

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 30, 2019

HUGHES: I see according to my phone it's 1:30. Welcome to the Natural Resources Committee, I'm Senator Dan Hughes. I am from Venango, Nebraska, and represent the 44th Legislative District. I serve as Chair of the committee. The committee will take up the bill that is listed for today. Our hearing today is part-- your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing, that is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the front row of chairs when you are ready to testify, just to facilitate keeping things moving quickly. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print, and it is important to keep-- complete the form in its entirety. This-- when it is your turn to testify, please give the sign-in sheet to a page or the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today, but would like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign in for that purpose. This will be part of the official record of the hearing. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify. They will be distributed to the committee. When you come up to testify, please speak clearly into the microphone. Tell us your name, and please spell your first and last name to ensure that we get an accurate record. We'll be using the light system for all testifiers today. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining. The red light indicates your time has ended and you need to wrap up your testimony. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves starting on my left.

MOSER: Good morning, I'm Mike Moser, District 22, Platte County, Stanton County, and some of Colfax County.

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HALLORAN: Good afternoon, Steve Halloran, District 33, which is Adams County, southern and western Hall County.

QUICK: Dan Quick, District 35, Grand Island.

GEIST: Suzanne Geist, District 25, east side of Lincoln, and includes the town of Walton and Waverly as well.

HUGHES: And on my right.

GRAGERT: Tim Gragert, from 40th District, northeast Nebraska, Cedar, Dixon, Knox, Holt, Boyd and Rock.

ALBRECHT: Joni Albrecht, I represent District 17, Thurston, Dakota, and Wayne County. Northeast, sorry.

BOSTELMAN: Bruce Bostelman, District 23, Saunders, Butler, and majority of Colfax Counties.

HUGHES: To my left is committee counsel, Laurie Lage, and to my far right is committee clerk, Mandy Mizerski. Our pages for the committee today are Noah Boger, he is a freshman at UNL with a double major in political science and French; and Hunter Tesarek, is a sophomore at UNL with a double major in history and political science. With that, I will turn it over to the vice chairman.

BOSTELMAN: Thank you, Senator Hughes. Senator Hughes, please open on LB302.

HUGHES: Thank you, Vice Chairman Bostelman, members of the Natural Resources Committee. My name is Dan Hughes, D-a-n H-u-g-h-e-s. I represent the 44th Legislative District. I am pleased-- here today to introduce LB302 on behalf of Governor Ricketts. LB302 will merge the State Energy Office into the Department of Environmental Quality. The combined agencies will be renamed the Department of Environment and Energy effective July 1, 2019. This bill will transfer all statutory power, and duties, and responsibilities, and obligations, employees, and funds of the State Energy Office to the Department of Environment and Energy. The director of the Department of Environmental Quality will remain the director of the merged agency and will administer all merged programs and funds. Most of the bills, most of the bills, more than 200 pages, are to facilitate the merger. There are two additional things the bill does, does that are not related to the merger. One, the bill repeals the section that authorizes the Environmental Quality Council to adopt rules and regulations for the Plastic Container

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Coding Act. This duty is no longer necessary due to national industry practices on plastic container coding for recycling. Two, the bill authorizes the Department of Environment and Energy to develop a program for possible adoption by the Environmental, Environmental Quality Council for the issuance of 404 permits under the federal Clean Water Act. The permits relate to the discharge of dredged or filled material into waters of the United States. Currently, the program is administered by the U.S. Corps of Engineers and the federal EPA. Federal regulations allow the delegation of this authority to states if they meet certain criteria requirements. Director Macy is here to explain the bill, so I will stop here, and I will be happy to try and answer any questions that you might have.

BOSTELMAN: Thank you, Senator Hughes. Committee members, do you have any questions? Seeing none, going to ask for any proponents to please step forward. Good afternoon. Welcome.

JIM MACY: Good afternoon, Senator Bostelman and members of the Natural Resources Committee. My name is Jim Macy, spelled, J-i-m M-a-c-y. I'm the director of the Department of Environmental Quality and the interim director of the Nebraska Energy Office. I'm here today to testify in support of the LB302, a bill introduced at the request of the Governor. This bill will make state government services more efficient, effective, and customer focused. I especially want to thank Senator Hughes for introducing this bill. There are three parts to LB302. The first, merges the State Energy Office into the Department of Environmental Quality. The bill renames the agency the Department of Environment and Energy to better communicate the agency's expanded priorities. The two agencies currently have a number of related functions and similar services which would be enhanced for Nebraskans by combining efforts to make a long-term strategic view towards protecting the environment and promoting energy efficiency policies. Here's some examples of the benefits we can realize by combining the agencies, including the Energy Office in the process improvements that we have at the Nebraska Department of Environmental Quality have, have made to utilize technology and modernize services that we provide. In recent years, the Department of Environmental Quality has improved its delivery of services electronically and eliminated many of the paper processes in the agency. By providing electronic submission of applications for certain permits and grants and providing electronic access to public documents, we have eased the burden to both the public and regulated community. This approach has provided faster service and reduced delays for our customers. Similar efforts are

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being pursued by the Energy Office which will be able to benefit from NDEQ's experience, staff expertise, and assistance. Merging the two agencies will create a greater depth in staffing and minimize duplication of jobs. Approximately 40 percent of DEQ staff and 70 percent of Energy Office staff are projected to be within five years of retiring. Both agencies have staff performing similar functions, such as human resources, fiscal management, information technology support, and records management. Merging the agencies provides an opportunity to proactively address these future staffing needs through cross-training and succession planning, so state services remain consistent and uninterrupted during staff transitions. The department can provide the Energy Office, comprised of 15 full-time employees, the benefit of shared administrative resources and fiscal records management, human resources to support the Energy Office staff, and can continue to focus on the essential work of their programs. Equally important in combining the agencies, leverages the expertise and knowledge of our employees to improve the delivery of environmental and energy programs and policies statewide. An example of this improved delivery of services in the future comes to mind, both, both agencies currently provide low-interest loans that help improve the environment. DEQ has the Linked Deposit Program, and Energy Office has the Dollar and Energy Savings Loan Program. While the programs differ in application, they tend to be used by the same banks and the same customers. We can expend our efforts to promote and market these programs to even more potential applicants with existing resources. The second part of LB302 allows the department to assume the functions of the federal Clean Water Act, Section 404, dredge and fill rules, and authorizes the Environmental Quality Council to adopt regulations. This authority is needed for DEQ to evaluate the feasibility of assuming authority to enforce the Clean Water Act from the Environmental Protection Agency. Section 404 of the Clean Water Act establishes a federal permit program administered jointly by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency for dredging and filling activities that could impact waters of the United States. Nebraska Department of Environmental Quality already reviews these sect-- these federal Section 404 permits now for compliance with state water quality standards. Federal law allows this 404 program to be delegated to a state that has adopted a comparable program under state law. State assumption of the Section 404 program could reduce the overlap and duplication of effort between the Corps of Engineers and the state and streamline the permitting process. This would reduce the amount of time it takes to get a permit and accelerate job creating economic development and infrastructure

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projects across the state while protecting water quality. The department will conduct a detailed analysis as a part of any regulatory action to determine the costs and benefits of pursuing assumption with the federal program. Any decision on adopting the Section 404 program would require regulatory action by the Environmental Quality Council and a return to this Legislature for any needed funding decisions at a later date. Finally, the bill repeals the requirement for the Environmental Quality Council to adopt regulations to carry out the Plastic Container Coding Act. State regulation is no longer necessary due to standard national industry practice on plastic container coding for recycling. In summary, this bill merges the two agencies of state government to realize efficiencies and economies in administration and service to customers. It allows the department to begin considering the assumption of federal Clean Water Act, Section 404 dredge and fill program. A process that will involve a dialogue with many stakeholders and the Environmental Quality Council, and it repeals unnecessary regulatory language that is obsolete. This concludes my testimony. I want to thank you, and I would be happy at this point in time to answer any questions that you might have.

BOSTELMAN: Thank you, Director Macy. Are there any questions from committee members? Question I would have on the 404 dredge and fill rules, could you give me some examples of how that applies-- where that would apply to?

JIM MACY: Sure. So as, as we work with our municipalities in, in-- if it's a water line project that they may have to advance a water line to a new area of the community, a new subdivision, and there were waters of the United States of, of a wetland or a stream crossing, that community would have to get a 404 permit to exce-- excavate and, and develop that permit activity.

BOSTELMAN: Does this have any-- does 404 funding-- and I just don't know, have anything to do with the work that NRDs are doing with construction dams, those type of things?

JIM MACY: The, the, the NRDs do have to get a 404 permit any time that they deal with a, a land issue, a dredge and fill activity that would be close to waters in the United States.

BOSTELMAN: Sure, my understanding is, working a lot with the NRD in my district, is that sometimes that can be a lengthy process, extended

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process, and I guess, I would hope that we would see a, a more streamlining process or quicker return out of this.

JIM MACY: That, that would be our hope also. We, we think that there are many efficiencies that can be made by allowing us to at least review this work and, and see how we can make this better and, and still protect the environment and make decisions that would offer a, a quicker return to communities and, and folks that, that want to work in Nebraska and, and protect the environment.

BOSTELMAN: OK. Any other questions from the committee? Seeing-- oops, sorry, Senator Moser.

MOSER: I was just gonna ask about whether you feel that with this combined agency that all the safeguards that need to be done by this agency, is it gonna compromise the oversight of any of the different departments? I mean, before did Energy and the other departments sometimes supervise each other, and so when you combine that, are the, you know, the sheriff going to be looking to see whether his deputies are doing things right? I mean, are we gonna have-- I don't know, I think you understand my question.

JIM MACY: I, I do. So the Department of Environmental Quality, largely as a regulatory agency that, that also has grants and loans programs-- each, each year and on five-year cycles we, we through our delegated process with the Environmental Protection Agency have a, a, review of our operations so that we maintain that delegated authority. DEQ does not oversee the Energy Office, but we do have combined areas where we, we both work together on, on, on issues that are of similar interest. I, I don't think combining the agencies will diminish the role of, of either agency and it can, in fact, enhance that role because again we are, we are looking at between 40 and 70 percent of our staff nearing retirement and, and we have to develop a, a system that sustains a succession plan to ensure these services are-- that are vital to Nebraskans remain a quality service.

BOSTELMAN: OK, thank you. Are there any other questions from committee members? Senator Halloran.

HALLORAN: Thanks for your testimony. Is there-- you mentioned several positions that possibly would be due for retirement in four or five years?

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JIM MACY: Yes.

HALLORAN: Is it, is it necessary to wait for retirement-- I understand that might make the process easier but it-- will there been a need to wait for retirement to maybe relieve some of those positions for the sake of cost efficiency?

JIM MACY: So we can, we can gain cost efficiency areas in, in like the human resources management and the fiscal areas where we have some vacancies right now in, in the NEO office. But right now, I believe that we need to retain staff to affect a very smooth and, and logical transfer of, of information from staff that have been in these jobs for 20 or 30 years that have a lot of technical knowledge and are, are able to help train maybe a successor in DEQ that could help manage those programs in the future.

HALLORAN: Understanding the need for a smooth transition, but would there-- once that's achieved, would, would there be any-- anything stopping you from expediting relieving excess employment if-- once, once everything transition smooth now?

JIM MACY: I, I understand that we, we do that currently in DEQ. Every time we have a position vacant we evaluate the, the need for that position and, and, and try to make those vacancies and, and positions fit the, the needs of the organization.

HALLORAN: OK, one quick question-- additional question. Was there any-- was there-- was it a flip of the coin or was it arm wrestling to determine whether it was inner-- environment and energy or energy and environment?

JIM MACY: We, we believe that, that provides a, a great explanation of, of the role of both agencies. And, and a--

HALLORAN: I forget who it was-- happened-- Costello--it's the old joke about who's on first and what's on second, and, and it may seem a silly question, but sometimes people look at something and, and draw a conclusion that, that there's a priority, one over the other, and I just wondered how that was achieved. Just combined the two?

JIM MACY: We're just-- this is a bill to merge the two agencies and, and gain some efficiencies.

HALLORAN: Thank you.

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JIM MACY: Thank you.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you. Just one quick question, in the fiscal note-- so the director and deputy director will go right away? That's money that's gonna be saved right away?

JIM MACY: Yes.

GRAGERT: OK, thank you.

BOSTELMAN: Any other questions from committee members? Seeing none, thank you, Director Macy, appreciate your testimony.

JIM MACY: Thank you.

BOSTELMAN: Next proponent, please. Welcome.

DAVID BRACHT: Good afternoon, Chairman Hughes and members of the committee. My name is David Bracht. For the record, spelled D-a-v-i-d B, as in boy, r-a-c-h-t. I'm testifying today in support of LB302, testifying on behalf of myself individually and certainly in part based on my prior role as, the immediately past year, director of the Nebraska Energy Office from January of 2015 to August of 2018. Before addressing LB302 specifically, though I'd like to take just a point of personal privilege and, and first say thank you to, to you, Chairman Hughes, and, and the members of the committee, and both current and past members, and to staff of the Natural Resources Committee. I really appreciated the working relationship we had with the Energy Office and with the committee while we were going. Also, I'd like to take this opportunity to publicly express my appreciation to Governor Ricketts for providing me the opportunity to be the director of Energy and a part of his administration and a member of his cabinet. This is the third time during my career that I've had an opportunity for public service, and I was grateful to play a part in our government process and very much enjoyed working with the Governor and, and his staff and, and all of my colleagues in the administration. Finally, I want to express my thanks and my admiration to the staff of the Nebraska Energy Office. As I'll discuss shortly, I had a small staff at the Energy Office, but without exceptions they were really talented and hardworking earnest individuals. And during my time as director, I was constantly impressed on how diligently and dedicated they were to accomplishing the mission of the, of the Energy Office. I'm afraid

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that our public discourse today sometimes overlooks and disregards really the contributions of government employees, but it was something I really saw every day. So now to LB302, as former director of the office, I fully support the proposed merger of the Energy Office and the Nebraska Department of Environmental Quality for the reasons that I'll detail shortly. I believe that the combined agency will have the resources and capabilities to achieve the Energy Office's mission both efficiently and with a high level of customer service that I, I know that Governor Ricketts and all of us want to provide the citizens of the state of Nebraska. There are three key factors that support the merger of the Nebraska Energy Office and the Nebraska Department of Environmental Quality. First, as part of a larger organization there will be opportunities for greater efficiencies and particularly among the administrative functions that Director Macy has mentioned. For one example on my own part in early 2017, the person serving as the NEO or Nebraska Energy Office legislative director and public information officer left to join the staff of Congressman Bacon. And currently that person is the communication director for con-- for the congressman. A very talented person and, and is doing quite well. I was happy to see her achieve such a great position. We chose not to fill that position for budget considerations and, and probably in part it was something that I had some experience in and so I could, could fill some of that role, but I'm more than confident that the PIO and the legislation functions for the Energy Office and the Energy Office programs can be accomplished very effectively by the Department of Environmental Quality staff that are currently doing those functions. Also considering the nature of the agencies, there's gonna be potential synergies be some-- between some of the functional areas and the programs of the combined agency. Director Macy already mentioned the loan program, the Dollar and Energy Savings Loan Program has been operated by the Nebraska Energy Office for over 25 years and it's really gained a national reputation. I know that their-- the Department of Environmental Quality Program-- Loan Program has a very good reputation as well, but I think there's some real opportunities there for synergies that will really allow a broader agency perspective to, to accomplish things. Another example of that, that I think is one that has a direct impact on, on our rural communities would be that both NEO and, and the Department of Environmental Quality has programs to improve the operation efficiency of our rural wastewater facilities and that'll be an opportunity, I think, to combine those two or really take into account on energy and environmental quality. Second, while I believe that the Energy Office has been very effective and impactful in fulfilling its mission, as a

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small agency the Energy Office certainly had resource limitations. The combination of the agencies is going to allow for more resources to achieve the Energy Office mission through the efficiency and synergies I mentioned. And I think the broader agency perspective will, will certainly help achieve the mission of the Energy Office as well. The third, and most significant point, is also one that relates to the Energy Office's small size, and was one that the director of-- that Director Macy has already mentioned. When I left the Nebraska Energy Office, the Energy Office had a staff of 16 individuals plus the director, myself as the director, and the deputy director position which was vacant had been relatively recently vacated, had a total of 17 and a half FTEs. Of the 16 remaining staff, 8 are eligible for retirement right now. Of the remaining eight staff, the other two-- only two will be eligible for-- only two are more than eight years away from being eligible for retirement. So we really have-- and that was a succession issue was a big issue for the, for the Nebraska Energy Office. And as Director Macy mentioned, with each retirement we were losing staff that had 10, 20, 30, and, in fact, sometimes 40 years of experience, and so that really made quite a difference.

BOSTELMAN: Mr. Bracht, we need to wrap-up please.

DAVID BRACHT: Sure. That problem was highlighted last year and, I think, it goes to the point maybe a little bit of what you were saying, Senator Halloran, is that last year the deputy director who had to retire somewhat earlier than he expected, although he had been at the agency for 33 years and had a great deal of experience, in fact, had written the loan program, the experience of having to reassign those duties really highlighted the importance of that. So in summary, I think that the Energy Office, the combination of the two agencies, is going to give both the efficiencies and the synergies and a more robust and, and really a better management structure as both agencies go through not only the succession but meeting the mission that they have. So with that I'd be happy to answer any questions from the committee.

BOSTELMAN: Thank you. Are there any questions from committee members? Seeing none, thank you, Mr. Bracht, for your--

DAVID BRACHT: Thank you.

BOSTELMAN: --testimony. Next proponent, please.

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JOHN McCLURE: Good afternoon, Chairman Hughes, Vice Chairman Bostelman, members of the committee. My name is John McClure. J-o-h-n M-c-C-l-u-r-e. I'm vice president and general counsel for Nebraska Public Power District in Columbus, Nebraska, and I'm here today in support of LB302. Both Director Macy and former State Energy Office Director Bracht, have given you, I think, very clear reasons along with the statements from the Chairman in the introduction. I'm going to just very briefly hit a couple of highlights. We've worked with both of these agencies since their inception at NPPD. I was thinking about it, I've worked with the past four directors of each of the agencies. And I think everything that's been said in terms of opportunities for efficiency, and I think synergies as well as improved effectiveness can all happen from this merger. One of the other important items that was addressed by the Director is the 404 permit program under the Clean Water Act, that process affects a lot of entities in the state of Nebraska, and, I think, if you talk to some of your key constituents you will find out that the issuance of those permits currently through the federal process takes longer than people think it should. And we believe that should the state take that on that they would be more focused on the timeline in delivering them more quickly. We've worked with both agencies, both departments in a variety of ways. NPPD has put a million dollars into the Energy Office as part of the fund that they use, revolving fund, to make loans even more attractive for customers in our retail and, and wholesale service areas to obtain high efficiency heating and cooling equipment. That's been a very successful program. Both departments deal with the administration of, of funds for the benefit of Nebraskans, and we think there is truly an opportunity for efficiencies and synergies there. So in closing, we think this is a logical combination. And as I was thinking about it, it's sort of like if a vehicle dealer would tell you, would you like to test drive a car for six months, and then decide if you want to buy it. They've been having this test drive. Director Macy has been the interim director, and our experience working with the-- both entities has been very positive during that time frame. And we think this is a very reasonable piece of legislation to improve both the efficiency and the effectiveness in the delivery of services in the state of Nebraska. With that, I'd be happy to answer any questions you may have.

BOSTELMAN: Thank you, Mr. McClure. Are there any questions from committee members? Seeing none, thank you, Mr. McClure.

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JOHN McCLURE: Thank you.

BOSTELMAN: Next testifier as proponent, please. Welcome.

LANCE HEDQUIST: Chairman Hughes, Senator Bostelman, members of the committee, thank you for giving me this opportunity to be here today. My name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City. On behalf of the city of South Sioux City, I wish to extend our support for LB302. The director of the Nebraska Department of Environmental Quality has done an admirable job in discharging his duties in his department. He has greatly reduced the time frame to get licenses and permits, approved getting the permit system on-line, and streamlined the department. He has done extensive work to get buy in of proposed changes to the permit process, and as a result has improved services for the state of Nebraska. For months now he's also served as the head of the Nebraska Energy Office, an agency that provides loans to many Nebraskans reducing their electric bills and utility bills. This, likewise, has been done very effectively and efficiently. Merging these two offices makes sense for the future of Nebraska, and we certainly support this streamlined bill.

BOSTELMAN: OK, thank you, Mr. Hedquist for your testimony. Are there any questions from committee members? My question, sir, would be-- you talked about streamlining the-- is that a permit process, what was that-- what exactly is that?

LANCE HEDQUIST: They-- there-- most those permits you get on-line now, so you don't have to send in written permits-- you can do it on-line and it's very fast, and the timeframe for the businesses that need those permits has been cut to probably 30 percent of what it used to be.

BOSTELMAN: OK, thank you, sir. Any other questions? Thank you for your testimony.

LANCE HEDQUIST: You bet.

BOSTELMAN: Next proponent, please. Welcome.

GINA COTTON: Thank you. Chairman Hughes and members of the National Resources Committee, my name is Gina Cotton, G-i-n-a C-o-t-t-o-n, and I'm the executive director of 4 Lanes 4 Nebraska. I'm here today to testify in support of LB302. 4 Lanes 4 Nebraska is an industry and

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business coalition working to raise awareness of the economic social and public safety benefits of finishing Nebraska's expressway system and connecting our communities with 21st Century infrastructure. Our support for this bill is derived from the new agency assuming the 404 permitting process from the federal government. Expressways being completed all across the state had become bogged down in the permitting process. It can take tremendous resources and time to get through the current process, which the Highway 275 project is currently experiencing. Similar to the Department of Transportation's recent assumption of the NEPA process from the federal government, we believe that the 404 permitting process will be done quicker and more efficiently as the state is the primary issuer. I'd be happy to answer any questions.

BOSTELMAN: Thank you for your testimony. Are there questions from the committee? Senator Geist.

GEIST: I do have one. Hi, Gina.

GINA COTTON: Hi.

GEIST: I didn't realize you were the executive director. Is this a new position?

GINA COTTON: It is, since October 1.

GEIST: Good. All right. That's all I have, thank you.

BOSTELMAN: I do have a question, I guess. Could you explain a little bit more on the permitting process? I think last session biennium, we, we worked on a bill on the highways funding for the state DOT to be able to do engineering work, environmental work and stuff, so can you explain a little bit more-- elaborate a little bit more for me maybe for the committee as to what benefits that you were talking about and how that applies?

GINA COTTON: We believe that it'll save, save tremendous amount of time if Nebraska can take over if we can have that merging with the Nebraska being in charge rather than from the federal government. It'll save resources and time and money, as time is money. So we believe that it'll just be done quicker.

BOSTELMAN: So have you been in your position long enough to--

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GINA COTTON: No.

BOSTELMAN: OK, that's fine. Are there other questions? Thank you for your testimony.

GINA COTTON: Thank you.

BOSTELMAN: Other proponents, please. Good afternoon.

TROY BREDEKAMP: Good afternoon, Chairman Hughes, Vice Chairman Bostelman. My name is Troy Bredenkamp, T-r-o-y B-r-e-d-e-n-k-a-m-p. I'm the executive director of Renewable Fuels Nebraska. We are the trade association for Nebraska's ethanol industry and our, and our, and our industry partners. We certainly lend our support to LB302. The ethanol industry utilizes both of these agencies. We have a regulatory relationship with NDEQ, and we have a more of a marketing promotion and grant relationship with the Energy Office. We certainly appreciate efficiencies being found within government structures along with the government finding better ways to serve the people in the business sector of Nebraska. We have a good working relationship with both of these agencies. We certainly have great confidence in Director Macy. We see no issues with the merging of these two agencies under the one umbrella. We look forward to continuing that working relationship, and we would reiterate our support for LB302. Thank you.

BOSTELMAN: Thank you, Mr. Bredenkamp. Is there any questions from the committee? Seeing none,--

TROY BREDEKAMP: Thank you.

BOSTELMAN: --thank you for your testimony. Next proponent, please. Good afternoon.

KARL BARFUSS: Good afternoon, Chairman Hughes, members of Natural Resources Committee. My name is Karl Barfuss, K-a-r-l B-a-r-f-u-s-s, and I'm the environmental manager at Nucor Steel in Norfolk, Nebraska. I am here today to testify in support of LB302. Nucor Corporation employs over 1,000 Nebraskans producing over a million tons of steel and steel products in this state every year. We have long seen ourselves as partners with the state of Nebraska and NDEQ, and are happy to support this legislation. We as customers and partners with a variety of agencies in Nebraska have benefited from the strong emphasis this administration has put on efficiency and customer service. As we understand this bill, the Energy Office will benefit

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from NDEQ's ability to provide administrative management support and assistance so staff can focus on the delivery of energy program services across the state. This administrative efficiency is similar to what was realized when the Department of Transportation merged with the Department of Aeronautics. Additionally, as we understand this bill, the newly formed Department of Environment and Energy will pursue taking over Section 404 permitting under the Clean Water Act. We support the effort for the state to assume permitting authority under this program. I would be happy to answer any questions you may have, and look forward to continuing our strong relationship with the state of Nebraska.

BOSTELMAN: Thank you, Mr. Barfuss. Are there any questions from the committee members? Senator Geist.

GEIST: I would ask the same question of you that, Senator Bostelman, asked of Miss Cotton, and that is: Could you give us an example of what that permitting process looks like and how you hope that that is more efficient with the merging of the two agencies?

KARL BARFUSS: So, so to my knowledge, our facility--our, our steelmaking facility in Norfolk has never had to obtain a 404 permit, but they are common within the city. I know at least one city group has submitted an application to the Army Corps of Engineers, and they've been told that they have to wait until the Army takes up their application and then the 45-day window to respond starts ticking at that time-- not from when they actually received it, but when they start to review it. So there is no defined time frame in which a permit can be issued, and through our experience working with the state and especially under Director Macy's leadership with the Department of Environmental Quality, the, the time to obtain permits, whether it's air permits, other permits under the Clean Water Act, has, has decreased substantially, and we anticipate the same thing with 404 permits.

GEIST: Excellent. Thank you.

BOSTELMAN: Other questions from committee?

KARL BARFUSS: Yes, sir.

GRAGERT: I'm interested-- do you a--

BOSTELMAN: Senator Gragert.

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GRAGERT: Oh, I'm sorry.

BOSTELMAN: No, you're fine. Just for the record, Senator Gragert.

GRAGERT: Thank you. Thank you, Senator Bostelman. Thank you for your testimony. Are you familiar-- or do you know if you can hire a private consultant to do that-- the legwork for a 404 permit to speed that process up?

KARL BARFUSS: I think in terms of the application many folks will hire a consultant, but that'll be at, you know, extensive fees and stuff to help facilitate that process. I don't know that it can force any action on the permit itself any quicker.

GRAGERT: All right, thank you.

BOSTELMAN: Other questions? Seeing none, thank you for your testimony. Next proponent, please. Good afternoon.

CRAIG MIELKE: Good afternoon, Senators. My name is Craig Mielke, C-r-a-i-g M-i-e-l-k-e. I'm an environmental scientist with Alfred Benesch & Company in Omaha. Benesch is a 600 employee national engineering firm with over a hundred employees in Nebraska with offices in Omaha, Lincoln, and Grand Island. I'm here today representing ACEC, the American Council of Engineering Companies, which is comprised of 47 member engineering firms across the state. And as a member of the ACEC, Energy and Environment Committee, and as a professional wetland scientist, I am here today to testify in support of LB302. ACEC, in general, supports the merger of the Department of Environmental Equality and the Energy Office to create the Department of Environment and Energy. Much like the merger of the Nebraska Department of Roads and the Department of Aeronautics, consolidation of these two entities will create efficiencies. We're also particularly interested in the portion of this bill that relates to the state's assumption of the Clean Water Act, Section 404 permitting program. When I moved to Nebraska 20 years ago, I quickly learned several things. The first, is how fast you need to license your vehicle. Shortly after that, I learned that Nebraska likes to be known for superlatives-- biggest, longest, best, first. Bailey Yard in North Platte is the largest rail classification in the world. Nebraska has the largest underground aquifer, the Ogallala Aquifer, under its soil. It was the first to complete its interstate system and is the only state with a Unicameral. It is also-- has the most river miles of any state in the union, and with over 81,000 miles of streams, 18,000

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miles of which are continuously flowing. Clearly, Nebraska is very good at being the best and the first in many things. That is why it is no surprise to me that we should be considering LB302, which would allow the state to become one of only a few if not only the third state behind Michigan and New Jersey to assume authority for managing the 404 program. With so many river miles and wetlands in Nebraska, there is already a great framework of existing agencies and state regulations for their protection. Between the DNR, the DEQ, and local natural resources districts, these agencies take great pride in this role and understand the intricacies and complex issues facing Nebraskans in this regard. The additional layer of federal oversight is often onerous and duplicative to these regulations and could be more efficiently managed by the state. Secondly, the number and proliferation of these resources makes it very difficult for private landowners, corporations, and public agencies to undertake any project without encountering them. And while there are so many of them, very few would actually be considered navigable, which is the underlying primary resources the Clean Water Act was originally intended to protect. This has been one of the difficult hurdles that other states considering assumption have encountered as they have coastal waters and multiple navigable waters causing very complicated interactions between the state and the federal government when it comes to assumption. Nebraska could assume responsibility for almost all waters in the state with the exception of the Missouri River and a few others and better protect these resources using state regulations. Lastly, the recent successes by the Legislature in passing LB271 in 2017 to allow the NDOT to assume responsibility for the National Environmental Policy Act has proven that Nebraskans are capable of this effort and that regulatory agencies are ready to explore this pathway to protect our own resources within the state. NDOT worked tirelessly with its partner FHWA to develop a programmatic agreement, methods, policies, and procedures to ensure them that NDOT would meet all federal guidelines and requirements for NEPA. And I have every confidence, every confidence that the new NDEE will be just as successful. Thank you very much for the opportunity to present to you today, and I'd be happy to answer any questions.

BOSTELMAN: Thank you, Mr. Mielke. Are there questions from the committee? Seeing none, thank you for your testimony.

CRAIG MIELKE: Thank you.

BOSTELMAN: Next proponent, please. Good afternoon.

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PAT O'BRIEN: Good afternoon, Senator Bostelman, Senator Hughes, members of the Natural Resources Committee. My name is Pat O'Brien and I'm here today to support-- to testify in support of LB302 on behalf of the Upper Niobrara White Natural Resources District and Nebraska Association Resources Districts. Name spelled, P-a-t O-'-B-r-i-e-n. Nebraska's NRDs have had a long history of working with NDEQ on several projects aimed at protecting and improving land, air, and water resources. One of the projects that many NRDs have undertaken is in the watershed planning area. Large plans that focus on water quality within a basin and a strategy is developed to protect and enhance the water resources. The outcome of these plans have included physical manipulation of streams and structures that then will require a 404 permit that is issued by the Army Corps of Engineers. Over the past few years the time and expense to receive these permits has risen drastically. For example, the Central Platte Natural Resource District out of Grand Island recently spent \$30,000 to apply for and receive a nationwide permit. The NRDs support the state of Nebraska exploring, exploring taking over the Section 404 permit program and moving it with NDEQ, and are willing to work with the department on developing the framework to achieve this. Thank you for the opportunity to testify.

BOSTELMAN: Thank you, Mr. O'Brien. Are there any questions from the committee? Senator Geist.

GEIST: Thank you for your testimony, Mr. O'Brien. I, I do have a question about the permitting process and you might not know the answer to this question, but it just came to me. The-- you have-- you indicated in your testimony that the Central Platte NRD spent \$30,000 to apply and receive a permit. Do you anticipate with the state taking over this process that that will change the cost of permitting?

PAT O'BRIEN: Well, we would hope so. Based on the efficiencies, we can work more closely-- working directly with the local control, the local elements, and the state of Nebraska, we can do it. There's duplication right now, because of the review that Director Macy talked about where the Department already is reviewing the applications for compliance with their water quality standards, then they have to consult with the Army Corps of Engineers.

GEIST: Right.

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PAT O'BRIEN: So it would all be done under one house, so we would hope that it will work much more efficiently.

GEIST: OK, thank you.

BOSTELMAN: Other questions from committee members? Yes, Senator Gragert.

GRAGERT: Thank you, Senator Bostelman. Just real quick, could you break down by any chance the \$30,000. What, what did, what did you spend \$30,000 on?

PAT O'BRIEN: So to make the application, there-- there's a lot of things that go into play, and one of the things that has been coming recently, is developing the, the plans for the actual structure, say a road structure. So they want to know the size, and they want to know where it is and, and how much wetlands is going to get impacted by it, and then the mitigation for it. So you're actually going to full-development of those engineering plans before you actually know if you can actually put it there in the first place. So in some cases it's-- you can develop plans and specifications and then not even use it or you have to change it. Wetland delineation-- trying to figure out how many areas of wetlands are going to be impacted, and then, then, as far as the mitigation, where-- if you have to mitigate-- where you have to go to get that and, and acquire some other land, so lots of paperwork.

GRAGERT: So that's engineering?

PAT O'BRIEN: Mostly engineering,--

GRAGERT: [INAUDIBLE]

PAT O'BRIEN: --some onsite.

GRAGERT: So would our-- would the state of Nebraska be able to do the engineering-- is that where we save some money, [INAUDIBLE]?

PAT O'BRIEN: I, I think it just expediting the process and being able to do some preliminary work up front so you can get a better idea without having to go to a full-blown plan as opposed to where we're at now, that you need to know footages and, and how much you're going to move and everything else. And then if it doesn't work, you've set that aside and go to the next plan.

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GRAGERT: All right, thank you. Thank you.

PAT O'BRIEN: You're welcome.

BOSTELMAN: Are there other questions from committee members? Seeing none, thank you for your testimony. Other proponents, please step forward. Good afternoon.

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n, and I'm a staff member at the League of Nebraska Municipalities, and I'd like to offer support for LB302 as well today. And just specifically, I'm gonna skip what I'm gonna talk about, but I would, would like to talk a little bit about the 404 process and what that is. The 404 Corps of Engineers permitting process is a huge regulatory burden for cities, and it's been this way for decades. And, and, and I think I can provide some specific examples of where there are probably some state synergies that can probably save cities a lot of money. And I will say the 404 process, when you first become immersed in it as an elected official of the city, it's not intuitive. When someone describes to you what the 404 process is, you think, oh, dredge in the Platte-- the Missouri River so tugboats can get on it, things like that. No, the, the-- it's a far more extensive-- extensive and less intuitive process than you think. For, for, for example, the city of Omaha recently, as part of a signal change at a major intersection, had to get a 404 permit, because they were going to put underground electric apparatus to control the signals. They had to get a 404, and that was not a complicated one, but they did have to get a 404 permit. And some of the extensive 404 permits, for instance, putting new bridge spans over a river, they might take a decade to, to obtain that permit. And this has been, this has been going on for, for 20, 25 years. The-- it's, it's a, it's a big, very difficult permit to get, and it takes a lot of time. And sometimes cities don't really understand why it's taking so long to get these permits, but it's something that comes up at the village level. It comes up at the Omaha level. It comes up all the time. And it's interesting-- I believe that, Senator Bostelman, asked a question about the possible synergies with the, the NEPA permit. And it's interesting that you asked that question, because that was something I was going to tromp over to Senator-- or to Director Macy's office next week a little bit to talk about. I, I believe potentially if Nebraska could obtain partial or full primacy of, of the-- some of the 404 permitting processes, and maybe not even the whole thing. There, there-- I think there is some cost saving possibilities and, and possibility of what, what happens

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in a major project-- not necessarily the little Omaha signal change project, but a big one is you're as-- when you're doing an environmental review, you're doing environmental review for both-- for the Corps of Engineers and at the time, you know, EPA, and-- or Federal Highway Administration or someone, someone is reviewing each of these permits. If one group of biologists becomes interested in-- oh, we want more information on this, then you're, you're spending more money to get that information on your environmental review. If a-- if the environmentalists over here-- or not the environmentalists-- the biologists-- the staff biologists say, we're interested in this, so suddenly you're doing two concurrent yet different reviews in response to their questioning. And, you know, and even if they're not the common biologists, and this is just one example of probably many, if, if they're all within the state of Nebraska at least they can talk to each other before-- and, you know, then ultimately maybe the same result, but at least there's the possibility they're in the same city and, you know, at least they could talk to each other and possibly frame their questions to go back to the engineers and the consultants in a way that, that allows you to consolidate your data collection, and these are complicated processes. And I look forward to, if this bill moves forward, to working with DEQ in, in trying to bring some primacy to this-- to the state on this process. But, I would certainly answer any questions.

BOSTELMAN: Thank you, Mr. Chaffin. Are there any questions from the committee? Senator Halloran.

HALLORAN: This is just more of an opinion on your part than, than, than anything else, but there's so much we can do to gain efficiencies at the state level in the process of going through these 401 [SIC] permitting processes. Here comes the opinion part, do you find that federal regulations are oftentimes a bit onerous? A bit over burdening and overbearing upon the states?

LASH CHAFFIN: I, I believe there are a lot of federal regulations that don't translate well to, to the state level, yes.

HALLORAN: OK, thank you.

BOSTELMAN: Are there other questions from committee members? Seeing none, thank you, sir, for your testimony.

LASH CHAFFIN: Thank you.

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BOSTELMAN: Next proponent, please. Good afternoon.

CHRIS PETERSON: Good afternoon, Mr. Chairman, members of the Natural Resources Committee. My name is Chris Peterson, C-h-r-i-s P-e-t-e-r-s-o-n, and I'm appearing before you today representing KAAPA Ethanol. KAAPA Ethanol supports LB302, the merger of the Nebraska Department of Environmental Quality and the State Energy Office, and the creation of the Nebraska Department of Environment and Energy. KAAPA Ethanol owns and operates two ethanol plants in central Nebraska, one in Minden, and the other in Ravenna. KAAPA has a long history of working closely with both the NDEQ and the State Energy Office. As customers and partners of NDEQ, KAAPA has benefited from the strong emphasis, Governor Ricketts, and his administration has put on efficiency and customer service. The State Energy Office will benefit from NDEQ's ability to provide administrative management support and assistance so staff can focus on the delivery of energy program services across the state. We recognize this administrative efficiency is similar to what was realized through last year's merger of the Department of Roads and Aeronautics forming the Nebraska Department of Transportation. KAAPA understands that LB302 also provides for state assumption of the permit program under Section 404, or at least exploration of, of assumption of the program, the Clean Water Act. Safe and reliable transportation is vital to the ethanol industry especially, for example, for the farmers that KAAPA Ethanol relies upon from their planning time through harvest. The Nebraska Department of Transportation is working to improve project delivery by shortening the time it takes to deliver projects and increasing the reliability of project schedules. Assumption or at least review and, and assumption of some or all of the section 404 permitting process could have, within a merged Department of Environment and Energy, positive impacts on the transportation community by improving reliability of project delivery. Again, KAAPA is pleased to convey to the Natural Resource-- Resources Committee its support for LB302 including the merger of the departments of NDEQ and the State Energy Office as well as the state assumption of the permit program under Section 404 of the Clean Water Act. KAAPA wants to thank, Senator Hughes, for introducing LB302 and, Governor Ricketts, for his advocacy for these changes.

BOSTELMAN: Thank you, Mr. Peterson. Are there questions from the committee members? Seeing none, thank you for your testimony.

CHRIS PETERSON: Thank you.

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BOSTELMAN: Is there anyone else who would like to testify as a proponent for LB302? Anyone wishing to testify as a proponent for LB302? Seeing none, anyone who would, who would wish to testify as an opponent for LB302? Anyone wishing to testify as an opponent for LB302? Seeing none, anyone wishing to testify in the neutral capacity? Anyone wishing to testify in the neutral capacity? Please step forward, sir. Good afternoon.

JONATHAN LEO: Good afternoon, Chairman Hughes, Vice Chairman Bostelman, members of the committee. My name is Jonathan Leo, J-o-n-a-t-h-a-n, last name Leo, L-e-o. I'm a resident of Lincoln, Nebraska. I've been a resident of Lincoln, Nebraska for a year and a half. I'm originally from California. I'm an environmental attorney and consultant. I practiced environmental law for over 25 years in California, both as an environmental crimes prosecutor, and in private practice representing businesses, cities, counties. I also have been a consultant with a couple of national environmental consulting companies. I've worked for U.S. EPA. I've also provided advice to Bank of America in its lending policies for coal companies doing mountaintop removal coal mining in the, in the Appalachians and for Union Pacific Railroad in its permit modern-- in its facility modernization project in the ports of Los Angeles and Long Beach. So I have experience both on the business as well as on the, the enforcement side. I'm testifying in a neutral capacity, because I haven't been in this state long enough to understand the nuances of the, the issues that are really brought to bear by this bill. But I do have a cautionary message that I would like to communicate to you, in 1970-- and, and the, and the cautionary message I should say has to do-- really not so much with the issue of whether or not the efficiencies, financial and, and operational, that are forecast to, to be provided by the merger of these two agencies, as I am about the importance of understanding the relationship of public officials both elected and appointed in all levels of government to the protection of natural resources within your jurisdiction. The environment does not have customers. The environment does not have clients. The environment has trustees. And it is imperative for the protection of natural resources of which, I forget which of the proponents in this who testified earlier mentioned, how extraordinary Nebraska is with respect to its natural resources and this is, this is not fake news. This is absolutely real. You have an extraordinary responsibility in your trusteeship capacity as members of this committee in terms of the legislation that you introduce and pass and oversee the implementation of. One remark I would like to make about the importance of

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environmental protection, not to lose sight of the purpose of the 404 permit, for instance, which is to protect the navigable waters of the United States and those water resources which are tributary to it. The waters of the United States as I'm sure you know the rule-- the federal rule has been in contention for over-- almost 15 years ever since the Rapanos decision of the United States Supreme Court produced almost more opinions than there were Supreme Court justices to write them. It has resulted in a major environmental, pardon me, executive order from President Trump to select one of those opinions by Justice Scalia as the basis for a new definition of waters of the United States. This is an evolving process that we're going through right now. There is no firm waters of the United States rule. It's being developed at a federal level. I don't know to what extent if Nebraska were to assume the responsibilities for the 404 permit process system in whole or even in part with the U.S. EPA, there would be an opportunity perhaps for, for the Nebraska agency to play a role in how you interpret the waters of the United States vis-a-vis Nebraska resources. My last thing I'd like to say, is that in my neutral capacity here in, in response to this bill, again to be a voice for the environment, not for a client, not for a customer, with the understanding of the imperative need for efficiency in how government resources and the government responsibilities are, are actually discharged. Per Senator Halloran, I've been on the wrong side of excessive federal regulation on behalf of clients, and I know how it's often who is the federal employee who is actually making the decisions in a particular permit process that makes a difference as opposed to the way the statute itself is run. This is where individuals make a difference. William Ruckelshaus, the very first EPA administrator under President Richard Nixon, when he addressed the Indiana State Bar Association and the Annual Conference of Cities about the EPA's purpose in 1970 said, we shall exercise our responsibilities as an in-- and I'm quoting now, "We shall exercise our responsibilities as an independent agency, an agency that has no obligation to protect [SIC] commerce or agriculture, but rather the awesome obligation to protect and improve our environment." Later in the same week he said, "No longer is the setting and enforcement of environmental quality standards in the hands of an agency which also has a promotional interest in the subject of regulation. EPA's sole charge is to see that the standards it sets and enforces adequately protect the environment." And I would simply urge you as you consider this legislation, and as you hear, if you pass-- if this is passed ultimately by, by the Legislature as a whole, if in your oversight of how this new agency is operating that you pay particular attention not

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just to the efficiencies that you were hoping are going to come from this merger, but to the actual increase of, at the very least, the maintenance of the same standard of environmental protection with respect to the waters of this state that are now in existence and certainly, ideally an enhanced level of protection for them. Thank you very much for your time.

BOSTELMAN: Thank you, Mr. Leo. Are there questions from the committee? Senator Halloran.

HALLORAN: Thank you, Mr. Leo. I-- my, my question was, was prefaced primarily on what I believe that the, that the states individually have a vested interest in the resources, natural resources and the environment that surrounds us has a natural vested interest in caring for that. And, and oftentimes-- I'm making more of a statement here and I apologize for that. But oftentimes federal government is quite distance from our states and our, our understood needs locally. And I would personally encourage the federal government to relinquish some of that authority to the states-- they can, they can present guidelines, and they probably should, but leave some discretionary authority to the states to manage their own resources.

JONATHAN LEO: And I know--

HALLORAN: I'm sorry, that was more of a statement.

JONATHAN LEO: Well, I appreciate the statement. I have no argument with that principle. The phrase, the devil is in the details, I think is, is appropriate in, in a way of a rejoinder to what you're saying. The devil is in the execution of that. Most of the major federal environmental statutes and I've, I've worked with most of them. Set floors for states-- they have a mandatory minimum level of protection both in terms of the subject matter that they address as well as the level of enforcement and permitting oversight that they require. But then they leave up to states the ability, if the states so choose, to increase the level of scrutiny, the level of regulatory involvement that the states may wish to do based upon the state's assessment of their own resources. Whether that's the Resource Conservation and Recovery Act, or the Superfund law, the Clean Air Act, Clean Water Act is the same way, and every state has unique resources. The most important thing is for state-- is for there to be what is called cooperative federalism between states and the federal government with respect to these kinds of environmental regulatory programs so that there can be actual cooperation between Army Corps of Engineers and

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EPA and state agencies here in Nebraska that have control of the natural resource districts, NDEQ, so that you really do bring to bear the purpose of those federal regulations in the way that the permits are actually executed. Streamlining and, and getting efficiency is where it's necessary is absolutely-- well, it's an unimpeachable goal. The most important thing, and what I simply want to be a voice for here, is not to lose sight of the original overlying purpose of these laws which is truly to protect the environment which as I say, has no customers, has no clients except for the trustees like yourselves.

BOSTELMAN: Other questions? Thank you, sir.

JONATHAN LEO: Thank you.

BOSTELMAN: Is there anyone else who'd like to testify in the neutral capacity on LB302? Anyone else who'd like to testify in a neutral capacity for LB302? Seeing none, we do have three letters that are proponent. One is from Kristen Hassebrook, Nebraska Chamber of Commerce and Industry; another is, Mike Drinnin, from the Nebraska Cattlemen; another-- and another is Tim Burke, from Omaha Public Power District. With that, we would invite, Senator Hughes, to please come and close on LB302.

HUGHES: Thank you, Vice Chairman Bostelman, members of the committee. I want to take this opportunity to thank everybody who came and testified today. Clearly, there is unanimous support for this bill to merge these two agencies. I have total confidence in Director Macy's ability to handle this dual agency, if you, if you will. He has proven that in the last time since he's worn both of those hats. I would like to publicly thank, Director Bracht, for his service to the state of Nebraska and his kind words for us as the Unicameral and the state government. But if you look down the list of testifiers, there's a broad range of support from private industry to municipalities, NRDs, so there is a good working relationship with, Director Macy, and the Energy Department and the Department of Environmental Quality. I thank, Mr. Leo, for coming and raising his points. I have had the pleasure of working with, Director Macy, the last four years in his capacity as director of Department of Environmental Quality, and his standards and the standards that we have in the state of Nebraska are second to none. As an agricultural producer I'm very attuned to our environment, because if I'm-- if my environment goes south so do I. So, and I think by far, the majority of Nebraskans who are involved in agriculture via livestock or a crop production and citizens, in general, are very attuned to our environment, and we all understand

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how fragile that environment is and how important it is that we protect that. So with that, I'd be happy to answer any questions. But I think this is a good bill, and I would urge the committee to pass it out-- to bring it to the full floor for debate. Thank you.

BOSTELMAN: Thank you, Senator Hughes. Are there any questions from the committee members? Seeing none, this will close the hearing on LB302. Thank you all for coming and testifying today.