Welcome. [LB585]

ANN BLEED: (Exhibit 3) Thank you. Senator Friesen, members of the committee, my name is Ann Bleed, that's A-n-n B-l-e-e-d and I am currently retired, but for over 20 years I worked for the Department of Water/Natural Resources, first as the state hydrologist and then as deputy director, and finally as director of the department. I have also earned a professional engineering license under the Professional Engineering and Architects Regulation Act. And I have a Ph.D. from the University of Wisconsin. I have done...worked at the University of Nebraska as a researcher and a teacher. I am here in opposition to LB585 not because I'm opposed to expanding the requirements for the director. In fact, I see many opportunities for hiring a director that would be qualified by expanding those requirements. However, I am strongly opposed to requiring that if the director doesn't have a professional engineering license that they have to have a doctoral degree. The training for a doctoral degree is really focused training on how to do research and how to write papers for a publication in academic journals. That kind of requirement is, I think, very appropriate for a research institute like the university. But I don't think it's appropriate for the Department of Natural Resources, who as Senator Schilz has pointed out, their main job is to, I would say, equitably and fairly enforce the water laws of the state of Nebraska. You don't need to be a researcher to do that. In fact, I would say in my mind, and you senators have already alluded to this, perhaps most of the...one of the most important requirements for the director is that they have individual integrity; they have the ability to work with the various variety of stakeholders; and a sense of equity and fairness when they enforce the laws of the state. On the other hand, I do believe it's important for the director to have a strong background in science of water. Most of what the state...the Department of Natural Resources does pertains to water. And it's also important to keep in mind that the director, when they are approving or denying a permit or presiding over a contested case hearing before the department acts in a judiciary capacity, very similar to a judge. If the director's decision is appealed, that decision goes to the Supreme Court or the Court of Appeals. The Supreme Court and the Court of Appeals are staffed by licensed attorneys who are in a good position to rule on the merits of the case based on water law. However, rarely, if ever, do they have a background in...a technical background in water. And therefore, traditionally, the courts have deferred to the director of the department if the issue is a technical issue as opposed to a legal issue. That is one case...one situation, and there are many others where I could argue that it is very important for the director to have an understanding of water. And a lot of the people that the director will be working with are also going to be engineers or other people with advanced knowledge in water. As I said, I support expanding the requirements of the...for the director. I would suggest that you might want

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to consider adding to the requirements that the director could be a licensed geologist under the state's Geologist Regulation Act. And I've put in the testimony I handed to you the actual citation to that act. It is very similar in form to the Engineering and Architects Regulation Act. And I would point out that these...having...being a licensed engineer or a licensed geologist in addition to having to certify that you are, in fact, a capable of understanding the science, they also have requirements that you have to follow to meet the professional conduct and ethics code. And if you do not follow those requirements, you may lose your license. Finally, the last part of the existing bill talks about having a degree in civil engineering, hydrology or geology, I would support maintaining that aspect of the bill so that somebody, for example, a hydrologist who would not qualify as a licensed engineer or a geologist could, perhaps, become the director. My suggestion would be, however, to remove the requirement that that person have a doctoral degree and say something like at least a masters degree in those fields. And with that I will conclude my testimony. I have some suggested wording at the end of what I handed out that you may want to consider for the bill. And I'd be glad to try to answer any questions if you have any. [LB585]

SENATOR FRIESEN: Thank you, Ms. Bleed. Any questions from the committee?  
Senator Johnson. [LB585]

SENATOR JOHNSON: Thank you. Thanks for coming in, Ms. Bleed. It says "or have a doctoral degree." I mean it's a two-part question. Do you think that having that option out there and they put an emphasis on there puts too much of the research side of it into the qualifications? Is that what... [LB585]

ANN BLEED: I do. As has been pointed out previously, the professional engineers...the field of professional engineers is not as large as it used to be. So if there was somebody with a very good background in hydrology, for example, who had also worked in an agency, understood water law, and so forth, were to be...were interested in the job, I think that person should be considered. However, I don't think they necessarily have to have a doctoral degree. There are a lot of very good people that I can think of that might be eligible for the job and would be good directors who only have a master's degree. [LB585]

SENATOR JOHNSON: Second part: Do you think a person with a doctoral degree in some other field, having that degree puts too much focus on...maybe it's economics or maybe it's some other type of a degree dealing with a natural resource. Do you think that should be totally out of the equation or would another type of a doctor's degree help in making that person more qualified for the job? [LB585]

ANN BLEED: Well, I think what I'm trying to say is not that you shouldn't have a doctoral degree. I do have one and I did do the job. [LB585]

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SENATOR JOHNSON: Yeah. [LB585]

ANN BLEED: I'm just simply saying it should not be a requirement that you have that training in research. If you have it and can meet all the other qualifications for the job, fine. [LB585]

SENATOR JOHNSON: Okay. But in here where it says "or" that would trump anything else. If you had that, didn't care what else you had. It almost sounds like...the way this is written, because it says "professional engineer under the Engineers and Architects Regulation Act or have a doctoral degree in civil or hydraulic engineering, hydrology, and geology. I think you've answered my question already, so I'll just stop there...at least your feelings towards that doctoral degree. Thank you. [LB585]

ANN BLEED: Yes. [LB585]

SENATOR FRIESEN: Thank you, Senator Johnson. Any other questions from the committee? Seeing none, thank you, Ms. Bleed. [LB585]

ANN BLEED: Thank you. [LB585]

SENATOR FRIESEN: Any other opponents? Come forward. Welcome. [LB585]

KAREN AMEN: Thank you. My name is Karen Amen, K-a-r-e-n, last name like the end of a prayer, A-m-e-n. It is awkward to say that I'm an opponent of the bill because I'm tremendously grateful to Senator Schilz for bringing this bill forward and for the concept of expanding the pool of potential applicants for DNR. But I'm here as an advocate for professional geologists. And in just a minute I think I can answer the question about the professional engineers act. I'll give you just a little bit of my background. I am speaking for myself and not for the organizations I belong to. But I am on the board of Lower Platte South NRD. Director Bleed and I are colleagues there. I am also newly elected to the statewide Natural Resources Commission and will be working on that process of developing rules and regs for the implementation of LB1098 and the statutes there. I'm also a member of the statewide Nebraska Geological Society. And they have not had the opportunity yet to review this bill in detail. And I'm hoping that at their upcoming meeting on February 19, which may be too late in terms of your voting it out of committee, but I'm hoping that they will take a position that I would anticipate they would take. And finally, I was on the original Nebraska Board of Geologists that in 1998 helped get the bill passed. And then I was on the board that set up the implementation of what a professional geologist is. I went to graduate school in geology both here and in Boulder, some 40 years ago, it's been a long time. And ever since then have been a strong advocate for geology and geological understanding. But especially here in Nebraska where without the geological knowledge of our aquifers, we really don't understand how groundwater operates. So my testimony is primarily going to be in that

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area. Although, Senator Johnson, I'm really intrigued with the direction of your questioning about a generalist who would know how to use all these people with technical abilities. And if Senator Schilz were to decide to include more specific technical things such as the professional geologist, that doesn't mean that I would disavow what you're thinking about and what you're looking at. Let me tell you just a little about what a PG is and what the process is according to the state of Nebraska Geologic Regulation Act and it is modeled directly on the PE act. A person is eligible to apply to be a professional geologist in a series of steps. And the first step involves taking what's called the ASBOG Exam. That's an exam put together by the American Association of Board of Geologists. And that is a national group that meets on an annual basis to redo the exam and it requires that anyone taking it have knowledge of the general principles of geology, the fundamentals of geology, and also knows geological conditions throughout the country. So that fundamentals of geology exam has to be passed. And then when the person has passed that, she or he can become an intern for five years, and after that intern period can then take the exam that is the practice of geology. And when it comes to professional engineers, I did work for Olsson engineering...Olsson Associates here in Lincoln and around the country. And our young interns, then, had as their major exam the practice of engineering or our interns in geology would have the practice of geology. And once they have passed that exam, then they are eligible to be considered. But the interesting thing is, and my colleague, Director Bleed, referred to this, in the Board of Geologists, we were concerned not only with the technical knowledge, but with a very strong code of conduct that got emphasized even more in 2013 in some legislation then. So there's continual oversight of the ethics and integrity of professional geologists, just as there is with professional engineers. And that's why these two certifications of PE and PG, I would ask you to include both in the bill. And I'm out of time it looks like. Or is that one minute more?  
[LB585]

SENATOR FRIESEN: No. You... [LB585]

KAREN AMEN: I'm out of time. [LB585]

SENATOR FRIESEN: But we'll probably have some questions. Thank you. [LB585]

KAREN AMEN: Please do, yeah, that gives me a few more minutes. [LB585]

SENATOR FRIESEN: Are there any questions from the committee? [LB585]

KAREN AMEN: No. [LB585]

SENATOR FRIESEN: None. I'm sorry, Senator Schnoor. [LB585]

SENATOR SCHNOOR: Thanks. Senator Lindstrom reminded me about that, you said

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you have some more knowledge about the Engineers and Architects Regulation Act.  
[LB585]

KAREN AMEN: Well, in several ways, before I joined Olsson I was a...I had my own consulting firm for 20 years and the Board of Engineers and Architects hired me for a number of activities. So that's when I became familiar with their process for getting the certification, which is pretty much identical to what I went through for professional geologists. But in addition, I facilitated the very first negotiated rule-making process in the state of Nebraska and that was the Board of Engineers that did that. So we had to base our rules, of course, on the act itself and on the statutes. [LB585]

SENATOR SCHNOOR: Okay. [LB585]

KAREN AMEN: Sorry, that was maybe a longer answer than you wanted. [LB585]

SENATOR SCHNOOR: No, that's fine. Thank you. [LB585]

KAREN AMEN: But yeah, um-hum. [LB585]

SENATOR FRIESEN: Thank you, Senator Schnoor. Done? Senator Johnson. [LB585]

SENATOR JOHNSON: Thank you. I mean you're here with some concerns about the bill the way it is now, somewhat opposition. But you're both...you and Ms. Bleed here to improve the bill with the expansion. Is that a fair... [LB585]

KAREN AMEN: Exactly. And I did not know whether to say we opposed it or not because, really, we don't. Maybe we should have been neutral with an amendment. But at any rate, Ann Bleed's wording that you have in front you is exactly what I would support with the emphasis. [LB585]

SENATOR JOHNSON: Yeah. Being an opponent, but improving the bill is...so we got the right wording. [LB585]

KAREN AMEN: Yeah. What am I? I'm not really... [LB585]

SENATOR JOHNSON: No, you're fine. [LB585]

KAREN AMEN: Yeah. [LB585]

SENATOR FRIESEN: Any other questions from the committee? Thank you, Ms. Amen. [LB585]

KAREN AMEN: Okay, thank you. [LB585]



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SENATOR FRIESEN: Any other opponents to the bill? Welcome. [LB585]

MIKE DRAIN: Thank you, Vice Chairman, Chairman, Senators. My name is Mike Drain, M-i-k-e D-r-a-i-n. I'm here to testify today on behalf of the Central Nebraska Public Power and Irrigation District in opposition to LB585. Just so you know for...if you wish for questions later, I am, myself, a licensed engineer, though I have no designs or intentions to apply for this job. (Laughter) The current requirements that are in the law have worked well for a century. But that does not mean that this is some sort of artifact or archaic piece of requirement that has no bearing today. The requirements for licensure are part of, really, three things you have to have in order to become the director of the Department of Natural Resources. You have to be a licensed PE. And that's what is getting a lot of the discussion today. But you also have to have experience. And, ultimately, you also have to have the willingness of the Governor to hire you. So the notion that any ol' PE can walk in the door and grab the keys and claim to be the director is a bit unrealistic. The licensure requirement is very important; more than just an education requirement. What is proposed is to have you be a licensed PE or perhaps just have a particular type of technical degree. But licensure is not a one-time thing, but an ongoing process. It is set up by the Legislature to protect the public. It requires that you have certain standards to get your license. It requires you to meet certain standards to keep your license. It includes a board of oversight to control if you go too far in applying technical issues in a way that don't match technical facts. This is very important. I know Senator Schnoor is not here now, was asking this question: Does the act have a bearing on your performance? The answer is--it never has historically, but it's important that it could. If you have an issue before the director and the director...and it's a technical issue, and the director chooses to address that issue in a way that is politically important or meets a personal agenda or meets their boss's agenda, but violates the principles of science and engineering, then that act can be taken before the oversight board. And it's conceivable that you could even, in the most extreme event, lose your licensure and therefore lose your ability to retain the position. Now this has never happened. We don't anticipate it happening. But it's very important...and it's important for this reason: This position is different than the heads of other departments in this state; and it's different from the head of similar departments in other states. And Ms. Bleed hit to this a little bit. In our case, in the Department of Natural Resources in the state of Nebraska for issues that come before the director, the director acts not just as another department head, but acts as a first court; acts as a judge, in essence, for issues that come before it. The department's and the director's actions are not appealed to a district court, but instead are appealed to a higher court with the department acting as the first court. Certainly a court of appeals or the Supreme Court can review a new issue that the director may have ruled on with regard to law. But in terms of the determination of fact, that is going to take place one time and one time only, and it's going to take place by the director at the department. For that reason, you need to have the director constrained by these codes of ethics in ways that

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other department heads are not. Now, it's not sufficient for other staff members to be licensed engineers on the board and cover that requirement, because, ultimately, it will be the director who makes the decision and only the director whose decision could be challenged. The notion that there are...is not qualified applicants out there today is just that, it's a notion. It's not been shown to be true. We have...every time we've had to replace the director, we have been able to do so. It requires search, it requires contemplation, it requires incentives. But the profession of engineering has not gone unchanged in the last hundred years. And there are professional engineers out there who are good negotiators, who are good business people, who are good with budgets, and they can be found. And they have been found. And we would suggest that there's not been shown a need to change the requirements at this time. Finally, and this is a little bit difficult to say, but I will take your questions. (Laughter) [LB585]

SENATOR FRIESEN: Thanks, Mr. Drain. Any questions from the committee? [LB585]

SENATOR JOHNSON: I will ask the question: I'd like for you to finish your statement. [LB585]

MIKE DRAIN: What was my last point? [LB585]

SENATOR JOHNSON: You got cut off and I'm sure. [LB585]

MIKE DRAIN: Yeah, I know, that pretty much killed what I was thinking, so, Senator, I apologize for having emptied my mind when that came up. [LB585]

SENATOR JOHNSON: Okay. As a committee chair, I appreciate you recognizing the light, but I hate to have somebody cut off. Thank you. [LB585]

MIKE DRAIN: I do recall what my point was. [LB585]

SENATOR JOHNSON: I'll let you continue. [LB585]

MIKE DRAIN: To be clear, our district is opposed to changing the requirements. But I can certainly tell you having emphasized the importance of licensure and the oversight that that provides...don't do it by just saying you'll accept a degree. If you're going to have a geologist put on, don't do it as a Ph.D. in geology, do it as a licensed professional geologist because those include the same types of protections that the PE does right now. Again, we oppose any change, but if I'm picking between the lesser of evils, I'd add PG requirement. [LB585]

SENATOR JOHNSON: Okay, thank you. [LB585]

SENATOR FRIESEN: Thank you, Senator Johnson. Any other questions? Seeing none,

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thank you, Mr. Drain. [LB585]

MIKE DRAIN: Thank you. [LB585]

SENATOR FRIESEN: Any other opponents to this bill? Welcome. [LB585]

JAY REMPE: Senator Friesen, members of the Natural Resources Committee, my name is Jay Rempe, J-a-y R-e-m-p-e. I'm here on behalf of Nebraska Farm Bureau in opposition to LB585. And we're basically opposed as it is written. And first, I want to thank Senator Schilz for introducing the bill because I think this is an important discussion to have and it's a good discussion to have from time to time. And as he mentioned over the past and the history of this topic and this issue, we've had several discussion on it and I've been involved in it in a few times in the past so I'd be happy to try to answer any questions that you might have in regard to some of the past history. We do oppose this legislation as it's written because in our members' minds the last time we talked about this, they feel very strongly that you need to have some kind of a licensed professional engineer, or some kind of a licensed profession--geology or something like that would be happy to have that discussion as well. But because of the nature of the decisions that are made by the director and some of the technical expertise that is needed, they feel strongly that you have to have that be part of it. Having said that, I think part of what is at issue here is the role of the director and the department. And from the discussion that's already occurred, you can see that we're looking for somebody with a lot of different talents and skills and experiences. And I think we all share the goal...all of us want to try to find the best person possible for that job. I had the opportunity in...when then Governor-elect Johanns was elected and was making a change in the department, I served on a committee that worked with...it was kind of a recruiting committee that worked with the Governor on trying to find somebody for the DNR director spot. And we put together a list of ten qualifications that we thought were necessary for that position. And I'd be happy to share that with the committee. I never thought about it until I got here. But I found it and pulled it up and, of course, it has the engineering requirement, somebody brought the administrative duties of the department and manage and supervise that part, the experience in irrigation work, understanding the Nebraska hydrology, understanding of the water issues in Nebraska, understand the surface and groundwater and the different doctrines that they operate under, familiar with the interstate issues that Nebraska and the compacts that we're engaged in, familiar with state and federal agencies and requirements. Obviously, you got to understand Nebraska water law and all the changes that have been made there. And then, ultimately, be fair and objective in what they do and try to be open minded and hear everybody out. I share that with you because we're looking for somebody that has a lot of different skills and expertise and experiences. And the last time that we had this discussion, as I recall, there was quite a bit of discussion about when we merged the two we...back in 2000, we merged the Department of Natural Resources or Water Resources with the Natural Resources Commission. And you blended a regulatory

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function with a planning function and part of a function of going out and working with different entities on some of these water issues. And at that time, we were having a serious discussion about the professional engineer requirement and the licensing requirement and separating that out and the decisions that the director makes in terms of applications and some of the water rights things from some of the planning activities of the department and some of the other activities of the department and maybe there's a way to divide that out. I share that with you because that was part of the discussion we had then. If I recall correctly, the bill at that time, and I can't remember what shape or form it took, but it did get out on to the floor, but it was late in the session and because of it wasn't prioritized, it didn't go any further at that point in time. But there were some discussions at that point in time along those lines and I just share that with the committee. It might be something for this committee to think about or investigate further. And I did visit with Senator Schilz about that a little bit this morning along those lines as well. So with that I'd be happy to answer any questions from the committee. [LB585]

SENATOR FRIESEN: Thank you, Mr. Rempe. Any questions from the committee? I see none. Oh, Senator Johnson. [LB585]

SENATOR JOHNSON: One come up. You've been in this area a long time and worked on this particular issue. Has it ever been the feeling that we need to expand it because there's not qualified candidates? Or is it more that the changing arena...the changing structure of natural resource and more types of responsibilities? [LB585]

JAY REMPE: I think there's been a fear of both, to be honest. The concern about whether we'd have qualified candidates has always been out there. In my experience, while that concern has been there, it's never been a problem in the sense of not finding the right person for the job. I think because of some of the work that we've done in the past in reaching out and recruiting and working through channels we've been able to find very good candidates for the position. I think here in the last few years the...at least my recollection, the discussion has been more along the lines of the expanding role of the department and some of the changes that have been made with the merging the two. And Mr. Cookson earlier mentioned the integrated management activities, that's all new, came on since 2004. And all these different new things that we're asking of the department now and whether, frankly, are we asking too much of somebody in the role of a director in trying to oversee all these things. [LB585]

SENATOR JOHNSON: Thank you. [LB585]

SENATOR FRIESEN: Thank you, Senator Johnson. Any other questions from the committee? Thank you, Mr. Rempe. Any other opponents wish to speak? Welcome. [LB585]

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RON WOLF: Senator Friesen and members of the committee, my name is Ron Wolf, R-o-n W-o-l-f, here today representing the Nebraska State Irrigation Association. It's a group formed in the late 1890s directly to handle surface water and surface water issues...supply surface water to patrons. There's companies, public power districts, irrigation districts are our main members, and individual surface water users. I've seen this iteration to this bill several times. I've been working with surface water since 1973, if you don't count setting irrigation tubes starting in 1957 when we got irrigation. And bear with me because my public speaking experience was as a child on a 29-person party line. (Laughter) So it's tough to get a date now. We rely on the department in the main...one of the main reasons for the creation of this department was to administer and protect surface water rights. There's many other items that have been added, safety of dams issues which engineering, I'm sure, certainly helps on. And you've heard a litany of other duties. And I do know...it was mentioned here that there are no NRDs, I think it was in response to a question that had managers that would be qualified geologists, etcetera. I've never seen this question come up when there was a sitting director. It always seems to come up when that seat is open which raises my paranoia on who are they looking at? Is this a guided effort here? And we have found qualified and good ones in the past. And I think as Mr. Cookson said, we're way ahead of other states in the area. And I agree with him. And we've done that a lot under the direction of a professional engineer heading this department. I think...I've heard some suggestions on making this bill better. I'm an opponent of this bill as written. Senator Schilz introduced it as hoping to start a discussion and I'm all for that. If you're going to change the bill, let's put that the director, who is a professional engineer, is provided in the Engineers and Architects Registration Act have the authority to hire civil, hydraulic, hydrology. You can possibly satisfy all parties then. I would make that suggestion just for your consideration. We've worked with the department and have not always agreed with the decisions, but they are the court of first order. And we have found that the...seldom in the past have they taken actions that they could not explain to us why they were necessary. However, here of late, conditions have changed. The resource is still there, we're still utilizing the resource. The conditions under which we're using it and other factors have tended to bring problems more to the forefront. The Republican Basin comes to mind. I think the professional engineer to me is doable and we would like to offer to participate in a search team of varying interest, everything from environmental, we'd be willing to work to help find a professional qualified engineer. There are two applicants, I understand, for the position already who meet these present qualifications. They don't fit the Governor, maybe we need to help him take a look. I'm going to quit, the yellow light is on. [LB585]

SENATOR FRIESEN: Thank you, Mr. Wolf. [LB585]

RON WOLF: I will try to answer questions, sir. [LB585]

SENATOR FRIESEN: Any questions from the committee? Seeing none, thank you, Mr.

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Wolf. [LB585]

RON WOLF: Thank you. [LB585]

SENATOR FRIESEN: (Exhibit 4) Any other opponents wishing to testify in opposition? Seeing none, are there any wish to testify...oh, we have a letter to be entered in in opposition from Brad Edgerton, the Frenchman-Cambridge Irrigation District. Okay, seeing no others, anyone wishing to testify in the neutral capacity? Welcome. [LB585]

BRIAN BARELS: (Exhibit 5) Good afternoon. Vice Chairman Friesen, members of the committee, my name is Brian Barels, B-r-i-a-n B-a-r-e-l-s. I'm the water resources manager for Nebraska Public Power District. We operate an extensive system of transmission distribution and generation; are familiar with the natural resources, utilize both groundwater and surface water with our generating facilities and understand the value of this resource, not only today, but into the future for the state. I'm testifying in a neutral position regarding LB585 today. While the job qualifications for the director of the Department of Natural Resources have been discussed by this committee on a number of previous occasions, as has been mentioned by other testifiers, I believe that additional discussions and considerations are necessary by the committee before moving this bill forward. One suggestion with regard to the proposed language is that a professional certification or licensure may be more important than a Ph.D. It is that certification, whether it is engineering, geology, water planning, in addition to the education and experience that demonstrates the broad understanding and professionalism that Nebraskans are looking for in providing leadership for our natural resources into the future. Also, in LB585, lines 15 and 16 through Statute 61-202 would enable the director to employ a professional engineer. However, NPPD does not believe that to be adequate to meet the state's needs. NPPD recommends that this committee establish a position for a state water engineer in Nebraska. The position would be responsible for administration, monitoring, regulating, enforcement, and other proceedings regarding the appropriation of the waters of the state of Nebraska. This is the approach that at least eight other western states utilize in the administration of the senior appropriations doctrine in their states. Unfortunately, the changes to the statutes needed to implement this recommendation are much more extensive than that proposed in LB585. But NPPD believes a state water engineer, in addition to the DNR director, would provide the best direction for successful management of the state's water and natural resources into the future. The head of the department would be responsible for the overall leadership and planning for Nebraska's natural resources including water resources development for future sustainability, integrated management, water conservation, soils, and flood control. Attached to my testimony, I've provided some additional background information and a description of the qualifications and responsibilities of a state water engineer. In summary, the administration of the surface water appropriation system, in accordance with the doctrine of the prior appropriations and our statutes, remains a significant responsibility

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within the Department of Natural Resources. I would urge this commission to evaluate the department needs in a broader context and consider implementing the position of a state water engineer. I will be glad to answer any questions the committee might have. [LB585]

SENATOR FRIESEN: Thank you, Mr. Barels. Any questions from the committee? Seeing none, thank you, Mr. Barels. [LB585]

BRIAN BARELS: Thank you. [LB585]

SENATOR FRIESEN: Any others wish to testify in a neutral capacity? Seeing none, Senator Schilz, would you like to close? [LB585]

SENATOR SCHILZ: Thank you, Senator Friesen and members of the committee. First of all, I just want to thank everybody that came in today. Whether they were a proponent or opponent, every one that you saw come up here has been very involved in Nebraska water policy and Nebraska water issues for as long as I can remember. So what you saw here today as far as testifiers, not that it's all encompassing, but these are the folks that make water work in Nebraska. So their opinions are very...we should listen to them. And so I know we've got some differences out there, as we always do on this issue. And so with that...I mean, the main thing I want to do is thank everybody for coming in and for sitting down and honestly discussing the issue. That's the important thing. And now that leaves it up to us to take it back and mull it over, see if there is any credence to moving something forward and go from there. But if there's any other questions for me, I'd be happy to try and answer them. Thank you. [LB585]

SENATOR FRIESEN: Are there any questions from the committee? Seeing none, thank you, Senator Schilz. And that will wrap up our hearing on LB585. Thanks. I'll turn the Chair back over to Senator Schilz. [LB585]

SENATOR SCHILZ: Thank you, everybody. That will close our hearing for today and we will take a motion to go into executive session. [LB585]