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Natural Resources Committee
February 20, 2015

[LB412 LB413]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 20, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB412 and LB413. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Jerry Johnson; Rick Kolowski; John McCollister; and David Schnoor. Senators absent: Dan Hughes.

SENATOR SCHILZ: Good afternoon, everyone, and welcome to the Natural Resources Committee on a Friday. I'm Senator Ken Schilz, Chairman of the committee, from Ogallala, representing District 47. We have committee members present with us today and I will give them each a chance to introduce themselves, starting over here to my far left with Senator Kolowski.

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

SENATOR MCCOLLISTER: John McCollister, District 20, adjacent to Senator Kolowski's district.

SENATOR SCHNOOR: Dave Schnoor, District 15, Dodge County.

SENATOR LINDSTROM: 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 who had to take off, he had some things to take care of at home so he got out of here a little early. So he will not be joining us today. And also with us today, we have Barb Koehlmoos, who is the committee clerk for the Natural Resources Committee, and Laurie Lage, who is the legal counsel, and Jake Kawamoto, who is the page today. He is a sophomore who is studying political science at the University of Nebraska. Today, we have two bills on the agenda, LB412 and LB413. And if you're planning on testifying, please pick up a green sheet at either corner of the room. If you do not wish to testify but would like your name entered into the official record, there's a form on the table that you can sign as well, and then that will become part of the official record. Please fill out the sign-in sheet before you testify. Please print, and it's important to complete the form in its entirety. And when it's your turn to testify, give the sign-in sheet to the committee clerk and this will help us ensure a more accurate public record. If you do not choose to testify, you may submit comments in writing and

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have them entered into the official record as well. If you have handouts, please make sure you have 12 copies for the pages to hand out to the committee. And when you do 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 one. Please turn off any cell phones, pagers, any other devices that would make any noises. And please keep your conversations to a minimum or take them into the hallway if you must. We don't allow any displays of support or opposition to a bill, vocal or otherwise, so we would appreciate that if you don't shout out or anything like that. It's not acceptable here. We like to give the testifiers the respect they deserve and the opportunity to state their case. We do use the light system in the Natural Resources Committee. We will give everybody five minutes to testify. You'll have four minutes on green, one minute on yellow, and then when it turns red, that's five minutes, and we would like you to finish up your testimony. And we will...if it turns red and you still have some more to go on, we will...I will tell you that your time is up and then it's your duty to stop at that point and then we will see if anybody has any questions. And with that, we will go ahead and move on to Senator Mello. LB412 is the first bill up and you're welcome to open on that bill. Welcome to the Natural Resources Committee.

SENATOR MELLO: Good afternoon, Chairman Schilz and members of the Natural Resources Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. I'm here this afternoon to introduce LB412, a legislative bill that makes minor changes to our rural community-based energy development statutes, commonly referred to as C-BED. I'd like to start by giving some historical background for members of the committee who may be not as familiar with C-BED. Nebraska is a top five state in terms of wind energy potential. However, Nebraska continually ranks in the middle of the pack in terms of developing our wind...developing our actual wind potential. The original Rural Community-Based Energy Development Act was adopted by the Nebraska Legislature in 2007 in an effort to tap into Nebraska's renewable energy possibilities by encouraging the construction of renewable energy projects in Nebraska through sales tax exemptions on equipment. Projects could only qualify for the sales tax exemption if a certain percentage of the project's profits remained in Nebraska. The C-BED statutes were updated last year with the passage of LB402, a bill this committee heard in 2013 that I introduced, to further encourage renewable energy and local economic development by expanding potentially smaller projects to the opportunity to qualify for the sales tax exemption on equipment. The bill lowered the percentage of profits that's needed to remain in Nebraska. It expanded the type of facilities that qualified and broadened the definition of qualified owners, which allows more entities to count toward the qualifying percentage of in-state ownership. That brings us to the bill we have in front of us today because LB412 is simply a cleanup bill that addresses two problems that have arisen with the original C-BED process. Currently, statute states that the board of every county in which a C-BED project is to be located must pass a resolution of support before the C-BED project can move forward. For most counties in Nebraska, this is not a problem. However, a few counties do not require county level approval for any energy projects. Since these county boards do not have jurisdiction over any energy

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project requiring them to pass a resolution in support of a C-BED qualifying project, opens up an inconsistency in their authority. Accordingly, the first change that LB412 makes is to amend Section 70-1903 to state that only counties that have adopted zoning regulations requiring either a planning commission, a county board, or a county commission, to approve a C-BED project, need to pass a resolution in support of a C-BED project. Approximately 89 of Nebraska's 93 counties would still need to pass a resolution of support for a project to move forward. Second, the statute as currently written requires C-BED project developers to provide written notification to each property owner on whose property a turbine is planned to be placed and an opportunity to become a qualified owner. This means that a landowner must be offered the opportunity to participate in a C-BED project as a partial owner of that project. The problem is, is the current law doesn't define what an offer quote, unquote, is, and the only people notified are the landowners with proposed turbine sites on their property. Therefore, LB412 amends the notification requirement found in Section 70-1907. The updated provision would require that the notification clearly showed the incentives available with local ownership, and participation to potential participants in the C-BED project. It also require that notifications be sent to the elected governing boards of each municipality and political subdivision represented in the territory of the project, giving broader notice of the project and its potential benefits to the local community. Thank you for your time and I'd be happy to answer any questions you may have.

SENATOR SCHILZ: Thank you, Senator Mello. Any questions for Senator Mello? Seeing none, thank you for your testimony. At this point, we'll take proponents for LB412. Do we have any proponents? Good afternoon, Mr. Herink. Welcome. [LB412]

ADAM HERINK: Good afternoon, Chairman Schilz and members of the committee. My name is Adam Herink, A-d-a-m H-e-r-i-n-k. I represent Bluestem Energy Solutions, an Omaha-based company. Our firm has two C-BED approved projects currently, and we will be starting an application for another C-BED project here in the coming months. We have been strong proponents of the C-BED legislation historically. We've used it and we believe these two items in this bill help from an administration standpoint in counties without zoning, help getting the application process with the state. And the second issue of publicly, you know, announcing that there is a project will enhance the participation qualities of the bill which are important. So, we strongly support these amended changes. And with that, I would take any questions. [LB412]

SENATOR SCHILZ: Thank you, sir. Any questions? I was wondering, could you just kind of, if you can, and if you can't, I understand, could you just kind of outline the projects that you have out there that are the C-BED projects or where they are? [LB412]

ADAM HERINK: We did our first C-BED project in 2011 with the Nebraska Public Power District. We repowered a wind farm for them in Springview, Nebraska, and that was our first C-

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BED project. Last year, we did a project with the city of Valentine, Nebraska, and that was a C-BED project. We just executed a power purchase agreement with Loup Public Power District in Columbus, and that project we'd like to start construction this summer, and we'll start the application process for that C-BED project here in a month. Platte County is a county that doesn't have any zoning and so they just...they don't really...it's an awkward conversation because they're not in the position to publicly do anything. [LB412]

SENATOR SCHILZ: Right. And how much...excuse me. How much investment are you talking about for Bluestem and these various projects? [LB412]

ADAM HERINK: Any...you know, anywhere from \$5 or \$6 million up to \$20 million. [LB412]

SENATOR SCHILZ: I see. [LB412]

ADAM HERINK: Those are on the smaller size of our projects. We have a hundred megawatt development in Greeley County, and then we have a two or three hundred megawatt project in Cherry County. Those would be in the, you know, hundreds of millions of dollars in investment. [LB412]

SENATOR SCHILZ: Right. Thank you. Senator McCollister. [LB412]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. You anticipate increasing volumes of applications, or has it been fairly static, or how does it compare with previous years? [LB412]

ADAM HERINK: My opinion is based on the changes we made last year where we opened up the qualified owner definition where local companies could participate and count toward that, that percentage, I think that we will see more C-BED projects in the future. Maybe not specifically with these two issues, but what we did last year. These two issues are important for some other reasons, but I do foresee more in the future. [LB412]

SENATOR McCOLLISTER: When that occurs, do you get local investors? Is that how the process works? [LB412]

ADAM HERINK: As a developer, we use a local Nebraska-based company on our project that counts towards the percentage. Once we meet the certain percentage, we get the sales tax exemption. So it used to be a qualified owner was just a financial investor. That got opened up to Nebraska companies. So we would use a local gravel company, concrete company, that works towards that percentage. [LB412]

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SENATOR McCOLLISTER: What is the percentage? [LB412]

ADAM HERINK: It's 25 percent of the total project costs. [LB412]

SENATOR McCOLLISTER: Okay. Thank you. Information is great. [LB412]

SENATOR SCHILZ: Thanks, Senator McCollister. Any other questions? Senator Friesen. [LB412]

SENATOR FRIESEN: Thank you, Chairman Schilz. I was just wondering on the last page here, they...you used to offer the owner...or the...where a site was located, the property owner the opportunity to invest in the company and that's being taken out now. How many landowners, where you put a wind tower, do join in investment in the past? [LB412]

ADAM HERINK: To date, we have had no landowners or company invest in our projects. [LB412]

SENATOR FRIESEN: No one was interested. [LB412]

ADAM HERINK: You know, the relationship is as we go in and we lease their land and we give them a fair lease payment for the term of the project. What I have found is that's not a very risky situation for the landowner and that's an acceptable financial opportunity for them to take part, and we have offered the investment option. We haven't found anybody that was...you know, wanted to take that risk-reward situation. [LB412]

SENATOR FRIESEN: Did it cost much to do that to educate the landowner or to go out and to make that contact, or why would you take the language out if someone down the road might want that opportunity? [LB412]

ADAM HERINK: And I...so if a landowner wants to invest, that investment still works towards the percentage we need. We're not against that at all. We go...we...it's our job to have that conversation and educate the landowner. We actually want to make it more of a public statement where we post it at the, you know, local county level so everybody knows, local companies, landowners. Even if we didn't have a turbine on your land if you wanted to invest, we'd be open to that conversation. So in my mind, we're making it more public, where before I just had to draft one letter to a landowner and not tell anybody else what was going on. [LB412]

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SENATOR FRIESEN: Okay. You're opening it up, but I wondered why you excluded that portion of it. Okay. Thank you. [LB412]

SENATOR SCHILZ: Senator Johnson. [LB412]

SENATOR JOHNSON: Thank you, Senator Schilz. You're in Platte County. Other counties that are not zoned, have you had contact with, or are you looking at any of those other counties, or...? [LB412]

ADAM HERINK: We do have a development in Butler County and they don't have zoning either, so. [LB412]

SENATOR JOHNSON: Okay. I'm a little familiar with that. I had assumed that was still discussion. [LB412]

ADAM HERINK: Sure. Yep, definitely, so. [LB412]

SENATOR JOHNSON: Thank you. [LB412]

SENATOR SCHILZ: Thank you, Senator Johnson. Any other questions? Senator McCollister. [LB412]

SENATOR McCOLLISTER: Yeah, I'm unfamiliar with the process, so if I'm a farmer out in Cherry County and you want to put a tower on my property, how much income would I receive from that? [LB412]

ADAM HERINK: So, it varies as you move across the state. What I see is the more productive your ground is, the more rent usually a landowner gets. [LB412]

SENATOR McCOLLISTER: That's a function of topography? [LB412]

ADAM HERINK: Sure. Well, agriculture production. So if I can produce, you know, X amount of bushels of corn off an 80 acres, that rent might be more...would be higher than maybe pasture. [LB412]

SENATOR McCOLLISTER: Because you're taking ground out of production. [LB412]

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ADAM HERINK: Exactly. [LB412]

SENATOR McCOLLISTER: I see. [LB412]

ADAM HERINK: So, and, you know, it can range anywhere from \$2,000, \$3,000 up to \$7,000, \$8,000 per year for a turbine. [LB412]

SENATOR McCOLLISTER: Great. And the lease, how long is it? [LB412]

ADAM HERINK: Traditionally, the lease is for the term of the power purchase agreement. Those are usually in the 20 year range, so you need your lease to, you know, be parallel with your PPA. [LB412]

SENATOR McCOLLISTER: So at the end of 20 years, you've just taken down the tower? [LB412]

ADAM HERINK: You know, in all of our agreements, and I would say this is pretty standard, we have decommissioning language in that lease that explains who is responsible for what when the project is over. And in our leases, we need to go down and dismantle the turbine, take it down, and put the ground back to the way we found it. [LB412]

SENATOR McCOLLISTER: Thank you. [LB412]

SENATOR SCHNOOR: That answered my question. [LB412]

SENATOR SCHILZ: Good. Thank you, Senator McCollister and Senator Schnoor. Any other questions? Seeing none, thank you for your testimony today. [LB412]

ADAM HERINK: Thank you. [LB412]

SENATOR SCHILZ: Further proponents? Mr. Levy, welcome. [LB412]

DAVID LEVY: Thank you. Good afternoon, Mr. Chairman and members of the committee. David Levy, D-a-v-i-d L-e-v-y, registered lobbyist for Sandhills Wind Energy and testifying on their behalf today. Thank you for asking Mr. Herink all the difficult questions, get those out of the way. Sandhills Wind Energy is a four-year-old Nebraska-based company focusing on renewable energy development in Nebraska, primarily focused in Cherry County. First though, I

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want to thank Senator Mello for his work on C-BED and renewable energy. LB402, which he talked about from 2013 and which passed last year, was really critically important legislation and it made a well-intentioned statute much more effective. LB412 that you have before you today, as you've heard, provides some cleanup. Really, I think, you know, you've heard the testimony. Mr. Herink's answers were good. I don't need to repeat what's been said. Senator Friesen, your question about the offer, one other issue was the term "offer" in a statute is not necessarily clear. What is an offer? You know, what are the terms of the offer? Those aren't things really that are appropriate for a statute and so it was always not clear with the Department of Revenue, was that a good enough offer? Was that, you know, a real offer or what was it? So really the intent here was still to give the opportunities to invest, but to take out that sort of...that term that had proven to be difficult to administer. And as was said, it really...it will broaden the notice and broaden the opportunities for investment. So, with that, really, I don't have anything else. Thank you for your time and answer any questions. [LB412]

SENATOR SCHILZ: Thank you, Mr. Levy. Any questions? Seeing none, thank you for your testimony. [LB412]

DAVID LEVY: All right. Thank you. [LB412]

SENATOR SCHILZ: Next proponent. Good afternoon, Mr. Hansen. [LB412]

JOHN HANSEN: Good afternoon, Mr. Chairman and members of the committee. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n, and I appear before you today as the president of Nebraska Farmers Union. We have worked for a long time to get the C-BED authority established and then to try to continue to make it work better. The improvements that we made last year as the result of LB402, I think will help make it work better. These amendments are certainly okay with us. They're technical amendments. We wanted from the beginning, which is why the section was in there in the first place, relative to the counties was to make sure that we're working in concert with the counties and with their approval, and that we were going to places where we were welcome, and that things were appropriate, and as they should be. And so, this makes it clear what you do in the case of a county that doesn't have planning and zoning in place because that was not one of the things we thought about. And so, that's...we're good with that and the second section just helps make it more, I think, accessible and there's more public notice. It gives more local folks, local companies an opportunity to invest if they would so choose. And in our experience having worked in this area for some time, the economic development benefits of wind energy, as you part them out, there's the construction phase, there's the additional workers that you bring into the area, there's the direct benefit to the landowners in terms of easements, there's the indirect, all the support things that go on around the...both the development and the operation of the systems. But certainly, one of the primary

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beneficiaries of the economic activity is the ownership structure. And so, one of the advantages of the C-BED model is that it provides that opportunity for folks who want to be entrepreneurs and do that. And so, in our case, we have...myself personally, we have been a part of a C-BED project that was brought to the construction phase, was bought right before we started construction, but it was made up of all Nebraska landowners. It was a 40 megawatt project, so in ballpark terms, that's about \$70 million. And so, all of those landowners, including the landowners in the project who also got easement payments when that sale was made, they were in a position to take advantage of the proceeds. And so, and they got a percentage of the same amount of money they would have gotten had they owned the project and ran it for twenty years. So, the model itself is a way of trying to maximize the economic development benefits back to the community. I just...anything that we can do to try to help make that work better, if we're going to do wind, why wouldn't you want to do wind in a fashion that maximizes the economic development benefits to the rural community. And when our guys make money, they do not go to Barbados, they buy...they buy new equipment. They repair farm buildings. They fix up the house. They do all of those kinds of things and they reinvest in their community and in their farms and their ranches, and that's good for the rural economy and it's good for the state of Nebraska. And with that, I'll close my testimony. [LB412]

SENATOR SCHILZ: Thank you, Mr. Hansen. Any questions? Seeing none, thank you for your testimony. [LB412]

JOHN HANSEN: You bet. Thank you. [LB412]

SENATOR SCHILZ: Any other proponents? Seeing none, any opponents? Seeing none, anyone in the neutral capacity? Seeing none, would you like to close? Senator Mello wisely waives closing. (Laughter) So that will move us to our second hearing, LB413, and welcome back, Senator Mello. [LB412]

SENATOR MELLO: (Exhibit 1) Good afternoon, Chairman Schilz and members of the Natural Resources Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. I'm here this afternoon to introduce LB413, a bill that gives the Nebraska Department of Environmental Quality the authority to review the potential economic implications of proposed permits developed pursuant to National Pollutant Discharge Elimination System's federal regulations. Communities of all sizes across Nebraska are facing ever-changing water regulations from the Environmental Protection Agency. As we've heard over the past six years, these federal mandates often come with significant price tags for municipalities that must comply with them. Just last year the city of Omaha was compelled to issue another significant sewer rate increase on residents and businesses to assist in financing the \$2 billion federally unfunded mandated combined sewer overflow project. Even worse, during

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the permitting process for the project, the city of Omaha was not permitted to make a case to the federal government that the sewer rate increases used to finance the project would impose an undue hardship on ratepayers. LB413 seeks to provide a new mechanism through the Department of Environmental Quality for political subdivisions to request an evaluation of the affordability and economic impact of proposed permits. As political subdivisions in the state develop their permit applications, the evaluations authorized by LB413 will encourage consideration of the potential impacts that projects may have on their communities and their ratepayers. The staff of the Department of Environmental Quality, with their knowledge and expertise with federal regulations, will analyze the permit applications and collaborate with municipalities to avoid undue or unsustainable financial hardship, while complying with infrastructure improvement requirements. LB413 gives both large and small communities alike another tool to be able to make strategic cost effective and affordable decisions regarding water projects and their compliance with federal regulations. As drafted in the green copy of the legislation, the fiscal note attached to LB413 shows an estimated \$370,000 General Fund impact over the biennium. In an effort to reduce this General Fund impact, I've provided the committee with AM474. The amendment...the first change in AM474 replaces the word "shall" with "may" on lines 14 and 21 of page 22 of the bill. This correction provides flexibility for the municipalities requesting the evaluation and even more flexibility to the Department of Environmental Quality in undertaking the requested evaluation. The second change in AM474 creates a process for municipalities requesting the evaluation to pay the actual costs of the evaluation. This would mirror existing state statute regarding the Remedial Action Plan Monitoring Act. Municipalities would be charged no more than a \$5,000 initiation fee for the evaluation. It would make further payments if the costs of the evaluation exceeds that initial payment. To ensure smaller villages and cities can afford to request an evaluation, the amendment gives the Department of Environmental Quality the ability to develop rules and regulations to allow for a sliding rate scale in a reasonable community hardship exemption. If adopted, AM474 will significantly reduce the bill's General Fund impact and will likely change the funding source from General Funds to cash funds. Colleagues, LB413 is a commonsense regulatory flexibility proposal that will not only assist the city of Omaha in their ongoing challenges with the \$2 billion...\$2 billion federally mandated sewer project, but every community in Nebraska who must be in compliance with the EPA's National Pollutant Discharge Elimination System. Following me, you'll hear supporting testimony from the city of Omaha and the Metropolitan Utilities District. And the committee should have also received letters of support from the League of Municipalities, the Omaha City Council, the Omaha Mayor, the city of Lincoln, and the city of Grand Island. Thank you for your time and I'd be happy to answer any questions you may have. [LB413]

SENATOR SCHILZ: Thank you, Senator Mello. Any questions? Senator McCollister. [LB413]

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SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. This flexibility, is the EPA going to allow us to have that flexibility? [LB413]

SENATOR MELLO: Actually, they will to some extent, Senator McCollister, because the EPA provides regular guidance to states, essentially state department of environmental qualities across the country that give this kind of flexibility and allows the states to take that in consideration when issuing these permits. So, as long as we allow the Department of Environmental Quality to take into consideration that EPA guidance when they're issuing permits and being able to do an evaluation of the economic impact of some of the specific components we put in the bill, the EPA will also consider that as well since they're the ones who are giving the guidance, actually, to the states. [LB413]

SENATOR McCOLLISTER: And it indicated there's about 50 applications that occur a year. Is that accurate? [LB413]

SENATOR MELLO: That would...you know, the Department of Environmental Quality's fiscal note gave kind of an estimate, give or take. I'm trying to pull that out here. They estimated 53, give or take, a year, could request the department to do this evaluation. So that was their general estimation of looking at cities, both large and small, that may want to take advantage of this flexibility in the bill. [LB413]

SENATOR McCOLLISTER: So what you're saying, is it's about a \$4,000 laboratory test? [LB413]

SENATOR MELLO: No, I can't say that, Senator McCollister. The way we've looked at it, each...with the amendment, the bill becomes a little bit different in the sense that it gives flexibility for the city to ask for certain components to be evaluated, but it also allows the Department of Environmental Quality flexibility to be able to make determinations. If they already have some information on some of those specific requests available, they then don't have to already do a duplicative analysis, so to speak. They're able to take each individual application and each individual evaluation that may be requested and tailor that instead of saying, we've got to do all seven of these components that were originally drafted in the green copy of the bill. It says, instead, let's say city of Exeter, we're only going to do these three evaluations based on other information and other analysis the department already has, thus saving the city the money that it would cost them to do the evaluation as well. [LB413]

SENATOR McCOLLISTER: Thanks, Senator. Thank you, Mr. Chairman. [LB413]

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SENATOR SCHILZ: Thank you, Senator McCollister. Senator Johnson. [LB413]

SENATOR JOHNSON: Thank you, Senator Schilz. Thank you, Senator Mello. On the fiscal note, when I was involved with some discussion dealing with regulatory agencies, they did not have the expertise to do some of this, and I see the contractual end of it here is \$80,000. Who do they contract with and what does that bring to the table? [LB413]

SENATOR MELLO: You know, Senator McCollister, I thought was going to ask that question, (laughter) and he didn't, but I'm glad you did, Senator Johnson. The Department of Environmental Quality in theory through their fiscal note and kind of some general research we've been able to do, is that they anticipate possibly needing to contract with economists to be able to do some of the economic impact analysis that comes with requesting these permit fees, or requesting these permits, and taking into consideration the economic impact that the financing those permits may have on ratepayers or the cities themselves. The caveat is still with the fiscal note. With the adoption of this amendment, it changes the financing mechanism so the state will not be paying General Funds for this. The cities themselves, if they want an evaluation, essentially will be the ones paying for that evaluation because it should, in theory, assist them of reducing their costs of the projects that they're requesting a permit for by being able to take into consideration added components of economic hardships and the affordability of the projects moving forward. [LB413]

SENATOR JOHNSON: One thing I guess I appreciate this accomplished, at least, gets them to confess that they don't know the economics. (Laughter) [LB413]

SENATOR MELLO: To some extent, yes. The department...now, I would probably tell you to some extent that the department will probably...would probably tell you that they've got...they have some analysis that they have contracted out before with other universities that have helped kind of provide some foundational research, and some foundational analysis, where it comes to some of these water permits as they're able to move forward. But purely the economic impact components, to that extent they've listed in the fiscal note that they would likely want to contract that out if a municipality is going to be requesting that information. [LB413]

SENATOR JOHNSON: Thank you. [LB413]

SENATOR SCHILZ: Thank you, Senator Johnson. Senator Friesen. [LB413]

SENATOR FRIESEN: Thank you, Senator Schilz. Senator Mello, are there any other organizations, groups, businesses, that have to apply for NPDES permits? [LB413]

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SENATOR MELLO: I'm not aware...I'm not aware off of the top of my head, Senator Friesen. I mean, and this bill specifically had been focused and I think with some of the returning members know, I spend most of my time dealing with these permits with the city of Omaha and the sewer separation project, which really was the impetus behind LB413. I'm sure there may be some other testifiers who would probably be more familiar whether or not individual businesses need to apply, or individual property owners may need to apply for those permits. But the way we have the bill drafted, it really is focused mostly just on political subdivisions, though, can request this evaluation as part of their permitting process. [LB413]

SENATOR FRIESEN: Right. Okay. Thank you. [LB413]

SENATOR SCHILZ: Thank you, Senator Friesen. Any further questions? Seeing none, thank you, Senator Mello. [LB413]

SENATOR MELLO: Thank you. [LB413]

SENATOR SCHILZ: We'll move now to proponents for LB413. Good afternoon and welcome. [LB413]

MARTY GRATE: (Exhibits 2-6) Good afternoon, Chairman Schilz. My name is Marty Grate, M-a-r-t-y G-r-a-t-e, and I work for the city of Omaha. I'm the city's environmental services manager and I provided your assistant here with letters of support from the mayor, a resolution from our city council, a copy of the letters of support from the city of Lincoln and the city of Grand Island, and the Nebraska League of Municipalities for this bill. And my main intent today was not to bury you with dialogue, but rather to answer the question which I've been getting recently from people that have read this bill and said, what is this really all about? And what it really is all about is that recently, in the last year, there has been a lot of federal guidance documents that put out that say, you know what, we get it that some of these regulations are overly burdensome on communities and we want to have established an open dialogue about what's realistic, what's common sense, where's the cost benefit, and how fast can we do these things. And what it boils down to is, it's a matter of, you know, something's got to give. It's either more time, another source of money, which we're not asking for under this bill, or a question of what is the target that we're shooting at. But the dialogue has to occur and the federal government at least in terms of talking, is open to that. And so the intent of this bill is very fundamentally just to authorize and encourage the Nebraska Department of Environmental Quality as the delegated authority of the Clean Water Act in Omaha...or in Nebraska, to embrace these philosophies and let's see what we can do in terms of sitting down and making sure that as we improve water quality, which Omaha is under a consent order with the state to invest \$2 billion to do that, to make sure that these expenditures are going to improve the quality of life for

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our residents as opposed to imposing burdens that are counterproductive to the overall quality of life. That's the fundamental reason for this bill. Again, I didn't come here to preach to you, but I want to make it very clear that this is not a request for funds and that really what it's trying to do is to allow the Department of Environmental Quality in Nebraska to embrace the kind of changing guidance and philosophy that EPA is exposing and allow us to have the conversation. Recently, Omaha elected officials passed an ordinance that extended significant rate increases through the year 2018. Senator, you asked about, you know, who are the people that do this sort of forecasting and what we can afford and what we can't. We recently...as part of our rate study, hired the University of Cincinnati who has what's called an Economic Center, to actually study the city of Omaha, and what we can afford and what we can't. And what they told us was that the rate increases that were approved by council, we had a pretty poor case to go back to the regulatory authorities and say, we can't afford this. But what they recognized was two important things. One was, that even right now, when you look at north Omaha as a federally defined poverty area, that in that federally defined poverty area, there is a hardship with the rate increases. And just to put it in perspective, if you took that area and picked it up and moved it 50 miles outside of Omaha, in another area, it would constitute the fifth largest city in Nebraska. So we're not talking about a small population here that's under hardship. And what they said that is, by the end of our program if we continue at this pace, the entire community will reach that high burden category. And so we need to have an opportunity to have a dialogue and figure out how we're going to work this out and exercise all of the flexibilities that we can garner. And with that, I'd answer any questions. [LB413]

SENATOR SCHILZ: Thank you, sir. Any questions? Senator McCollister. [LB413]

SENATOR MCCOLLISTER: So, are these continuing applications or is it a one-time discharge? So, for example, the city of Omaha would make an application and it's for the discharge for a year or is that the way it works? [LB413]

MARTY GRATE: You know, there are actually several documents that constitute kind of our compliance order. We've got the consent order that says that we must make improvements to improve water quality by 2027. But within that, there's actually the NPDES permits and those operate on a five-year cycle. And we've got a long-term control plan that's updated with each cycle. So those are kind of the three salient documents that are involved here and we're just at a place where we're updating that cycle that will take us through a commitment of 2020. And our rate cycle right now takes us through 2018 with enough funds to accomplish what we kind of have committed to. But we need to start right now talking about, what do we do beyond that because when you look at the consumer price index, typically the economist experts tell me, because I'm not an expert, but you plan on 3 percent. Well, utilities in general are 6 percent and what we need is 9 percent. So we're outpacing definitely the consumer price index and even the average national index for utilities. And 9 percent is not sustainable through 2027. [LB413]

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SENATOR McCOLLISTER: You're talking about consumer rates for sewer service. [LB413]

MARTY GRATE: The residential sewer rates, yes, sir. [LB413]

SENATOR McCOLLISTER: Okay. What I was asking about, what's the nature of the discharge test? Do you chemically analyze the discharge that you make? [LB413]

MARTY GRATE: The...you know, there are certain pollutants in wastewater and that's the heart of the combined sewer overflow program is that untreated wastewater discharges to the Missouri River. And the key indicator is bacteria, or E.coli. And the public health threat with that is the idea that all the streams should be fishable and swimmable. And currently, ours don't meet that standard. But one of the things that we need to bring into the dialogue is that our computer modeling suggests that by 2018, when we get to the next rate cycle, we will have spent a third of our \$2 billion commitment and achieved two-thirds of the water quality improvements that we're committed to. And so then it starts to beg the question of cost benefit. How much more do we spend and what do we get for it? And I think that's the open, honest, community dialogue that we need to have with our state regulators as to when's enough, and oh, by the way, there are other regulations that are looming right out there that could come in and compete for these same pool of funds. And what's the real priority? Where's the cost benefit? And how do we make sure that we're being good stewards of the public's money? [LB413]

SENATOR McCOLLISTER: Well, thank you, Marty, and thank you, Mr. Chairman. [LB413]

SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? Seeing none, thank you for your testimony. [LB413]

MARTY GRATE: Thank you very much. [LB413]

SENATOR SCHILZ: Further proponents? Mr. Kubat, welcome. [LB413]

RICK KUBAT: Thank you, Senator Schilz and members of the committee. My name is Rick Kubat, R-i-c-k K-u-b-a-t, here today on behalf of the Metropolitan Utilities District of Omaha to testify in support of LB413. MUD is a political subdivision of the state and we provide potable water and natural gas to roughly one-third of our state's residents, or just over 600,000 citizens. LB413 is a commonsense solution to assure expenditures of public funds are prioritized to meet multiple EPA environmental mandates, and at the same time, that the affordability of our state's residents are taken into consideration. This committee has heard about the financial consequences of the EPA's mandates on the city of Omaha in terms of their combined sewer

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overflow project. It should be noted that NPDES, or National Pollutant Discharge Elimination System permits also have significant financial consequences on ratepayers statewide in terms of delivering potable water. MUD is subject to similar federal mandates in terms of NPDES permits in terms of solid removal for post-water treatment by-products. Compliance issues for NPDES permits can cost tens of millions of dollars for MUD and other political subdivisions to comply with. In terms of MUD and the city of Omaha, this is in addition to the increase in sewer fees necessary for Omaha to comply with the EPA's mandated CSO project. MUD bills mutual constituents for the city of Omaha's sewer fees and we remit those collections back to the city of Omaha. We essentially act as the bill collector for the city of Omaha in their sewer fees. On top of that, we bill for the cost necessary to deliver potable water. LB413 would give the NDEQ the additional information necessary to prioritize environmental objectives and at the same time, take into consideration the financial capability of the public to pay for multiple compliance issues. Thank you for your time today and I'll do my best to answer any questions that you might have. [LB413]

SENATOR SCHILZ: Thank you, sir. Any questions? It looks like you lucked out. Thank you for your testimony. [LB413]

RICK KUBAT: Thank you. [LB413]

SENATOR SCHILZ: Any other proponents? Good afternoon, sir. [LB413]

LORAN SCHMIT: Good afternoon, Senator and members of the Natural Resources Committee. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I appear here today in support of LB413. I'm pleased to hear the report that the federal government is now encouraging the local NDEQs who attempt to find more reasonable solutions to some of the proposals that are emanating out of Washington. In the past, it was my understanding, and I've worked with it for a number of years, that we were not allowed to consider the cost of implementation of a new federal rule and whether or not it was to be enforced or not. I believe that the local NDEQ will appreciate having this encouraging language in this statute and if, in fact, there is encouragement coming from Washington, that they will attempt to make the thing work better. I just want to raise one question. There has been some concern in the past about the prompt action, or the lack of prompt action, at a local level on these permits, and so if someone testifies on behalf of the agency, you might raise the question as to whether or not they have sufficient personnel in house to handle these permits in a reasonable amount of time. Frequently, permit applicants are subjected to additional costs, and unreasonable delays because permits have not been handled promptly. With that, Mr. Chairman, I would answer any questions. [LB413]

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SENATOR SCHILZ: Thank you, sir. Any questions for Mr. Schmit? Seeing none, thank you very much for your testimony. [LB413]

LORAN SCHMIT: Thank you. [LB413]

SENATOR SCHILZ: Further proponents? Seeing none. We do have two letters of support. One from Lynn Rex of the League of Nebraska Municipalities, and one from Miki Esposito from the city of Lincoln. Do we have any opponents? Any opponents? Seeing none. Do we have any neutral testimony? Seeing none. Senator Mello once again waives closing and with that, we'll close the hearing on both bills and the hearing for the day. Thanks everyone for coming in and we will take a quick Exec Session.