

Transcript Prepared by Clerk of the Legislature Transcribers Office
Agriculture Committee January 18, 2022
Rough Draft

HALLORAN: Good afternoon, everybody. Welcome to the Agriculture Committee, I'm Senator Steve Halloran, and I'm from Hastings, Nebraska, and represent the 33rd Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. Committee members might come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phone. Please move to the reserved chairs when you are ready to testify. These are the first two chairs on either side of the first row. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, get the sign-in sheet to a page or to the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today, but would like to record your name as being present at the hearing, there's a separate white sheet on the tables that you can sign for that purpose. This will be a part of the official record of the hearing. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify, and they will distribute those to the committee. If you do not have enough copies, the page will make sufficient copies for you. When you come up to testify, please speak clearly into the microphone, tell us your name and please spell your first and last name to ensure we get an accurate record. We will, we will be using the light system for all testifiers. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining, and the red light indicates that your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, are allowed in the public hearing. Committee members with us today will introduce themselves, starting on my far right.

BREWER: Thank you, Mr. Chairman. Tom Brewer, representing the 43rd Legislative District, which is 11 counties of central and western Nebraska.

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HALLORAN: OK, on my immediate left--

LATHROP: Steve Lathrop, District 12, which is Ralston and parts of southwest Omaha.

GRAGERT: Tim Gragert, District 40: northeast Nebraska.

J. CAVANAUGH: John Cavanaugh, District 9: Midtown Omaha.

HALLORAN: And to my immediate right, Senator--

B. HANSEN: Senator Ben Hansen, District 16: Washington, Burt, Cuming, and now part of Stanton County.

HALLORAN: To my right is the committee, committee research analyst, Rick Leonard, and to my far left is the committee clerk, Rod Krogh. Our pages for the committee are: Rolf Kloch-- he is a junior at Nebraska Wesleyan University with a major in political science; Bobby Busk-- he is a sophomore at UNL, with a major in political science. All right. With that, we will start with an appointment with Ervin L. Portis. Would you please join us? Good afternoon, Mr Porter,

ERVIN PORTIS: Good afternoon, Mr. Chairman, committee members, senators.

HALLORAN: Feel free to be yourself, and tell us about yourself and your interest in this, this appointment.

ERVIN PORTIS: Does bald old guy work? I'm Ervin Portis, the assistant director at Nebraska Emergency Management Agency. I've been in that position since September 13th. Before that, yeah, my history is 50 years in local government and it gets to the, to the old. In that, in that local government capacity, the last 14 years were as city administrator, city of Plattsmouth-- prior to that 35, 36 years in policing, about half of that as, as chief of police in two communities, in Papillion in the early '90s and then in a community in Michigan for about 11 years. You know, my daughter and granddaughter and son-in-law said: [INAUDIBLE] Dad, you got to come back to Nebraska because you're going to be here for your grandkids. So we did. And that's what landed us in Plattsmouth, where I had plenty of experience responding to and recovering from natural disasters, most significantly being flooding-- 2011, 2019 Missouri River floods-- 2019 also, the Platte River and its impact on Plattsmouth and our response, our last response there, about \$100 million worth of damage to, to Plattsmouth's infrastructure.

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HALLORAN: Could I ask you to--

ERVIN PORTIS: Yes, sir.

HALLORAN: --if you could, for people that are a little hard of hearing like myself, to maybe speak up just a little bit?

ERVIN PORTIS: I will.

HALLORAN: And could you spell your name for the record, too, please?

ERVIN PORTIS: I will do that. Ervin, E-r-v-i-n, Portis, P-o-r-t-i-s.

HALLORAN: Thanks.

ERVIN PORTIS: Yeah, that is my, my bio and introduction.

HALLORAN: OK? All right. Are there any questions from the committee? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Halloran, and thank you, Mr. Portis, for being here. You got cut off when you were going to, I think, say what the cost of the flooding was to Plattsmouth.

ERVIN PORTIS: It's-- by, by the time they're done, it's going to be about \$100 million.

J. CAVANAUGH: That's just to Plattsmouth.

ERVIN PORTIS: Just to Plattsmouth.

J. CAVANAUGH: And that's from the 2019 flood?

ERVIN PORTIS: 2019 flood, yes.

J. CAVANAUGH: I just want to-- I heard you start saying that, and I thought that maybe I was mishearing it. So I appreciate your willingness to serve on this committee. And to be clear, you work for the Nebraska Emergency Management Agency currently?

ERVIN PORTIS: Yes.

J. CAVANAUGH: Is that right?

ERVIN PORTIS: Yeah.

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J. CAVANAUGH: And you are filling a spot that statutorily required someone from the Nebraska Emergency Management Agency to serve.

ERVIN PORTIS: Yes.

J. CAVANAUGH: OK. Are you aware of how many people would actually qualify for that position on this board?

ERVIN PORTIS: One.

J. CAVANAUGH: OK. And you're the one?

ERVIN PORTIS: I'm it.

J. CAVANAUGH: Well, I still appreciate your willingness to take on extra responsibility in your position. But my question just is, generally, what-- so what is the Climate Assessment Response Committee supposed to be for?

ERVIN PORTIS: It's Climate Assessment Response Committee, to analyze the data and prepare the response, particularly in, in response to ongoing disasters and events that, as they occur, with emphasis on agriculture being a primary piece of, of that and its economy to Nebraska.

J. CAVANAUGH: So it's reactionary, basically.

ERVIN PORTIS: Yes.

J. CAVANAUGH: So is there any portion of that that would be looking at the data and making a plan to be proactive to deal with future flooding, future drought?

ERVIN PORTIS: I, I think-- well, yes. In any natural disaster or in emergency management, you're, you're driven by what's called the THIRA, the threat and hazard, hazard identification and risk assessment process, and its stakeholder engagement to, to ask and answer: What threats and hazards can affect us? If they did occur, what impacts would those threats and hazards have on us? And then, based on those impacts, what capabilities should we have? That is the emergency management process.

J. CAVANAUGH: And just to, I guess, put a point on the \$100 million damage to Plattsmouth-- that's just Plattsmouth, it's not every other

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town and everything-- Would it be, perhaps behoove us to make plans that would prevent \$100 million damaging events ahead of time?

ERVIN PORTIS: If you can ideally, ideally forecast and predict those, yes, sure. There's a multitude of mitigation factors or variables.

J. CAVANAUGH: So I'll, I mean, I was just asking about climate change. Is there any affect or consideration of climate change that goes into the Climate Assessment Response Committee's discussions and assessments?

ERVIN PORTIS: Climate, climate is the discussion, yes. And then what threats, hazards and risks does climate have on, on those events.

J. CAVANAUGH: What about our responsibility to take proactive action to maybe mitigate climate change?

ERVIN PORTIS: In terms of our responsibility to proactively mitigate climate change, from the emergency management perspective, you have to look at the threats and the hazards that are likely to affect us. And if they did affect us, what impacts would they have on us and what capabilities should we have in response to that? You've got to look at that, and not just in a real time, but in a historical perspective.

J. CAVANAUGH: I appreciate it. Thank you for your interest.

ERVIN PORTIS: You're welcome. Thank you.

HALLORAN: Thank you. Senator Cavanaugh. Senator Brewer.

BREWER: Thank you, Mr. Chairman. All right, I was actually going to give you a pass on running any questions by you, but because Senator Cavanaugh started this, I got to jump in here. I got a call from Boyd County Sheriff and it had to do with bridges and flooding, so that fits into your emergency management piece, right?

ERVIN PORTIS: It does.

BREWER: And the part that, I guess, might cross over into the job you're trying to go to here is that he's saying, Listen, our problem is we've got ice jam buildup. But this was just last week, so this is fairly current. Now I'm sure you're on top of that with the emergency management part. His point is, you know, who are the hammerheads that built these bridges lower? They cause more problems because we're going to have worse ice jam problems than we had before the bridges

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that were wiped out from the floods. And I said, Well, I'm not sure what that process is. So when you have a flood and something is destroyed-- say a bridge-- before you build a new bridge, who gets a say in the design and, and, and the factors it should be considered so that you don't have these threats and hazards that compound the construction?

ERVIN PORTIS: So it's a great question, Senator Brewer, and it's a question that comes up anytime you recover from a disaster. Can you improve this? Can you improve the infrastructure that existed prior to the event? And the answer to that is, it depends. The first step in the recovery process, following the FEMA rules, is you rebuild to the pre-incident standard, to what existed at the time. If you believe that that is going to be insufficient, then you have to make an application for either an improved project or a, or to mitigate the, that infrastructure-- mitigate, do something different. But there are multiple hoops and hurdles to jump through, including benefit cost analysis. But the first step is recover to the pre-incident condition.

BREWER: Well, I don't envy you because you have to have the ability to answer the 911 calls and you have to have the ability to look into a crystal ball. That's, that's not a very easy job, but thank you for what you're doing and volunteering to do this because we need you.

ERVIN PORTIS: Thank you, sir.

HALLORAN: OK, thank you, Senator Brewer. Senator Gragert.

GRAGERT: Thank you, Chairman Halloran. Thank you for your testimony. First of all, I'd like to clarify for myself that you're from the Nebraska Emergency Management Agency, applying for this. Is that, is that because of the correlation for what this job will take is what the Emergency, Nebraska Emergency Management Agency-- do you already have plans in place for like a tornado, a flood, you know, of, of that sort, natural? Or the natural--

ERVIN PORTIS: The state of Nebraska, through the Emergency Management Agency, has the State Emergency Operations Plan, which is an all-hazards plan. But then there are, there are responses to incidents based on the incident itself. Does that answer your question?

GRAGERT: Yeah.

ERVIN PORTIS: But yes, we have a, a [INAUDIBLE].

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GRAGERT: So there are plans in place.

ERVIN PORTIS: Yes, there are.

GRAGERT: Now my next thing, I guess, to follow up Senator Brewer asking about the bridge-- and I've been to that bridge on numerous occasions-- but in the defense of the hammerheads who, who designed the dam or the, the bridge, that was in a time of everybody wanted traffic back on highways. The bridge, the bridge itself at the Niobrara River there wasn't, wasn't wiped out, so they connected that bridge and, and took it all the way. All but from the south side of that bridge was all wiped out-- that was all soil-- was all wiped out, so they matched up with that bridge and went across. And now what we got is, we come down like this. And the last two years or the last, well, any time we get ice thawing, we're getting an ice jam on that bridge. And the ice is right up to the top of that bridge right now. Well, that thing is silted in four feet, as I understand. From the time they built it, it was at eight feet to the, to the water; now it's like four feet. So I think a lot of times, in the, in the haste of trying to get things back going, and, and the temporary bridge went in there. I couldn't believe, and I, and I still can't believe how fast the bridges went in, the, the federal bridges on 281 and, and Highway 12 and Highway 11. So there was a lot of bridges being, being constructed at that time. So yeah, did it turn out probably the best? It probably would, would have, should have went as just straight across, you know. So at the time, money, money was driving the train, so--

ERVIN PORTIS: I, I can respond to that in, in pretty much the same way I did, in post-2011, to the mayor and city council in Plattsmouth. 2011 Missouri River flood, our water and wastewater plants were both inundated, were off-line-- significant damage. And we asked and answered, we asked the question: Shouldn't we move them? But the FEMA rules were such that, yes, we can, but it's going to be primarily on our own dime. So it just was not cost-efficient at the time to move them. And when 2019 flood came in, the damages were even worse. So using the FEMA programs to, to our advantage as they were written at the time, yes, they'll get moved. So you, you, you have to understand the FEMA policy, guides, and, and the rules, and apply them with a benefit cost analysis, and then make choices based on those economics.

GRAGERT: Yeah, it definitely has a, an issue with ice buildup, which will continue. Thanks.

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HALLORAN: OK, thank you, Senator Gragert. Yes, Senator Brewer.

BREWER: All right. And just so you understand it, the sheriff used a little bit different language, so I used hammerhead as an alternate. And, and no, there probably should have been a better battle, battle handover between Senator Gragert and myself on, on Boyd County. I now have it, he did have it, and we're kind of figuring out some of this. But if we were to say, for example, the ice buildup, and that bridge gets taken out, now we get a chance to redo this. And this is where we get into, you know, future hazards and threat issues. Would we go back and build it the same again because of the rules? Because it seems like we might get into a cycle where we, because of the rules, we would never get it right.

ERVIN PORTIS: In that, in that scenario, you have additional variables, which is the cost of prior damages, and you can use those in, in the benefit cost analysis to do a different project.

BREWER: All right. Thank you.

ERVIN PORTIS: We'll help you with that, but let's pray that doesn't happen.

HALLORAN: OK, thank you, Senator Brewer. Quick question-- you mentioned FEMA wouldn't allow, FEMA rules wouldn't allow the bridge to be moved to a different location. Did I--

ERVIN PORTIS: They, they would allow it, but the cost--

HALLORAN: But the allowance--

ERVIN PORTIS: --share would be different.

HALLORAN: OK. Do you find that's unusual or commonplace that we have federal regulations that are counterintuitive and counterproductive?

ERVIN PORTIS: Sometimes.

HALLORAN: OK, thanks. That's a [INAUDIBLE]. All right. Any more questions? OK, seeing none, thank you so much for accepting this opportunity to, to ask you questions and for taking this-- putting yourself through this appointment.

ERVIN PORTIS: Thank you, Mr. Chairman. Thank you, committee members.

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HALLORAN: Are there any proponents for this appointment? Seeing none, are there any opponents? Any neutral? Seeing none, OK. Thank you very much. Senator Hughes, you're up next week LB712. Good afternoon, Senator.

LATHROP: I'm looking forward to it.

HUGHES: Thank you, Mr. Chairman. Members of the Agriculture Committee, for the record, my name is Dan Hughes. That is D-a-n H-ug-h-e-s, and I represent the 44th Legislative, Legislative District. I am here today to introduce LB712. This bill makes a number of changes to improve the Black-Tailed Prairie Dog Management Act. This law allows the county to go onto private land to manage uncontrolled prairie dog colonies that are spreading onto neighboring ground. The county will have this power only after its board adopts a coordinated management program, publishes general notice of this program, gives individual notice to the offending landowner, and allows them 60 days to cure. If the landowner fails to manage the colony after receiving individual notice, the county can then take its own management action and bill the landowner for the expense. These changes, these changes in the law are based on the state's noxious weed control laws. To date, only one county has adopted a management plan pursuant to this act. The act was passed in 2012. Since then, there have been efforts to repeal the act, which has been criticized for allegedly violating due process rights, private property rights, and for failing to lay out specific procedures for counties to use when adopting or carrying out their management program. This bill eliminates those possibilities and the chance of abuse, and will improve the administration of the act. For those of you who have not been around as long as Senator Lathrop and myself, there's a lot of history with this bill. I won't go into all of it, but there's only been one county who has ever adopted this act, and they never had to enforce it. Just the fact that the county adopted the act did force the landowners to finally come together in order to solve the problem. But prior to that, there's always a lot of questions. Well, doesn't the federal government have a wildlife management specialist that will go in and poison prairie dogs? And yes, they do. But in my tenure, I have had an opportunity to spend some time with that gentleman who was the federal wildlife management agent on this property in this case, and he told me what had happened was the neighbor without the prairie dogs or that was being encroached upon would complain, they would call the federal agency to go in and poison them. The feds would go in and poison them, and the offending landowner would never pay the bill. And it wasn't a lot of money-- \$300 or \$400. It wasn't something that the federal government was

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going to sue this, this landowner over. So he got away with that two or three times. And finally, the federal wildlife management guy says, we're not going to do it again because we're not going to be wasting federal taxpayer dollars when we know that this landowner is not going to cooperate. So then the county went ahead and adopted the Prairie Dog Management Act, which said that we are serious about taking action, but they never had to because that forced the offending landowner to get together with the aggrieved landowner, and they solved the problem. He allowed, or he took care of the prairie dogs on his side of the line. So just a little extra background of where this bill has come. I-- when this bill came up to be repealed, I fought it all the time. I wanted to fix it because it is a very good tool that occasionally you do have neighbors that don't take care of their property, and this is a tool that allows the county to step in and solve that problem. So with that, I'll-- I think I used my two minutes, so I'll be happy to try and answer any questions.

HALLORAN: All right. Thank you, Senator Hughes. Any questions? Senator Brewer.

BREWER: Thank you, Mr. Chairman. By chance, do you know the name of the county where it was implemented?

HUGHES: I believe it was Sheridan.

BREWER: Very good; that is correct. And your bill does what, in layman's terms?

HUGHES: My bill clarifies that the county has to notify the landowner who is not controlling their prairie dogs. They've had a complaint from the neighbor. They have to notify him by certified mail, I believe. They have to publish in the paper, and they have to give him time to remedy the situation.

BREWER: And that window of time is how much?

HUGHES: Sixty days, I believe.

BREWER: Fair enough. All right, thank you.

HALLORAN: Any other questions? OK.

LATHROP: Yeah, I do.

HALLORAN: Yes, Senator Lathrop.

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LATHROP: Why is this not-- why, why does one landowner get to decide what should happen on somebody else's property? What if the guy wants these things or wants to have them proliferate on their property? Why should the neighbor have something to say about it?

HUGHES: Well, he doesn't have anything to say as long as they stay on his side of the line. But when they cross the property line, they are a very destructive animal. If you have rangeland or farmland-- and in my case, I have neighbors that are not controlling their dogs, their prairie dogs on their property. They come over and they eat my crops and they build mounds that make it very difficult, you know, if you're harvesting or farming certain operations. So we're not, we're not trying to control what's on one person's ground. But when his hobby or preference begins to impact his neighbor, then it's con, it's harming the value of his property. So he should have a remedy.

LATHROP: And I'm not trying to be a wise guy; I'm just trying to understand this. So if Neighbor A has prairie dog colony and they start to-- this-- apparently these colonies grow and then they, they spread,--

HUGHES: Correct.

LATHROP: --and it starts to infringe on your property, why can't you just poison the ones that you need to poison or rid yourself of the ones that cross the property line? Why are you basically starting a process that has somebody going onto the other guy's property?

HUGHES: Well, you're in, you're incurring an expense because of the neighbor's negligence, that he is not controlling his side of the line or his-- the colony on his side of the line. The prairie dogs, you know, I-- there's-- they predominantly like pasture ground, grassland. There is no grass within, you know, three miles, five miles of where I've seen prairie dogs. I mean, they are, they, they migrate. Their-- when their, when their town becomes full, you know, the juveniles are kicked out, and they're looking for a new place to establish a colony. And if that happens to be on your land, then that's a problem for you because they're diminishing the value of your land because it is not as productive. So the-- we'll call it the, the colony. And, and generally it's if you're right next door, you know, the prairie dogs don't know where the fence is. I mean, they're going to go, where--

LATHROP: I assume that's true.

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HUGHES: Yes.

LATHROP: So what do they eat?

HUGHES: They eat grass.

LATHROP: If they're-- pardon me?

HUGHES: Grass, basically.

LATHROP: So they're not eating your crops. They're not--

HUGHES: Well, they do.

LATHROP: --taking down a cornstalk and eating the corn.

HUGHES: No. But when wheat grows, it is a grass. Corn is a grass. They, they devegetate the area around their hole, their home, in order for protection and to give them line of sight for predators. But I think their main diet is grass and roots. They never, it never gets--

LATHROP: So the bill that we're talking about is modeled after if someone had uncontrolled thistle or noxious weeds?

HUGHES: Right. If, if you have noxious weeds on your property and the, and you're not controlling them, and the seeds blow on to your property, so you-- now you have a problem, you can force the neighbor to control that patch, if you will.

LATHROP: OK. That's all the questions I have. Thank you.

HALLORAN: Thank you, Senator Lathrop.

HUGHES: Good, good questions.

HALLORAN: Senator Brewer.

BREWER: And this might help answer his question, too. My nephew is now that control specialist with the government out there. And part of the reason that it becomes overwhelming is you have nonresident landowners who aren't managing because they're, they're not there seeing what happens every day. You're right, they're migratory, and, and the holes they dig become hazards for your domestic animals, too. So it seems like it would be a cut and dried thing that you could, you know, keep them where they need to be, but they really will-- it's a population thing, and once that population reaches a point, they're going to take

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off and move; they're very migratory. And, and they can move in and, and chew up a quarter section in no time, and it will look like the surface of the moon. There's not a blade of grass. There's nothing but holes and mounds. So it does become difficult for a landowner to manage that if, if he has to pay for all the costs to fix it.

HALLORAN: OK. Senator Groene.

GROENE: Thank you, Chairman. Just devil's advocate, this is the only mammal we do this with, right? We don't do it with deer, we don't do it with coyotes, we don't do it with--

HUGHES: I don't believe so. I don't-- I'd have to--

GROENE: So it's, it's specific to this mammal. I, like--

HUGHES: Yes.

GROENE: Senator-- it's noxious weeds. Usually, we, we handle these situations through the control, game control officer, like if it was calves or something, you call him and he, and he'll go out and hunt the coyotes or-- so why-- I just don't understand why this, this fits a different scenario than a coyote or we've got people with-- wealthy people buy land along the river and, and try to get as many deer population as they can so they get the one trophy. And then they go across the, you know, that [INAUDIBLE] and wipe out 10 rows of your corn. What's the difference? I mean, could you-- why do you think there's a difference here?

HUGHES: Well, the, the prairie dog colonies, they are fairly stationary, so once they establish in an area, they tend to just expand in that area. And when they, when they expand, if, if, if you own 10,000 acres and they're in the middle, you're probably not going to be impacting your neighbors.

GROENE: For a few years?

HUGHES: Well, yes. But if you're, if you own land and the colony that's established is up next to your neighbor's boundary, they're going to expand on his side of the fence. So where coyotes and deer, they're more not, not as tied to a location. I mean, they don't have dens, and the coyotes probably have dens, but they tend to move around. But prairie dogs, once a town is established, they, they rarely move. They, they kick out the young until it hits capacity, and then, then they may move.

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GROENE: Does this cover federal land, state lands, park lands, school lands? Is the government responsible, too?

HUGHES: I, I think the-- I'd, I'm, I would have to double check this, but I think the federal and state, we have wildlife officers to control those land. This is more aimed at absentee landlords or someone that may come in and likes to hunt prairie dogs, you know, three or four times a year, and he's, he's willing to let them go for the recreation of it. But when it comes to impacting his neighbors, that's what this law is designed to address.

GROENE: Thank you.

HALLORAN: Thank you, Senator Groene. Senator Hansen.

B. HANSEN: Thank you. Is there a mediator between the two parties, like when somebody has an out of control prairie dog colony [INAUDIBLE]?

HUGHES: This, this forces the mediation, if you will. I, I-- there's not a, there's not someone specifically outlined in the bill, I don't believe, that would, would come into place. But if the, if the landowner who is being impacted wants to go to the county and the county begins to take the steps, I think that forces them to come together. And generally, the neighbors do talk. You know, I've had conversations with my neighbors saying, you know, I'm getting quite a few of your prairie dogs, you know, destroying my crop. You know, what, you know, what kind of remedy-- would you like me to come help you poison them? I've done that, too, that I've, you know, gone and, you know, they buy the poison. And, and it's a lot of work because it's-- there's a lot of holes and you don't remember which one you've been on. And if there's livestock, you want to make sure the, the poison grain doesn't get to where the cows or horses can get to it. I mean, it's not, it's not a simple task.

B. HANSEN: OK, I was just curious. Thank you.

HALLORAN: OK. Thank you, Senator Hansen. Senator Gragert.

GRAGERT: Thank you, Chairman. I just have a quick question. If you got two landowners, you know, bordering you, whose prairie dogs was it that came onto your land? Was that his or hers?

HUGHES: Well, generally you have-- you can-- the county would go on to do an assessment as to where the largest portion was. And if you've

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got one landowner who's working diligently to control his side of the line, which is what I've done in my case, You know, I poison, I poison everything on my side of the line and maybe throw a little poisoned grain on the other side-- maybe, I said maybe-- to try and keep them from encroaching. And if, if one person is doing it and the other one is doing nothing, well then, it's pretty obvious where the problem is.

GRAGERT: So is there allowable density of prairie dogs that you can have on your land before you're, you're, you're determined you're not managing those prairie dogs anymore?

HUGHES: If they're not impacting your neighbor, you can have as many as you want. We're not trying to stop you from having them. We're just trying to make sure that they don't impact your neighbors.

GRAGERT: Thank you.

HALLORAN: Thank you, Senator Gragert. Just a point of clarification for your sake, Senator Lathrop. This is pasture land, typically, they reside there, build their colonies in. And obviously, this is an obvious statement maybe to many, but in pasture land, you asked about crop damage. Pastureland, naturally, grass is the crop, right?

LATHROP: Yeah, he brought up the crop damage. I, I was imagining some-- things climbing up and tearing corn off--

HALLORAN: Eating the corn? Yes.

HUGHES: It-- one, one point. It generally is in short grass so more like your buffalo grass or blue grama, those type of things that they're not-- they don't like. They don't like things above their head that they can't see predators. So they generally tend to migrate in the, in the shortgrass prairie, not brome grass or something like that.

HALLORAN: OK. Seeing no further questions, thanks for the introduction for LB712.

HUGHES: Thank you.

HALLORAN: Are there any proponents for LB712? Any proponents? Good afternoon.

ANDREW DUNKLEY: Good afternoon. Well, Chairman Halloran and, and members of the committee, my name is Andrew Dunkley; that's A-n-d-r-e-w D-u-n-k-l-e-y. I'm the director of state governmental

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relations with the Nebraska Farm Bureau. And I am here today in support of LB712. And we just wanted to, to keep it short here. I am-- I'll preface this with I'm fairly new, so I'll, I'll, I may plead ignorance to any questions, but I wanted to, to come on behalf of the over 55,000 members of the Nebraska Farm mem-- Farm Bureau, and say we are neighborly people and, and the members of the Farm Bureau are, are-- pride themselves on being fair neighbors. And we see in this bill a chance to, to have, have equitable treatment between any landowner that, that chooses to have a managed, black-tailed prairie dog population and, and be good neighbors and ensure that those don't harm the land of, of their adjacent neighbors. As Senator Hughes pointed out, the, the damage that can be done is, is significant by, by prairie dog colonies and, especially on grasslands, can damage the, the livelihood and the food that is put on our tables. So I will leave it, leave it there, and, you know, to go along with the letter submitted. But I'm open for, for any questions.

HALLORAN: OK. Thank you, Mr. Dunkley. Are there any initiation questions since this is his first time in front of you? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you for being here, Mr. Dunkley, and I'm just reading your prepared statement here, and there's a part about differentiating between theoretical damage to property value and actual damage. I'm just wondering if there's an example of theoretical in this case that we're talking about.

ANDREW DUNKLEY: Yeah, the thought on that was, was, was that it's, it's not something that you could say, oh, well, this, this damages my, my property value because it's an eyesore. It's, it's not something that, that could be up in the air or questionable of, oh, well, you know, boy, that, that, that painted barn on the other side would really diminish my value. Of course, I'm being facetious, but this, this is direct damage that, that could be done to, to property, and, and we wanted to deferent, differentiate that.

J. CAVANAUGH: Quantifiable, maybe?

ANDREW DUNKLEY: Correct. Yeah, yeah.

J. CAVANAUGH: Thank you.

ANDREW DUNKLEY: Thank you.

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HALLORAN: Thank you, Senator Cavanaugh. Any further questions? Seeing that-- that was a pretty, pretty, pretty safe initiation we gave you on that.

ANDREW DUNKLEY: Let's keep it easy on me.

HALLORAN: All right. All right, any further proponents for LB712? Proponents? Seeing none, are there any opponents to LB712, LB712? Seeing none, anyone in a neutral capacity? Good afternoon.

JON CANNON: Good afternoon, Chairman Halloran. Members of the Agriculture Committee, my name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials, otherwise known as NACO, and we're here to testify today in a neutral capacity on LB712. First and foremost, the reason we're testifying in a neutral capacity is because the NACO board has not yet met to take any of its positions. You will probably notice, from the flavor of my testimony, that we are going to be neutral-positive in all likelihood. We certainly appreciate that this committee and the Legislature are continuing, and not repealing, the opportunity for a management plan in our county, as we find it to be a valuable tool. We also find that, with these items of peculiarly local control, the devolving authority to the county boards is probably a good policy, and encouraging them to encourage their landowners to work these things out amongst themselves is probably the best of all. It's a kind of devolution of, of power and authority that, that we tend to prefer. Just a couple of items that I, I would note. As Senator Hughes had mentioned, there's only one county which has adopted a comprehensive plan so far, and that would be Sheridan County, as Senator Brewer noted. You know that we certainly hope that there are other counties that [INAUDIBLE] and make use of this, this authority that is given to them. One item that we might mention is, as far as a couple of the procedural aspects of this, right now we-- I think we included in here that you have to provide notice to the adjoining landowner by certified mail. We have found that certified mail, you, you know that someone has received it but, by the same token, people pick up certified mail or, or it's returned with about the same efficacy as, as other sorts of mailings. And we have found over the years that, frankly, in other contexts, that as long as you're able to demonstrate that you have a procedure for sending out mailings in a timely manner, that ordinarily is accepted by the courts. The other item that we wanted to mention is the rates, which would appeal to any court having jurisdiction. That could increase costs to the counties. Personally, at-- or, or I think what we would prefer is something that would

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clarify this a little bit more, something probably similar to the TERC statutes, as far as the burden of proof and burden of persuasion. I think that would make it a little bit more amenable for the counties. I have nothing further, but I would be happy to take any questions you might have. I think this is my first appearance in the Agriculture Committee, so please go as, as easy on me as you did on the last testifier.

HALLORAN: All right. Questions? Senator Brewer.

BREWER: I just want you to repeat that opening part there. You're neutral, leaning positive?

JON CANNON: Yes, sir. We think it's-- and, and again, for what it's worth-- spoiler alert-- I'll be testifying as a proponent for another bill that you have before this committee, and that is because it's been written into the NACO platform. As far as prairie dog management, that's not something that's part of the NACO platform, and so, because our board has not yet meant to take positions, I have to testify in a neutral capacity. If you have a new executive director for NACO next week, you'll understand that I guessed wrong.

BREWER: OK.

HALLORAN: OK, Senator Brewer. Yes, Senator Groene.

GROENE: Thank you, Chairman. I haven't read this previous, but it looks like a lot of the language is being stricken that, that was more, I don't know. more harming to the-- or more demanding on the county and more fines. This seems to make it easier.

JON CANNON: Generally speaking, it does, sir, which is why I would characterize, characterize my testimony as being neutral with a positive flavor.

BREWER: Oh, flavor.

GROENE: And it, it doesn't put the fines in there of \$100 a day and assessments, you know,--

JON CANNON: I'm from-- I'm sorry.

GROENE: So how many of your counties are doing this?

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JON CANNON: There's only one county, and that would be Sheridan County that has adopted a plan.

GROENE: So now if we do this, and it-- Senator Hughes apparently has a problem. We knew this from last time and Ernie's not here now, so-- but it didn't do him any good unless Chase County or Perkins County enacts it, right?

JON CANNON: That's correct, sir.

GROENE: All right, thank you.

JON CANNON: Yes, sir.

HALLORAN: OK. Thank you, Senator Groene. Senator Gragert.

GRAGERT: Thank you. Just a couple of questions. What's your policy and how do you handle noxious weed control right now, like this?

JON CANNON: How do we handle, how does NACO handle noxious weed control?

GRAGERT: Yeah, if somebody that won't manage, you know, their noxious weeds, what does the county do right now? And as far as-- do you have authority to go in there and spray those noxious weeds? And, and--

JON CANNON: Yes. Yes, sir. The county is doing that, and actually we'll, we're going to have a bill up, LB805, right after this one. And some folks that are, are very apt to describe exactly how the noxious weed control program works are-- they're going to be here to testify on that.

GRAGERT: So you give them 60 days to take care of or first available time? I mean, if it's in the fall, just spray them? I mean, what, what do you do with the noxious weeds?

JON CANNON: I, I'm probably not the right person to answer that, sir. I apologize.

GRAGERT: OK. So can a weed be a native, a native plant?

JON CANNON: I'm, I, I'm not a soil scientist. I'd, I'm probably still, still the wrong person to answer that question, sir. I'd, I'd probably defer to the folks that are going to be testifying on the next bill.

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GRAGERT: Nothing to do with soil scientists, but you know, whether-- like an animal-- I want to, I want to switch over from, from weeds now and ask you an animal. Are there introduced animals, animals and, and native animals?

JON CANNON: I, I don't know the answer to that question, sorry.

GRAGERT: Like the, like the pheasant's an introduced, an introduced-- pheas-- you know, animal or, you know, pheasant and are--

JON CANNON: Sure. Based on my limited understanding, sir, I would expect that there is that distinction to be made, that there are introduce-- you know, there are native species and non-native species, but I'm-- I don't have that expertise.

GRAGERT: OK, thank you.

JON CANNON: Yes, sir.

HALLORAN: OK. Thank you, Senator Gragert. I know before this hearing started, I had several senators come up to me and ask me, how long will this hearing last? And I said, I have no control over you guys' questions so-- and I appreciate the questions; they're very helpful. But-- and I'm not trying to expedite this. It's going very smoothly. I appreciate your being here,--

JON CANNON: Yes, sir,

HALLORAN: --Mr. Cannon. All right. Thank you for your time.

JON CANNON: Thank you very much.

HALLORAN: Anyone else in the neutral-leaning positive?

BREWER: I just had to get a clarification.

HALLORAN: No, you're fine. Good afternoon.

KIMBERLY STUHR: Hello. My name is Kimberly Stuhr-- Kimberly S-t-u-h-r, and I'm representing today the Nebraska Wildlife Federation and Friends of the Niobrara. I'm also neutral capacity on this, on the changes that, that have been recommended, but speaking about the law in general. I'd like to start by saying I understand landowners' concerns about prairie dogs-- very much so. I understand that they're concerned about their grazing, you know, the amount of grass that the

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prairie dogs eat, as well as the threat to their livestock. So we support the conservation of-- in general, we support the conservation of prairie dogs and, whenever possible, relocation of the colony and other measures like to increase predators of prairie dogs on the property. Mediation was brought up. I think that's a good way to get landowners and prairie dogs to coexist. And something-- I don't know if it's been discussed before or not-- is the-- it costs quite a bit to exterminate the prairie dogs. Has anyone considered paying landowners for the grass that the prairie dogs have eaten rather than the cost of exterminating them? Because prairie dog, prairie dogs are keystone species and there's many species of birds, along with vertebrates and invertebrates, that depend on prairie dogs for existence. And some of these species are on the edge of being extinct, like the black-footed ferret, which could click the Endangered Species Act into play, and that's something that I don't think that most governing bodies would want to deal with. Nebraskans can-- currently able to poison and-- prairie dogs more than any other state. It's our opinion that, with better communication and looking at other ways to manage the, the colonies, that this bill, this law might not even be needed. So again, we support measures like boundary control, relocation, and increasing predators over recreational shooting and poison. I think that there's ways that we can look at to get landowners and prairie dogs to coexist.

HALLORAN: OK. Thank you, Ms. Stuhr. Senator Brewer.

BREWER: Quick question. How many black-footed ferrets have ever been found in Nebraska?

KIMBERLY STUHR: Well, I know of some that have been tried to be rein, reintroduced into prairie dog colonies, so I don't know how many have been found on that [INAUDIBLE].

BREWER: Actually, they were thought to be extinct until the '80s, when they found one town of them in Meeteetse, Wyoming. And they have since tried to populate--

KIMBERLY STUHR: That's [INAUDIBLE].

BREWER: --with them, through the University of Wyoming, and have been pretty much a failure, except in a controlled environment. But to my knowledge, there's never been any in the state of Nebraska. But we'll keep an eye open.

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KIMBERLY STUHR: Yeah, I do know that there's, in one instance in particular, that they've tried to reintroduce the black-footed ferret, and it was--

BREWER: Was it successful?

KIMBERLY STUHR: It was not successful either, but--

HALLORAN: Senator Groene.

GROENE: Thank you, Chairman. So you say more predators. What are you talking about, foxes and coyotes and hawks?

KIMBERLY STUHR: Um-hum, which could, I suppose, be its own reason for people to, to oppose that.

GROENE: I'd rather have black-footed-- I like my pheasants and I like some other game,--

KIMBERLY STUHR: Um-hum, but there's also--

GROENE: --and I don't like hawks.

KIMBERLY STUHR: Yeah, there's a lot of--

GROENE: Anyway, whatever.

KIMBERLY STUHR: --hawks and raptors, yeah.

GROENE: Yeah.

HALLORAN: Senator Hansen.

B. HANSEN: No, never mind. He took mine.

HALLORAN: Senator Cavanaugh,--

J. CAVANAUGH: Thank you, Chairman.

HALLORAN: --who might be interested in relocating some of these to Omaha.

KIMBERLY STUHR: Well, I do know the-- I mean, there are some places that would take the prairie dogs, so--

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J. CAVANAUGH: Well, to your other forms of management, is there anything in this statute-- or the bill, as drafted, that would prevent the county from adopting a plan that would include some of those alternative managements?

KIMBERLY STUHR: I don't think so. It's just that they don't look at that before going into, you know, extermination.

J. CAVANAUGH: So, so what we've heard today is only one county is doing it,--

KIMBERLY STUHR: Um-hum.

J. CAVANAUGH: --that has adopted a plan. Do you know if their plan is exclusive to those other forms of management?

KIMBERLY STUHR: I don't. But it would be nice if, in this bill, there were measures to take before, like the mediation or finding a location to relocate the prairie dogs to, before extermination.

J. CAVANAUGH: And I've never, I've never heard of relocating prairie dogs. Is that-- I mean, do you come in with like a backhoe and scoop up the village? Or I--

KIMBERLY STUHR: No, you can kind of flush them out with like soap and soapy water and stuff, flush them out and then trap them.

J. CAVANAUGH: OK, and then move them to some like-- I guess my only interaction with prairie dogs has been at the Badlands National Park.

KIMBERLY STUHR: Um-hum, there's a lot of them out there.

J. CAVANAUGH: Yeah, but if you've got [INAUDIBLE].

KIMBERLY STUHR: We were just there.

J. CAVANAUGH: I think those are there on purpose for recreational purposes. But is there-- so you said that there's a, I guess, habitat or value to them? What did you call them, a keystone?

KIMBERLY STUHR: They're keystone species.

J. CAVANAUGH: Keystone species, so by capturing and moving them, wouldn't that have a detrimental effect to their keystone nature in that area?

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KIMBERLY STUHR: It could, yes. Yeah.

J. CAVANAUGH: Thank you.

KIMBERLY STUHR: Um-hum.

HALLORAN: Thank you, Senator Cavanaugh. Any further questions? Seeing none, thank you, Ms. Stuhr.

KIMBERLY STUHR: Thank you.

HALLORAN: Appreciate it. Any further neutral testimony on LB712? Seeing none, Senator Hughes, would you like to close?

HUGHES: Thank you, Mr. Chairman and members of the committee. I will be brief in my closing, but there's, there is-- not for lack of material. I, I would point out one of the predators of the prairie dog is the rattlesnake, that you do see rattlesnakes in prairie dog towns. So not all of the predators of a prairie dog are warm, fuzzy, endangered species. To Senator Gragert's question of what is a weed, a weed is anything growing where it's not wanted. So soybeans are weeds on my farm. A lot of my eastern Nebraska colleagues don't appreciate that, that comment. The other thing on, on this bill, you know, I'm certainly not trying to stop neighbors from trying to work it out first. That's what needs to happen, is for neighboring landowners to talk across the fence or, you know, meet on the road and, you know, say, you know, and that's what I've done. I've said, you know, Hey, Jane, you know, you've got some-- quite a few prairie dogs in your pasture. You know, they're kind of encroaching on my crop and eating my crops, you know. You know, can I help you take care of them? Now, that doesn't always happen. We're not trying to exterminate them. Relocating them, the question is they have a giant truck vacuum that they send down the hole and literally sucks them out and shoots them into a padded chamber so they don't get hurt. I've seen videos of that when I was in my less productive time. But it is, it is being done. I think the expense of that far outweighs a few dollars' worth of poisoned oats. It is not-- and we're not trying to eradicate any colony. We're just trying to move them back away from the boundary of the neighbor that is being damaged. So thank you very much. I would be happy to work with the committee on any amendments that you may see fit in order to get this bill to move forward to General File.

HALLORAN: OK. Thank you, Senator. Senator Groene.

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GROENE: Maybe I missed it, but have you gotten feedback from counties, and when you-- like your own counties? I'm sure you've asked Chase and Perkins Counties to implement this. Is that the original language was too complicated that they were concerned about it? Are you trying to make this more palatable to the counties to create a, a plan?

HUGHES: During the multiple years of discussions that Senator Chambers and I had on this bill-- I mean, he was very good, I did learn a lot from Senator Chambers, and he pointed out the flaws in the original bill. And that's what my bill is set to do, is take those flaws out to make sure that it is workable not only for the counties, but for the individuals who are, are in the process. It streamlines the process, makes it legal, you know, so that it can't be challenged.

GROENE: So have you talked to Chase County, county commissioners and Perkins?

HUGHES: I, I don't have pastureland. None of my land is pastureland, so I don't have a problem except where I farm next to my neighbors that have a pasture. And if they would not control their prairie dogs, yes, I would be going to my county commissioners and saying, you know, I have this problem. Here's a law that, if you adopt it, then we can move forward and maybe force my neighbor Jane to, you know, work with me to reduce the number of her prairie dogs.

GROENE: So you brought this bill because the constituents or ranchers and stuff in other parts of the state still are having the trouble.

HUGHES: Yes. This, this is a bill that I've worked on for several years and have been beaten up pretty hard on. So I've, I wanted to fix it before I left.

HALLORAN: Senator Gragert.

GRAGERT: Thank you. Just to clarify, though, after you send a certified mail and they don't, they don't respond to it, 60 days after that, the county can go on without trespassing and eradicate those, those whatever [INAUDIBLE]?

HUGHES: I think yes, You-- it is, it is in the local newspaper and certified mail, as well. So there are two forms of notice to the landowner. And you know, the, the courthouse has the-- where they send the tax statement. That would be where you would send the notice. And if they don't respond within 60 days, why then, yes, the county, you know, has covered that base and they can begin procedures.

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GRAGERT: And then charge the individual on-- afterward?

HUGHES: Yes, they will, they will assess their-- put an additional charge on their property tax.

GRAGERT: OK, thanks.

HALLORAN: Any other questions? Seeing none, that concludes the hearing for LB712. We'll roll into LB805 which, coincidentally, is Senator Hughes.

HUGHES: Good afternoon, Chairman Halloran. Members of the Agriculture Committee, welcome to round two of Senator Hughes Day in the Ag Committee. For the record, my name is Dan Hughes, D-a-n H-u-g-h-e-s. I represent the 44th Legislative District. I am here to introduce LB805. LB805 would amend the Noxious Weed Control Act. In 2007, the Legislature passed LB701, which appropriated \$5 million in general funds to help control invasive vegetation in Nebraska's riparian corridors. This funding was instrumental in starting the work needed to increase flow conveyance, wildlife habitat, and water availability for human uses by reducing the consumption from invasive vegetation. This bill includes added measures that prevent the spread of invasive species already in place. This bill includes added measures that prevent the spread of invasive species. It also clarifies that management of vegetation is within the banks or floodplain of a natural stream. It also clarifies that the project is intended to reduce or prevent the total population or area of infestation of a noxious weed or invasive species, as identified and listed by the Nebraska Invasive Species Council. Also, it increases the appropriation from \$1 million currently to \$3 million annually. I'd be happy to try and answer any questions for you.

HALLORAN: Thank you, Senator Hughes, Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you, Senator Hughes, for bringing this bill today. The definition of a floodplain-- so if I have a waterway in a field [INAUDIBLE] a stream, is that, is that part of the floodplain?

HUGHES: I-- no pun intended, but that's a little too far in the weeds for me, Senator Brandt. I do not know that, but I will find out.

BRANDT: All right. Thank you.

HALLORAN: Any further questions? Senator Brewer.

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BREWER: I believe that one of the spots that we have a lot of weed problems, and ownership being the problem, figuring out who actually are responsible, the Cowboy Trail, you know, runs the whole northern end. It was the old Chicago Northern [SIC] rail line. Now it's, it's been made into a trail. The problem is it's not well maintained in some areas; somewhere it is. But the right of way, what was the old railroad right of way? Is that Game and Parks, or who would be responsible for weed control along that route?

HUGHES: That's a very good question. I do not have that answer.

BREWER: OK. It's just that we rode that, and there were spots where the thistles were shoulder high on a horse for a quarter of a mile. Now that many thistles allowed to continue year after year, will, will obviously make it a problem. It's almost unmanageable at some point. but we'll, we'll see if we can find someone from Game and Parks on those.

HUGHES: This, this legislation was specifically designed, designed for our rivers and waterways, so the riparian vegetation, to increase flow to, to-- when, when there's vegetation in the river, it slows and we lose capacity. And when [INAUDIBLE].

BREWER: I was thinking the wetlands, not just rivers, so OK, if it's just designed for waterway, there are no major waterways that run along the Cowboy Trail. It would just be [INAUDIBLE].

HUGHES: Yeah. And there may be someone behind me could, could answer your question.

BREWER: All right, thank you.

HUGHES: I, I do not have that answer.

HALLORAN: OK. Any further questions? Senator Gragert.

GRAGERT: Let me just ask quick, you got biologists or somebody behind you coming up?

HUGHES: I believe there's someone from the Nevada, Nebraska Invasive Species Council--

GRAGERT: OK.

HUGHES: --probably going to testify.

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HALLORAN: OK. Any further questions? Seeing none, Senator Hughes, thank you for your opening.

HUGHES: Thank you.

HALLORAN: Proponents for LB805?. Good afternoon.

MIKE REED: Hello. Good afternoon, Chair Halloran and committee members. My name is Mike Reed, M-i-k-e R-e-e-d. The appointment of Mr. Portis would have been a good segue for the discussion of LB805 when Mr. Portis was talking about the flooding. And Senator, you had asked about it, I think-- and Senator Cavanaugh, you had asked about preventative measures. Senator Hughes had mentioned that some of the edits to LB805 included preventative measures in addition to the regular control efforts, so that'd would be working with university members and also, you know, U.S. Geological Society, U.S. Fish and Wildlife Service, any of our, any of our partners, University of Nebraska-Lincoln. If there is any way, you know, in addition to controlling those weeds, if we can prevent those weeds from even establishing in the first place on those sandbars, on those banks along the waters of the state, that those methods would be included in this legislation and would be eligible for the appropriated funds. I am the weed superintendent in Douglas County and I serve as the current chair of the Riparian Task Force. I want to thank Senator Hughes for introducing LB805. This bill is the result of your steadfast working relationship with local officials to maintain and protect waters of the state from non-native invasive plants. Senator Hughes and his staff attended the Riparian Vegetation Management Task Force meeting on December 16th to talk about this legislation. The task force is made up of local officials from Natural Resource Districts, University of Nebraska-Lincoln staff, Nebraska Department of Energy and Environment, Nebraska Department of Agriculture, and Local landowners. The task force members at that meeting provided their feedback on this proposed legislation, which includes using preventative measures by local landowners to protect waters of the state. And, and in addition, that the bill would apply to the natural flowing, flowing stream and the floodplain at that stream. I have over 20 years of weed control experience on the Lower Platte River in Douglas County, first as a seasonal employee, strapping a backpack to my back, a backpack sprayer, walking the sandbars and controlling invasive plants. And those were the tools at the time, that trusty backpack and a, and a strong back, walking up and down the river. If I was lucky, I could catch a ride on an airboat to do that kind of work as well. Whereas I worked only on the main channel of the Platte River

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in the county, nowadays the workload has shifted dramatically, where not only the main channel is the, is the target for these invasive species projects, but also all the flowing tributaries in the weed management area. I work in the Lower Platte weed management area, which is downstream from Columbus, Nebraska, down to the confluence of the Missouri River. The scope and scale for work, for, for Nebraska's 13 weed management areas across the state mirrors this example, as these land managers and landowners across the state now work together on both the main channels of Nebraska's rivers and also on those tributaries and side channels, using helicopters and GPS mapping. Maintaining these water resources never, has never been more important for the state. Last year, the western portion of the state endured drought conditions. These conditions stress Nebraska's water resources, but also allow invasive species an opportunity to displace water. That's what weeds do, they, they seize an opportunity. Funding appropriated from the Legislature allows the necessary funds to address newly invasive species and to control them before the, the problem grows exponentially. LB1038, also sponsored by Senator Hughes, was signed in 2016, to provide \$1 million for vegetation removal, and control projects across the state allowed weed management areas to proactively manage waters of the state and clear species that would otherwise cause channel narrowing and decreased flows. The floods of 2019 had a large impact on the state of Nebraska. The flooding impact would have been far greater if Nebraska had not proactively been managing its streams to clear them of invasive vegetation and water conveyance. The flood waters of 2019 did move both water and invasive invasive plant materials outside the banks of these channels. The new populations of invasive plants will move back into those adjacent main river channels and tributaries if not controlled and addressed. LB805 adds the needed floodplain language to address these locations. This legislation impacts all Nebraskans from one side of the state to the other, Nebraska's water resources, and the wildlife that inhabits the state. With that, I'll take any questions.

HALLORAN: Very good. Thank you, Mr. Reed. Any questions? Senator Hansen.

B. HANSEN: Thank you, Chairman. So I think it's always prudent for us, as people who spend the people's money, to always ask, why should we give you more money? Like what I mean by that is, if we're going to give 2, \$2 million more to this fund, has it worked? And if it has, can you explain, maybe, what you have done that has had some benefit to Nebraska as a whole and with noxious weeds?

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MIKE REED: I have a testimony that will provide information that, after, after mine, to attest of the numbers and success stories. On that, I will say that, to your first question about why is more, why are more funds needed, the Riparian Task Force and the, the committee that I described works for the Nebraska Department of Agricultural on implementing this, these appropriated funds every year. And so our group gets to go see those projects firsthand. We've been in the central part of the state. We've been up in the northeast, in the Niobrara. And so there's, there's a lot of work to be done that hasn't been done yet. Recently saw Niobrara and the Missouri River, could see all the work being done on the South Dakota side, but the Nebraska side of the Missouri River, there was invasive plants and the phragmites all up and down, as far as you could see, on, on either side. And so this work being done, we talked, I talked about Mr. Portis' testimony. He was talking about Plattsmouth, the, the flooding that occurs and your-- these species also use water. We have members on our task force at the university level. They know that these species, just like trees, consume water, so that's taking water away for agriculture and from the environment. And so that's a, it's a small investment in, in weed control, in favor of environment and use for water consumption.

B. HANSEN: So what-- so we've seen some benefit, I think, is pretty much what you're saying so--

MIKE REED: Yeah.

B. HANSEN: --which, which then makes sense why we want to, want to give more money to this program. What kind of chemicals do you use-- just like I'm just kind of curious-- to help control the weeds along the [INAUDIBLE]?

MIKE REED: Those, those are labeled just for, just for aquatic use. And so when I was talking about the helicopter use, there's special language for each one of those herbicide uses, which only applies to a fixed-wing, fixed-wing aircraft or a helicopter application. And so it's a very narrow language as it needs to be.

B. HANSEN: OK. I asked that because I'm curious, because obviously waterways kind of go everywhere. There might be some people where it affects other people downstream, I was just kind of curious to know. Have we had any, have we had any--

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MIKE REED: Yeah, and, and, and I've been the project coordinator for the Lower Platte. We've managed the area for the past 12 years. And so what our way of managing an area does is, we have to comply with the Nebraska Department of Environment and Energy. And so we have a plan that not only talks about our, our project for those, addressing those weeds, but also how we're going to notify for water intakes. And so we, we notify in Omaha. We notify MUD prior to the project and so they can shut those wells off private projects.

B. HANSEN: OK. I've got one more quick question, if I can, I mean, important to me. So with what you do, do here along the waterways, does it help control mosquitoes, because I hate mosquitoes? They just attack me.

MIKE REED: I wish I could have some positive information on that.

B. HANSEN: No, then. OK. Well, all right. That's fine. Thanks. Appreciate that you had a quick answer for that.

MIKE REED: Thank you.

HALLORAN: Thank you, Senator Hansen. Senator Gragert.

GRAGERT: Thank you, Chairman. Thank you for your testimony. I just-- so quick question. Invasive species versus noxious weed, can it be one and the same?

MIKE REED: Yes.

GRAGERT: So if your--

MIKE REED: If you're talking about at the state level, the state of Nebraska Department of Agriculture designates noxious-- weeds as noxious.

GRAGERT: Like the phragmites you mentioned.

MIKE REED: Right.

GRAGERT: Is that an invasive species or noxious?

MIKE REED: That was designated as, as a noxious species in 2008.

GRAGERT: OK.

MIKE REED: Yeah.

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GRAGERT: So taking this out to the floodplain, you know, you want to widen it out. I, I know you, you first work the banks, you know, along the water course itself. Taking it out of the floodplain, will the producer have to control this phragmites that may go up the waterway and, and like a noxious weed, or it is considered a noxious weed?

MIKE REED: It's going to be a case-by-case basis. I haven't seen phragmites grow in an active production field. It's been on the crop borders. And so that's a discussion between the weed superintendent and the producer. Typically, what needs to happen is you need to go in after the crops are controlled so that those crops are not affected, you know, the control where it can happen after those crops are removed. Or you tell the producer, Okay, there's a weed infestation here, we need to not have this planted, you know,, this this current growing season. Then you can use an appropriate product and get that removed and controlled, and then farm it the next year.

GRAGERT: OK, thank you.

HALLORAN: Senator Groene.

GROENE: So what we're really talking about is phragmites, because it's everywhere.

MIKE REED: Right.

GROENE: Now--

MIKE REED: That's the species that has, has expanded.

GROENE: So you work for Douglas County?

MIKE REED: Yes.

GROENE: So you wouldn't know, or somebody-- what was the process and who-- can we have a list of who received the million dollars?

MIKE REED: Absolutely, yeah. There's a--

GROENE: 'Cause--

MIKE REED: --list of projects. The task force has a website as well, where those pro-- projects are published, as well as the Riparian, Nebraska Riparian Task Force has a website.

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GROENE: In Nebraska, that would always be county weed control districts, right?

MIKE REED: It would be the, the weed management areas, correct.

GROENE: It's just the county weed district.

MIKE REED: Right.

GROENE: So I happen to--

MIKE REED: Yeah, that was--

GROENE: --be familiar with the South Loup River, and phragmites is everywhere. And there's no way you're going to get a helicopter down that river unless it can turn on a dime. So how are those smaller tributaries and rivers handled, 'cause phragmites is everywhere?

MIKE REED: Which river were you talking about?

GROENE: South Loup--

MIKE REED: The South Loup River?

GROENE: --up in Custer County.

MIKE REED: I'd have to-- but it gets more information to respond back to you.

GROENE: Well, that's what we'd-- well, I'd love to see the list--

MIKE REED: Um-hum.

GROENE: --of who received the million dollars so far. Was it concentrated in one or two places?

MIKE REED: It, it was statewide.

GROENE: But it sounds like it was on the big river systems.

MIKE REED: It-- the flowing waters of the state. So the Republican River, I know the Platte River, the Niobrara River all had projects last year, and, and that, that whole list of projects can be sent over and-- to the committee.

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GROENE: It's, it's not eradication. You, you're just trying to control it.

MIKE REED: Right, and--

GROENE: 'Cause there's no way you can eradicate that stuff.

MIKE REED: --proactively manage for water conveyance. This is the main, the main thing as well, and, and manage for water, yeah.

GROENE: So you--

MIKE REED: Main, maintenance is, is the key goal, that's correct. And in the Lower Platte, it's like I mentioned, started on the main channel and now we have the Elkhorn River. We've got tributaries in, in Lincoln here, in Lancaster County, that are added to the project. And so the footprint is expanding for phragmites.

GROENE: Thank you.

HALLORAN: Further questions? Senator Cav, Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you for being here for your testimony. So is this-- removal is all done by spraying on chemicals for this management?

MIKE REED: There's also management for water conveyance, and these weed management areas will also undertake, undertake vegetation removal projects to remove other invasive species

J. CAVANAUGH: So would that be a mechanical removing?

MIKE REED: Yeah, woody, woody species to restore the channel. And so you have the Platte River or whatever river system you're working on so that river can, can contribute to some of the scouring so that chemicals aren't needed. So it depends on the project, but there are other methods used.

J. CAVANAUGH: And for the chemical application, is it-- that's toxic to humans and animals then?

MIKE REED: No. It's, it's applied. It has, it has the label which allows it to be applied over water, but it's really targeted at just those, those plant species. And so you have an application. Say that this was a sandbar right here with phragmites on it. You would just

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apply it right over the plants. You wouldn't apply it over the open water. You just apply it where the plants are at.

J. CAVANAUGH: So why do you inform MUD to shut down those wells when you do the applications?

MIKE REED: It's a precautionary measure, yeah.

J. CAVANAUGH: But if it got into the water system, it wouldn't be a concern, then?

MIKE REED: This-- it's-- the, the current-- the flows of the of the river you're working on are going to dilute that, dilute, dilute that product down, and you're playing it over a sandbar, which that's going to filter through the sand and also that plant, the plant structure as well.

J. CAVANAUGH: And what about this helicopter application or airplane application? Is that-- 'cause I mean, that's obviously not nearly as targeted.

MIKE REED: Right, that's targeted as well.

J. CAVANAUGH: That is targeted, but it's not as targeted, right?

MIKE REED: You're talking about just, just applying to those, just those sandbars where the plant's actually growing. During the summer months, we have a narrow, narrow window, roughly about eight weeks, whenever that frost occurs. We also have to comply with the department of the-- the Nebraska Game and Parks on those endangered species because we can't apply, at least in my area, before August 15th, because it would impact the tern and, the terns and plovers, the bird species, as well. So you have a narrow window, and then we notify all the appropriate agencies when we're going to undertake the project.

J. CAVANAUGH: You can't apply it in that time because that's when they would be there--

MIKE REED: Up, up and prior to that point, sorry.

J. CAVANAUGH: OK. And if-- but that's because of concern that that would-- that the [INAUDIBLE].

MIKE REED: Impact the nesting habitat, yeah.

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J. CAVANAUGH: OK, so there is potential for that sort of harm to an animal if, if it weren't applied in a, in a responsible manner.

MIKE REED: Right. Each weed management area has their own Game and Parks plan, as well as the, the plan for the, the water intake, so water resources for that area.

J. CAVANAUGH: Thank you.

HALLORAN: Yes, Senator Gragert.

GRAGERT: Thank you. Real quick question: What, what do you-- you say you have success stories.

MIKE REED: Yes.

GRAGERT: That-- is that not full elimination of, say, like, phragmites then, right?

MIKE REED: Elim--

GRAGERT: Well, what, what's-- what--

MIKE REED: --total elimination of the, of the plant?

GRAGERT: Yeah.

MIKE REED: I would characterize-- and I said I've been around, working in Omaha for the last 20 years, and the river, river today looks just as good as it did 20 years ago. And so it's main, it's maintaining that, that river system of water, water conveyance and being proact-- as proactive as you can. And we work with the Natural Resource Districts, and so we want to eliminate flooding and, and have those Game and Park species there as well. And so I characterize success as a balance between all of those things. And, and you're not going to eliminate phragmites because it's such a dynamic non-native plant that it's always going to be there in, in some numbers.

GRAGERT: Phragmites is native and non-native, right? There's both species.

MIKE REED: But the, the invasive, invasive variety is non-native, correct.

GRAGERT: I've watched, I've watched the Missouri River, you know, up, up-- they tried to build new sandbars in there, you know, for the

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extinct species-- or not extinct-- the endangered. But it-- I don't see a control of the phragmites. It seems like it comes back in, in greater force.

MIKE REED: Are you talking--

GRAGERT: I mean there's--

MIKE REED: --about near the--

GRAGERT: --a lot of [INAUDIBLE].

MIKE REED: South, the South Dakota border? Or--

GRAGERT: South in the Missouri River, from up, from Lewis and Clark or up from Gavins Point, up to the Santee, that area, all that-- through that area, phragmites is-- I mean, that-- is it a smaller watershed that you're able to even try to control phragmites on?

MIKE REED: I think it's dependent on the, the weed, weed management area, as Mr. Groene was talking about. It's those, It's those counties and the, the follow-up and control. And so we do have some success stories. I'll let the next test, testifier talk about those. But I know in the Lower Platte-- and I've talked about the footprint expanding, the acres have not increased. Even though our footprint is expanding, our maintenance is, is the same. Anywhere from-- we're spraying anywhere from 100 acres of phragmites a year roughly to about 400, 500 acres a year on a 120-mile stretch. And now that's, now that's tripled or quadrupled. You know, it used to be just a 120-mile stretch, and now we're adding in the Elkhorn River, all the tributaries here in Lancaster County. And so the footprint's expanded, but our numbers have remained the same. So that speaks to the maintenance. So I think it can be achieved.

GRAGERT: So we've been talking a lot about phragmites, but cedar trees along the rivers, you're familiar, then, how much water they, they can suck up. You-- do you also control cedar trees?

MIKE REED: I don't in what-- my weed engineering. I know there, there have been others that have controlled cedars and Russian olive trees,--

GRAGERT: OK.

MIKE REED: --using these funds. Thank you.

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HALLORAN: Any further questions? I've got a quick question. First, it's kind of a reflection on the current bill that, that underlying bill. "Such funds shall only be used to pay for activities and equipment as part of vegetation management programs that have as their primary objective improving conveyance of stream flow in natural streams," which raises the questions. Do you, do you envision projects from this bill, which may be some distance from the stream, being in conflict with this restriction, on improving streamflow, that which would be so far away from the streamflow that, that it might-- that, that this restriction on the use of funds might come into play?

MIKE REED: I believe that this is a follow-up to this-- Senator Hughes's previous legislation. So I think that the focus will be on the flowing waters of the state and the adjacent floodplains where those phragmites are occurring, to get that seed source out of there. I don't think there would be a conflict for something far off-stream. It needs to follow it, either between that as defined by the, by the, by the bill, either within the stream or within the floodplain.

HALLORAN: Yeah. Senator Gragert.

GRAGERT: That just-- thank you. That just brings up-- OK, we're going from \$1 million to \$3 million. How-- what--where does this money funnel through?

MIKE REED: The Nebraska Department of Agriculture--

GRAGERT: And--

MIKE REED: --accepts the grant proposals and awards the grants.

GRAGERT: Oh, OK. So there's a, there's a-- how do you choose which, which project gets funded and which one doesn't? You've got a--

MIKE REED: Yeah, there's mechanisms in place for that. I know that the Nebraska Department of Agriculture has mechanisms, mechanisms in place. Also, the Riparian Task Force Committee, which I mentioned, also has the ability to provide parameters for priorities annually. And so that, that, that is something the committee works on every year, are those priorities.

GRAGERT: Do you get any monies from the Environmental Trust Fund?
Are--

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MIKE REED: There are, there are-- we [INAUDIBLE] projects across the state that in the past have received funds as well. And those funds, along with other federal funds, can be matched with, with these funds as well? That's part of the success stories that we'll talk about with the next speaker.

GRAGERT: OK, thank you.

MIKE REED: Yeah.

HALLORAN: OK, thank you, Senator Gragert. Any further questions? If not, I appreciate your input, Mr. Reed; thank you so much.

MIKE REED: Um-hum.

HALLORAN: Next proponent for LB805. Good afternoon.

TODD BOLLER: Good afternoon. You guys are getting all kinds of first-timers today, so this will be my first testimony, so--

HALLORAN: We'll be gentle.

TODD BOLLER: All right, thank you. Chairman Halloran and members of the Agriculture Committee, my name is Todd Boller, T-o-d B-o-l-l-e-r. I am the noxious weed superintendent for Fillmore County. I am here today on behalf of the Nebraska Weed Control Association and on an-- to an extent, the Nebraska Association of County Officials, to testify in support of LB805. Thank you, Senator Hughes, for introducing this legislation and the 2016 LB1038 that is being revised in LB805. Because of the previous legislation and through environmental trust grants and assistance of our partners, such as the Natural Resource Districts, U.S. Fish and Wildlife, Nebraska Game and Parks, the Nature Conservancy, public power districts, UNL Extension, landowners-- and those are just to name a few. We have been able to improve water conveyance throughout the state of Nebraska. In 2007, legislation was passed to begin the fight to preserve our waterways in Nebraska. That was during a time when Kansas had a lawsuit filed against Nebraska for \$72 million for not delivering enough water through the Republican River. At that time, much of the Republican River was being clogged by invasive vegetation that was only allowing 300 cubic feet per second of water before spilling out of the banks. Because of the work done, the Republican River easily handles 1,100 cubic feet per second and the lawsuit was reduced to \$5 million. At that time, \$4 million was the investment the Legislature made and, with that and our partners' investments, we were able to do \$26

million of on-the-ground work to control the invasive vegetation. We have successfully reduced numbers of acres of invasive vegetation, such as salt cedar. It went from 5,176 acres in 2010, down to only 1,457 acres today. And these numbers are accrued from all the counties across the state, so. And purple loosestrife had 18,978 acres in 2018, and it's down to 8,832 acres today. The one plant that has shown an increase in acres is common reed, also known as phragmites. It went from 10,436 acres in 2016, to 12,417 acres in 2021. We have seen an increase in the floodplains. This is why we are here today. We must expand our work outside the rivers in order to get the vegetation under control and to protect the riparian areas of the state. These floodplain sites are a constant seed source and is pushing rainwater, rainwater runoff out into the fields, outcompeting crops for both water and nutrients. While portions of our river systems are in a maintenance phase, there is still much work to be done. While we have seen positive changes within the river systems to stop the infestation, LB805 gives us the opportunity to expand our efforts into the tributaries and the floodplains throughout the state. These areas provide a continual seed source which feed into the rivers. It is imperative that we continue our quest to rid them of these invasive species which, in some areas, are continuing to strengthen the hold on the waters of the state. Water is life for many things, including biodiversity of wildlife and water for agriculture. Our goal is to help continue to grow Nebraska and protect our waters and land from the attack it is under. We would appreciate your support for LB805. Thank you for your time.

HALLORAN: Thank you, Mr. Boller. Any questions? Senator Lathrop.

LATHROP: I think I'm starting to understand this bill. So one of the things we want to do is the, the river. And then when it overflows, there's land that people own and farm and and have a property interest in, that are holding some of these plants. And when it floods, the plants seed and now we end up with problems. So why don't we make this the problem of the landowner? So if I have a place up against the Republican River and it has these phragmite plants or other invasive species, why is it not the problem of the landowner? And why are we making it a problem of the state?

TODD BOLLER: To me, this is a more dangerous plant, I guess, because of the area that it grows. It's growing in those waterways. We want to be able to make sure that the right chemical and the right procedures are being done so you're not hurting, you know, because when I grew up, a lot of times diesel was in your mixture for killing things. And

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you know, that might be the old habit, and that-- we don't want to see that used on our waters.

LATHROP: Well, we could regulate what you could use to address this problem. I've been here and I've watched this, this. I think this was a Senator Carlson bill in 2007, if I remember it right.

TODD BOLLER: Yes, yes.

LATHROP: And now I've also seen money go to, to landowners to get rid of the red cedar trees. I see them planted as hedgerows in parts of western Nebraska. I don't know why this is our problem. If, if a landowner owns the land, why is this different than thistle that we make the landowner control? Why is this different than any other noxious weed that we want or expect the landowner, insist that the landowner control?

TODD BOLLER: And I guess because of this, it's not just phragmites. Phragmites, yes, is the number one invader, but you also have Russian olive that is not a noxious weed. You also have reed canary grass, you know, stuff like that, that is not a noxious weed that is going to have to be addressed, and, I mean, it's all over the place.

LATHROP: But those are the, those are the species that you're talking about. In answer to my question, why is this not a landowner issue? Why are we making it a state of Nebraska issue? Why are we spending our money trying to control something that's growing on somebody's property that is a problem?

TODD BOLLER: I guess, you know, I don't know the exact answer on that. I guess my thought would be because of its, you know, the conveyance of the water. You want that water to get from one end of the state to the other. If for some reason the landowner isn't made to take care of it or that process has not been finished, then that's, you know, that could be an area where it's really choked off.

LATHROP: OK. Well, maybe Senator Hughes will have an answer for me--

TODD BOLLER: Yeah.

LATHROP: --when he comes up, too. Thank you.

HALLORAN: Any further questions? Senator Groene.

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GROENE: Thank you, Mr. Chairman. Follow up on that. Phragmites isn't a, isn't a-- harm, doesn't make no harm to the farmer. He doesn't farm the river. Is that correct?

TODD BOLLER: Actually, within, within my county, which a lot of this, probably, language does pertain to within my county, Fillmore County has a lot of low-lying areas that are now farmed through. The areas I'm seeing of the phrag and other invasives showing up are in those wetland areas or those dry areas out in-- and it outcompetes the crops. And then when we do get a water system, it pushes that water out into the field and ends up killing off the soybeans or, you know, just depends. We didn't-- haven't had that water this last year.

GROENE: So you do-- seeing it affecting farm ground--

TODD BOLLER: Yes.

GROENE: --in some instances.

TODD BOLLER: Yes. Actually-- and I think we could have people in Fillmore County that tells you it triples in size every year if it is not controlled.

GROENE: And in that case, the farmer, he doesn't spray it?

TODD BOLLER: Yeah, generally--

GROENE: Because it's the wetlands?

TODD BOLLER: Generally, no, be-- and also because the crops are in at the time, and you don't want to put on anything on that that's going to affect those crops that are bordering right next to it.

GROENE: Well, everything out there is Roundup Ready, and phragmites is one of the major things to kill from [INAUDIBLE] of Roundup, so that shouldn't be a problem.

TODD BOLLER: Yeah, and, and that-- actually that burns that plant down. I guess we'd like to see them use like a chemical called Imazapyr, that actually gets down into those roots and, and-- 'cause those phragmites' roots, I mean, those runners are 20 foot long. The roots put down a new root every 12 inches or so, so it's-- I guess we're just wanting to use the best product available and have it done right and not affect the crop ground around it. So--

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GROENE: Thank you.

HALLORAN: Thank you, Senator Groene. Further questions? Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you, Mr. Boller. It's always good to see somebody from the district testify. I think Fillmore is pretty representative of Thayer, Jefferson, and Saline. You probably have a few more lowlands. But this gets back to the, the question I asked before, because in our counties, we don't have a lot of water course. But what we've got is we've got all these waterways upstream. And I think most of our producers are more than willing to work with the county weed superintendent. They want these things gone. Phragmites, I guess we'll use phragmites; I guess there's any number of things. So as the weeds superintendent in Fillmore County, how far upstream would you go? I mean, would you, wherever you see this thing, you would attack it? 'Cause Fillmore is pretty flat.

TODD BOLLER: Yeah, Fillmore is pretty flat, and we don't have a lot of floodplain areas that are affected. For one thing, we've got the Turkey Creek that feeds down into the little Blue River Valley. Fillmore County is not a big problem area. Most of my landowners, yeah, are great. They just-- we wait until the crops come out and we go in and we take care of it. I guess the problem is, you know, we're getting enough out there that it's not only water moving these seeds, it's also birds and stuff like that. And so these are ended up being transferred down into, you know, river areas and that, have a lot of trees and a lot of birds drop a lot of seed in those areas. They are hard to control in those areas. You mentioned the Loup River, also. Drone is a new application we've been able to use on a lot of the phrag. So it's, it's kind of a new thing to us and we're getting more acres done because of it. So-- but I, I don't know if I answered your question or not, but I-- the reason why it's a concern in Fillmore is just because it's starting to move out into the crop fields and--

BRANDT: And I guess if I could follow up somewhat what Senator Lathrop was saying, is why is it the state's problem? And as a farmer, you don't see a lot of these areas. You got a little corner fence line that you share with a neighbor. I think drone technology would be wonderful that you could alert that landowner, and I think most landowners would be responsive to this, particularly if there's a public-private partnership of some sort or the the county would cost share or do something like that, because we-- I am aware of producers that would be very reluctant to address this as they don't see it as

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the problem that, that you, as a weed professional, would see. Would that be a correct statement?

TODD BOLLER: Yeah, I would say that'd be correct. And there are weed management areas that are utilizing cost share to get the landowner very involved, also, so--

BRANDT: So would, would, would you, as the county weed superintendent, would you be authorized to cost share this money or not?

TODD BOLLER: As long as it was in the grant that was submitted to the NDA for a cost share portion. Fillmore County, I don't know that-- you know, we usually run with like a budget of \$23,000 a year on chemical, and that's got to cover pastures, roadsides, all that. So it wouldn't be something presently that my budget could handle alone. But with the help of a grant from the NDA, that would, you know, through this bill, would be great.

BRANDT: All right, thank you.

HALLORAN: OK, thank you, Senator Brandt. Senator Gragert.

GRAGERT: Thank you, Chairman. You're going to get tired of looking to your left.

HALLORAN: No, that's OK.

GRAGERT: I just got a couple questions. With, with this being your waters and what you're dealing with, is it considered of the waters of the United States?

TODD BOLLER: We do have to follow the same rules of the waters of the U.S., yes. I mean, like so when that, that bill came out, we were getting schooled up on that to make sure we were complying with everything within that.

GRAGERT: So do you get federal monies?

TODD BOLLER: So far, no.

GRAGERT: You know, it's a-- I have a hard time understanding that. If the state is supposed to take care of it, why, why wouldn't the federal government if, if they are of the waters of the United States or navigable waters?

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TODD BOLLER: Yeah. You know, there's a lot of states that are doing a lot of studying of the plant. There's not a lot of states that are doing control like Nebraska is. So you know, USDA FAS has provided money for scouting, for looking at things, but there hasn't been much [INAUDIBLE] control, as far as I know. But I don't know that for a fact, so somebody might have to [INAUDIBLE].

LATHROP: Scouting sounds like it might [INAUDIBLE].

GRAGERT: Then my last question is, is you're-- again, you're not looking to control like phragmites or control cedar trees. And if you were looking to eradicate, you'd have to get to the top of the tributary. Otherwise you got a seed source.

TODD BOLLER: Yeah, and that's kind of--

GRAGERT: So is-- do you concentrate on that in, in your, in your treatment of phragmites, you go as far up as you can see them?

TODD BOLLER: Yeah. And like for me, I don't have it coming down, flowing waters in my county at all. It's all upland sites or that, so that. But when I was in Lincoln County for ten years, we started working on purple loosestrife, and we went up onto the-- pretty much the base of the Sandhills, where it started, and started working our way down on control on that. So that's the general-- that's-- with this legislation, we want to be able to go up to where that, you know, as far as the legislation reading will let us, go to that source and keep that seed from coming down into the rivers.

GRAGERT: OK, thank you.

HALLORAN: Thank you, Senator Gragert. Senator Groene.

GROENE: You mentioned Lincoln County. That's the [INAUDIBLE] where I'm from. So are you familiar with the, the North Platte coming on the north side of North Platte?

TODD BOLLER: Yes.

GROENE: And the bridge there, phragmites was just thick there.

TODD BOLLER: Yes.

GROENE: To Senator Lathrop's question, the farmer or rancher, that didn't cause him any grief at all. Why would he, why would he treat

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that? You're talking on ag and-- but where I'm from, it's on the river.

TODD BOLLER: Yeah.

GROENE: In fact, in my area, it's good grazing for cattle on the bank. It, it firms up the, the bank, the root system does for erosion. Why would it-- but I don't like the stuff because it's taking over. But it's-- the cows eat it.

TODD BOLLER: Yeah. It, it's--

GROENE: So as far as-- why would we mandate to the farmer to control on the river when it has no economic gain for him to control?

TODD BOLLER: Because if you continually let that plant grow, and as it chokes that river off, that water is going to have to go somewhere, and it's going to come out onto that, that landowner's property, which if he's-- you know, sure, you can graze the phrag, and that has been a good tool, with cows working the banks with their hooves and everything. And there is good nutritional value in that phragmites, but then, once that water comes out and kills off your other good grass or possibly gets up to your house and causes financial problems there for repairs, that's--

GROENE: Have you actually had evidence that phragmites is causing flooding? Or is that a theory?

TODD BOLLER: You know, it's, it's kind of theory, but that's because of the, the work that was done on the Republican. I mean, it showed there that, I mean, you could not get 300 cubic feet per second down that river without it spilling over the banks. And once that work came through and got done, it would take 1,100 without spilling over the banks.

GROENE: But there was also, on the Republican, trees and everything, and dams, natural cause-- dams that slowed the river down, and they cleaned all that out, too, I believe.

TODD BOLLER: This was just within-- you know, 2007 is when that work was done. And since then, we have gotten environmental trust grants to go in and remove like the trees and kind of take some of those pinch points out, out of that river to keep that water flowing.

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GROENE: But it wasn't just invasive materials that was causing the Republican problem.

TODD BOLLER: I wouldn't say just, no, but it was a big contributor, yes.

GROENE: Thank you.

HALLORAN: Thank you, Senator Groene. Senator Gragert.

GRAGERT: You mentioned the Environmental Trust Fund, and I asked the individual prior to that. Can, can you tell us how much money the Environmental Trust Fund puts towards, towards this-- projects like this in a year throughout the state?

TODD BOLLER: You know, early on, it was fairly consistent, where each weed management area was getting a grant and it was, I don't know, anywhere from a million on down to \$70,000. I don't have the total numbers of that, but in the last few years, it's been a lot harder to get any grants from them to continue to do work. They've kind of shifted the focus to other projects. So one weed management area this year got funded through NET grants. None of the others did, and every one of them put in a grant application. So--

GRAGERT: So you're saying there used to be, three years ago, that you went all the way from one project getting a million dollars down to \$70,000?

TODD BOLLER: And actually, it's probably more than three years that we got a million dollars. And, and now, some of them-- that Republican River did not get any Environmental Trust, Trust grants this year. Platte Valley, I don't believe, got any, also. The only one that did was South West Weed Management area down by McCook and going west there.

GRAGERT: Is that in the same river valley-- I mean, [INAUDIBLE]?

TODD BOLLER: That's the Republican River Valley on that.

GRAGERT: So did they change their-- how they set their priorities or did the-- did-- because of your great work, you don't need it anymore?

TODD BOLLER: It's because of priorities, because the work is obviously there. I mean, in, in, it kind of-- and with the Environmental Trust,

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we've kind of tried to take that money and work, also work on cedar tree issues that are off that waterway. So--

GRAGERT: But you don't have any idea how much monies they give you?

TODD BOLLER: Not total, no. Yeah.

GRAGERT: [INAUDIBLE]. Thank you.

HALLORAN: Thank you, Senator Gragert. Any further questions? Thank you, Mr. Boller; appreciate your testimony. Are there any further proponents of LB805? Good afternoon again.

JON CANNON: Good afternoon, Chairman Halloran. Members of the Agriculture Committee, my name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials. You've probably heard us referred to as NACO, and we're here to testify as a proponent for LB805. First, we'd like to thank Senator Hughes for bringing this. This is something that the NACO board has found important enough to include as part of its platform, which is why I feel like I have the discretion to testify on behalf of NACO today. This is a great success story. As Mr Boller had testified previously, you know, to get to dollars and cents, Senator Hansen, we had a \$72 million potential liability to the state of Kansas and the Republican River, which was reduced down to \$5 million as a result of our efforts in that river. So certainly, there is a reason that the state has a vested interest in making sure that our rivers are well taken care of and clear of all that good stuff. In the NACO platform, we've written that we support incentives to strengthen county weed control authorities and fully fund the state's noxious weed control and repairing invasive species programs. That's no accident. It's, it's something that we have found to be beneficial to our landowners and our taxpayers. It certainly helps with the property tax base when you've got more land that is not considered waste than is. And you know why the state should bear the cost and not the individual landowner, I've got probably a couple of responses to that. One would be philosophical, the other would be fairly practical in its application. The first, the philosophical, would be that this is a community good. This is good for our communities to make sure that we're controlling invasive species. The practical consideration is that the state of Kansas is not going to sue an individual land owner. They're going to sue the state of Nebraska. That's really all I have, and I'd be happy to take any questions you may have. Thank you.

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HALLORAN: Thank you, Mr. Cannon. Any questions? Senator Lathrop.

LATHROP: So in the counties that have weed control, is that paid for with property taxes?

JON CANNON: Yes, sir.

LATHROP: So if I'm running the Douglas County's weed control, Douglas County will actually have a tax, a property tax to pay for the weed control people.

JON CANNON: It, it's a-- it would come out of the General, the General Fund. Yes, sir.

LATHROP: OK, if I'm in a rural area, that would also be true.

JON CANNON: Yes, sir.

LATHROP: Right? So pick a, pick a, a county-- Perkins County. They, they can levy a tax paid for and have the weed control done locally. But they got to, they got to generate the revenue and pay the people that do the work and buy the chemicals.

JON CANNON: Yes, sir. That's certainly true. When you rely on it to only be done locally and not have the kind of statewide coordination that we've seen through the Riparian Vegetation Management Task Force, then you've got-- you're going to have competing priorities as you go from county to county. And so the statewide approach is certainly going to have-- certainly be more effective and provide us a little bit more bang for our buck. And since I'm, I'm here, one of the things that I-- I always think that a picture is worth a thousand words, and so I, I'm, I'm going to offer that, that you all check out a website at the Department of Agriculture. It would be nda.nebraska.gov/rvmtf--as in Riparian Vegetation Management Task Force-- /index.html. A lot of the stories that you've been hearing you'll, you'll see the pictures of the company and the before and the after, and they really are telling. It, it absolutely has made a difference.

HALLORAN: OK.

LATHROP: I think that's all I have.

HALLORAN: That's it? Thank you, Senator Lathrop. Any questions? Senator Hansen.

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B. HANSEN: Thank you. Just got a, kind of a budgetary question, maybe, if you know. So we appropriated a million dollars to this every year, since-- probably it was 2007, I think, or whenever it, it was started.

JON CANNON: It's, it's fluctuated in the past, sir. It's gone, it's gone down in some years. When we fully funded it at a million dollars, we, you know, we certainly were seeing greater results.

B. HANSEN: OK. And then, when we do fully fund it, do we use all of it? Do you know?

JON CANNON: I, I don't know that.

B. HANSEN: OK. I just was kind of curious about--

JON CANNON: Yes, sir.

B. HANSEN: --if you were act-- were you actually using the \$1 million-- if we appropriated two more, if you'd even use it, so--

JON CANNON: I, I would expect that they're going to use every penny if they can.

B. HANSEN: OK, thanks.

HALLORAN: Which makes sense, they probably would. Any further questions? Yes, Senator Groene.

GROENE: So do you know, has there been more applications for the million dollars than there was-- be able-- did it cover all the applications?

JON CANNON: I, I don't know that answer, sir. I--

GROENE: Do they pro-rate it across or do they just pick certain ones and fully fund them?

JON CANNON: As I was listening to the testimony, it, it seems like there's a grant process. And so I, I would expect that that's probably the case, but I don't know that.

GROENE: The Department of Ag handles that?

JON CANNON: It's through the Department of Agriculture and the Riparian Vegetation Management Task Force.

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GROENE: So you don't know what your counties go through the application process.

JON CANNON: No, sir, I do not.

GROENE: Thank you.

JON CANNON: Yes, sir.

HALLORAN: Thank you, Senator Groene. Seeing no further questions, thank you, Mr. Cannon,--

JON CANNON: Thank you, sir.

HALLORAN: --for your testimony. Any additional proponents for LB805? Good afternoon.

DEAN EDSON: Good afternoon. Senator Halloran and members of the committee, my name is Dean Edson, D-e-a-n E-d-s-o-n. I'm the executive director of the Nebraska Association of the Resource Districts, representing the 23 NRDs in the state. The NR-- like others, I'd like to preface my remarks by thanking Senator Hughes for staying engaged on this issue and working with all the parties involved to control invasive species on Nebraska's rivers and streams. It's very much appreciated by all the local NRDs. The local NRDs have been very active in joint ventures with the state of Nebraska to control the spread of these phragmites in our system, in our, in our Nebraska river systems. The local entities have been providing additional cost share dollars to leverage the state funds that are appropriated to this program. We've also been working directly with the local weed management authorities and others to coordinate efforts to keep the river conveyance open for all water users. When we started addressing this issue over a decade ago, both the Platte and Republican Rivers were infested to the point we could not see the river at all in some areas. The phragmites is a very invasive plant that spreads through the root system. While we've been able to clear the channels, if we don't stay ahead of it, the streams will get clogged again. It's imperative that we continue to take annual actions necessary to support water conveyance programs so that all water users that depend on the river get adequate water supplies. This ongoing preventive maintenance can be critical to preventing reinfestation of these invasive plants. The, the additional funding provided will assist the local efforts. We are supportive of changing the 100-foot limitation to expand to the floodplain of the stream. This would allow to reach

beyond an arbitrary 100-foot line. However, we would suggest that the primary focus needs to be on the stream. I see I've got a little bit more time. I'm going to add to my comments here a little bit from the personal side. I grew up on the Platte River out by Gothenburg, where our family had 500 acres of river pasture out there at one point in time. We're down to 85 acres now. In 2006-- 2005, 2006, went up there to do some repair on some fences. I couldn't even see the river channel anymore. It had spread that fast and had, and had taken over not just that area, but a stretch all the way from Brady all the way to, almost to Cozad. You could look down off the river bridge off of Highway 47, couldn't even see the channel. When we got to this point, where how do we, how do we coordinate this with all the landowners-- and Senator Lathrop, I'm glad you brought up that question-- we had an issue now where we, we were looking at trying to, to help the state out with the Platte River and the Republican River. On the Platte, we were looking at a stretch to coordinate with landowners, from about Kearney all the way back up to North Platte, to clear that out. The Republican, the entire Republican River Basin, so we had to do something with the state to help coordinate that effort rather than rely on individual landowners to take action upon themselves. So with that, that might prompt some more questions. I'll be glad to end there and then answer any questions you might have.

HALLORAN: Thank you, Mr. Edson. Any questions? Senator Gragert.

GRAGERT: Thank you, Chairman. Thank you for your testimony. I'm just going to ask you the-- your opinion. And all this stems from sedimentation. In these small rivers, and even like the Missouri River, as I watched it over my years, a few years of in the boat, as more sedimentation comes down, that phragmites spreads throughout these sandbars. So is this the same cause in the, in your smaller, where you can keep a channelized stream going without sedimentation, where this will get down and actually go across the entire stream, creek, river?

DEAN EDSON: Yes, but it wasn't just due to that sedimentation. It was the low flows where it allowed it to spread throughout that channel. And it'll grow under water, those phrags will grow under water, and they just-- their root system is over 50 feet long, and it just sprouts up shoots. And so the sedimentation issues-- another issue that we probably need to be talking about in conjunction with this, some areas of the Platte we're not getting the pulse flows we used to get. And what I'm witnessing-- and I've been, I've stayed in tune with my friends that I grew up with back in the Gothenburg-Cozad

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community-- we're not, we haven't had a pulse flow through that south portion of that channel for probably eight years now, and we're getting sediment loads in it, and the phrags are taking over again. And it's taking over off of the channel. That's where you run into your real problem is when it gets loaded up away from that channel where we can't get in there mechanically with the helicopter, and you've got to use ATVs with tracks to go back off that channel and spray that to control it. So you've got a kind of a dual problem here. You don't--

GRAGERT: Yeah, my-- I guess where I was going with that, though, is-- yeah, is the sediment, and then you get the plants, you're slowing the water up and then the sediments set on out. You're-- I mean, you got a dam action going on. That's why I say it's as critical with getting up to the top of the tributaries for soil erosion as it is for this--

DEAN EDSON: Yeah.

GRAGERT: --this plant.

DEAN EDSON: Yes, that's where I'm-- and I'm agreeing with you. You kind of got multiple issues going on here with that soil erosion issue as well.

GRAGERT: Thank you.

DEAN EDSON: And with the pulse flows that we used to get in the Platte on that portion, that used to-- didn't spread that out and scour that out. But now we haven't had it for seven or eight years. And now we're starting to see just exactly what you're talking about, about the erosion control, that becoming a problem.

GRAGERT: That's good, yeah. Thank you.

LATHROP: Can I ask a question?

HALLORAN: Yes, I'm sorry. Senator Lathrop.

LATHROP: Did you use the term pulse flow? What's that term mean?

DEAN EDSON: Where a large volume of water gets released to create a flood to scour out--

LATHROP: OK.

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DEAN EDSON: --a channel.

LATHROP: So I look at the Missouri River near Omaha, and there's no-- none of this noxious weed growing in it because there's too much water moving, and it, it's, it doesn't permit it to grow in the Missouri river by Omaha. Would that be true?

DEAN EDSON: Could be, yes.

LATHROP: And even in the creek behind my office at 107th and Pacific, there's too much of a, a stream or a flow for this stuff to take hold and grow in the stream. Is that right?

DEAN EDSON: I'm not familiar with your area, but that could be true.

LATHROP: You're the director of all the NRDs, though, including the Papio?

DEAN EDSON: Yeah.

LATHROP: OK. So if I understand, one of the issues is that, as our stream flows have diminished, this stuff has been allowed to take hold. Is that the cycle that we're in?

DEAN EDSON: That's the cycle the Platte River has always been in. The, the Platte River, you have heavy spring flows and you get some flooding and scour that out. We've got-- McConaughy captures a lot of that water. You've got some other dams that capture some of that, but--

LATHROP: Sure. But the, the flows, this didn't used to happen before we had all the irrigation, though, right? In other words, the irrigation is recharging the aquifer. The water-- the river is recharging that aquifer, and we're taking water out of the river for irrigation, so the flows are down, and this stuff is able to take hold.

DEAN EDSON: We didn't have the problem with the phragmites. We had, we've always had the issue with--

LATHROP: Weeds?

DEAN EDSON: Yeah,--

LATHROP: One thing that [INAUDIBLE].

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DEAN EDSON: --but it wasn't to this magnitude. A lot of people thank our friends from Colorado for this plant, that--

LATHROP: Well, where it came from,--

DEAN EDSON: Yeah.

LATHROP: --I'm sure that they might disagree with that.

DEAN EDSON: Yeah.

LATHROP: But the fact is that it can take hold because we don't have these kind of flows that you described, which we used to have, and they scour the river and clean this stuff up.

DEAN EDSON: Yeah.

LATHROP: So I'm wondering, why is this not an issue to be paid for by the people who are using the water that's diminishing the river flows that allow this stuff to, to take hold and not be scoured out by decent water flows?

DEAN EDSON: Part of that issue is that the-- we are providing a lot of these flows and pulse flows for endangered species, so that's not necessarily a landowner that needs that water; it's for endangered species.

LATHROP: But the pulse flows-- let me make sure I understand your logic. You, you, you're attributing this to management of wildlife, but a pulse flow would be a lot of water. And our problem is when we don't have enough water to scour the river, this stuff grows. So it wouldn't be wildlife management, right? Wildlife management is to try to make sure there's enough flow, but a pulse flow is what we used to experience and no longer experience.

DEAN EDSON: Yes and no. The pulse flows create the habitat, the sandbar habitats, that they're needed for those endangered species. If that doesn't happen--

LATHROP: Is the pulse, pulse flow something that's regulated by releasing water from dams or is it runoff water, and in the springs when it rains and we see the Platte River is up and it's scouring the sandbars clean of all this growth?

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DEAN EDSON: It, it can be both. Under the Central Nebraska Public Power and NPPD, their, their temporary FERC license for McConaughy, they have to store-- I believe it's 100,000 acre-feet of water that is released from McConaughy for pulse flows at the request and timing of the U.S. Fish and Wildlife Service. And so you have that to balance. It's when they want it to be released.

LATHROP: Well, in terms of managing the weeds that are growing in the river, these, you know, spring rains, the impulse flows are a good thing.

DEAN EDSON: Yes.

LATHROP: They'll scour a sandbar. And in the spring, I can look at a sandbar on the Platte and there's nothing on it but sand. And by the fall, it's got plants this tall. So it's the low water flow that creates the environment for this stuff to grow.

DEAN EDSON: Yes, it can. Yes.

LATHROP: OK.

DEAN EDSON: Yes, it can. And that, that's where you've got to try, would try to manage everything. And that's why, in my testimony, I referenced all water users.

LATHROP: OK. I, I don't want to be argumentative.

DEAN EDSON: Yeah.

LATHROP: I think I've got the information I need. Thanks.

DEAN EDSON: OK.

HALLORAN: Thank you, Senator Lathrop. Senator Groene.

GROENE: Thank you, Mr. Chairman. Back to Senator Lathrop's-- phragmites is an invasive species. He asked, Why didn't we have a trouble before? Because it really wasn't even here until the 19th century, and it moved from the West Coast, west to us. Is that correct? So it--

DEAN EDSON: Yeah.

GROENE: I mean, personal experience, I had a flood through the South Loup that was three-quarters of a mile wide, and it's normally 20

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yards wide. The next spring, I had more phragmites than I had the year before. It does not scrub out, in my personal experience. Question for you personally. You said you had 500 acres, now you got 85 acres. That's how you started your personal testimony. Is that because the floodplain is wider now on the Platte River, you lost? Or is it just-- why?

DEAN EDSON: We sold it off.

GROENE: Oh, all right. It made it sound like it was in relationship to the phragmites.

DEAN EDSON: We, we used to have a-- I grew up-- our, ours was a livestock operation, and so we had 500 acres of river pasture.

GROENE: But that 500 acres is still pasture.

DEAN EDSON: It's still river pasture. But not everybody uses it for river pasture.

GROENE: The deer have it.

DEAN EDSON: The people that bought it don't use it for that.

GROENE: The deer have it.

DEAN EDSON: A gravel company bought part of it, put a sand pit in. An attorney bought another sect--

GROENE: Could--

DEAN EDSON: --portion of it.

GROENE: Back to the question. We don't know.

DEAN EDSON: Yeah.

GROENE: We don't have 1,000 years' history as we do with prairie grasses what, what the economic and, and long-term environmental impact of, of phragmites is. We've got 50 years, right? So we don't really know.

DEAN EDSON: Right.

GROENE: We don't really know what it's going to do to the rivers, why, why it spread. We don't really know, do we?

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DEAN EDSON: No, we haven't had that much experience.

GROENE: Yeah.

DEAN EDSON: But I, I could tell you my personal experience growing up on the Platte River. As a kid, I never saw this stuff.

GROENE: I didn't either.

DEAN EDSON: I never saw this stuff till about 2000. I didn't know what it was. We, we-- when it first started showing up, we started calling it elephant grass 'cause it was so tall. But we didn't know it was actually phragmites.

GROENE: When I first seen it, I thought shattercane was-- learned how to grow on a river.

DEAN EDSON: Yeah.

GROENE: That's what I thought.

DEAN EDSON: Yeah.

GROENE: Anyway, but--

DEAN EDSON: So and we-- that's where it's-- we didn't know what it was, didn't know how to control or what, what it was going to do, and it just spread like crazy. That's where this coordinated effort to try to-- after we figured out it caused all these other problems on river conveyance to get water for endangered species, we needed to have some type of coordinated effort to try to get, open up those channels again.

GROENE: And it's moving west to east. So in five years, Senator Lathrop could see it in his little rill running past his office, couldn't he?

DEAN EDSON: Yes.

GROENE: Thank you.

DEAN EDSON: We can, we can transplant some, too, if you want.

HALLORAN: Thank you, Senator Groene. Senator Gragert.

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GRAGERT: Thank you, Chairman. In your testimony, you, you have here that the NRDs also provide additional cost share dollars. Do you know approximately how much dollars that'd be?

DEAN EDSON: That's, that's going to vary by district,--

GRAGERT: By district?

DEAN EDSON: --depending upon the, like the Central Platte. They're, they're right in that portion of the stream with the endangered species. They're very aggressive.

GRAGERT: Um-hum.

DEAN EDSON: And so they're putting in a lot more money than maybe with Lewis and Clark, it might be.

GRAGERT: That, that additional cost share money generally, probably most of the time, goes to producers, though, right?

DEAN EDSON: Well, it's put together with the local weed management groups. And so when you do a coordinated spraying-- and they used helicopters on the Platte to spray-- that went to hire that contractor to do that.

GRAGERT: Oh. So you're not talking to any kind of addition, any kind of conservation practices that would help eliminate--

DEAN EDSON: Good.

GRAGERT: --noxious weeds, or these weeds, invasive?

DEAN EDSON: Well, the spray is about the only thing that's going to control it. Mechanical, I, I do mechanical on my river ground. I've had some, but I've spent the extra time and I have the equipment to-- in my low lying areas, I can get my tractor in there with the mower, and I mow it. And I just kept mowing it, mowing it, mowing it three, four times a year. That patch eventually went away and I got grass back. But not everybody can do that.

GRAGERT: Um-hum. OK, thank you.

HALLORAN: And I'll thank-- thank you, Senator Gragert. Any further questions? Very good, Mr. Edson; appreciate your input.

DEAN EDSON: Yeah, thank you.

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HALLORAN: Very good. Next proponent for LB805. Good afternoon.

ANDREW DUNKLEY: Good afternoon, and thank you, Chairman Halloran and the committee. As you are now aware, I'm an expert on testimony in front of the Agricultural Committee, although I am no, I am not an expert on the subject that you've been hearing from, so I will leave the technical aspects to the previous testifiers. My name is Andrew Dunkley, A-n-d-r-e-w D-u-n-k-l-e-y, with the Nebraska Farm Bureau. Just-- and, and you can review the letter that we are submitting-- but just wanted to say, on behalf of the members of the Farm Bureau, noxious weeds can, can be a real threat to, to crops and, and, and-- but both on ag land and, and, you know, livestock land, but invasive to grasses and, and obviously a, a, a threat to floodplains. So we are in favor of, of using taxpayer, taxpayers' money wisely and further funding this program. So I'm, I'll try to answer any questions that you have.

HALLORAN: Thank you, Mr. Dunkley. Senator Lathrop.

LATHROP: This subject fascinates me because-- is your background, you've been at Farm Bureau for a while?

ANDREW DUNKLEY: A month and a half.

LATHROP: Did you come to Farm Bureau by way of an agriculture background?

ANDREW DUNKLEY: Yes and no, yes.

LATHROP: OK, you're not an economist from New York City or anything, are you?

ANDREW DUNKLEY: I worked, I worked at the Colorado Farm Bureau before this,--

LATHROP: OK.

ANDREW DUNKLEY: --but as a consultant.

LATHROP: OK. So do we do this with thistle? Do we go in and make the taxpayers, the state taxpayers, pay to eradicate thistle in agriculture areas across the state?

ANDREW DUNKLEY: I am unaware of that, Senator.

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LATHROP: Is there any other noxious weed that you know of that we have state taxpayers pay to eradicate on private property?

ANDREW DUNKLEY: Not that I know of. But again, I can, I can look that up for you. I'm, I'm not aware of any.

LATHROP: OK. You let me know if they do.

ANDREW DUNKLEY: Sure.

LATHROP: I don't know why we don't say that every NRD shall develop a plan for the eradication of these noxious weeds that are growing in the river-- rivers, streams, creeks across the state-- and turn it over to the NRDs, who are responsible for the rivers and streams.

ANDREW DUNKLEY: Well,--

LATHROP: Then the people that, that rely on the water can help pay to keep it flowing.

ANDREW DUNKLEY: I, I, I am, I, I, I am not able to answer your question, but I,--

LATHROP: OK.

ANDREW DUNKLEY: I, I believe that the gentleman who testified before me might, might be better, better able to answer,--

LATHROP: That's OK.

ANDREW DUNKLEY: --but with the NRDs.

LATHROP: Thank you.

ANDREW DUNKLEY: Yes.

HALLORAN: OK. Thank you, Senator Lathrop. Senator Gragert.

GRAGERT: Thank you. But you would, you would agree that the primary reason for what you do with this controlling phragmites is, is basically for keeping the current open and keeping the, the, the crick open itself, right?

ANDREW DUNKLEY: I'd agree with--

GRAGERT: And that's the primary purpose?.

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ANDREW DUNKLEY: I'd agree that that is a primary purpose and, and, and also protecting crop, crop land. But--

GRAGERT: OK. Thank you.

HALLORAN: Thank you, Senator Gragert. Any further questions? All right, thank you, sir.

ANDREW DUNKLEY: Thank you.

HALLORAN: Thank you for your testimony. Next proponent for LB805. Seeing none, any opponents for LB805? Seeing none, any in the neutral-- neutral positive or neutral negative? Seeing none, Senator, would you like to close?

HUGHES: Thank you, Mr. Chairman. I apologize; this has taken a lot longer. But we are getting really into the weeds on this. So as I, as I've made notes, Senator Hansen, you asked why more money. It costs more to do business nowadays, and the problem is growing. We need to make sure we understand that this is not just noxious weeds. These are invasive species which are in the riparian, under the Riparian Vegetation Task Force, so waterways is what we're talking about. We're not talking about farmland, we're not talking about road ditches. There are, there are noxious weed programs that I pay taxes to-- for my county to do that, because I don't have any riverfront. There are cost share programs with a lot of different entities we-- you know, grants, NRDs, landowners. You know, this is, this is money to provide incentive to control the problem, which is a state problem because the rivers flow completely across the state. We're trying to get a handle on this, so those seeds that begin, you know, up in Scotts Bluff, where the Platte River, the North Platte River enters in, in my area where the South Platte River comes in, farther south of me, where the Republican River comes in. You know, those invasive species have moved in. Early in the last century, there was no vegetation in the Republican Basin. There were no trees down there. You know, I, I had an older lady that has since passed away, but yeah, there were no trees in the Republican River Basin, you know, west of McCook. So like everything else, time has changed, species have adapted. The Phragmites have certainly adapted, saltcedar, Russian olive, and it's a challenge that we as a state need to take seriously to pro-- because the water flows clear across the state. The reason we use helicopters is because they are very agile. They can get into places where you cannot drive a four wheeler, and they are very targeted. The down wash from the blades of a helicopter target the chemical, so it does not

encounter the non-target area. So that's why they're very, very helpful. The drones would be even more targeted. The boundaries on rivers change. You know, if you-- a lot of times you have to-- you own, if you own land on this side of the river and somebody else owns to this side of the river, sometimes it says you own to the middle of the river. Well, the middle of the river changes as the channels change, so that, that can be a problem. And there's a lot of publicly-owned land. There's a lot of privately-owned land. There's a lot of federal land that it's owned on, on our river system in the state of Nebraska. It does take specialty equipment and specialty chemicals and specialty knowledge in order to make sure that you are doing it correctly, because we are spraying in the river basin and there's a lot of communities take their drinking water, the water that we drink, in those areas. So we have to make sure that we are using the proper chemicals, the proper timing, and the proper amounts. As I did mention, there is landowner cost share because it is, it is in the self-interest of everybody in the state. I'm glad to hear Senator Lathrop does not have phragmites behind his office, but I would bet that there probably will be before too much longer, because it's not only as they travel with water, but you know, animals eat the seeds, birds, especially. That's why we've got such a problem with cedar trees in pastures, because the birds and the animals are eating those seeds and then they defecate them out in another area, and all of a sudden you've got a little cedar tree coming up. The same thing happens with phragmites. You know, the birds eat those seeds, and they fly wherever and roost in a tree over the river or stop down to the river and get a drink, and you've got seeds in place. So we are talking about a noxious weed, but this bill is for the Riparian Vegetation Task Force, which is tasked to help keep our waterways clear. And that helps the scouring, if you will, of those waterways, so we're enhancing Mother Nature's ability to help us solve this problem. So I'll try and answer any additional questions.

HALLORAN: Any questions for Senator Hughes? Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you, Senator Hughes, for bringing this bill. In your former life, you were chairman of the Natural Resources Committee. Can you clarify this for me? Where I, as a landowner, am adjacent to a river, I own the ground under the river, but the water in the river is owned by-- is it the state?

HUGHES: The state of Nebraska owns the groundwater. Now surface water, I'm not sure, because it is allocated. There are, there are people who don't-- do own surface water rights. Now, depending on whether the

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water under that flows across the top of your land is owned by someone else, I don't know. There probably are some instances where that would be the case, but I'm not sure.

BRANDT: Well, it's always been my understanding that a person can be on the boat on the river, then they are on the state of Nebraska-- or the waters of the state of Nebraska. It's when they touch the shore that they're trespassing. So if, if that is indeed the case, that that water is the state's water, and that to me justifies the expense of this program because we're trying to manage the waters of the state in partnership with our landowners.

HUGHES: We'll go with that, sounds great.

BRANDT: I just, I just wondered what your interpretation of that was.

HUGHES: I'm, I'm-- you have a better explanation than I do.

BRANDT: Thank you.

HALLORAN: Thank you, Senator Brandt. Any further questions? Senator Groene.

GROENE: Try telling a rafter that you see going down your river that you own that, that river. But anyway, you just get to pay taxes on the ground underneath that river. But anyway, but Senator Brandt makes a good point. It's spread by the state's waters that come through the land, landowners' land, and, and the phragmites and the noxious weeds are actually spread by the state's water, so--

HUGHES: And, and the animals.

GROENE: And the animals, yes, so, so there isn't-- it isn't the landowner who caused the problem in the first place. Would that be true?

HUGHES: That-- I would, I would agree with that assessment.

GROENE: By best farming practices or something that-- yeah. Thank you, Senator Hughes.

HALLORAN: Thank you, Senator Groene. Any further questions? If not, that concludes LB805. For the transcribers-- for the transcribers, I neglected to point out that we have a position statement for the record submitted on LB712, on behalf of Nebraska Cattlemen, in favor

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of LB712, and a copy of that comment is in your committee books. For LB805, we have received two position statements for the record to online comment portal: Brent Meyer from the Lower Platte Weed Management area, and John Winkler for the Papio Missouri River NRD, both in support to LB805. Moving on to LB802, Senator Hughes, you're back on deck.

HUGHES: Thank you, Mr. Chairman. I certainly appreciate the opportunity to come before the Agriculture Committee again. Members of the committee, for the record, my name is Dan Hughes, D-a-n H-u-g-h-e-s. I represent the 44th Legislative District. I'm here today to introduce LB802. LB802 will update provisions of the Nebraska Wheat Resources Act. There are three main changes this bill will make to the Nebraska Wheat Resources Act. Currently, wheat producers pay the excise tax when wheat is placed under loan with the federal Farm Service Agency. LB802 would eliminate the excise tax collection on loan grain and make the collection only when wheat is sold into the market for the first time. The bill also clarifies that excise tax will not be collected on wheat used as seed. LB802 also allows the Nebraska Wheat Board to invest in seed marketing entities and exercise ownership rights of varieties in order to help market these varieties develop, developed by the Nebraska wheat research funding. A little-- just a little bit more background. The Nebraska Wheat Board collects a checkoff on every bushel of wheat sold in the state of Nebraska, and it's based on a percentage of the value. They take those dollars and they spend a good chunk of them with the University of Nebraska for their wheat breeding program. They take another chunk of that, and they use that for education of people about wheat, and they also use a chunk of that for market promotions, not only-- mostly in markets around the world. There are not-- there's not really a market promotion within the United States. We allow the private companies to do that. But there is no government, no federal government program that does any marketing of the United States-grown wheat in the world. So that's-- those are the three main focuses. There are some other smaller areas, but what we're dealing with today is the checkoff that is used to help develop improved varieties of wheat that I would plant on my farm. It would be higher yielding, more protein, more disease resistant, those types of things. So that's what we're trying to do. We're also wanting to make sure that the legislation clarifies that the Wheat Board can partner with an entity that will take the Nebraska-bred varieties and market them in a more aggressive fashion like we've seen the Kansas, Colorado, South Dakota wheat boards or commissions, if you will, to promote those weeds to be planted wider--

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in a wider variety of areas. So with that, I'll be happy to try and answer any questions.

HALLORAN: Thank you, Senator Hughes. Any questions? Senator Hughes-- Senator Lathrop.

LATHROP: So do I understand, senator, that you want to not pay taxes on some transactions involving the sale of wheat?

HUGHES: That's not correct.

LATHROP: OK.

HUGHES: So--

LATHROP: Help me out. OK, help me out on that tax piece,--

HUGHES: OK.

LATHROP: --and then we can talk about where you want it spent.

HUGHES: Sure. So the excise tax that's collected on every bushel of wheat that is sold in the state of Nebraska. In years past, when the price of wheat was very low and we had federal support, you could place your crop under loan at a very low interest rate, and then redeem that and market the wheat. Hopefully you'd be able to-- you'd have cash flow to get you through the lean times when the-- and the price of wheat would come up. When the Farm Service Agency wrote that loan, they collected the excise tax. The-- it used to be a quarter cent or under a half cent a bushel. Then when you paid off that loan and you would use that wheat, take it to the elevator and sell it, the elevator would also collect that excise tax. So you were being taxed twice on the same bushel. And if you wanted the money back, you would have to go to the Wheat Board, fill out a whole bunch of paperwork. You know, some people did, some people did. This just clarifies that if you use grain as collateral for a loan, it is not considered sold.

LATHROP: OK.

HUGHES: Then the other piece of that is, on the, the seed, the wheat that is used for seed, there will be a seed producer come behind me. So he sells wheat to farmers for them to plant. Technically, that's a sale, but is for increased production; it is not for market utilization. So we're not collecting. We're clarifying that there is not a, a excise tax collected on those bushels.

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LATHROP: Is there currently?

HUGHES: No, there is not. We're--

LATHROP: OK, so it's--

HUGHES: --we're clarifying that it doesn't have to--

LATHROP: You're clarifying something that's not a practice anyway.

HUGHES: Yes.

LATHROP: Gotcha. OK. And now you want to spend it somewhere else, too, or be authorized, too?

HUGHES: I don't, I don't say spend it somewhere else. I want to, I want to say they want to, they want to have a little more control over how it's spent, to do a better job of marketing the varieties that are produced at the University of Nebraska, and get them in some trials outside the state of Nebraska so we can promote those varieties. The-- because the Wheat Board invests in the wheat breeding in the state of Nebraska, they do have some ownership of those varieties. So there are royalties that are available back to the Wheat Board. So it is in their self-interest in order to promote those in a wider area than what is currently being done.

LATHROP: OK. Thank you for answering those questions. I got one last one for you. Who's on the wheat board, and how do they get there? I guess how do they get there, because I don't--

HUGHES: It's, it's a--

LATHROP: --care if they get [INAUDIBLE].

HUGHES: Governor, a Governor's appointment.

LATHROP: OK, thank you.

HALLORAN: Thank you, Senator Lathrop. Senator Gragert.

GRAGERT: Thank you. I was just interested in the-- how long can we be under, under loan? I mean, say, say one harvest, can it be held over multiple years?

HUGHES: It, it has. I-- you know, when, when I was-- first started farming or when I was a young child, there would be, you know, five,

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six, seven years it could be held under loan. So it, it isolated it from the market, but it allowed the farmer to have some cash flow in order to continue to operate and hopefully hold it until the market went up, and they could pay off the loan and have additional revenue.

GRAGERT: And that was at a very low interest.

HUGHES: Yes.

GRAGERT: And so you would use that monies, and then you don't, don't want to pay any interest, I mean, on that, on that wheat under loan. Is that, that's [INAUDIBLE]?

HUGHES: No, no. There's, there's always interest charged.

GRAGERT: Maybe, OK, but what, what is it that you want exercise [SIC] tax when wheat is under loan? You got--

HUGHES: Well, you pay the, you pay the checkoff or the excise tax--

GRAGERT: OK.

HUGHES: --when you, when it is first sale. And previously when it went under loan, it was considered a sale or as being sold. So the Farm Service Agency collected the excise tax or the checkoff on those bushels. Then the Farm Service Agency would never take possession of the wheat. You would have to, you eventually you had to pay that loan back. And then when you did, then you could haul that wheat to the, your local elevator and they would charge you the excise tax again.

GRAGERT: OK. OK, thanks.

HALLORAN: Thank you, Senator Gragert. Senator Groene.

GROENE: So I could ask the seed-- wheat guy. So he buys wheat from a neighbor or as a neighbor [INAUDIBLE] Now, he-- when that neighbor sells it to him, is there an excise tax on it?

HUGHES: If it's used for seed, no. If it's used for-- into the, into the market for bread or livestock production or livestock feed, ethanol production,--

GROENE: So why is the seed sell, the seed seller worried about it? When does he pay the tax, when he sells it to the farmer, as seed?

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HUGHES: If he-- no. If he has excess production that he sells into the commercial market, if he, if he raises some wheat that is not fit for seed or the germination is not good, he, he will sell it into the commercial market and he'll pay the excise tax then. But if it's seed that he runs through his cleaner conditions and it is used, it's used to be planted to raise more bushels than the excise tax is not--

GROENE: That's presently, or you want to change it?

HUGHES: Yes. Well, it', it's-- we're clarifying that.

GROENE: If that's the case.

HUGHES: Yes. Currently, currently, seed producers are not collecting excise tax.

GROENE: On their retail sales to the farmer?

HUGHES: On their sales to farmers for seed.

GROENE: Yeah.

HUGHES: Correct.

GROENE: So if the local co-op buys wheat from a farmer, that farmer pays the excise tax, and then they decide that's the wheat they're going to clean and sell to-- that's just been cleaned wheat. A lot of wheat is just cleaned and then it's seeded that-- second time. It won't be taxed twice, but it could be taxed once.

HUGHES: It should only be taxed once.

GROENE: Yeah.

HALLORAN: Thank you, Senator Groene. Any further questions? Yes, Senator Hansen.

B. HANSEN: Just one more kind of clarifying question. I know, I think that some of this is going towards the construction of ethanol production facilities. I think that was already currently in the bill and that you just clarified it in a different way.

HUGHES: No, there is not. None of this is going to building ethanol facilities. Wheat was never a part of that original bill.

B. HANSEN: OK. Thanks.

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HALLORAN: Thank you, Senator Hansen. Any further questions? If not, thank you, Senator Hughes.

HUGHES: Thank you.

HALLORAN: Proponents for LB802? Good afternoon.

CHRIS CULLAN: Good afternoon.

HALLORAN: We've been waiting all afternoon for this.

CHRIS CULLAN: All afternoon. I'm the last dog, and it's-- good afternoon. My name is Chris Cullan; first name is Chris, C-h-r-i-s, last name, Cullan, C-u-l-l-a-n. I am a fourth generation farmer from Hemingford, Nebraska. Our dry land and irrigated farm produces wheat, corn, sugar beets, pinto beans, great northern beans, sunflowers, alfalfa, oats, and we also have a small Red Angus cow herd. I am here to support LB802, sponsored by Senator Hughes. There are three main improvements on this bill to benefit Nebraska's farmers, one regarding the collection of the excise tax on grain uses the collateral for federal loans to the Farm Service Agency. The second one is clarifying that the excise tax will not be collected on seed sales. The third authorizes the Nebraska Wheat Board to invest in seed marketing to capitalize on the research investment they started in 1949. Regarding the collection on the excise tax on loan grain, the original language was written when grain loans were more commonly used for federal loans. This practice, practice is still used today, but on a much smaller scale. The issue is that the tax is inadvertently collected twice, once [INAUDIBLE] the loan and then again when the grain is, is marketed after the loan has been paid. The grain will eventually get marketed under the loan, so this eliminates the collection of the grain at the time of the loan. This will not have an impact on the Wheat Board revenue. Regarding the excise tax on grain sold to seed, the board does not collect on seed rate, the intent of the excise taxes for grain going into the food or animal feed and processing, and we feel an excise tax, if it's collected on seed, it will encourage producers to use lower cost seed or illegal bin-run seed, and so, hence, we encourage their use of certified seeds. So producers, we use the best high yielding and high quality seed to provide our country elevators a competitive advantage in selling it to the end-use market and export market. By authorizing the Nebraska Wheat Board to invest in seed marketing with ownership rights and subsequent license and royalty-free revenue, and allows the board to capitalize on the research investment that started in 1949. The board invests producer

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dollars into the creation and research of better yielding varieties with greater end-use quality. These varieties have had reduced plantings due to a lack of marketing. The varieties developed by the University of Nebraska with supporting friends from our states, wheat producers through the checkoff are developed through to, to thrive in Nebraska's diverse climate and soils. Over the past several years, the wheat breeding industry has changed, and, and Nebraska producers are being courted by new wheat breeding-- there are new private companies as well as the [INAUDIBLE] land grant marketing programs from some, from other states such as Colorado and Kansas. The goal is to allow Nebraska farmers the first opportunity to purchase the varieties that were created with their excise tax investment. The end goal is to improve marketing of these varieties produced by the University of Nebraska's wheat breeding program, thus providing more local support to-- thus providing more local support from increased royalties kept local to fuel further development within that department, to make the-- Nebraska's wheat breeding program even stronger. Thank you all for your time, and, and I would answer any questions you might have for me.

HALLORAN: Thank you, Mr. Cullan. That was very thorough.

CHRIS CULLAN: Thank you.

HALLORAN: Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you for the, the drive down here today.

CHRIS CULLAN: Thank you, 402 miles.

BRANDT: We'll try and make it worth your time.

CHRIS CULLAN: You betcha. Thank you.

BRANDT: So the component on this bill with the University of Nebraska, and you can probably explain this to me, is a, is a seed breeder out there. Is the university developing hybrids and then selling them to AgriPro, or they're developing these hybrids and not offering them to state seedsmen, as yourself, to, to promote?

CHRIS CULLAN: The University of Nebraska develops the wheat that are-- they're not hybrid wheat yet, but they're a variety, and they produce them by testing them in different areas throughout the state. And I think there's-- oh, it's like 11-- there's several locations in the

state that they do a variety testing program, where they check it and see if those yields-- or these varieties' yield are produced in their areas, given the climate-- you know, our climate diverse-- is so diverse from Lincoln to Hemingford, Nebraska. But they-- through that process, they make all the knowledge public that the yield potential and-- or the yield that happened in those so growers, in turn, go and view these results to see these results that are funded through public dollars, to see unbiased, an unbiased yield-- proof of yield so they can select which variety to use on their farm. And then once these varieties are promoted or once they figure out that they are a variety that they're worth producing them, they grow them through the foundation's seed division at the University of Nebraska, and then they release them to seed growers, such as ourselves, and then we plant those varieties on our farm. And then we harvest those varieties, we clean them and condition them, and then replant as foundation seed. And then, when we produce the foundation seed, the progeny is registered seed. And then we, we take registered seed and we grow it ourself, we replant that and then we grow it ourselves, harvest it, condition and clean it, and then sell it to our-- and that, once, once registered seed is harvested, it's certified seed, and then that is what we market to our friends and neighbors. And--

BRANDT: OK, but I guess what I'm trying to get a handle on is, what is the university doing now that doesn't allow this, this wheat to be marketed as seed in the state of Nebraska?

CHRIS CULLAN: They're doing things to promote the varieties, and it's basically through the seed industry channel, through growers such as myself. And you know, one of the frustrations that I have, as a seedsman, is that we have growers in our state that are raising varieties that are released from public companies or private companies and other institutions such as a-- like in my case, we see pressure from Colorado, and we see some pressure from Kansas on the varieties, but more of it, more so from Colorado, and they're producing varieties that may not yield as well as the variety that Nebraska has already released, mainly because it's just not promoted as strongly as it could be. And, and when we're doing that, when a neighbor, my brother, raises a variety-- or buys a variety that's sourced out of Colorado, that royalty dollar goes back to Colorado. And if it's raised a Nebraska variety, that royalty dollar goes back to the University of Nebraska and then funds the program and continues to grow us. So our challenge that we see is that we'd like to see more promotion of the varieties that are produced in this state to help fund that. It's basically priming its own pump.

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BRANDT: All right. Thank you.

CHRIS CULLAN: Thank you.

HALLORAN: Thank you, Senator Brandt. Any further questions? OK, seeing none, appreciate your testimony--

CHRIS CULLAN: Thank you so much.

HALLORAN: --and the trip.

CHRIS CULLAN: You bet.

HALLORAN: Have a safe trip home.

CHRIS CULLAN: You bet.

HALLORAN: Any additional proponents, LB802?

ANDREW DUNKLEY: Good afternoon once again, Chairman Halloran and committee. Andrew Dunkley, A-n-d-r e-w D-u-n-k-l-e-y, with the Nebraska Farm Bureau, here in support of LB802. This-- our support came from a meeting with the wheat checkoff board, and I believe Senator Hughes was there as well. And we, we agree with all the proponents' points before, especially the, the three points of, of what this bill does. We think any, any efforts to avoid double either, you know, excise tax or, or extra, extra work that has to be done on the back end to refund any, any undue taxes is just an easy cleanup. We believe that this is a simple fix, and we also believe that we growers should be able to market the products. And, and as you may have heard before, I, I come from Colorado and I can testify to or second what Mr. Cullan said before me, that, that we growers or, or seeders from, from Colorado and other states can market their products. And I believe that-- we believe that Nebraska wheat growers should be able to, to market those products. So I'm open to any questions if I, if I can answer them.

HALLORAN: Thank you, Mr. Dunkley. Any questions from the committee? Seeing none, appreciate it; thanks.

ANDREW DUNKLEY: Thank you very much.

HALLORAN: OK. That con-- and we'll look for a close. Well, no. Are there any opponents? Excuse me, any opponents to LB802? Any in the neutral capacity? Seeing none, Senator Hughes?

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HUGHES: Unless there are questions. I will waive.

HALLORAN: Any questions? Potential? No, there's not. No, I guess there's no questions.

HUGHES: Thank you.

HALLORAN: Thank you, Senator Hughes. That concludes our hearing today. I would like to have a quick Exec session very quickly, so upon clearing the room, we'll go into Exec session.