

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

[LB845 LB1161]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 16, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB845 and LB1161. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee hearings for the day. My name is Chris Langemeier, I'm the Chairman of the Natural Resources Committee. I'd like to start off by welcoming everybody that is here in the audience, and those that are watching us on closed-caption television, as well as those that are watching us on-line. I'd like to introduce the committee members for those who are here in the audience can see, but to my far left we have Senator Jim Smith from Papillion. Then we have Senator Ken Haar from Malcolm. Then we have Senator Mark Christensen from Imperial. And then we'll have the Vice Chair of the Committee, Senator Ken Schilz, from Ogallala. Then right immediately is Laurie Lage is the legal counsel for the Natural Resources Committee. To my immediate right, or your immediate left, we have Senator Annette Dubas from Fullerton. Then we have Senator Tom Carlson from Holdrege. Then we have Senator Beau McCoy from western Douglas County or the Elkhorn area. We have two pages that are helping the Natural Resources Committee today and we have...Brian is here; Brian Eulie from Omaha, who is a student at UNL. And then we have Alex Wunrow, who will be joining us shortly, is from Los Angeles, California, and is here as a student at Southeast Community College. Today if you care to testify, in the corners of the room there are these green sheets. We ask that you fill that out and when you come up to testify if you would give that to Barb Koehlmoos the committee clerk at the end of the table and she helps us keep an accurate record of today's hearings. If you're here and you want to be on the record in support or opposition to a bill, there is a spreadsheet form in the corner that you can sign in on and weigh in as you are a supporter or opposition. You don't have to do both. This is if you don't care to testify, but you want to let us know that you were here. At this time we would like everybody to look at your cell phone and please turn those off at this time. As in the Natural Resources Committee, we do use the light system. You'll get five minutes to testify; green light will come on when you start, the yellow light will come on at the one-minute mark, and the red light will come on, we ask that you conclude...you stop your testimony when the red light comes on. If you have anything you would like to hand the committee, we ask that you give it to Barb when you come up to testify. We do remind you that if you do give us something to look at, we are going to keep it for the record. It will become part of the permanent record. If it's something you want us to see, but you want to keep it, we ask that you show it to us from the testifier's table. Next thing is the microphone. The microphone does not amplify the speaker's testimony into the room, it only records. We ask that you don't touch it. If you get it too close to you, it

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

gargles on the tape and then we can't understand what you said for the record. So we ask that you don't touch it, because it does not amplify in the room. It is for recording only. When you come up to testify, we ask that you state and spell your name, the first thing you do. It helps us keep a more accurate record of today's events. So with that, we have two bills today. The first one is going to be introduced by Senator Sullivan, which is LB845. We'll take up that one first, and then we will move to LB1161. Senator Sullivan, welcome back to the Natural Resources Committee.

SENATOR SULLIVAN: (Exhibit 1) Thank you. Good afternoon, Senator Langemeier and members of the Natural Resources Committee. I'm Senator Kate Sullivan, that's K-a-t-e S-u-l-l-i-v-a-n, of Cedar Rapids, representing the 41st Legislative District. LB845 is the reclamation bill I promised to bring you during the special session last fall. It builds upon the work that I began last session with LB629. LB845 amends the Oil Pipeline Reclamation Act to add legislative intent language which states that reclamation is to be part of the oil pipeline construction process and, unless otherwise agreed to by the landowner, reclamation is intended to restore construction areas as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction; stabilize disturbed areas; establish a diverse plant environment of native grasses and forbs to create a safe and stable landscape; restore active cropland; mitigate noxious weeds and manage invasive plants. Now the new statutory requirements include: final grading, topsoil replacement, installation of erosion control structures, seeding and mulching shall be completed within 30 days of backfill, except when weather conditions, extenuating circumstances, or unforeseen developments do not permit the work to be done within 30 days. Also, all reclamation, including choice of seed mixes, method of reseeded, weed and erosion control measures and monitoring must be conducted in accordance with the Federal Seed Act, the Nebraska Seed Law, and the Noxious Weed Control Act. Genetically appropriate and locally adapted native plant materials and seeds must be used based on site characteristics and vegetation as determined by a preconstruction site inventory. Seed mixes must be state-certified seeds in accordance with the Nebraska Seed Law and Sections 81-2,149 to 81-2,154. Mulch must be installed as required by site contours, seeding methods, weather conditions, or when requested by the landowner. LB845 also carries an emergency clause. These requirements in LB845 are based on reclamation requirements in Montana and South Dakota and incorporate time frames and practices already used by large pipeline companies as part of their permit applications. I will tell you, the concern has been raised that by requiring state-certified seeds in Section 5(3) of the bill, LB845 might potentially limit access to locally adapted prairie seeds for use in reclamation. I've heard from some prairie seed experts, and in fact, I would like to have this e-mail passed out, if I could by one of the pages, that identifies this concern. According to some of these experts, state-certified seed for reseeded prairie and meadow areas is not generally available in large amounts. Given the time that it takes to develop a state-certified seed, this type of seed may not be available in bulk for many years. As long as the seed mix has been tested for mix of species, viability, and is free of noxious weeds, which is

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

already required by both state and federal laws, a statutory requirement to use state-certified seed actually may not even be in the best interest of the landowner, the pipeline carrier, or the state. And since it is my intent to assist in the reclamation process and not hinder it, I would advise and suggest and hope that you would consider that this subsection might be best removed. And if that's the course you take, I would certainly support a committee amendment to do that. I would also tell you that the reclamation requirements outlined in LB845 and ultimately, hopefully placed in statute, does not in any way hinder pipeline construction in Nebraska in any way. LB845 assists in efforts to restore Nebraska's land after pipeline construction, protects Nebraska's landowners, and provides guidance to pipeline companies doing business in our state. Earlier this week I did designate LB845 as my priority bill, so I certainly encourage you to advance it to General File. And I will try to answer any questions. [LB845]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LB845]

SENATOR CHRISTENSEN: Thank you, Chairman. Senator, in Section 4, you've got in here installation of erosion control structure, seeding, and mulching within 30 days after backfill. [LB845]

SENATOR SULLIVAN: Um-hum. [LB845]

SENATOR CHRISTENSEN: Is your intent here to try to get the pipeline covered as soon as it goes in? Is your intent just to make sure it's finished after it...because after backfill, they could wait awhile to backfill. [LB845]

SENATOR SULLIVAN: Um-hum. [LB845]

SENATOR CHRISTENSEN: And then start your 30 days after start of backfill. I've got a couple of concerns. One is, I didn't know what your intent was. If you're trying to get this filled right away, then that's one thing; if you're just trying to get the grooming done, it's another. But my concern also comes in on if we're putting this in and the ground freezes once it's out, it's actually in everybody's best interest not to be filled again until the dirt is all melted or you end up with settle spots, and, you know, so I guess that's why I'm asking. Is your intent to just try and make this done quickly? Or is it to try and get it finished properly, what is your real intent here? [LB845]

SENATOR SULLIVAN: Well, my first intent is to make it reasonable and make the reclamation sound. And I think your comment about the appropriate time to do backfill and the seasonal problems that might be connected, as in wintertime and freezing and thawing, would be one reason that maybe the backfill wouldn't take place right away. And then in giving the 30 days, same thing applies, that you might have some weather conditions that if we speed up the reclamation process or backfill process too soon, then

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

you might have a problem down the road. So, with the 30 days from backfill, I'm giving some leverage, actually, to the pipeline company to make the decision when the appropriate time to do backfill is. And then going forward after that, the 30 days should allow enough time to take into account some particular weather circumstances. [LB845]

SENATOR CHRISTENSEN: The final grooming, I guess, is my major concern that, you know, it doesn't have big sink holes and everything else in it when it's done is one of the main things I'm looking at. [LB845]

SENATOR SULLIVAN: Um-hum. [LB845]

SENATOR CHRISTENSEN: And that's why I was asking your intent here, because after backfill I think accomplishes what I want because they don't have to backfill until the conditions are right and that's a great thing, even though a lot of people are going to be frustrated because it's open so long if it's winter, but I have backfilled something before that had frozen clunks...chunks...wow, (laughter). [LB845]

SENATOR SULLIVAN: Thank you for that. And I think, as I recall, when we have heard testimony and received a lot of information about other pipeline constructions, we've seen just what has happened, pictures of when that backfill has taken place too soon. So, your point is well taken. [LB845]

SENATOR CHRISTENSEN: Thank you. [LB845]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much, well done. [LB845]

SENATOR SULLIVAN: Okay. Thank you. [LB845]

SENATOR LANGEMEIER: You have heard the opening on LB845. We will now go to proponents, those that support. Welcome. [LB845]

DEAN EDSON: (Exhibit 2) Senator Langemeier and members of the Natural Resources Committee, I'm Dean Edson, D-e-a-n E-d-s-o-n, executive director of the Nebraska Association of Resources Districts presenting testimony today on behalf of the association in support of LB845. We believe the provisions of this bill are important to protect Nebraska's natural resources and protect previous investments made both by the public and private sectors. Proper reclamation of land disturbed by development and construction of oil pipelines is essential in preventing the introduction of conditions that can potentially lead to natural resources degradation. Anytime vegetation is destroyed and underlying soil is removed, it is critical to return the condition of a disturbed area to a state that as closely as possible replicates conditions that were in place before the construction began. The provisions in this bill address notable components of soil

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

reclamation. These include the erosion prevention and the revegetation requirements of those disturbed areas in a timely fashion. Also included are the mulching materials or mulch fabric requirements essential in stabilizing an area and enabling growth of desired vegetation. Bare soil is highly vulnerable to colonization by invasive and/or noxious plant species. Approved plant species in adequate numbers must be established as soon as possible following the construction in order for such vegetation to successfully compete with the aggressive invasive plant species. The seeding mixes and methods included in the bill address these issues. It's important that disturbed private lands be returned to land uses that existed prior to construction, including preexisting elevations and contours, or as requested by the landowner as provided in the bill. This is something all landowners can and should reasonably expect in exchange for their permission given to allow construction and all associated disturbances and inconveniences on the property. We believe the provisions in this bill will provide protection for natural resources and should not place an undue burden on a pipeline carrier. We urge the committee to advance the bill. And I'd be glad to answer any questions you might have. [LB845]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB845]

SENATOR HAAR: Just for my own education, when an NRD does something that disturbs soil, would these be similar requirements? [LB845]

DEAN EDSON: We do them in a similar, timely fashion like that. And we put appropriate erosion control methods out there, especially on sloped soils to prevent any runoff. [LB845]

SENATOR HAAR: Okay. [LB845]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much. Further testimony in support. Welcome. [LB845]

ERNIE FELLOWS: Morning...or afternoon, excuse me. My name is Ernie Fellows, E-r-n-i-e F-e-l-l-o-w-s. I'm testifying in behalf of LB845. I believe in that bill. I think it needs to move forward. Some of the pipeline companies don't have the best reputation for covering up that loose dirt. And, quite frankly, I'm not sure that everybody down here in Lincoln understands how that sand blows up there in the Sandhills. And that's why I'm for that bill so that that can be reclaimed as fast as possible. I'm not sure that 30 days is too long. [LB845]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Fellows? Seeing none, thank you very much, well done. Further testimony in support. Welcome. [LB845]

ALISON KROHN: (Exhibit 3) Hello. I am Alison, A-l-i-s-o-n, Krohn, K-r-o-h-n. I am a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

native seed farmer in Antelope County, but a resident of Lincoln, Nebraska. And I've prepared, perhaps, too long of a letter concerning this bill and some opinions I have about it. But I'll quickly try to run through them. I want to thank Senator Kate Sullivan for addressing the restoration needs following pipeline construction. I support the bill, but I do believe some corrections could be made, or it could be improved. First, I also work for the Department of Roads in erosion control inspection and construction inspection. And there is an industry standard that after grading has been completed, both the backfill has been placed and the topsoil has been placed, that within 14 days, weather permitting, those exposed soils be stabilized. I think in a way the bill should maybe be reworded to address once the final soils are in place and the grading is complete, it's important to go ahead and seed and mulch after that point to prevent erosion. That way if there are freeze concerns with the soil, you know, that's not going to be an issue. It's also an industry standard by most construction companies. I commend the bill for requiring genetically appropriate materials; however, I don't believe certified seed addresses that goal currently. The way Nebraska certifies seed, it would require multiple production plots growing out of locally harvested seed and it wouldn't actually be certified for probably ten years it would take if you were to grow out the four generations required currently by our state law. So I'd like to see the bill changed so that locally harvested material can be tested. It will be tested for noxious weeds; it will be tested for germination and purity, and that way the appropriate seeding rate can be applied to the exposed ground and the land can be restored. Third, mulch and erosion control materials are not the same thing; they're not equivalent. There are some slopes that will be too steep and you do want to make sure that there is a blanket on it or other erosion control best management practices are employed. Just a caveat, that wherever mulch is used it implies also the use of erosion control when conditions demand that because soils are too steep or too long, slopes are too long. Finally, in addition to pre-construction surveys, I think it would be good if there were some post-construction surveys to make sure that the vegetation and the pipeline site was stabilized adequately to make sure that the pipeline company got what they paid for. So those are my comments. And I'm very happy to see the topsoil replacement requirement. Salvage and placing of topsoil is what I assume that means, that it will be the in situ or local soil materials are being stockpiled and then replaced after the backfill is put into place, because my experience is there is a lot of seed in that top six inches of soil and we've had a lot of success in the Sandhills, especially, when we do salvage native topsoil. So, I want to thank you for your time. [LB845]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB845]

SENATOR HAAR: Yes, how do you stabilize a steep slope in the Sandhills, you know, in...even where there is clay soil it is difficult, but how do you stabilize something? [LB845]

ALISON KROHN: In the Sandhills we actually have a greater wind erosion risk than

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

water erosion risk because the soils are so porous, permeable. You don't have the rills formed in those soils that we have in the clay soils, or especially silt loam is the most erodible soil. So the best thing to do is have a very heavy layer of mulch...or we did a project along the Dismal River where we used a product called a wattle and you build little...it's like...have you seen these straw rolls that are laid out on soils? Those act as mini terraces and they help catch snow so that the vegetation will establish faster from the snow melt. And they also break up the wind so the wind isn't as aggressive on that exposed slope. So there are multiple ways to address...so much of it comes down to aspect, wind directions, all of that stuff. It's very site-specific work. [LB845]

SENATOR HAAR: Okay. Thank you. [LB845]

SENATOR LANGEMEIER: Very good. Seeing no other questions, very good, thank you. [LB845]

ALISON KROHN: Thank you. [LB845]

SENATOR LANGEMEIER: Further testimony in support. Seeing...come on up, about missed you. [LB845]

KEN WINSTON: Didn't think anyone was...well, didn't want to jump in anyone's way. [LB845]

SENATOR LANGEMEIER: Welcome. [LB845]

KEN WINSTON: Thank you. My name is Ken Winston, appearing on behalf of the Nebraska Sierra Club. My last name is spelled W-i-n-s-t-o-n, appearing in support of LB845. I believe the reasons for supporting the bill have, basically, been stated by the other speakers, so I won't go further other than just to say that we're supporting the bill. [LB845]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Winston? Seeing none, well done. [LB845]

KEN WINSTON: Thank you. [LB845]

SENATOR LANGEMEIER: Welcome. [LB845]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record my name is John Hansen, H-a-n-s-e-n. I am president of Nebraska Farmers Union and appear before you today as my organization's president and lobbyist. We are in favor of LB845 and think it's a good idea. And I think all of the primary reasons have already been covered. Our organization's issues on the pipeline were about equal parts groundwater

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

quality issues from an environmental standpoint, but the really fragile sands and reclamation was the other. And as we all know, we can pass laws, but you can't make grass grow, especially in really marginal, sandy soils. In my former life I used to sell grass seed and try to reclaim some of those sandy soils and have some appreciation for the struggles that are in that. And I think LB845 does some good things and is a worthwhile effort. Thank you. [LB845]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Hansen? Seeing none, thank you very much. Further testimony in support. Welcome. [LB845]

BEN GOTTSCHALL: Thank you. Good afternoon. My name is Ben Gotschall, that's B-e-n G-o-t-s-c-h-a-l-l. I'm the energy director for Bold Nebraska and I'm the Lancaster County and District 5 president of the Nebraska Farmers Union and I would just like to go on the record as supporting this bill as the representative of those organizations. I'm not going to repeat what has been said earlier, but I definitely agree what the previous testifier said about native grass seed. It's a big concern for friends and family up in the Sandhills and up in northern Nebraska that the kind of grass that grows there has grown there for a long time and they want to make sure that what is the type of grass seeds that are used in the reclamation process are appropriate to the area to ensure the best recovery. So that's all I have for today...for now. [LB845]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much, well done, well done. [LB845]

BEN GOTTSCHALL: Thank you. [LB845]

SENATOR LANGEMEIER: (Exhibits 4 and 5) Further testimony in support. I'm going to pause a little longer to make sure I don't skip anybody. Anyone else in support? Okay. I do have a letter from Lee Orton with the Water Coalition and I have a letter from Lynda Buoy with the Sandhills Region of the Nebraska Farmers Union in support of LB845. We will now move to opponents. Is there anyone that would like to testify in opposition? Seeing none, is there anyone that would like to testify in a neutral capacity? Seeing none, Senator Sullivan, you're recognized to close on LB845. [LB845]

SENATOR SULLIVAN: Thank you, Senator, and just briefly to further clarify, Senator Christensen, Section 4 that you apply...referenced, it applies after backfill and does make exceptions, I think, to weather too. And with all the references to native prairie and native grass, I think it's important to note that there is native prairie all over the state, not just the Sandhills, and it's quite reasonable to expect that if we have future pipelines that they will be going through native prairie. So I think that this continues to be an important piece of legislation that not only is helpful in giving direction to the pipeline companies and the construction in their reclamation efforts, but some additional protection to landowners. So I...and I...as you heard through testimony that the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

reference I had made to the suggested amendment of removing the note about state-certified seed would be a good move and so I would encourage you to consider that and hope that you'll look upon this favorably. Thank you very much. [LB845]

SENATOR LANGEMEIER: Very good. Are there any other questions for Senator Sullivan? [LB845]

SENATOR SULLIVAN: Thank you. [LB845]

SENATOR LANGEMEIER: Seeing none, thank you very much. With that you've heard the closing on LB845; that will conclude the hearing on LB845. We will now move to the next bill, LB1161. And Senator Smith is here, welcome. [LB845]

SENATOR SMITH: Thank you. I think this is the first time I've had a chance to testify in front of this committee. [LB1161]

SENATOR LANGEMEIER: I believe it is. [LB1161]

SENATOR SMITH: (Exhibit 6) So good afternoon, Senator Langemeier, and fellow members of the Natural Resources Committee. For the record my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County. I am here today to introduce LB1161. LB1161 is a simple amendment to LB1 and LB4, the two bills that were passed during the November Special Session. LB1161 supports the intent of LB1 and LB4 and is consistent with both our efforts during the special session, and with all that was involved and that led to the ultimate outcome of the special session. LB1161 is not intended to generate new discussion or debate on the merits of the pipeline's construction, the economics of the project, or the legalities associated with federal versus state regulations. These issues were discussed and debated at length during the 2011 Session, as well as during the special session. A solution was orchestrated and the Legislature discussed and supported that solution by passing LB1 and LB4 with an overwhelming majority. Nebraska demonstrated a reasoned and effective approach to resolving this public policy issue and we're very thankful for that and very proud of that. Unfortunately, we could not have anticipated the circumstances and the actions that occurred at the federal level that have now jeopardized the agreements we reached last year. On Tuesday I filed an amendment to this bill, and I believe it is in your books, AM1984, that would embody the changes to both LB1 and LB4 that are necessitated by the developments at the federal level. Simply speaking, this amendment does two things. First, it decouples the efforts of the Nebraska Department of Environmental Quality from the Department of State. We don't know what will come from the federal government or even if the State Department will continue to be a part of the equation in the future and that's...so that's the first reason we had to go through that decoupling. And then secondly, it allows the DEQ to continue to proceed with its review of an alternative pipeline route that avoids the Sandhills.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

Following me in testimony today will be Robert Jones, vice president for Keystone Pipeline at TransCanada. I have asked Mr. Jones to again join us and to provide the committee with an update of their plans with regard to Nebraska. Also following me will be Mr. Jim White, federal regulatory counsel for TransCanada, who can provide this committee with some insight into the federal process that has or that will occur with regard to Keystone XL going forward. And finally, Mr. Mike Linder, director of the Nebraska Department of Environmental Quality, will testify in support and can provide the committee with some insight into this process and the process that the department, his department, has followed thus far and how they will intend for this process to move forward. I believe it is very important for the state of Nebraska to continue to move forward with respect to the Keystone project and to adhere to the process that we worked so hard to develop just a few months ago. Therefore, I have prioritized LB1161. With that I will conclude my testimony and thank you for your attention and consideration and I'll be happy to answer any questions. [LB1161]

SENATOR LANGEMEIER: Very good. Is there any questions? Senator Dubas. [LB1161]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you very much, Senator Smith. And I understood when you introduced this bill originally, it was a placeholder. And I agreed with that because just not knowing where the circumstances were going, it's smart to do that in the first ten days because we can't do anything after that. But you'll have to forgive me, I'm not fully understanding the amendment and how it impacts the various bills, so the questions I'm asking you is to help me to understand your intent and to clarify things in my own mind. You reference LB1 and I'm not quite sure I understand how your amendment impacts LB1. [LB1161]

SENATOR SMITH: Yes. There's a section in the AM1984 that references an effective date of 1-1-13. I believe that is one initial effect on LB1. There is also reference to LB1 in the Major Oil Pipeline Siting Act that is roughly on page 3 of what you have as your amendment, once again delaying that effective date to allow the Nebraska Department of Environmental Quality to continue their review. [LB1161]

SENATOR DUBAS: So basically all you're changing in LB1 is just the date because of what is going on. [LB1161]

SENATOR SMITH: That's correct. [LB1161]

SENATOR DUBAS: Okay, that's...I want to be... [LB1161]

SENATOR SMITH: The component that's affecting LB4 deals more with that decoupling that we...that I referenced. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR DUBAS: Okay. So we don't know what the federal government is going to do, that's very clear. If we...if your intent is to have DEQ go ahead and go forward without any MOU with the State Department, go ahead and on their own do an EIS, is that correct? [LB1161]

SENATOR SMITH: Basically, yes. [LB1161]

SENATOR DUBAS: Okay. [LB1161]

SENATOR SMITH: Or the equivalent of an EIS. [LB1161]

SENATOR DUBAS: Okay. Do we want to move forward with that, not knowing what the federal government is going to do because if they end up not approving this and we have an EIS and we've spent a lot of money and nothing is going to come from that, so can you help me understand that? [LB1161]

SENATOR SMITH: Well, again, I would like...and perhaps those that follow me can address that better. I will say this much that I do believe there is an intent going forward to refile a permit, and I know at the federal level a lot has happened there and we don't really know by which avenue or which route that's going to go...that's going to follow. But this legislation is to make certain that Nebraska has provided the very best information on alternative routes when that does come into play. And the Nebraska Department of Environmental Quality is well prepared to complete that study. [LB1161]

SENATOR DUBAS: Okay. Forgive me because this question is probably going to sound repetitive, but I want to make sure that I understand it and I want to make sure the intent of what we're trying to do with this particular bill is very clear. So in regards to LB1, we've changed nothing except that operative date in there. [LB1161]

SENATOR SMITH: That is right. There's some minor wording changes to...for example, I believe that this is also referencing in LB1 when we talk about environmental impact statement or similar study or evaluation of a route of an oil pipeline, because that terminology "environmental impact statement" we want to make certain that, you know, we wanted to have it inclusive of what that looked like coming out of DEQ. [LB1161]

SENATOR DUBAS: Okay. So when we left here in November after doing all of what we did, it was with the understanding that LB4 was for this project that TransCanada has proposed before us. LB1 was for anything in the future, any new project, any new company coming in. Is what you're trying to achieve through this amendment in any way changing the intent of where I think we all understood we were at when we left here in November? [LB1161]

SENATOR SMITH: I do not believe it is, Senator Dubas. It is staying with the spirit of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

what that was in LB4. For the TransCanada Pipeline we want to make certain that that is outside of the Sandhills and we want to look at the alternative routes. Unfortunately, things occurred at the federal level that created a situation where DEQ struggled with being able to continue under LB4. So we wanted to modify it so DEQ could continue on the path they were following. [LB1161]

SENATOR DUBAS: Because the agreement was they were going to work with the State Department and now that that's...doesn't...and I would guess that your following testifiers will further clarify that, but because we no longer have that working arrangement, this is just allowing DEQ to move forward. So we're still focused on this current pipeline through LB4. [LB1161]

SENATOR SMITH: That is correct. [LB1161]

SENATOR DUBAS: All right, thank you. [LB1161]

SENATOR LANGEMEIER: Senator Haar. [LB1161]

SENATOR HAAR: Well, Senator Smith, I approach this sort of emotionally. I guess I'm angry, not at you, I'm angry at people at the federal level for screwing around with what we accomplished in November. And so I have to ask you a whole bunch of "what if" questions that...that...as I've studied your bill. In the bill you've replaced the NEPA process, Environmental Protection Agency process with something you mentioned six times which is "or similar study or evaluation of the route of an oil pipeline." What do you mean by a similar study of evaluation, who decides, whose oversight, what does that mean, since we've written NEPA out? [LB1161]

SENATOR SMITH: Well, I'm going to attempt to answer your question, and if I fail to do an adequate job, those that follow me, hopefully, will be able to do that. If not, when I come back up to close I'll do that. But let me start by saying I share your frustration and I equally am angry with the games that are played at the federal level. [LB1161]

SENATOR HAAR: Yeah, yeah. [LB1161]

SENATOR SMITH: And once again makes me very proud to be an Nebraskan and how Nebraskans go about resolving issues, so I totally agree with you. My understanding is the similar study or evaluation is the type of language that is necessary for us to consider the results of the NDEQ. And I look forward to those that follow me to see if they can clarify that at all and if not, then I'll come back at you. [LB1161]

SENATOR HAAR: Okay. And the way I read, if...and again I need to ask a lot of "what ifs," if I read this correctly, since the federal government, or the State Department and NEPA and so on is written out of it, and on page 4, lines 1, 2, 3, and so on, it says that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

DEQ could enter into a joint review with a pipeline carrier or a federal agency and so on, but if you really take this down, really the NDEQ could just sit down with the pipeline company and come up with requirements. [LB1161]

SENATOR SMITH: Primarily, the intent here is to allow NDEQ to be able to work going forward without necessarily having to tie itself to DOS and that is the primary intent of that language. [LB1161]

SENATOR HAAR: Okay. But wouldn't you agree with me, with the language the way it says, basically, I mean, one of the problems with this whole pipeline thing from the beginning has been the way in which the State Department worked with the pipeline company, using the same environmental consultants and all that sort of thing. There was at least the appearance of coziness there and it would seem to me that this would allow the NDEQ just to meet with whatever pipeline company comes up with a permit before 2013 and set up requirements and we're giving no oversight to that process. Who decides what that evaluation would be? [LB1161]

SENATOR SMITH: Once again, I'm going to allow some of those that follow me... [LB1161]

SENATOR HAAR: Okay. [LB1161]

SENATOR SMITH: ...answer some of that, but, once again, remember the intent of this is to take place with the pipeline that is at issue, that's at hand now. And I suppose I would disagree that the level of coziness that you refer to, I believe that there certainly has been cooperation among all parties to try to provide the best information for the evaluation and that's what the intent of this language is. [LB1161]

SENATOR HAAR: Um-hum, um-hum. But, you know, NEPA is a...and I don't understand NEPA entirely either, but it is a set of regulations and so on, and this really gives no...I'll just say then that bothers me, this part of it that there's a similar study or evaluation with really no oversight from the Legislature or anyone else. Now the date of moving it back, is this simply for the Keystone XL pipeline then? [LB1161]

SENATOR SMITH: I think, primarily, that is what is at issue here is the pipeline that has already begun. [LB1161]

SENATOR HAAR: Okay. Right. And that's...and I was criticized by people for saying I...I thought the process would just go forward with the NDEQ, but the way it's stated here, let's say...and again, I did a lot of research back in those three months and there was a map from 2007 from the Canadian Association of Petroleum Producers, CAPP, and that map showed four pipelines coming from Alberta through Nebraska down to the Gulf. So if all of a sudden other companies decided now is the time to get our applications in, this

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

could include how many other pipelines, correct? I mean, any pipeline that would apply now in the next year would fall under LB4 instead of LB1. [LB1161]

SENATOR SMITH: Probably no less of a risk than what we ended up with at the conclusion of the special session. I think the timing, the timeliness of everything, I think, is somewhat of a deterrent. But once again, I'm going to defer to some of those experts that follow me that may be able to address that specifically for you. [LB1161]

SENATOR HAAR: Um-hum. Well, for example, Enbridge talked about...and I haven't seen this lately, but they talked about...well, maybe they would go ahead with the pipeline. So if they came ahead with the permit, they would fall under LB4 instead of LB1, isn't that correct? I mean, if they...in this next year? [LB1161]

SENATOR SMITH: Well, I think if all the conditions were met. Now whether the timing would allow for that to be completed, that's a good question. [LB1161]

SENATOR HAAR: Um-hum. But I mean according to the...and these are just my concerns, I mean, we can ask people following you the same questions as well. But it moves the date, basically, for LB4 from January 1 of this year to next year, isn't that correct, to 2013? [LB1161]

SENATOR SMITH: That is correct, 1-1-13. [LB1161]

SENATOR HAAR: So, and it says here, right on page 3, line 12, and so on, "the Major Oil Pipeline Siting Act shall not apply to any major oil pipeline that has submitted an application to the United States Department of State pursuant to executive order, blah, blah, blah, prior to January, 2013. So it's not...it's not just TransCanada, otherwise it's special legislation. This could be Enbridge or any of those other two or three pipelines that that early map showed, isn't that correct? [LB1161]

SENATOR SMITH: Well, once again I'm going to go back to there's a...you know, if all the planets aligned, but I think what we're seeing here is that there's a number of things that would have to take place with any type of an application that came forward to be reviewed and there is certainly a limited amount of time to have that completed. And then it would have to fit in within the federal process as well. Those that follow me, again, may be able to answer that more specifically for you, but it would appear to me unlikely that another pipeline from scratch could take advantage of this, But once again, I'd like to hear from those that follow me as well. [LB1161]

SENATOR HAAR: Okay. And then on line 17, we talked a lot, and I talked a lot with Senator Fulton about the Tenth Amendment. It says here: authority prior to the effective date of this act pursuant to any provision established by federal legislation. So if the federal government and the crazy way they've been acting so far around this pipeline, if

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

they decide to do some other types of things between now and January 1, 2013, we're bound to those things, or we have to come back and readjust our laws again. [LB1161]

SENATOR SMITH: Once again, the intent of that language, Senator Haar, is to be able to go forward with what was already started and to be able to complete that review as was...as we had planned to be done after the special session. [LB1161]

SENATOR HAAR: Right. And I take you seriously on that, and when I was asked by the World-Herald what I thought would happen, I said, yeah, I thought we would just go ahead with the same process. But in the bill, the way it's stated it seems that it is really wide open, number one, to any pipeline that would come forward; and the second, to any law that the federal government passes in the interim. And we know that the pipeline has become a political football used by, it seems to me, both sides trying to embarrass the other side. And so if they come up with some screwy law, that line, line 17 on page 3, ties us to whatever they do in Washington. And that concerns me a great deal. [LB1161]

SENATOR SMITH: Well, it's a good question you've raised. And I'm going to look at that while I'm sitting back here and listening to the other testimony. And, once again, if those that follow me are not able to answer that for you... [LB1161]

SENATOR HAAR: Okay, we can talk about that. [LB1161]

SENATOR SMITH: ...to the degree that you want, then I will work on it for you. [LB1161]

SENATOR HAAR: Okay. One of the things, I guess, that bothers me is that we're trying to fix what does or doesn't happen in Washington. And what we've seen from them so far is we don't have any idea and you almost have to assume the worse from what we've seen so far. [LB1161]

SENATOR SMITH: Well, I'm going to take a little bit of a different perspective on that. I don't...I'm not certain we're able to fix what's going on in Washington and this is certainly not an attempt to...at fixing what is going on in Washington. This is simply what we're trying to do to make certain that Nebraska, through the process that was established in the special session, is able to adequately, properly review all potential sites and made certain those sites work for Nebraska. [LB1161]

SENATOR HAAR: Um-hum. [LB1161]

SENATOR SMITH: And that's what this is intended to do so that at the time that comes when there is another application for a permit, that we will have the proper amount of input into that route. And that's what this is about. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR HAAR: Um-hum. Okay. Now again, I...in my mind I always just ask a ton of "what ifs" and my understanding is that LB1 and LB4 not...I mean, we did it in response to the KXL coming across the border. But when all is said and done, LB1 would apply to any pipeline, and there are certain length and certain diameter of the pipeline. So there could be a pipeline, let's say, constructed within in the United States that right now if they applied for an application right now and it went through Nebraska, they would have to go through the Public Service Commission process. But by delaying this for a year, it would go back under the NDEQ process where Nebraskans pay for it, pay for the environmental study. [LB1161]

SENATOR SMITH: Well, I think the...once...you know, the intent here is to be able to utilize a department that is prepared and ready and qualified to perform the reviews that are necessary for us to have the outcome that Nebraskans wanted as was seen in the special session. The PSC at this point is not at the same point to be able to take over those responsibilities. That's why it's better since the timeliness of this is that the authority and the ability be given to DEQ to be able to complete their review. [LB1161]

SENATOR HAAR: Um-hum. But another pipeline, let's say an intrastate pipeline, under this delay would come under NDEQ instead of the Public Service Commission, because that applied to all hazardous material pipelines, crude oil pipelines. [LB1161]

SENATOR SMITH: I do not know for certain about the answer to that question, Senator, but again, let's see if someone else is able to answer that for you. [LB1161]

SENATOR HAAR: Okay. Okay. Now do we know how much money...well, how much money the NDEQ has spent so far, or is that something...I suppose I can ask that later. [LB1161]

SENATOR SMITH: You know, I think Mr. Linder is going to...I have had some discussions. I have a general idea as to where they are in this process, but I would prefer for him to answer that for you. [LB1161]

SENATOR HAAR: Okay. And you had made the statement, the Public Service Commission might not be able to jump right in if somebody applied for one today. Have you talked to them about that? Is that...or is that a... [LB1161]

SENATOR SMITH: I want to be clear on, you know, if that is exactly what I said, let me clarify. [LB1161]

SENATOR HAAR: Okay. [LB1161]

SENATOR SMITH: I believe for this pipeline, the Nebraska DEQ, I believe, is in a better position to be able to complete this process review than would be the PSC at this point

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

in time. [LB1161]

SENATOR HAAR: Okay. Okay. Then again, just some of the "what ifs"; now this law actually takes the MOU out of, the memorandum of...MOU...of understanding out of the mix. So what if things happened in a way that the memorandum of understanding made sense? I mean, haven't you eliminated that in this bill? [LB1161]

SENATOR SMITH: There is someone that is going to follow me that is much more... [LB1161]

SENATOR HAAR: Okay, okay. [LB1161]

SENATOR SMITH: ...of an expert on the legality, so please, allow him to answer those questions. If he is not able to, I will assure you, I will work for that. [LB1161]

SENATOR HAAR: Okay, okay, okay, then we'll come back...okay, yeah. And really, I'm just trying to talk about my concerns and my questions, so that's fine. And again, I guess then I would just...my final question and sort of a statement would be that it seems to me that this opens the door for another year to...to unintended consequences and, gosh, I don't want another special session next August, again, in terms of any pipeline coming through and this provision that...pursuant to any provision established by the federal legislation, and I have no faith in that right now in that process, so. [LB1161]

SENATOR SMITH: And I'm going to respond to that, but actually use that opportunity to clarify. As I'm asking you to refer those questions to some of the experts that follow me, the reason for me doing that, Senator, is that Nebraskans deserve the facts. [LB1161]

SENATOR HAAR: I agree. [LB1161]

SENATOR SMITH: And you deserve answers to your questions. And we did our very best to line up the people that...and anticipate the questions that would be asked and line up the folks that could best answer those questions. I don't want to get into a game of "gotcha" and I know that's not your intention. [LB1161]

SENATOR HAAR: And I'm not playing that. [LB1161]

SENATOR SMITH: I just want to make certain that you get your questions answered and that the public gets the facts. So that's the primary reason I'm referring off to some of the experts that follow me. And once again, I will make certain you get your answers if they are not able to provide them. [LB1161]

SENATOR HAAR: Okay. And I found long ago I don't play "gotcha" very well. I just have

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

to be up front with my concerns. [LB1161]

SENATOR SMITH: All right. [LB1161]

SENATOR HAAR: Thank you. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you. [LB1161]

SENATOR SMITH: Thank you. [LB1161]

SENATOR LANGEMEIER: Very good. You have heard the opening on LB1161. We'll now move to proponents. Welcome back. [LB1161]

ROBERT JONES: (Exhibit 7) Thank you. Good afternoon, Chairman Langemeier, members of the Natural Resources Committee. My name is Robert Jones, J-o-n-e-s. As you know, I represent TransCanada Keystone Pipeline L.P., a U.S. company headquartered in Houston, Texas, with field operations headquartered in Omaha, Nebraska. I am responsible for the implementation and development of the Keystone pipeline project. I appreciate the opportunity to testify before this committee once again on legislation related to the Keystone XL pipeline project. This afternoon I will provide the committee with an update on the progress that has been made since the special session last November, as well as certain developments that have occurred since then. I would also like to advise the committee on our plans on advancing the project to completion. I will comment on the importance of LB1161, which is now before the committee, and following my testimony, Jim White, TransCanada's associate general counsel, will testify in more detail about the need for LB1161. As you recall, last November the Legislature took up bills to address Nebraskans' desire for TransCanada to develop an alternative route for the Keystone XL pipeline project that avoided the Sandhills region. During the special session, the U.S. Department of State announced that it was delaying its issuance of a Presidential permit for the project until it could study alternate routes in Nebraska and that a supplemental environmental impact study would be prepared under the National Environmental Policy Act. With that announcement and under the leadership of this committee, Speaker Flood, and the Governor, and with TransCanada's full support, the Legislature unanimously passed LB4. The legislation authorizes the Nebraska Department of Environmental Quality to enter into a memorandum of understanding with the U.S. Department of State and collaborate in a supplemental environmental impact statement to determine a new route across the state. The DEQ promptly engaged with the Department of State to develop an MOU and hired an independent contractor to assist with the reroute effort. The DEQ also published a map which delineated the Sandhills region so that TransCanada could know what areas the Keystone XL pipeline must avoid. At the same time, TransCanada began to assess and study potential alternative routes that avoided the Sandhills region.

Natural Resources Committee  
February 16, 2012

---

Keystone conducted desktop assessments and we supplemented it with our aerial and ground reconnaissance. And with this information, TransCanada continues to assess and refine potential alternative routes. On December 22, Congress passed the Temporary Payroll Tax Cut Continuation Act. That act included a provision that required the President to make a decision on the Presidential permit for the Keystone XL project within 60 days. The act further provided no further NEPA review was required for the pipeline route and the reroute in Nebraska. And as a result at that point, the U.S. Department of State was no longer working on a supplemental EIS for the reroute and suspended its collaboration on the MOU with the DEQ. On January 18, the U.S. Department of State announced that the President accepted its recommendation to deny the Presidential permit for Keystone XL and determined the project at present and analyzed at that time does not serve the national interest. The President's Report to Congress on the denial stated that the 60-day period provided by the Payroll Tax Act was not adequate for the Department of State to obtain and assess the additional information that was required to complete the national interest review of the project. Specifically, there was insufficient time to develop and assess information regarding alternative pipeline routes in Nebraska. The President's decision emphasized that it was based on not having necessary information at that time. Importantly, the decision stated that it does not preclude any subsequent permit application or applications for similar projects. In a response to this decision, TransCanada issued a press release stating it fully intends to refile for its Presidential permit. The most important aspect of refile for this Presidential permit is the determination of a process for a new route in Nebraska. And for that reason I'm here to support LB1161 which authorizes the DEQ to resume its work in connection with that reroute determination. As you may be aware, there are a number of legislative initiatives being discussed in D.C. that could impact this project and that process would lead to a Presidential permit. What I want to make very clear is TransCanada's intent to live up to its commitment to work with the state of Nebraska to develop a new route that avoids the Sandhills no matter what the federal process turns out to be. We made that commitment last fall; we want to live up to it. We are ready to resume our engagement with the DEQ as soon as LB1161 becomes effective. Thank you. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Dubas. [LB1161]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Jones. I have not been able to get a clear answer to this question and I'm hoping you will be the one who will be able to do it. When we refer to, in the legislation, we're talking about Executive Order 13337. When you make your reapplication, will it be under that same executive order or will it be a different executive order? [LB1161]

ROBERT JONES: No, that executive order was for permits crossing the border. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR DUBAS: Okay. So your reapplication will still fall underneath that executive... [LB1161]

ROBERT JONES: Yes, and I'll have Mr. White...you should ask Mr. White that to confirm it. He's the expert. [LB1161]

SENATOR DUBAS: All right, thank you. Well, then I have some other application questions so maybe I'll just wait on those with Mr. White, is he more... [LB1161]

ROBERT JONES: When it comes to real technical legal bill stuff, he's the guy. [LB1161]

SENATOR DUBAS: I think that's where the rest of my questions are at, so. [LB1161]

ROBERT JONES: I'm about the business; he's about the legal aspects. [LB1161]

SENATOR DUBAS: I'll let you off the hook then. [LB1161]

ROBERT JONES: Very good. [LB1161]

SENATOR LANGEMEIER: Senator Haar. [LB1161]

SENATOR HAAR: Yes. Welcome. [LB1161]

ROBERT JONES: Again. [LB1161]

SENATOR HAAR: Yes, we bumped into each other in Columbus as well. So by opening...again, my "what if" is around unintended consequences. If you were the only pipeline company in this world right now, I wouldn't have nearly the "what ifs" that I have. But if we delay this for another year, what if Enbridge comes in? Wouldn't, as you read the legislation, couldn't they then be treated in the same way not only by the NDEQ, but Nebraska taxpayers paying for that study? [LB1161]

ROBERT JONES: I think...first of all, let's look at the business aspects. Is the reality of another pipeline ready to apply across for a route in Nebraska? And the answer is no. Your CAPP map clearly shows that there's no other pipeline going through Nebraska by Enbridge. They don't come anywhere near Nebraska. Their competitive alternative is to go through Chicago. And whatever pipeline proposals they're talking about, that's the way they would go. So the reality is that there is no other pipeline company right now that's proposing a pipeline across the state of Nebraska. I think what this bill is intended to do is to address the spirit of what we did last November. And, yes, the federal government has put a lot of challenges for us in order to meet that commitment, both the people and the state of Nebraska and for TransCanada. Believe me, we didn't go

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

looking for this. We were working in collaboration with the Department of Environmental Quality and we now just need the authorization to continue our job. Right now we only have a final environmental impact statement that goes through the Sandhills. Our commitment is to make sure we have a process...we need a process to make sure we can fulfill our commitment, which is to avoid the Sandhills. [LB1161]

SENATOR HAAR: But if there were another pipeline, and again, that 2007 map and I...the 2010 didn't show it, but there were four pipelines coming down. [LB1161]

ROBERT JONES: But...so...you're talking about a macro characterization... [LB1161]

SENATOR HAAR: Of course. [LB1161]

ROBERT JONES: ...of what is going to be required to move Canadian oil and Balkan oil into the marketplace. Those four pipelines don't go through Nebraska. Only Keystone XL goes through Nebraska. [LB1161]

SENATOR HAAR: So this...well, on that map they all went through Nebraska. And each one of them... [LB1161]

ROBERT JONES: I know that map. I work...I worked with CAPP. [LB1161]

SENATOR HAAR: Okay. Well, you and I can share maps afterwards, but I have a copy of that too. [LB1161]

ROBERT JONES: Yeah. But it was a characterization, right? [LB1161]

SENATOR HAAR: Sure...agree. [LB1161]

ROBERT JONES: It was a characterization to show that pipelines are required to go from where there's the production basin to... [LB1161]

SENATOR HAAR: But in that characterization, four pipelines went through Nebraska from Alberta. [LB1161]

ROBERT JONES: I respectfully disagree with that. That's fine. [LB1161]

SENATOR HAAR: Yeah, anyway. Well, we'll pull out the maps and then we can do that afterwards. [LB1161]

ROBERT JONES: Sure. Because Express goes through Wyoming and Enbridge goes through Wisconsin and Minneapolis and Illinois, so it doesn't make practical sense for them to come through Nebraska. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR HAAR: Yeah, yeah. So we don't know what Washington is going to do. I mean they acted in a...it's a political fight, right now. I doubt if anybody cares about the oil. It's...you know, who can embarrass who the most. [LB1161]

ROBERT JONES: And I think this bill absolutely...by decoupling, we depoliticize, so no matter what federal agency...because it could be that we won't be dealing with the Department of State anymore. And I want to clarify two questions. One was with regards to MOU. It does not write out an MOU. This absolutely is an and/or requirement. So if we end up dealing with a different federal agency, or even the Department of State and we needed to have an MOU, then DEQ is totally allowed under this legislation to do an MOU. It doesn't prevent it at all. And the other was in regards to NEPA. It doesn't prevent NEPA at all. In fact, it supports NEPA, it's an and/or situation. And again, if the federal government, which, by the way, it has, has said the NEPA record is closed, but let's say some other federal agency needs something and that's what that's trying to clarifying. So it's an expansion to say, look, we don't have to be...we're not just looking at a NEPA requirement here if it's some other federal legislation. So let me give you an example, the Migratory Bird Tree Act. That prevents certain types of construction. So if we need to...if DEQ needs to work with an agency then they can do that whether they use NEPA or not. But it doesn't prevent NEPA. In fact, we would strongly urge that the DEQ continue to follow the NEPA guidelines. [LB1161]

SENATOR HAAR: But it strikes out the words NEPA and so on. [LB1161]

ROBERT JONES: No, it doesn't. [LB1161]

SENATOR HAAR: Well, let's look. [LB1161]

ROBERT JONES: And I would...so I suggest you talk to Jim White about this, but I don't believe that's the edit that that's required, it's an and/or thing. [LB1161]

SENATOR HAAR: Okay. Well, I would disagree that it decouples us from the federal government, because on page 3, line 17, where it moves the date, it says, pursuant to any provision established by federal legislation. So if they come up with something tomorrow, we're tied to that. [LB1161]

ROBERT JONES: Yeah, but that's in regards to the fact that they've approved the pipeline. [LB1161]

SENATOR HAAR: But it just says, pursuant to any provision established by the fed...so whatever the federal government passes in the way of the pipeline between now and 2013, we've tied ourselves to that. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

ROBERT JONES: We do now. I mean, we have to comply with the federal rules. [LB1161]

SENATOR HAAR: Okay. Well, you have more faith in what is going to happen there than I do. And what about the phrase that keeps occurring about "similar study or evaluation" and the next... [LB1161]

ROBERT JONES: I think that's...that's...yeah, but, it truly...that's the one that says...DEQ decides. Right? DEQ is representing the state of Nebraska here. They're the ones that are most qualified. This isn't TransCanada. This isn't the federal government here. This is the state of Nebraska saying the spirit of our session in November was we've got to find an approved route. And they're the experts and they're going to run this process. And so that really leaves it to them to figure out. [LB1161]

SENATOR HAAR: But before, it was tied to NEPA. Now NDEQ could decide...it says, or a similar study or evaluation. That is so broad and vague that it could be whatever NDEQ wants then. [LB1161]

ROBERT JONES: Right. But because NDEQ is the appropriate party to determine that, they're the experts to determine it, because certain federal agencies they may need to work with wouldn't fit in...NEPA doesn't work, so maybe it's something else. But again, I'm the business guy. [LB1161]

SENATOR HAAR: I'll defer. [LB1161]

ROBERT JONES: Talk to the lawyers and DEQ after I'm done. [LB1161]

SENATOR HAAR: I get uncomfortable talking to lawyers. [LB1161]

ROBERT JONES: They are the experts on this...the actual nuances and the technical change that are regarded in this bill. [LB1161]

SENATOR HAAR: Okay, thank you. [LB1161]

ROBERT JONES: You're welcome. [LB1161]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. [LB1161]

ROBERT JONES: Thank you. [LB1161]

SENATOR LANGEMEIER: Further testimony as a proponent. Welcome. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

JIM WHITE: (Exhibit 8) Good afternoon. Good afternoon, Chairman Langemeier, members of the committee. My name is Jim White. I'm the associate general counsel for TransCanada Corporation with responsibility for advising the company with respect to the major state and federal permits that the company requires in order to prosecute the Keystone XL project. I understand there may be a few questions for me so I'll try to keep my remarks brief. I appreciate the opportunity to address the committee regarding the need for the legislation referred as LB1161. We believe the bill is required to restore the process that was put in place by LB4 during the special session last November. LB4 was adopted to authorize the DEQ to participate in a joint effort with the State Department to develop a new route avoiding the Sandhills region. At that time the State Department had indicated publicly that it intended to conduct that review in the form of a supplemental environmental impact statement under NEPA. Therefore, LB4 specifically referenced the DEQ's authority to "collaborate with a federal agency or agencies in a review under NEPA involving a supplemental environmental impact statement for the oil pipeline projects through or across the state." The bill further required the DEQ to enter into an MOU with the State Department. Upon the enactment of LB4, DEQ engaged with the State Department with respect to the MOU, hired a contractor and published a map delineating the Sandhills region that Keystone was required to avoid. In late December in a step that no one here could reasonably have anticipated, the Congress passed the Payroll Tax Cut Extension which required the President to make a decision with respect to the Presidential permit application within 60 days. The act required the reconsideration of a route within Nebraska, but provided that the supplemental...that the final EIS was sufficient for that reroute and that there would be no further NEPA review. In January the State Department announced its determination that the project as presented and analyzed at that time did not serve the national interest. That determination was based on the rationale that there was inadequate time to complete the review of the route and the Sandhills. As Mr. Jones stated, TransCanada intends to refile its application for a Presidential permit. In pursuing that application, TransCanada will honor its commitment to develop a new route in Nebraska that avoids the Sandhills. Moreover, TransCanada intends to work with the state in developing that route. Given these circumstances, we believe it is important for the Legislature to provide renewed authorization for DEQ to take the lead role in the Nebraska reroute effort. That authorization should take into account developments that are under consideration in Congress that make it difficult to predict with certainty what the federal process will be going forward. In short, there are legislative initiatives that if enacted, could take the reroute out of the hands of the State Department or provide that the State Department's role in that process would not involve a supplemental EIS under NEPA. Without going into any great detail, there is an initiative in Congress that would require the Federal Energy Regulatory Commission to grant a permit to TransCanada after a reapplication is filed. There is another initiative that would grant TransCanada a Presidential permit and prohibit construction in Nebraska until the Governor submits a new route to the State Department. That initiative requires federal agencies to assist Nebraska, but not

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

necessarily under a NEPA process. It's not possible to predict whether or when any of these federal initiatives might ultimately be adopted, or if so, how they might be amended. TransCanada, certainly, does not control or direct the federal legislative process. For these reasons we believe that LB1161 appropriately grants the DEQ the authority to determine an alternative route under either the existing federal framework, which is 13337, or any other scenario that develops through congressional initiatives. Thank you. [LB1161]

SENATOR LANGEMEIER: Very good. Are there questions? Senator Dubas. [LB1161]

SENATOR DUBAS: Thank you, Senator Langemeier; and thank you, Mr. White, you've helped clear up a few things for me. But, okay, so an MOU, is that...walk me through what an MOU looks like in a generic form. What are we agreeing to here? [LB1161]

JIM WHITE: Essentially the MOU sets out roles and responsibilities of the various participants in a review process. So if there's a joint federal and state, it would delineate those responsibilities of the state agency, the responsibilities of the federal agency, usually there is a timing aspect to it or a schedule aspect to it, and a substantive aspect, what would be the criteria in the review, those sorts of steps. [LB1161]

SENATOR DUBAS: Okay. So if we decouple ourselves from an MOU with the State Department or any other...not knowing what agency we may ultimately end up having to deal with, if we have no MOU and we move forward with our own EIS and we're dealing with another agency...or they come in and they say, well, what you've done doesn't meet with what we would set out in an MOU. Are we wasting our time by doing that? Is it okay for us to move forward without any MOU in place? [LB1161]

JIM WHITE: Right. So I can't speak specifically to what standards or what process the DEQ would establish in the absence of participating in a joint NEPA review. My expectation would be that they would set forth a process which if not a strict NEPA process, was very similar to a NEPA process. But we had some preliminary discussions with DEQ and that was our understanding. I do want to make the point that it's by far the most likely scenario is that we will file a new application under the existing executive order, under the existing framework and proceed through the supplemental NEPA process with the State Department. The only reason that this legislation is being proposed is because of the federal initiatives that are out there. The likelihood of those federal initiatives actually being adopted, I think, is relatively low, but because there is the potential for that activity, there's a...the bill, LB1161, adds on an additional authorization for DEQ to do its work in the event that it's taken away from the State Department. [LB1161]

SENATOR DUBAS: Okay. So your understanding then is if it would still remain with the State Department, we moved forward with our own EIS, we would probably...we would

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

be okay with what we're doing. [LB1161]

JIM WHITE: Yes. [LB1161]

SENATOR DUBAS: And you answered my question about the executive order. There has been some concern about would there be any other pipeline companies who could potentially come in under this...this appears to kind of open it up to others. We know what our intent is, but could this be opened up to others. [LB1161]

JIM WHITE: Right. [LB1161]

SENATOR DUBAS: If you're going to submit an application, is it something as simple as saying I'm Company XYZ and I'm applying for a Presidential permit... [LB1161]

JIM WHITE: No. [LB1161]

SENATOR DUBAS: ...and then you move forward? Or is it...I mean, is this something that has to be in the works for a considerable amount of time before you make the application and the application is extensive? [LB1161]

JIM WHITE: So I've prepared three Presidential permit applications. The prework, both on the regulatory and commercial side, that has to go on in advance of filing that sort of an application is voluminous. First of all you need commercial support or you don't have a project. Secondly, you need to do the studies that help you delineate where the project is going to go. Then you need to put all that information together in an application. Typically, a Presidential permit application has a national interest demonstration, it has a business case, and then it has an environmental submittal that goes with it which is extremely voluminous. So the work that is required to both put together a project from a commercial standpoint and from a regulatory standpoint is quite significant. I'm not aware of anyone who has proposed a border crossing, an additional border crossing permit, sorry, an additional border crossing project. Those are the only projects that could theoretically be excluded from LB1 and put into LB4. A project, of example, the Enbridge project that's been discussed from Flanagan, Illinois, down to Cushing, that's not a candidate for LB4 because it would not seek a border crossing permit. [LB1161]

SENATOR DUBAS: So, if you're going to be submitting a border crossing application and we're extending this time line out another year, that's not a time frame that is especially conducive to getting one of these applications ready to put forward, is that correct? [LB1161]

JIM WHITE: I would agree with that. It's a theoretical possibility; I think from a practical standpoint it's quite unlikely. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR DUBAS: All right, thank you. [LB1161]

SENATOR LANGEMEIER: Senator Haar. [LB1161]

SENATOR HAAR: Well, I'm going to go over some of the same issues. And I think we all agree that the kids in Washington are playing with politics and not with energy policy. What in the LB4 said LB4 could only apply to a border crossing? [LB1161]

JIM WHITE: Okay. On page 3. [LB1161]

SENATOR HAAR: Okay. [LB1161]

JIM WHITE: If you look at between lines 12 and 18... [LB1161]

SENATOR HAAR: Okay. [LB1161]

JIM WHITE: ...there is the...this is the exemption from LB1 and it's for a pipeline that has submitted an application under the executive order prior to January 1, 2013; or which applies for or is granted a border crossing authority prior to that date. So it has to be someone who has actually filed or been granted by Congressional fiat a Presidential permit before January 1, 2013. There are no bills being discussed in Congress that would grant anyone else a Presidential permit by a Congressional fiat. It's not on the table. [LB1161]

SENATOR HAAR: Not now. [LB1161]

JIM WHITE: Not on the table. [LB1161]

SENATOR HAAR: Okay. Not now. Well, let's go back to page 4 of the bill that strikes out the memorandum of understanding. Would your understanding of Nebraska law be that since...that the NDEQ could enter into an MOU with the federal government without authority? Because this just crosses that out. I mean, it...at line 3 it says "the department shall enter into a memorandum of understanding with such federal agencies as set forth," and it just crosses out "enter into a memorandum of understanding." And so if we came back and everything just came back into line and started flowing again and it was appropriate that the DEQ had to work with the Department of State, now the NDEQ has no authority to enter into a memorandum of understanding. Or am I reading this wrong? [LB1161]

JIM WHITE: So section... [LB1161]

SENATOR HAAR: I'm sorry, on page 4. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

JIM WHITE: Yep. [LB1161]

SENATOR HAAR: Line...well, it starts at line 1 and it...the memorandum of understanding is mentioned in line 3. [LB1161]

JIM WHITE: Yeah, I don't believe that that precludes DEQ from entering in a memorandum of understanding. It simply takes into account the possibility that they might be proceeding in a...down a review in a different scenario. For example, Section 3 says that the department may collaborate with a federal agency in a NEPA review involving a supplemental environmental impact statement. That's the old language, that's the standard process, Executive Order 13337, that's the most likely scenario. What is added here is the ability to determine the route of a pipeline to be included in an application to a federal agency or agency. That's to cover the situation where, for example, Congress grants a Presidential permit by Congressional fiat, leaving no one at the federal level to do the border crossing. But we still need to apply for other federal permits. For example, our Clean Water Act, Section 4, for permits to the Corps of Engineers, we need a route for that. We would need DEQ to assist in developing that route. And DEQ could enter into a joint review with the U.S. Army Corps of Engineers either under a memorandum of understanding or some other arrangement with the Corps. The... [LB1161]

SENATOR HAAR: How do you... [LB1161]

JIM WHITE: Sorry. [LB1161]

SENATOR HAAR: Yeah. How do you interpret in this...this is one of the things that I brought up several times again, and I guess it's finally fallen to you, so congratulations. Six times it says, "or similar study or evaluation of the route of an oil pipeline." To me, that seems vague to the extent that I just have to trust things. [LB1161]

JIM WHITE: Well, I don't think it's particularly vague, because if you read it in context, it says, "shall fully fund the process of the preparation of a supplemental environmental impact statement or similar study or evaluation." The supplemental environmental impact statement would occur under the standard executive order process. If in the event that that's not the path that we go down because of some federal development, it says that the study that the DEQ must do must be similar to a supplemental EIS under NEPA. So I think that actually provides DEQ with quite a bit of guidance as to what that process should look like. It should be similar to a supplemental EIS under NEPA. [LB1161]

SENATOR HAAR: To a nonlegal person "similar to" is sort of like the word "fair" to me, but maybe it's not. I guess, you know, to summarize it, this bill does not...and I

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

understand the intent that Senator Smith is talking about, basically, to let federal government do their thing and get on with where we were in November. I mean, that's kind of the way I understand his intent. But this law doesn't require memorandum of understanding; it doesn't require a NEPA review; it doesn't require a supplemental impact statement; and it no longer has to be a shared jurisdiction and authority with the feds. So I just see the...again, NDEQ could enter into an agreement with a pipeline and get going and...that makes me feel uncomfortable. [LB1161]

JIM WHITE: If I could respond to some of that. [LB1161]

SENATOR HAAR: Oh sure, please, please. [LB1161]

JIM WHITE: So again, if we are under the standard executive process, there will be a supplemental EIS under NEPA and DEQ would be participating in that under an MOU. In the event that another process was established by federal legislation, DEQ would be directed to conduct a study similar to that which would have been done under NEPA in a supplemental EIS. I don't think it provides them with unfettered discretion to simply sit down and, you know, sketch out a route with us. I think it requires a process that is similar to NEPA. [LB1161]

SENATOR HAAR: But it could be done just with the pipeline company. It wouldn't have to include the federal government. [LB1161]

JIM WHITE: If Congress created a scenario where no federal agency was involved in the border crossing, that's theoretically correct. [LB1161]

SENATOR HAAR: Okay. Thank you. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you for your testimony. Further testimony in support. Welcome. [LB1161]

MIKE LINDER: (Exhibit 9) Thank you. Good afternoon, Senator Langemeier, members of the Natural Resources Committee. My name is Mike Linder, last name L-i-n-d-e-r. I'm director of Nebraska Department of Environmental Quality. First of all I'd like to thank Senator Smith for inviting me to testify today, but more importantly for me, for not...for not uninviting me. It's good to appear and testify on this topic. I'm here today to testify in support of LB1161 and AM1984. I want to make it clear from the outset that my support is of the legislation as a means to modify and carry forward the process devised during the 2011 Special Session regarding the Keystone XL project. My testimony should in no way be taken as any kind of position on the project itself, but only as clarifying the process that began after the special session adjourned. I would like to take a couple of minutes to outline what steps DEQ had taken subsequent to the special session and the process that we had planned to implement LB4. And finally I will indicate how I believe

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

LB1161 and AM1984 would enable DEQ to get back on track with the special session solution. As you probably know, DEQ had only peripheral involvement in the pipeline project prior to the special session. Our involvement related mostly to kind of peripheral permits that we issued, but no permit for the project, per se, based on a broad environmental evaluation of that project. Pursuant to LB4, DEQ is given the ability to conduct an environmental review of an alternate route segment of the Keystone XL project. The understanding at the end of the special session was that TransCanada would alter its proposed pipeline route to avoid the Sandhills region in Nebraska. To the extent the DEQ would work with a federal agency in a NEPA review, we were to do so only under the terms of a memorandum of understanding between DEQ and the federal agency involved pursuant to LB4. Upon enactment on November 22, 2011, DEQ began promptly implementing LB4. On December 2, we hired the services of a full...of a full-service environmental consulting firm and also an internal agency team. And the consultant then began preparing for an environmental evaluation of the proposed alternate route segment which would be determined by the applicant. Also on December 1, 2011, DEQ contacted the Department of State to begin exploring the process for entering into an MOU between our two agencies which would outline responsibilities and define a schedule. DEQ received a first draft of the agreement from the State Department within the next couple of weeks and exchanged comments with them. DEQ then submitted the proposed final version to the State Department on December 19, 2011, and to this date no further progress has been made on that front. I might mention that that document is available on our Web site if anybody is interested in looking at the content of that. Also under LB4, the Department knew that one of the first actions it would need to be taken by the DEQ would be to delineate the Sandhills area on a map so that the applicant would know what areas of the state to avoid in its proposed alternate route. DEQ did that on December 29, 2011, by adopting an existing and widely accepted ecoregions map of Nebraska that identified the most extensive and comprehensive evaluation of all of the state's ecoregions including the Sandhills. This map was the result, and it's actually a national map, a result of a multi-agency effort led by federal and state agencies, but led by United States Environmental Protection Agency in the mid- and late 1990s and complete in the early 2000s. With the map available, DEQ believed it would receive the proposed alternate route segment filed with the department by the pipeline carrier in early to mid-January. Once the department received that alternate route segment report, the plan was to review it and conduct several public meetings; actually, it would have probably been about this week, in the affected area to present the new proposal and to answer questions from the interested public. Once that process would have been complete, DEQ planned to give an initial reaction back to the applicant on the proposed preferred new route segment and alternatives, if any. And then the applicant would move from its preliminary review to a more in-depth, on the ground investigation of the actual proposed route to be submitted. DEQ estimated this process would commence, probably, in about the March, 2012, time frame. And then we anticipated over the next couple months the applicant would finalize its route to submit to the agency. I see my light has come on, so I got to... [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR LANGEMEIER: Go ahead and finish; this is important. [LB1161]

MIKE LINDER: Okay. [LB1161]

SENATOR LANGEMEIER: Finish your... [LB1161]

MIKE LINDER: So we anticipated that by May or June of 2012, we would get the in-depth environmental report and it would then be our turn and our consultant's turn to examine the information and prepare the SEIS report. Once complete, and we're projecting in July, 2012, we would have presented that document out again for additional public comment. And I might mention that while I only refer to two different comment periods, we had...we had begun preparing our Web site to be able to accept comments throughout the process. We had set up a special e-mail account that people could...I think we had five different ways people could comment, not only during these two periods, but throughout the review process. And then finally, after considering any additional public comments in that second period, DEQ would finalize its report for the Governor along with a recommendation by September 1, 2012. Pursuant to LB4, the Governor then has 30 days to review the report and act on it by forwarding his decision to the relevant federal agency, which in this case would be the Department of State. Obviously, this was an ambitious schedule, but there was a clear intent, I felt, during the special session to complete the process of an alternate route segment review thoroughly and expeditiously. As you know, and has been discussed already, on January 18, 2012, President Obama announced that he was accepting the recommendation of the State Department to deny the application for a construction permit for the Keystone XL pipeline under the Temporary Payroll Tax Cut Continuation Act of 2011. The official denial was published in a Presidential memorandum published in the Federal Register on February 3, 2012. I mentioned earlier that the DEQ had begun negotiations with the State Department on an MOU. But since the President's decision, DEQ was informed by the State Department that it will not be entering into an MOU with our agency since there's no longer a pending application on file. So this has brought the state review process, essentially, to a standstill. Our department has been unable to accomplish the task assigned to it by the Legislature and the Governor. The department has suspended any task order assignments to the contractor, and the internal team is back doing their regularly assigned duties. LB1161 and AM1984 would allow flexibility for DEQ to perform a review of the alternate route segment if submitted by a pipeline carrier, without the need of an MOU with a federal agency. As I envision it, the review would follow the same basic process as outlined above, although obviously, the time frame would now be delayed somewhat. AM1984 would maintain the intent of the special session legislation by clarifying that LB1 does not apply to the situation before us now if the applicant does reapply at the federal level before January, 2013. Secondly, the amendment would still allow DEQ to be a cooperating agency under NEPA, but not require that an MOU be in place before we begin our work. Also, in the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

absence of an active application under NEPA, AM1984 would allow DEQ to start a review which would eventually become part of a NEPA application to an appropriate federal agency. So in summary, the proposed legislation would give DEQ the flexibility to conduct a review as contemplated in LB4 without the necessity of having an MOU in place. DEQ is ready to reengage; the consultant is still on-board ready to reengage in the process and is poised to respond quickly with its review team and pick up where the process left off. However, we do feel a legislative change is necessary for DEQ to continue evaluating an alternate route segment of the oil pipeline if it is submitted. That concludes my comments, I'd be happy to respond to any questions. [LB1161]

SENATOR LANGEMEIER: Senator... We'll start with Senator Carlson. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. Director Linder, on the first page of your statement here, the next to the last paragraph, on...and you acted quickly, after the special session. On December 2, DEQ hired a full-service environmental consulting firm. What was that process? How did you go about doing that? [LB1161]

MIKE LINDER: LB4 waived the procurement, I can't remember the name of the engineering consulting procurement act, but it is pretty much at least a 90-day process. So LB4 waived that process for us procuring a consultant under LB4. What we did was we knew there were a limited number of firms that had a significant Nebraska contact or that had done a lot of work in Nebraska and were either based or semi-based in the state. So we reached out to three companies that we knew were probably of sufficient size and had a significant Nebraska contact and asked them for proposals. I think we had about a week for them to submit proposals. And then we had an internal review team look at the three proposals and selected HDR out of Omaha. I say full-service consulting firm because they were able to provide all of the expertise we needed without having to create a separate subcontractor team, which would take additional time and actually additional vetting, too, to make sure there wasn't any conflict of interest. So that's the process we used. [LB1161]

SENATOR CARLSON: Okay. So you ended up with three proposals. [LB1161]

MIKE LINDER: Right. [LB1161]

SENATOR CARLSON: And did you meet individually with those three or you just evaluated based on what they turned in? [LB1161]

MIKE LINDER: We evaluated, and I believe Pat Rice in my agency, who I asked to head up the internal team, visited with each of the firms on a pretty informal basis. It wasn't the typical come in and make a presentation, but they all had written proposals for us. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR CARLSON: Okay, all right, thank you. [LB1161]

SENATOR LANGEMEIER: Senator Haar. [LB1161]

SENATOR HAAR: Yes, thank you. Director Linder, you probably don't make enough. (Laugh) But that's not a topic for here. Have you seen a route yet from TransCanada on a map where they plan... [LB1161]

MIKE LINDER: They have not submitted a proposal, but I'll take you back in time. We were probably a week away from them submitting their alternate route report. So they did, in a meeting with us, show us more or less what they were thinking. [LB1161]

SENATOR HAAR: Could you tell us what that is? [LB1161]

MIKE LINDER: And they had a number of different drawing...essentially corridor drawings that went around the Sandhills area, but I can't describe them. It was just...and there's nothing they left with us or anything. [LB1161]

SENATOR HAAR: They were sort of on the napkin kind of things, yeah? [LB1161]

MIKE LINDER: Well, it was a little more than that. [LB1161]

SENATOR HAAR: Okay. [LB1161]

MIKE LINDER: But it was very rough. And, of course, that was, I believe, the next week was when the President made the decision. That kind of threw everything off track at that point. [LB1161]

SENATOR HAAR: So if Congress would not...would just have let things alone we'd be going right now? [LB1161]

MIKE LINDER: We would...this was the week we had projected that we would...I think we were going to conduct a series of four or five public meetings in the area. I can't remember which communities. But so it would have been this week. And, you know, we would have been out gathering comments. [LB1161]

SENATOR HAAR: Okay. So how much money do you think you already spent? Do you have an estimate? [LB1161]

MIKE LINDER: Well, the internal team, I don't really have a dollar figure on that. HDR, we got their first bill and I believe it was about \$90,000. And that was ramp-up time so, you know, it's kind of...I think it was kind of go in a little bit of a cyclical billing amount. That was ramp-up time and, you know, we would have had another very busy period

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

during the summer. But I think we were fairly comfortable with the budgeted amount. We were billed for \$90,000 give or take. And I think they had a few weeks into January then that we haven't been billed yet for. [LB1161]

SENATOR HAAR: Okay, so right around \$100,000. [LB1161]

MIKE LINDER: Probably a good guess. [LB1161]

SENATOR HAAR: So to unwrap this project again, is it going to be more expensive for Nebraska because it got halted in Congress? [LB1161]

MIKE LINDER: Well, I guess it depends on what we end up with. I mean, if we were to start again where we left off, whatever it was, three or four weeks ago, I wouldn't think there would be much difference. [LB1161]

SENATOR HAAR: Pretty much just flip the switch. [LB1161]

MIKE LINDER: But otherwise I'd just be speculating on what we're faced with. [LB1161]

SENATOR HAAR: Sure. Okay, without LB1161, in your opinion, would we be operating...okay, without LB1161 and TransCanada makes a new application, are we then operating under LB1 or LB4? LB1 was the Public Services Commission, LB4 is the NDEQ. [LB1161]

MIKE LINDER: Without LB1161? [LB1161]

SENATOR HAAR: Yeah. [LB1161]

MIKE LINDER: I think it's a question mark, I don't think there's a clear answer to that because this applicant had made application prior to the effective date under that executive order. It's kind of silent on...is a reapplication, does that count. I don't think it's clear. [LB1161]

SENATOR HAAR: Yeah, because we couldn't anticipate the mischief of Congress I guess. And so we're probably all in the dark there. [LB1161]

MIKE LINDER: Yeah, I don't think it's a black and white answer on that question. [LB1161]

SENATOR HAAR: Okay. So you said that...and I don't know how exactly how an MOU works. I'm sure you talk back and forth, right? And then you come to an agreement since it's a memorandum of understanding? [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

MIKE LINDER: Yeah, and actually, if you look at the document that's on our Web site, you'll see that it's really kind of a template document that is the process that many agencies in the federal government use to designate cooperating agencies. So there isn't redundant reviews. When a state has, a state or a tribe or other entity has its own siting requirements, oftentimes the federal government will enter into these MOUs or some kind of arrangement designating cooperating agencies so there's not a redundant review. So we were banking on that process. So what you would see is a pretty standard document that we started with and then refined it for our particular process, but... [LB1161]

SENATOR HAAR: So if things just got back on track the way they were and so on, and went ahead with LB1161. Could you just sort of pull that MOU off the plate and go forward with it? [LB1161]

MIKE LINDER: I...well, I'm not sure I quite understand your question, but based on earlier questions. I think if the applicant reapplied at the federal level, presumably with the Department of State, unless something changes, we would recontact Department of State right away and try to get that MOU in place because it only...you know, we're going to use the NEPA process because eventually that's what the applicant would need would be a NEPA, very much a NEPA-like document in order to get their final EIS amended. If we just turned in an inadequate study, it wouldn't really do anybody any good. [LB1161]

SENATOR HAAR: Well, except if Congress is successful in changing it from the Department of State, we might not even see that same EIS or it might even be called by a different name. So we don't know probably. [LB1161]

MIKE LINDER: I suppose that's possible. [LB1161]

SENATOR HAAR: Yeah, we don't know what that would look like. So in your opinion is this...is LB1161 designed for the Keystone or could another, you know, tsunamis are not predicted, oil ruptures in the Gulf are not predicted, we don't predict that someone else would come in. But could another pipeline, another situation come into this or is this just for KXL? [LB1161]

MIKE LINDER: Yeah, I suppose it's possible that somebody else could apply. But it would be a Department of State EIS, which I think Mr. White testified to. To get to that point is a pretty lengthy process. I think some of your earlier questions dealt with intrastate pipelines. And, you know, I don't think that would...I don't think this bill would really affect those. But in terms of other Department of State applications, you know, I suppose it's possible somebody could apply. I'm not as familiar with them in terms of what it takes to file that application but... [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR HAAR: Well, I'd just like to say, I appreciate your diligence in moving forward after the special session then. And you answered questions I threw at you and so on and I appreciate that. Thank you very much. [LB1161]

SENATOR LANGEMEIER: Very good. Seeing no other questions, thank you very much for your testimony. [LB1161]

MIKE LINDER: Okay, thank you. [LB1161]

SENATOR LANGEMEIER: Further testimony in support. Seeing none, we'll move to...don't want to go too fast. Any other support? No. Opponents. Come on up. [LB1161]

MARY PIPHER: (Exhibit 10) Thank you, I'm sorry...my name is Mary Pipher, P-i-p-h-e-r. I'm sorry to rush to the head of the line, but I have to go pick up my grandson from day care. I come to you as a concerned citizen, a lifelong resident of Nebraska and as a mother and grandmother whose family all live in our state. I also come as a friend of Sally Gordon who many of you knew. She died this week at the age of 102. I attended her funeral yesterday and thought about her 85 years of service to the people of Nebraska. As her son, Jim, said at her service, Sally didn't want the good life, she strived for a good life. Today I'm here to ask that you, like Sally Gordon, serve the people of our state. We are your constituents, not the lobbyists for TransCanada. This last year I have followed the work of this committee, the Legislature, and the Governor. And I have to say that I'm rather dumbstruck by what I have seen. It appears to me that, with the exception of a couple members, this committee in particular has spent its year worrying about the welfare of TransCanada. I simply cannot comprehend about why this would be the case. TransCanada is an oil conglomerate, owned by, among others, China and Saudi Arabia. Its business profits and bidding should not be the concerns of this committee. Why have you wasted so much time protecting a foreign corporation? Why have they had a voice in your deliberations instead of the people of the state? Why has TransCanada had access to legislators that ranchers and farmers threatened with eminent domain have not had? Why is this corporation being privileged and given a pass on rules and regulations? What is so special about it? If we have an oil spill and our lands and waters are polluted, will you be able to tell us not to worry, that it's TransCanada oil and not the oil of some other company? In fact, why is this hearing even necessary and why was the Smith bill submitted? There is no pending pipeline permit and there is not even a tentative route that we know about. We already have a legal process in place, LB1, to evaluate the new pipelines. Many of us are not happy with what we have witnessed in this Capitol Building which was funded by the dimes and quarters of our grandparents during the Great Depression. I see a committee pandering to TransCanada and ignoring the needs of our citizens. I won't speculate on the reasons why this is happening, but I will state for the record that you have not respected the voices of our people and you have not treated us fairly. I want you to know that many Nebraskans are watching you. We have had enough. We expect an

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

open, just and democratic process from this committee and the Legislature. We should not have to ask for this, but we do. Please, Senators, do your jobs, think about Sally Gordon and all the others in our state who have done their jobs to give us a good life. Don't let yourselves be bullied by TransCanada or don't sell yourself short. You are our leaders. Please protect us and our state, you can do it. Thank you. [LB1161]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you very much. [LB1161]

MARY PIPHER: You're welcome. [LB1161]

SENATOR LANGEMEIER: Further testimony in opposition. Welcome. [LB1161]

KEN WINSTON: (Exhibit 11) Good afternoon. For the record, my name is Ken Winston, last name is spelled W-i-n-s-t-o-n, appearing on behalf of the Nebraska Chapter of the Sierra Club in opposition to LB1161. On November 15, 2011, I appeared before this committee in support of an amendment to LB4 as part of an agreement intended to achieve two goals--rerouting the proposed TransCanada pipeline out of the Sandhills, and establishing a framework to determine the routing of oil pipelines. There were two significant parts of that agreement, first, that the LB4 process would be applicable only with regard to an application pending on the effective date of the act; and second, that all subsequent pipeline applications would be subject to the process provided by LB1. This agreement is reflected in the legislative record. It is also specifically endorsed in the language of the legislation enacted by the Legislature. Both LB4 and LB1 were unanimously passed by the Legislature and signed into law by Governor Heineman within minutes of their passage. The most significant, although perhaps unspoken, party to that agreement were the thousands of Nebraska citizens who attended State Department hearings in Lincoln and Atkinson, and more than 100 who testified at the hearings in the special session, and countless others who have spoken out on this issue, participated in events, written letters, and made phone calls. Their messages came from research and personal experience and were both honest and eloquent. I believe that LB1161 represents a unilateral repudiation of that agreement. Although I testified at the hearing that we had reservations about LB4, the Sierra Club has upheld its side of the agreement. Instead of following the laws passed by the Legislature in the special session, TransCanada now wants a special law passed to accommodate them since their application was denied. I also believe that in addition to repudiating the agreement that it creates, that it has legal flaws. LB1161 does strike a reference to the NEPA in contrast to what Mr. Jones said. It would significantly change the LB4 agreement. Part of that agreement was that the process would be pursuant to NEPA and the state would conduct an EIS. There's a body of law and procedures that are based upon these provisions, in particular a process for public input. We supported LB4 with the understanding that there would be full opportunities for public input pursuant to the EIS process and we encouraged the public to participate to the fullest extent

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

possible. In addition, we also have concerns about whether it would be subject to a constitutional attack under Article III, Section 18 of the constitution which forbids special legislation. LB4 may have been susceptible to a challenge on such grounds, but LB1161 is far more vulnerable in this area since it is an attempt to legislate for one company's project for which there is not even a current application. It appears to be a closed class and would confirm a benefit on one applicant that would not be available to others. It's also likely to be vulnerable to a challenge on equal protection grounds, since it is likely that any subsequent applicants would also be able to state similar reasons why their application should be given an expedited process and why the state should pay for their review. LB1161 would also exempt TransCanada from the eminent domain provisions contained in LB1. Nebraska landowners need protection from unwarranted eminent domain threats. LB1 is a step in the right direction, but hardly provides enough protection for the kinds of threats that Nebraska landowners have experienced. LB1161 is a step backward in that regard. On November 22, 2011, I gave a speech at the Lincoln Rotary Club about the pipeline process. The theme of that speech was how Nebraskans had come together to find common ground and resolve a difficult issue. In closing, I said the participation of thousands of Nebraska citizens throughout this process had made me proud to be a Nebraskan. The fact that the Legislature responded to their concerns and found a solution to these significant policy issues had only increased that pride. And I also want to talk about Sally Gordon because she was in attendance that day. And she told me the reason that she came was because she wanted to find out what the Legislature had done in the special session. She asked a question, at 102 years old, she asked what had happened and how could we be sure that the Sandhills and the aquifer would be protected? I told her that there was an agreement and that it was in good faith and that I expected the people would honor it. But I also indicated that people would have to keep their eyes and ears open and stay involved in the process. I'm honoring my promise to Sally. Thank you. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LB1161]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Ken, for your testimony. I guess I'll have to agree to disagree with you, but I think we made an agreement with TransCanada to exempt them in LB1 and LB4. And I believe I asked several of your testifiers for the Sierra Club if we passed these bills if you guys would support the pipeline. And many times the same response come, we're not trying to kill the pipeline, we're trying to keep it out of the precious Sandhills. I believe we worked out an agreement to move it. And then I believe your organization, as well as others here, went to Washington fighting it. I guess I felt stabbed in the back after all that work. And I guess I feel like you've went back on your agreement. I guess that's all I have. Thank you. [LB1161]

KEN WINSTON: Senator, with all due respect, I've been on record since the summer of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

2010 indicating the Nebraska Sierra Club's opposition to the pipeline. And I would hope that anyone who would like to, I'd be glad to share all that information with you. I've never said that I supported the pipeline in any way, shape, or form. [LB1161]

SENATOR CHRISTENSEN: But several people testified on your behalf. I asked them questions, what you guys' federal stance was, local stance was, and unfortunately it's not lining up here. Thank you. [LB1161]

KEN WINSTON: Well, I understand. I'm not going to get into a public disagreement, as I said a couple of weeks ago, with a state senator. But I believe that the record has been very clear all along, the Nebraska Sierra Club has opposed the pipeline entirely. And I believe that there was some testimony from some people who said...who were representing the Sierra Club, in that they did not have direction to testify about that particular issue. And so I guess I'd be glad to have a further discussion off the record with you, Senator. [LB1161]

SENATOR CHRISTENSEN: Thank you. [LB1161]

SENATOR LANGEMEIER: Senator Haar. [LB1161]

SENATOR HAAR: Ken, thanks for being here. Tell me more about the eminent domain part that you talked about. [LB1161]

KEN WINSTON: Well, under LB1, the eminent domain process requires an applicant to have a permit in order to be able to proceed with eminent domain. This exempts the applicant from that process so that they would not have to have a permit. And once again, I think that raises some legal issues about whether you're granting a special class to one company. And I realize that TransCanada's lawyers will probably be running in to try and do what they do. But frankly, I think that would make this...it creates some legal issues about the constitutionality of this legislation, in addition to being bad policy to say that there's going to be one class, one group of landowners, one group of pipelines that is going to have to comply with one set of standards. And this one pipeline only...doesn't have to follow that set of standards. [LB1161]

SENATOR HAAR: And that's the equal protection thing. [LB1161]

KEN WINSTON: That's an equal protection question. [LB1161]

SENATOR HAAR: Okay. One thing that concerns me, and you maybe know more about this, I don't know, but when we strike NEPA and it simply says, and I am still concerned about this statement six times, it says, similar study or evaluation of the route of an oil pipeline. You said that NEPA is a body of law. Talk a little bit more about that. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

KEN WINSTON: Well, and once again I'm not an expert on NEPA and I won't...and I don't play one on TV either. But the thing about NEPA is it is a federal statute. There's been lots of activity pursuant to that law over the years. And so people know what it means. And there are provisions that they would normally follow pursuant to NEPA. And when you strike that and you say or other similar provisions, I can't...I don't...similar study or evaluation, that could be lots of things. Who knows what that means. In particular, one of the other things, and this was pointed out in a hearing in the Judiciary Committee yesterday, is that words have meaning and striking words in the statute also has meaning. And so if someone comes in to litigate this issue, they're going to say, well, the Legislature stripped those words. That must mean that doesn't apply anymore. And there's an intent that this language should not apply. [LB1161]

SENATOR HAAR: Okay. So the lawyer that testified earlier said that really similar study or evaluation has some precision to it. I guess you're disagreeing with that. [LB1161]

KEN WINSTON: I think it's fairly wide open. And frankly, I don't know what that would mean without some sort of criteria, I mean what a similar study or evaluation, it could be...in particular if the...and this raises another question. I know that you brought this up, Senator Haar. There's a provision that says that the department shall make every reasonable attempt to assure that each vendor has no conflict of interest. And part of the reason for the state funding it is to make sure that there is no conflict of interest. But then it says that there shall be a joint review with a pipeline carrier. I don't know how you balance those two things when you have a joint review with the entity that's seeking the application, how can you avoid a conflict of interest in that situation? If you're jointly reviewing it with that carrier, how can you...I mean, it seems to me that's saying you're sitting down with them and you're working arm in arm with them to determine the route. And, you know, a certain amount of collaboration and discussion makes sense, but just a joint review, I find that problematic. [LB1161]

SENATOR HAAR: Okay. All right, thank you very much. [LB1161]

SENATOR LANGEMEIER: Senator Carlson. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. Ken, I'm a little bit puzzled. And however, I'm going to disagree with you here. But you always testify in a civil manner and I appreciate that. But in your letter you're talking about how proud you were of the state of Nebraska through the process of the special session. Well, I think it... [LB1161]

KEN WINSTON: And I'm very honest in saying that, Senator. I really feel like the Legislature stepped up to the plate. I'm sorry to interrupt you, but I really feel like the Legislature stepped up to the plate and took on this issue and resolved it without partisanship and dealt with a big, tough issue. And I said that in lots of things, including

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

a press release that we did. So yes, I definitely...that's a heartfelt statement. [LB1161]

SENATOR CARLSON: Okay. And I agree, that was a pretty good process. I didn't even like that we had to have the special session. But I think it was a good process. I think we came together and we did some good work. And the only governmental structure in the United States of America that could have done that was the Unicameral in Nebraska. But I think that LB1 and LB4 were pretty clear. In fact, I think you were in on a session that we had where I made it very clear that one of the wordings changed in LB1 was that pipelines are, not may be, are important for the future of Nebraska and possibly the future of the United States. And so for you to be against the pipeline, there's nothing wrong with that. But I don't know how you could come out of LB1 and LB4 and think that settled it and we're not going to have any pipelines in Nebraska. And that's kind of the way that I took your statement with Senator Christensen. We're going to have pipelines, I think. We're going to need pipelines, I think. And I believe that the process that we established in the special session is a good process. I think another thing, I just want to express this, and you can respond if you want to. But we're in the order now of listening to opposition, which is fine, that's all part of the process. But it can sound like that we just have multitudes of people against something and not a whole lot of people for something. And I want you to know that I have gotten a lot of contacts from my constituents, and I pay attention to my constituents in particular. They're overwhelmingly in favor of the pipeline, and most of them the original path. So it's not a one-sided thing in Nebraska as to what we should have done or whether it was mandatory that we move it. But we did it because we listened to a group of people that had concerns. And I think that's the part you're proud of. But we're going to have pipelines in Nebraska. [LB1161]

KEN WINSTON: And I'm not necessarily disagreeing with your statement about there being pipelines. I think it's this pipeline that we're concerned about. And I guess one of the things that I wanted to say in response to what you said is the provision of LB1 in particular states that this shall not apply to any oil pipeline that has submitted an application prior to the effective date of the act. And to my knowledge, the TransCanada has no pending application, so there could be no application pending prior to the effective date of the act. And my contention is that we went through that process. There was an agreement on that process, everyone agreed on that legislation. The language in the legislation is very clear, and it was vetted by TransCanada. They indicated, Mr. Jones indicated today that they supported that legislation. Well, they supported it, then let's go forward with the laws that are currently in place. [LB1161]

SENATOR CARLSON: And it's probably a technicality and maybe you're correct. But if you go back in the testimony on the floor of the Legislature, I made it very clear that I was not going to support legislation that first of all exempted any area of the state of Nebraska from a future pipeline, that would have a bill written in such a way that it wasn't a somewhat friendly bill because we are a business, we are a business state, and thirdly, that it exempted TransCanada. I said specifically TransCanada, and I wasn't

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

going to support anything that didn't do that. And in the extended meeting we had, that's where we ended up. So it may be a technicality in terms of wording and you might be right on that. But I know the spirit of what we...what our process was, and I'm comfortable that that was it. But you have every right for your expression. You've done it well and I have a right too. [LB1161]

KEN WINSTON: And I appreciate that, Senator. And I do recall your statements both in this committee and on the floor of the Legislature. And I guess I'm just saying I'm reading the words of the statute and I'm listening. And I recall, as I said, I sat in this chair on November 15 and said this is what we support. And I believed at that time that there was a clear understanding of what everyone was agreeing to. [LB1161]

SENATOR CARLSON: Okay. [LB1161]

SENATOR LANGEMEIER: Senator Schilz. [LB1161]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Winston, thank you for coming in today. I'm just... [LB1161]

KEN WINSTON: You can call me Ken, it's a good first name. [LB1161]

SENATOR SCHILZ: Well, we get confused maybe. (Laughter) Anyway, as I'm looking here and we talked about removing the NEPA language out of there. In the end, even if that's out of there, doesn't the NEPA process...isn't that going to basically supersede whatever the state does in looking at this? And if we don't comply with those regulations, won't this run through that same process anyway? And if that is the case, and you're looking for ways to make sure this gets done, DEQ is not going to go off that path very far. It doesn't make any sense. In my stance in sitting here, it doesn't make any sense to move forward at all. Here's what I mean...first of all, does that make sense to you and does not jibe with what you understand? [LB1161]

KEN WINSTON: Well, if it's going to be done in conjunction with a federal agency, then I think definitely it's going to have to comply with NEPA. Now if it's going to be decoupled from the federal process, which is what I heard earlier, then, and we're talking about...and the language referring to NEPA is stricken, then I'm not sure how far NEPA extends, particularly since the state of Nebraska does not have a NEPA process per se. [LB1161]

SENATOR SCHILZ: Exactly. And that's my next question. How is it that if you...okay, so you want to move forward, you want to get this stuff done. You want to have the best route through the state of Nebraska, I think that's why we're all here. The state of Nebraska cannot do a NEPA process, correct? [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

KEN WINSTON: It's my understanding they can through a cooperative agreement, which is what LB4 envisioned. And they can do a cooperative agreement to do a NEPA process, yes. [LB1161]

SENATOR SCHILZ: Okay. Where we're at now, since the Department of State has taken a step back from that, we could not do that, correct? [LB1161]

KEN WINSTON: Yeah, there would be no...well, I guess just to go back another step, from where I sit there's no basis for anyone to do anything because there's no application. It would be like a judge giving a ruling when there are no parties in front of it. So until there's an application and until there's a process at least on the federal level, then the state of Nebraska is spending money on an activity for which there's no...I mean, I don't know what they'd be doing it for. [LB1161]

SENATOR SCHILZ: Okay. I guess as I'm sitting here looking, we'd be doing it to find the best route to help the people of the state of Nebraska so that this pipeline, in our opinion, we would know where we'd want to see it. And I would think that once you have that and once you have that information that the Department of State and the NEPA process, if we're doing it in such a fashion where it fits within their system, they would probably be thankful for that, I would guess. But I mean I don't know. But I think what we run into is if we go back to that NEPA process, if we go back to the process that the feds have set up and that is in place, we're going to run into that same situation of what was it, cozy? You talked about...oh, I'm sorry. Senator Haar used cozy. I mean, all of a sudden we're right back to that. How do we do this circular thing again? Because what I don't want to see happen is I don't want to see the state of Nebraska being looked at as, you know, or the federal process to be looked at as giving anybody the preference as it comes to the process to define where the route should be. [LB1161]

KEN WINSTON: Well, and just to give it a little bit different slant from where I sit, I don't want us to be saying the one particular applicant gets a special process and nobody else gets that. And that's why I think that this process being spelled out in LB1161 is legally suspect. [LB1161]

SENATOR SCHILZ: Okay, thank you. [LB1161]

SENATOR LANGEMEIER: Senator Christensen. [LB1161]

SENATOR CHRISTENSEN: Thank you, Chairman. Guess I'll make a couple of statements. One, Nebraska made an agreement with TransCanada, if they made a voluntary movement of the pipeline that Nebraska would find the...an acceptable route. And that's what we're allowing the process to go on. Once we find that acceptable route, then it makes sense for them to go on, where if they got the rest of the route approved, it makes sense for them to apply for the permit and go on. Nebraska hasn't lived up to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

their end of the bargain. That was a voluntary movement for finding the suitable route to please the crowd that's here and that was here in the special session. So...and you say that you're reading the language technical. If we would have put in the language that we were exempting TransCanada, it would have been called special legislation, wouldn't it. [LB1161]

KEN WINSTON: Actually, I'm saying that this is special legislation. And I'm not reading it technically. I'm reading literally, Senator. [LB1161]

SENATOR CHRISTENSEN: But the same would have been if in the special session we would have exempted TransCanada by name, it would have been special legislation. So we had to come up with a process that allowed, in wordsmithing, to allow this process to be done. And we are setting with an agreement we haven't fulfilled. That's my end of this. We haven't fulfilled our end of it; they have. We need to do it. [LB1161]

KEN WINSTON: Well, and just to have a different point of view, I believe that Nebraska has followed through on its agreement. And we would have, we, the Nebraska Sierra Club, would have gladly participated in the DEQ process had Congress not intervened. But once Congress intervened, then suddenly the provisions of LB4 no longer applied. And so I believe Nebraska has lived up to its part of the deal and will continue to do that throughout this. [LB1161]

SENATOR CHRISTENSEN: I'll have to agree to disagree. [LB1161]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. Well done. [LB1161]

KEN WINSTON: Thank you, Chairman. [LB1161]

SENATOR LANGEMEIER: Further testimony in opposition. Just out of curiosity, how many more do we have to testify in opposition? Okay. [LB1161]

NINA NELSON: Good afternoon. [LB1161]

SENATOR LANGEMEIER: Welcome. [LB1161]

NINA NELSON: (Exhibit 12) I'm Nina Nelson, N-i-n-a N-e-l-s-o-n. I live in rural Clarks, Nebraska. And, of course, there's been a lot of testimony already given. But frankly, Senators, even before I came this morning, I don't even know why we're having this hearing. What part of no do some of you not understand? Most of us in this hearing chamber today are well aware of the past activity and the rhetoric that's gone on for many months regarding the TransCanada proposed Keystone XL pipeline. We all know TransCanada applied for a permit, followed by months of activity on their part. Then the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

State Department hearings were held, and finally President Obama and the State Department denied the application. End of subject. But, no, that hasn't been the end of this debate. It sounds just like when a mother tells a teenager no and somebody keeps whining around, trying to get their own way. We, the citizens of Nebraska, spoke loud and clear when we asked for that special session, thanks to Ken Haar and others, and we got it. And at that time I commend you for the vast debate and the fact that you did pass laws that would govern the routing of pipelines through our state for years to come, where we didn't have anything before. But special concessions or promises were made to TransCanada at that time. But they were regarding the Keystone XL pipeline that was just denied. And I believe that should have died with that denial. If they want to do another pipeline, I think they should have to develop and treat it as a new application. They should be required to give it a brand new name so we don't hear the name Keystone XL anymore. And they should have to adhere to the law that we now have on the books. You know, in this past year we've just been bombarded out here in rural Nebraska with newspaper ads and TV ads and radio ads. And TransCanada has been over at the State Fair and they're all over the state. And we know that that's been paid for by them or sometimes down at the bottom you'll see big oil mentioned, so they can say, well, that was somebody else. If they've got that kind of money, why shouldn't they be paying for the permit and all of the things that go associated with it? Now I've mentioned \$2 million in my handout. I may be wrong on that. That's the figure I keep hearing bandied about. But \$2 million is a lot of money in the state of Nebraska. And I just feel like anything that's associated with TransCanada or really any other pipeline company, they ought to pay the bill. Big oil has got a lot more money than the state of Nebraska will ever think about having. I've lived in Nebraska most of my life. I worked here all my adult years. And even today in retirement my husband and I contribute substantially each year to this state with our state income tax dollars. And I just wanted to publicly say I object to any of this tax money being paid to pay for any pipeline, whether it's TransCanada or anybody else. I see the value in the business world. I know what people are saying about our dependency on oil and a whole lot of other things. But I think that the state of Nebraska can do better with their tax dollars than pay bills that pipeline companies could be paying themselves. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LB1161]

SENATOR CHRISTENSEN: Thank you, Chairman. I'll make a quick statement. In your testimony here you said we, the citizens, spoke loud and clear. And I agree, we've heard a loud message. But also, as Senator Carlson said a little bit earlier, I'm going to reiterate, it's not just what we hear in this committee,... [LB1161]

NINA NELSON: I understand that. [LB1161]

SENATOR CHRISTENSEN: ...and I can tell you my district was over 2 to 1 telling me

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

just leave the pipeline where it was. [LB1161]

NINA NELSON: And it wasn't going through their backyard either. [LB1161]

SENATOR CHRISTENSEN: And if it wants to go through my backyard, I have a number of farms, I welcome it. It doesn't upset me. [LB1161]

NINA NELSON: Well, you can have it. (Laughter) [LB1161]

SENATOR CHRISTENSEN: But you know, we do have to listen to everybody. [LB1161]

NINA NELSON: I understand that. And that's what we expect you to do. And we honor you for doing that. [LB1161]

SENATOR CHRISTENSEN: And I just wanted to reiterate the statement. Thank you. [LB1161]

SENATOR LANGEMEIER: Senator Carlson. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. And thank you for your testimony. I want to add something to it. You pay income taxes, you also pay sales taxes, and so we appreciate... [LB1161]

NINA NELSON: I pay plenty of them. [LB1161]

SENATOR CARLSON: ...we appreciate that. [LB1161]

SENATOR LANGEMEIER: Very good. [LB1161]

NINA NELSON: Most of my shopping is done in Nebraska. [LB1161]

SENATOR LANGEMEIER: Further testimony in opposition. Come on up. Come on up to the front, while you wait your turn. Welcome. [LB1161]

ADAM HINTZ: Hi, I'm Adam Hintz, A-d-a-m H-i-n-t-z. And I'm a small business owner here in Lincoln. I own a coffee shop. And you know, I kind of know that business is kind of the school of hard knocks. And after being open for seven years, earning sales tax for the state, you know, I kind of understand that it's not always an easy game and the rules are set. And sometimes there's just nothing you can do about that. I really don't know...I think this is just a big waste of time. I think we made our decisions back in the special session. And, you know, going to play ball with somebody who didn't make it to the championship game is kind of ridiculous. You know, they didn't get in, they got their permit denied. It's time to just kind of move forward and not have to do anything extra

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

except keep going with this process that we already decided on. I mean, that's how business is. And you just got to go with the flow and just, kind of, you know, put in your permit, go through the process. And just because things changed, you know, that's just the way it is. So I just would like to reiterate that we all have to play this game and it's time to just kind of grow up and go forward. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Hintz? Seeing none, thank you very much. Stay close. Welcome. [LB1161]

JOHN HANSEN: That was close. I might not get out of that chair a second time. Mr. Chairman, members of the committee, for the record, my name is John Hansen, H-a-n-s-e-n, I'm the president of the Nebraska Farmers Union. As you can tell from the testimony that you've heard so far today, there are obviously different sets of expectations based on the agreement and agreements that were struck in the special session. As I think about this, I understand the benefits of the state of Nebraska helping develop the alternative route through our state. But I also agree technically that there is not technically now a project to review until a filing has been made, a refiling has been made on the part of TransCanada. If we're going to backdate the check to give the tax benefit for the deal that was struck to TransCanada and the benefits that come with that, including \$2 million of our money to help pay for the alternative route, here's what I would suggest as fair balance, as a way of keeping faith with multiple facets of agreements that were struck, is to make the...add amendments to LB1161 that would include the eminent domain process that is laid out in LB1 for the protection of landowners as they come through our state. We're going to have a second set of landowners, we're going to have a second part of the process or at least some new landowners. And that they ought to at least at a minimum have the same benefits of the new process that was also agreed to for a new application. I think that would strike an acceptable balance and leave folks with differing perspectives, both with something that they got out of the bargain. I would end my testimony and be glad to answer any questions. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. John, I'm going to ask a different question because the cost of the environmental impact study comes up, the review, who do you think should pay for that? [LB1161]

JOHN HANSEN: I think that it gets mighty dicey. We've made the commitment to that now interrupted process to... [LB1161]

SENATOR CARLSON: Let's throw that away, we're starting over again. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

JOHN HANSEN: So if we're going to start all over, the normal process that would be in LB1, the company would pay for it. [LB1161]

SENATOR CARLSON: Who should determine who does the study? [LB1161]

JOHN HANSEN: Depending on whether we're using the LB4 agreement or LB1 agreement. [LB1161]

SENATOR CARLSON: Well, I just said let's start all over again. And then you said to that the company should pay for it. [LB1161]

JOHN HANSEN: Well, the company would pay for it in LB1 if it were a new process. [LB1161]

SENATOR CARLSON: Okay. But then who decides which firm conducts the study? [LB1161]

JOHN HANSEN: If it were the State Department, it would be the State Department that would hire the consultants that would do the study. So which is why what I said up front is that there are some advantages to Nebraskans to make sure that we have a process that we are comfortable with, because we were not all comfortable with the arrangement that existed before with the State Department. And so the Legislature rightly tried to deal with that perception. [LB1161]

SENATOR CARLSON: Okay, all right. [LB1161]

JOHN HANSEN: And I give them credit for doing so. [LB1161]

SENATOR CARLSON: Thank you. [LB1161]

SENATOR LANGEMEIER: Senator Christensen. [LB1161]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, John. I just want to thank you for coming in and bringing the suggestion of how maybe we can make more people happy and try and satisfy both sides. And just wanted to thank you. [LB1161]

JOHN HANSEN: Well, thank you, Senator. I've been on the other side of the equation too many times myself as a public official where folks are a lot quicker to tell you what's wrong than they are to tell you what a potential fix might be. And as I thought about this and thought about the pluses and the minuses of every aspect of both LB1, LB4 and now what do we do post State Department decision. I've thought that from my landowners, and those are the folks that I represent, and their private property interests, they, I think, would get a benefit and would appreciate the value of a process that more

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

clearly protected their rights and their private property rights and interests that were included in LB1. They felt that was a significant step forward. So thank you. [LB1161]

SENATOR CHRISTENSEN: Thank you. [LB1161]

SENATOR LANGEMEIER: Very good. Thank you very much. Now he's getting his opportunity. Welcome. [LB1161]

JIM ANDERSON: (Exhibits 13 and 14) Good afternoon. My name is Jim Anderson, J-i-m A-n-d-e-r-s-o-n. I'm here to show my opposition to LB1161. We're not really considering all the issues regarding the Keystone XL pipeline. I'd like to share with you a letter that I recently wrote to the Lincoln Journal Star and I've got some more comments here. And please all of you consider what I have to say here. I have always been amazed by the lack of foresight, indeed by the lack of knowledge of those who continue to blindly support the construction of the Keystone XL pipeline. They prefer to ignore the many negative consequences of this pipeline. Let's consider these facts--mining tar sands oil is a very expensive and a very environmentally destructive process. Canadian forests have to be cut down, then the land strip-mined in order to obtain the tar sands oil. This process also creates many toxic by-products which have to be stored in tailing ponds. And these tailing ponds often leak, further polluting the land surrounding them and the groundwater underneath. This high-pressure crude oil pipeline will cross over the Ogallala aquifer plus five major rivers here in Nebraska, including the Platte, the Loup, and the Niobrara rivers. A pipeline leak will have disastrous consequences and will be very difficult and expensive if at all possible to clean up. Wouldn't it be much wiser, much more sensible to focus more of our efforts in developing cleaner and safer renewable sources of energy? Wouldn't it be much more beneficial to develop more fuel-efficient vehicles, many of which will not need petroleum as a fuel source? We have to really seriously consider this. Depending on fossil fuels is only further polluting this planet and destroying more and more ecosystems. Extracting and processing tar sands oil contributes substantially more to greenhouse gas emissions. Tar sands are much more carbon intensive. It is adding to global warming and to more extreme weather patterns. What benefits can we gain from this? We must also consider all the water which will be needed to extract, process and transport this tar sands oil, roughly at least five gallons of water for about one gallon of tar sands oil, thus a very inefficient way to produce energy. Can we really afford to use and contaminate so much water? There's so much to say against this pipeline, I could have written much more. We must face and consider all the negative consequences of this pipeline. In fact, I believe this pipeline will become obsolete even before it is finished due to climate change, increasing costs and more and more. Is it wise to keep destroying ecosystems? More reasons to be against the Keystone pipeline and things we have to consider. This pipeline will cross over many bodies of water, including groundwater. This pipeline will be over 1,700 miles long. Already there have been at least 12 leaks on much smaller pipelines in just this last year. Is it wise to pollute and contaminate our clean sources of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

drinking water, which also has many agricultural uses and which we depend on for our very survival? Although many people, I realize, would prefer not to think about this, we can no longer afford to ignore these facts. These hearings on the Keystone XL pipeline only focus on a few limited aspects of this pipeline, namely the routing issue. We must remember that the Keystone XL pipeline is a high-pressure pipeline which will be much larger than the current Keystone pipeline. Can TransCanada really guarantee that this pipeline will not leak, thus jeopardizing our clean sources of drinking water? And can we really afford the many cleanup costs and the continued destruction of ecosystems? More importantly, is it wise to remain so dependent on such a dirty, toxic energy source? We can put an end to this foolishness right now. Please become better informed about the many negative consequences of this pipeline. It's the responsible and the right thing to do. And thank you for taking the time to hear us. And do you have any questions? I'd be glad, very glad to answer them. [LB1161]

SENATOR LANGEMEIER: Mr. Anderson, you did a good job. Are there any questions? Seeing none, well done. [LB1161]

JIM ANDERSON: All right. And I have a copy of this letter, handwritten. [LB1161]

SENATOR LANGEMEIER: You just want to leave it? [LB1161]

JIM ANDERSON: Yeah, thank you. Thank you. [LB1161]

SENATOR LANGEMEIER: Appreciate it. Further testimony in opposition. [LB1161]

ERNIE FELLOWS: Good afternoon, Senators. I'm Ernie Fellows, F-e-l-l-o-w-s. I'm here in opposition to LB1161 and its amendment. I'm not sure why we're even doing this because TransCanada does not have a construction permit in Canada at this time. That expired last summer. We don't have a border crossing permit. We don't have any other permits that we've seen. Governor Heineman says we're in time out. The State Department doesn't know what they're going to do. And the senators are messing around in Washington, and we don't know what they're going to do. Whatever we do here could all of a sudden become unconstitutional. And I think we should just drop the whole thing and sit back and wait and see what happens. I have nothing more to say. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, well done. Thank you. Further testimony in opposition. Welcome. [LB1161]

DONNA ROLLER: I'm Donna Roller, R-o-l-l-e-r. And I appreciate you listening to me. There are just a few things I have to get off my chest. I am...I prepared, I wrote something, but I'm not going, based on what I've heard today, I'm not going to give you that handout. And it's like I will say I'm against the pipeline, there's no doubt about that.

Natural Resources Committee  
February 16, 2012

---

But we don't have that choice, our federal government does. What we can do is do everything we can through our laws to make it safe for us to live in this state. But there is a moral thing to this. You need to be aware of what's happening in Canada, and you need to see the aerial pictures of it. It's hell on earth. And TransCanada building this pipeline is like we're supporting what's going on up there. And so this company is immoral because they want to perpetuate what is happening in Canada unethically. And we're all putting ourselves at risk. We don't...we want to ignore this. We need oil, it's good for business. And we're going to have more of it, we need to have this oil. But you know what? It's over. We're on countdown time because all the world has already gotten all the available oil that's easy to get. So now we're fighting wars over this and there's going to be more and more and more controversy over this because it's the end. We got to find another way to fuel our economy and our energy and to drive our cars and to farm because it's game over. There's no more oil. And what we're doing up there will destroy our environment, there's no doubt about it. And I have a few facts about TransCanada. What is TransCanada about? They've contributed \$12 million in the last 24 months to our senators and representatives in Washington. And they're privy to information on insider trading because they just passed a law now they can't do that, but they stand to make billions. There's many investors. This is about money. People stand to make a lot, a lot of money. And TransCanada stands to make a lot, a lot of money, and that's what this is about. They made...their fourth quarter they made...their profit rose 39 percent, to the tune of \$2.36 billion, that's last year's quarter. This crude oil is going to Texas and it's going to go out of a port that's not taxed by the United States. And the Prime Minister of Canada has had trade missions to Beijing last year. This oil is going to China and Europe. And there are contracts. This oil is not for us. And the farmers, diesel fuel here in this state it's predicted will go up. And what this is about is big people stepping on little people. And the little people are the farmers that own land and everybody in this state. It seems like we have all the risk and we have none of the profits. You know, while South Dakota, North Dakota, Kansas are taxing these people for every foot they go in their state, we get little money, we don't get any money from TransCanada. Where's our money coming from? I tell you, I have a farm. You know, you want pipeline on your land, you don't have any problem with it. York County, December, 160 acres sold for \$1.6 million. My sister and I own a farm in York County of 160 acres with two irrigation wells and a center pivot. Now this is in my backyard from the original route, ten miles from it. You are threatening my life, you are threatening my livelihood. I can't stand the thought of them coming on my land or even close to my land and digging it up and destroying it. So I am out of time. But what I think...I agree with a lot of people have been opposed and what they've said, go with that. But we need to just forget about TransCanada and pass laws to protect our state and our water and our land, because that's the only thing we can do. Take TransCanada out of the equation and write some laws that will protect us. We don't have a right whether we have this pipeline or not. It's up to the feds, and they're really screwing us around right now. And they all need to be voted out. But I want you to know how dangerous this oil is because I am afraid for the future that my grandson is going to live. And I encourage you to look

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

at the mining sites in Canada. There is no way we can ethically support a company that wants to transport that stuff. And I thank you. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, well done. Further testimony in opposition. Welcome. [LB1161]

RANDY THOMPSON: (Exhibit 15) Thank you. My name is Randy Thompson, spelled R-a-n-d-y T-h-o-m-p-s-o-n, and I'm from Martell, Nebraska. I'd like to thank the Chairman and the committee for the opportunity to be here today. Mr. Chairman, I'd just like to note one thing. I appreciate you being courteous to the people giving testimony and you act like you're paying attention, and that's something I can't say about some of your other colleagues. So I do appreciate that fact, sir. I know you and I haven't always been on the same page. I'm going to be very brief today. I think we're getting on a very slippery slope when our lawmakers start reshaping and changing our existing laws just for the benefit of one company. And as Senator Smith testified, that's what his amendment is all about, it's benefiting one, individual company. Unfortunately, we're seeing this at the national level. I was in Washington, D.C., and testified before Congress a week or two ago, Mr. Terry's bill, a bill trying to short-circuit the system to shove through a project. So this concerns me as an ordinary citizen. You know, the state of Nebraska has just went through this whole major procedure to get some laws on the books so we can handle these big pipelines when they come. And we are not denying TransCanada the ability to apply to the state of Nebraska through our system. So my question is, is there a valid reason to change our law? I see no valid reason for it. I cannot see where this amendment provides any benefits to the state of Nebraska or to our citizens and that's why I'm here today to oppose the bill. Thank you. [LB1161]

SENATOR LANGEMEIER: Well done. Are there any questions of Mr. Thompson? Seeing none, well done. Thank you. Further testimony in opposition. Come on up. Oh. Hop up faster. Welcome back. [LB1161]

BEN GOTSCHALL: (Exhibit 16) Thank you. Good afternoon and thank you. My name is Ben Gotschall, that's B-e-n G-o-t-s-c-h-a-l-l. I'm the energy director for Bold Nebraska and the District 5 of Lancaster County, president of the Nebraska Farmers Union. And I'm speaking today in opposition to LB1161. This bill is unnecessary. As I see it, it's little more than political pandering to the interests of a foreign corporation at the expense of Nebraska citizens' right to a transparent and deliberate process already established by Nebraska law. What's more, it disrespects members of the Legislature and this committee even who worked diligently on behalf of Nebraskans during the Special Session in November 2011. During that special session passed legislation, LB1, or the Major Oil Pipeline Siting Act, established a process for routing and siting pipelines in Nebraska through the Public Service Commission. That legislation was intended to apply to future pipeline projects not currently under consideration. Also passed in the special session was LB4 which created a process by which the Nebraska Department of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

Environmental Quality would conduct an environmental review of a pipeline reroute. This was done pending a State Department decision on TransCanada's pipeline permit under the consideration at that time. The denial of the Presidential permit for the TransCanada Keystone export pipeline occurred in January. Denial of that permit negates any necessity for Nebraska to conduct its own environmental review. Since there's no pending pipeline permit, circumstances prompting the conditions of LB4 no longer apply. Should TransCanada or any pipeline company choose to apply for a permit for another project, that application and the routing and siting process would be and should be evaluated by Nebraska's PSC as established by the Major Oil Pipeline Siting Act. An effort by this committee to circumvent that process set forth by the Major Oil Pipeline Siting Act would set a dangerous precedent. It would send a message that our Legislature is little more than a tool to be used by foreign corporations to gain preferential treatment for projects. If our Legislature is going to make exceptions for this corporation, what other corporations will they favor in the future at the expense of fairness, competition and transparency of process under the law? If we start doing political favors for TransCanada now, where does it stop? Our Legislature and in this case the Natural Resources Committee in particular at a minimum should abide by its own laws. I urge you to reject LB1161 on these grounds. Thank you and I will answer any questions that you may have. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB1161]

SENATOR HAAR: Well, the question I've been trying to contemplate is, what is the benefit of passing this? What do you see as the benefit to TransCanada or to Nebraska or to anybody of passing this law? [LB1161]

BEN GOTSCHALL: I don't know that there is a benefit. I'm assuming that there must be a benefit to TransCanada or they wouldn't be supporting the bill. I guess the question on my mind is, why would TransCanada be opposed to the process set out by LB1 in the special session, because it seems like that's what they're trying to avoid. So I don't...I thought that, you know, that was a very clear process set out. And I guess I don't understand why that's not adequate enough. [LB1161]

SENATOR HAAR: That's it. [LB1161]

SENATOR LANGEMEIER: Senator Christensen. [LB1161]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for testifying. I believe we sat through a number of hearings where TransCanada said, you know, for any future pipelines we'll follow that one. And as I said earlier, we wordsmith all the time to not have special legislation, because if we would have put in the words "TransCanada" or whatever pipeline you want to say is exempt, it would be unconstitutional. And

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

Nebraska give their word that we would find a route. And I guess I, personally, don't see the difference if we'd find a good route now or we wait until there's another permit applied for, they're going to apply. And if you go to the other process, do you believe there's going to be any different route found than what would be found now? [LB1161]

BEN GOTTSCHALL: If we were to go through the LB1 process? [LB1161]

SENATOR CHRISTENSEN: If we went through the LB1 process today versus DEQ finishing what we told them that we would do, do you think there would be any different route found? [LB1161]

BEN GOTTSCHALL: I have no idea. I mean, it would be a different agency that would be doing the review. I don't know that that would have a bearing on the route. There would be...as I understand it, there would be somewhat of a public input process with that procedure. Maybe that would cause an alteration. I don't know. I mean,... [LB1161]

SENATOR CHRISTENSEN: DEQ also testified today, Mike Linder testified, saying that if this hadn't been stopped by President Obama, we would be in the public hearing process. Is there anything that would be different if we were doing LB1 than what would be occurring now that we asked of TransCanada, other than DEQ would be leading it now instead of they would be doing it under the Public Service Commission? I don't believe there would be anything different, but... [LB1161]

BEN GOTTSCHALL: Well, I think that we've been talking about the \$2 million that the Nebraska taxpayers would be paying for the DEQ process. In my understanding, we would not be paying that under the other process. So that would be different. So yeah. [LB1161]

SENATOR CHRISTENSEN: I would agree with you on that, that at that point in time they'd be liable for that. [LB1161]

BEN GOTTSCHALL: But as far as the route goes, I don't...I can't say one way or the other whether the route itself would be different. We don't know what the...I mean there is no route. [LB1161]

SENATOR CHRISTENSEN: Well, we now have zones that it can't go. And it pretty much narrows down where it's going to go. I guess I bet you I can get real close to where it's going and I haven't seen any of their maps or anything else, just from the zones. [LB1161]

BEN GOTTSCHALL: Well, if you would draw me a map and show me where you think it's going to go then I would comment on whether or not I think the different process would make any difference in that. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR CHRISTENSEN: And do you believe we should live up to our word of finding an acceptable route as we told them if they would voluntarily change their route? [LB1161]

BEN GOTTSCHALL: No, I believe that the permit was denied, which was the whole reason why we had to determine an alternate route. There's...you know, we've talked a lot about the spirit of LB4 and LB1. And as I see it the only spirit in this room today is the ghost of pipeline past. There is no pipeline permit on the table. We don't have any obligation to undertake anything. In fact, I think it's against our best interest to continue to act. So, no, I don't...I think that we are honoring our agreement by not acting. [LB1161]

SENATOR CHRISTENSEN: But you are for no pipeline at all is the stance of your groups, correct? [LB1161]

BEN GOTTSCHALL: My groups? [LB1161]

SENATOR CHRISTENSEN: Yeah, that you're representing. [LB1161]

BEN GOTTSCHALL: Are you asking me or my... [LB1161]

SENATOR CHRISTENSEN: You are representing two groups you said. [LB1161]

BEN GOTTSCHALL: Yes. [LB1161]

SENATOR CHRISTENSEN: And their stance is we want no pipeline crossing Nebraska. Correct? [LB1161]

BEN GOTTSCHALL: I don't know that it's the stance of the Nebraska Farmers Union entirely. But me, personally, I can speak for myself. Yes, I am opposed to the pipeline, I always have been. [LB1161]

SENATOR CHRISTENSEN: Okay, thank you. [LB1161]

SENATOR LANGEMEIER: I do want to ask you, Ben, for a clarification, just because this has become a problem in the past. In your first paragraph of your testimony I thank you for your disclosure. That seems to help people. It says that you're energy director for Bold Nebraska and you're the District 5 Lancaster County president of Farmers Union, which is your association. [LB1161]

BEN GOTTSCHALL: Yeah. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR LANGEMEIER: But is your testimony, it's your testimony for you. You're not testifying for each of those groups, right? [LB1161]

BEN GOTTSCHALL: Right, I am just... [LB1161]

SENATOR LANGEMEIER: So your testimony is you as self... [LB1161]

BEN GOTTSCHALL: I'm affiliated with those groups. (Laugh) [LB1161]

SENATOR LANGEMEIER: But I just want it clear so there's no confusion. But your testimony is for you, yourself, but you are affiliated with those groups? [LB1161]

BEN GOTTSCHALL: Yes. [LB1161]

SENATOR LANGEMEIER: Okay, thank you. Seeing no other questions, well done. Further testimony in opposition. Come on up. Welcome. [LB1161]

DEBRA TRAINOR: Hello, Senators. My name is Debra Trainor, D-e-b-r-a T-r-a-i-n-o-r. I tell you, I haven't been to one of these sessions before and I'm getting quite an education. (Laugh) I appreciate how much you all are putting time and effort into this. And it tells me how much time and effort you must have put into the special session, all of you, coming from both sides, working hard to make LB1 and LB4. I am opposed to LB1161 because of something...because I've been reading some articles about the Keystone pipeline. I have been opposed. I went to the hearings, the public hearings and the demonstration before against the pipeline. But I'd like to read you a few dates. May 21, 2010; June 23, 2010; August 10, 2010; August 19, 2010; January 5, 2011; January 31, 2011; February 3, 2011; February 23, 2011; March 8, 2011; March 16, 2011; and May 7, 2011. Those are the dates that it says that the National Resource Defense Counsel, Anthony Swift, has noted spills or spills of oil or tar sands from the Keystone...the original Keystone pipeline. I'm against the Keystone XL pipeline totally. I'm against this bill because it seems to me like it gives them a little extra oomph to help them get through Nebraska instead of just going through the bills, LB1 and LB4, that you folks arranged in the special session. I want to point out that the number 12 leak was approximately 21,000 gallons of raw tar sands in Kansas. That was in May, 2012 (sic). I don't see why we should be granting extra help or extra promotional services to Keystone pipeline when we don't even...I don't even want it in our state. Yes, I'm against it. I'm against any pipeline. I think there are other ways to...safer ways to transport oil and tar sands. I think we need to be done with the special consideration to TransCanada and Keystone pipeline. I'd like to let just common sense break through. And we don't need an addition to the LB1 and LB4 that you've already proposed. We don't need an addition to help make it easier for the Keystone XL pipeline because of what everybody else has said, too, it's not on the table right now. So that's the end of my statement. [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LB1161]

SENATOR CHRISTENSEN: Thank you, Chairman. I guess I'd just like to make a statement on the oil leaks that you mentioned. They've all been inside of a building with faulty fittings and things and not in the pipeline themselves. And I think that is misinformation that don't quite often get stated. And only one of them has actually hit dirt as I understand. So I think there's always some misunderstandings here of when people say the pipelines leaked, yeah, it's part of this system, but the actual pipeline underground I don't think has had any leaks. And, you know, we've got a lot of old pipelines that run through my district that I represent that's been there since the fifties. And it's been a very successful thing. And I do think pipelines are the safest way, safer than trains or safer than trucks. But that's my opinion. I think it can be backed up by statistics. But I just wanted to mention that. [LB1161]

DEBRA TRAINOR: Okay. Thank you, Senator Christensen. I would answer that just a little bit in that the way that this pipeline, I understand it is that it's mostly going to be built underground. And, true, they may have buildings that are where the fittings are...the pipeline is fitted together or whatever. But I assume they also have fittings underground. And one thing we haven't talked about is that everyone is worried about the Sandhills. I'm worried about the aquifer in Nebraska and where they can find a route that wouldn't leak into the aquifer, because Nebraska covers almost totally the Ogallala aquifer so. [LB1161]

SENATOR CHRISTENSEN: I would state the pipeline is welded together underground. But also the fact that our two probably most respected water people in the state of Nebraska are with the university, or were with the university, both wrote articles saying that they would not fear it going across the aquifer. And these guys are very cautious individuals on this. And I'd just like to mention that. Thank you. [LB1161]

DEBRA TRAINOR: That's okay. As I said, I'm getting an education. But I still have my own opinion. Thank you. [LB1161]

SENATOR LANGEMEIER: Very good. Seeing no other questions, well done. Thank you. [LB1161]

DEBRA TRAINOR: Thank you. [LB1161]

SENATOR LANGEMEIER: Further testimony in opposition. Welcome. [LB1161]

LINDA DUCKWORTH: Good afternoon. Thank you, Senator Langemeier and committee. I'm Linda Duckworth, L-i-n-d-a D-u-c-k-w-o-r-t-h. I am president of the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

League of Women Voters of Nebraska. And I'm here today to say that in true Nebraska form we need to slow down. We need to slow down on the spending of \$2 million. That may not sound like a lot of money to some people, but to this taxpayer...did I say \$2,000, I meant \$2 million (laugh), \$2 million. Even \$2,000 is a lot, but \$2 million is really a lot to this particular taxpayer. And we need to slow down on the unintended consequences. When I heard Senator Haar say something about another special session I thought, I don't personally it was very interesting when that was happening, but it took a lot of time from my personal life. And I think it probably took a lot of time from your personal life too. So truthfully, my calendar at home, where it says April 12, I've got exclamation points all over it. (Laughter) So that's the perception of a total volunteer who doesn't get paid, even for mileage. Anyway, the permit was denied and there was a reason for that--insufficient information in the time allowed, or at least that's what was being said. And I think Nebraska needs to wait and see what transpires at the federal level after TransCanada has refiled. A precipitous action in the form of LB1161 is rash and uncalled for. And that's all I have to say. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much. [LB1161]

LINDA DUCKWORTH: Thank you. [LB1161]

SENATOR LANGEMEIER: Further testimony in opposition. Welcome. [LB1161]

EMILY McKEONE: Thanks. I'm Emily McKeone, it's E-m-i-l-y M-c-K-e-o-n-e. And I just want to echo that I am also a concerned citizen and opposed to LB1161. I just think that, you know, the federal government denied the Presidential permit to this company, and therefore why should it be left to Nebraska taxpayers to fund an environmental impact statement for a nonexistent application. So that's all I have. [LB1161]

SENATOR LANGEMEIER: Well done. Are there any questions for Emily? Seeing none, well done. Further testimony in opposition. Welcome back. [LB1161]

AMY SCHAFFER: Good afternoon. Amy Schaffer, A-m-y S-c-h-a-f-f-e-r, and I don't have any written testimony because I actually planned on speaking in a neutral capacity because I was unsure where Senator Smith's intent was with this bill. Was it to benefit Nebraska citizens and improve upon the processes and laws that we already put into place or was it to benefit entities? And after listening to him open, it became very clear to me that it was in favor of entities and it wasn't going to improve upon our processes or benefit Nebraskans. The reason that they called the special session to preserve the aquifer, that was everyone's concern. That's why Governor Heineman called a special session, to preserve the lifeblood of our state and the state's agricultural economy. So I oppose this bill. And I think any laws that we enact in Nebraska should protect the aquifer and also support the position of the citizens of Nebraska, the majority of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

Nebraskans that are worried about the aquifer. That's all I have. [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, well done. [LB1161]

AMY SCHAFFER: Thanks. [LB1161]

SENATOR LANGEMEIER: (Exhibits 17-19) Further testimony in opposition. Okay. I do have a number of letters here. I have one from Lynda Buoy from Bassett; I have one from Rita Corell from Omaha; and I have a letter from the Nebraska Wildlife Federation, signed by Duane Hovorka. We now move to testimony in a neutral capacity. Welcome. [LB1161]

BRUCE BOETTCHER: Bruce Boettcher, B-r-u-c-e B-o-e-t-t-c-h-e-r. I'm testifying in the neutral position because I don't understand what this bill is for. The permit has been denied. There is no memorandum of understanding. There is no route. Is there even a project? The Governor says we're in a time out. I don't understand the lost time, the money spent for a special session to enact law for oil pipelines and then not use them. I don't understand why we enact more law when you don't even know if you have a project that is lawful. In closing, what are the benefits to the citizens of this state with this bill? [LB1161]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, well done. Thank you for your testimony. Further testimony in a neutral capacity. Seeing none, Senator Smith, you're recognized to close on LB1161. [LB1161]

SENATOR SMITH: Thank you again, Senator Langemeier and members of the Natural Resources Committee. I appreciate Messrs. Jones and White and Director Linder for providing their expert testimony on this issue and especially for clarifying the status of their roles in pipeline projects in general. I'm especially encouraged by the work of the Nebraska Department of Environmental Quality and the ability of the organization under the leadership of Director Linder to complete the department's EIS evaluation. I was very encouraged by listening to Director Linder's testimony. Senator Haar, I trust your questions were answered about whether this bill could apply to other similar projects. As those that spoke in supporting testimony answered and as I attempted to answer, and maybe I was not clear enough, yes, it could and would apply to similar projects. I also appreciate the citizens that traveled here today to comment. Regardless of their positions, I applaud them for being involved and for exercising their rights. I think that is such a critical component to our society and I greatly appreciate that. However, for clarity I, like Mr. Winston, believe we had an agreement last year. This legislation, Senators, is simply in the spirit of that agreement, that agreement to route pipelines around the Sandhills. And I make that point because LB1 does not make that same requirement. This legislation does, and it keeps with the spirit of what we discussed and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

debated and agreed to in the special session. I thank you for your patience today. You've sat through countless hours of testimony and you've reviewed tremendous amounts of evidence. And I was heartened to hear some of the citizens here testifying and acknowledging that, that you have carefully reviewed this subject. And I know that this particular piece of legislation doesn't get into the specifics of pipelines and fossil fuels, but all of that evidence you've had before you and you've carefully considered that. And I appreciate that and I know the citizens of Nebraska appreciate that. But mostly, thank you for your engagement and your interest on this issue. That concludes my testimony. Thank you. [LB1161]

SENATOR LANGEMEIER: Very good. Questions? Senator Christensen. [LB1161]

SENATOR CHRISTENSEN: Thank you, Chairman. Senator, would it be your understanding if we did not extend this study for NDEQ with LB1161 that the Public Service Commission could use the original route proposed by TransCanada and send it right through the Sandhills? Is there anything prohibiting them from sending it through the original route? [LB1161]

SENATOR SMITH: I think you make a very valid point. I agree that that's the potential because once again, LB1 does not prohibit the route going through the Sandhills. [LB1161]

SENATOR CHRISTENSEN: And I would hope that they wouldn't. But as I agree with your interpretation that if we don't extend this we do have the opportunity. That was made clear on the floor by Senator Carlson and several others, and he mentioned it again today that there would be no areas protected with LB1, that the protections that we give in the special session to voluntarily move it was part of this agreement that we're working on now. [LB1161]

SENATOR SMITH: I would agree with your statement. [LB1161]

SENATOR CHRISTENSEN: Okay, thank you. [LB1161]

SENATOR LANGEMEIER: Senator Haar. [LB1161]

SENATOR HAAR: I'm going to play with that a little bit because I just feel like we're, you know, dealing with agreements and agreements that were made and so on and so forth. So do we have anywhere in writing from TransCanada that if we extend this agreement they would not go through the Sandhills? And they came back and did LB1, I'm sorry. Let me broaden this out. Okay. Let's say we didn't do this, and I'm still not sure whether LB1 or LB4 applies if they reapply. But let's say that LB1 then applies, and that's the Public Service Commission. Okay, so do we have any agreement saying that if we pass LB1161 that TransCanada will not try to go through the Sandhills? I think they'd be

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

crazy to do it, but do we have any written agreement, because we're suggesting a bill here, a law, a written agreement from us. [LB1161]

SENATOR SMITH: Regarding our supporting passage of LB1, if there was an underlying agreement as to how we would determine a route? Is that my understanding? [LB1161]

SENATOR HAAR: Okay, I'm sorry. It's getting late, but I'll try and rephrase my question. By passing LB1161 we're giving TransCanada some significant benefit, one of those is the \$2 million that Nebraska will pay instead of them having to pay, although I doubt money is their issue. But so if we pass LB1161 we're giving them a benefit of that \$2 million. Do we have...and that's in writing if we pass this bill, it's in writing, it's the law. Do we have from TransCanada the reciprocal written part of the contract that says that they're not going to go through the Sandhills? Is there anything in writing? [LB1161]

SENATOR SMITH: Well, I think, Senator, the process that we came away from during the special session and that LB1161 builds on puts it in the DEQ's court to do that review. And as a result of that review there were going to be alternative routes that avoided the Sandhills region. Now that's the only agreement that I'm aware of. [LB1161]

SENATOR HAAR: And it's not in writing, it's sort of a handshake? [LB1161]

SENATOR SMITH: I don't know if that's a handshake necessarily. I think that was part of the outcome of our special session and... [LB1161]

SENATOR HAAR: Well, I kind of feel that we're talking about the pressure, gee, if we don't go along with LB1161 then TransCanada is going to come back and run it through the Sandhills. And so, you know, now I'm getting a little angry again that all of a sudden now we have a threat hanging over our head, we better do this or they're going to run through the Sandhills. [LB1161]

SENATOR SMITH: Senator, with all due respect I hope we don't digress to that type of discussion. And the reason is, is because no one has threatened anything. The folks that have been here today to testify in support of this bill have been generous with their time to come in, Director Linder to be forthcoming and to work to explain. And I think we always have to understand what are the consequences of adopting a bill and legislation and not doing so. And there's no reason to get angry over these matters. I mean, that's something we have to consider. And so we're trying to make certain that there is...the facts are out there for everyone to understand. And these are not threats. I mean, we're doing our job as state legislators to make certain that the citizens of Nebraska have the facts. [LB1161]

SENATOR HAAR: Would you, again, we're just playing with the what if's now. The

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

timing of this and so on, we all know this, you know. By January 1, 2013, we're either going to have the same President or a different President and so on. Let's say that things got delayed even further. Do you think we ought to keep moving the date back to 2014 or is this just a...is this a one-time we move it to 2013? [LB1161]

SENATOR SMITH: I wish I could read the minds of those that are at the highest levels of our national government. [LB1161]

SENATOR HAAR: Yeah, me too. [LB1161]

SENATOR SMITH: And I can do that as well as you can do that. [LB1161]

SENATOR HAAR: (Laugh) Not at all. [LB1161]

SENATOR SMITH: Not possible. But what we're trying to do with this legislation is to remain in the spirit of what Nebraskans expected of us during the special session and that we concluded the special session with. We're trying to do the right thing by Nebraskans. I can't answer for what happens at the federal government anymore than you can. [LB1161]

SENATOR HAAR: Okay, thank you very much. [LB1161]

SENATOR LANGEMEIER: Senator Carlson. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Smith, I'm going to make a statement kind of in response to what Senator Haar has said, and Senator Dubas can check me if she's not agreeable with what I'm saying. But let's go back to the special session and LB1. And I was very adamant about a piece of legislation that's supposed to govern us for many years into the future would not exempt any portion of the state from a future pipeline because we don't know what the future is going to be. We don't know what's going to happen in the next 10, 20, 25, 30 years from now. And there can come a time, I think, with national security we're going to look at things...we may look at things differently in Nebraska. So as it was in its final form, LB1 was not a threat to the future as far as mapping out exactly how things were going to be. And I think that was the right thing. Now in theory LB1, if TransCanada were to start all over again, nothing is exempt. But how foolish would that be to come in now into the state of Nebraska, and we have a procedure mapped out in LB1 that says who's going to help decide where a good route might be, how foolish would that be to come in with a proposed route through the Sandhills? It would not be very smart. And it would not get an approval. And so your bill, I think, is simply trying to make good on an agreement that was made. And there's no guarantee with that either. But we're trying to do what we said we would do because LB1 goes a little bit different direction. And I just don't see...I don't see a big threat here. Do you? [LB1161]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

SENATOR SMITH: You know, no, Senator, I don't. I think your comments, you know, very well spoken. And I...regardless of what has been said, all I know of TransCanada is what you senators have heard. And I think the character of the people that have been here and that have represented themselves, I believe that they also believe it would be foolish to try to come in with a route that was across the Sandhills. I cannot speak exactly for them, but I think you're absolutely right. I do not see the threat. But the only point that I was making, and I don't think you're disagreeing with this, was that I was pointing out LB1 and what it does and does not do and the differences between it and this current piece of legislation. [LB1161]

SENATOR CARLSON: And part of the reason it was so important, as far as I was concerned, that we didn't set the future and try and design where things could go and where they couldn't go. But we're doing it for today. And if, and they're not going to do it, but if TransCanada came back in with a new permit and went right through the Sandhills I'd jump all over that and so would a whole lot of other people. They're not going to do it. [LB1161]

SENATOR SMITH: And I would expect, hopefully, the same for any other pipeline company, that they would not be permitted to do that. [LB1161]

SENATOR CARLSON: No, they're not going to do it. [LB1161]

SENATOR LANGEMEIER: Senator Christensen. [LB1161]

SENATOR CHRISTENSEN: Thank you, Chairman. I'll clarify, I'm not intending to say there's a threat. I'm trying to state a fact and I believe you and Senator Carlson dealt with it, and that is if we continue where we're at with what this bill is doing, we have the exclusion zones that DEQ talked and the agreement that it won't go through there versus starting clear over it could. I'm sure it wouldn't. I'm just making a very...clarify. I thought I said "could" and that I didn't think it would and it shouldn't. But, you know, I think that's very clear when you go to LB4, Section 3, paragraph 2, the intent of the spirit of this is to find a new route and pay for it by the Legislature. That was the...to fulfill the agreement that we made that it would be moved and have them exclusion zones. I'm not saying I think it would go back to the first route, I just wanted to clarify it. Thank you. [LB1161]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much, Senator Smith. [LB1161]

SENATOR SMITH: Thank you. [LB1161]

SENATOR LANGEMEIER: That concludes the hearing for LB1161 and the hearings for

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 16, 2012

---

the day. Like to thank everybody that came and participated and those that watched the proceedings. Thank you and have a safe trip home. (See also Exhibit 20.) [LB1161]