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BOSTELMAN: [INAUDIBLE] let me get arranged here. We'll get started here in just a minute. I do need to read some COVID hearing procedures as we get started. For the safety of our committee members, staff, pages and the public, we ask that those attending our hearings to abide by the following procedures. Due to the social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list-- the list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance on that side and the exit doors to the hearing room. We request that you here-- you wear a face covering in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and the transcribers in hearing-- clearly hearing the-- understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by a sergeant at arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter the hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the ability of an overflow hearing room for hearings which attract several testifiers and observers. For hearings with a large attendance, we request only testifiers enter the hearing room. We ask that you please limit or eliminate your handouts. Welcome to the Natural Resources Committee. I am Senator Bruce Bostelman from Brainard, and I represent Legislative District 23. I serve as the Chair of this committee. The committee will take up the bills in order posted. Our hearing today is your public part of the Legislature-- legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing. 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 phones. Introducers will make initial statements, followed by proponents, opponents, and then neutral testimony-- testimony. Closing remarks are reserved for

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Natural Resources Committee February 3, 2021

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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. Good morning. Is this Mr. Hellbusch?

JIM HELLBUSCH: Yes, it is.

BOSTELMAN: If you could please wait. This is Senator Bockelmann. I'm finishing the opening for the hearings information, so we'll be with you in just a minute.

JIM HELLBUSCH: No problem, it's all right.

BOSTELMAN: Yes. Please fill out the green sign-in sheet before you testify. Please print. And then it's-- and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to a page or the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today, but I would like to record your name as being present at the hearing, there is a separate white sheet on the tables you can sign for that purpose. This will be a part of the official record of the hearing. When you come up to testify, please speak-- please speak loudly and clearly. It is difficult for us to hear with the plexiglass, and if you have a mask, to be able to hear you. So please speak clearly and loudly into the microphone. You may remove your mask, tell us your name, and please spell your first and last name to ensure we get an accurate record. We will be using the light system for all testifiers. You will either have three or five minutes-- and we'll determine that at the start of each hearing-- 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 your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves, starting on my left.

GRAGERT: Good morning. Senator Tim Gragert, District 40: northeast Nebraska.

WAYNE: Justin Wayne, District 13: North Omaha and northeast Douglas County.

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AGUILAR: Ray Aguilar, District 35: Grand Island and Hall County.

BOSTELMAN: And on my right--

MOSER: Mike Moser, District 22: Platte County and parts of Stanton and Colfax Counties.

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

GROENE: Mike Groene, representing Lincoln County.

BOSTELMAN: Senator Moser is Vice Chair of the committee. To my left is committee legal counsel, Cyndi Lamm, and to my far right is the committee clerk, Katie Bohlmeier. Our pages for the committee today are Lorenzo and Brytany, and we would like to thank them for being here and serving in the hearing for us at the hearing today. With that, we will begin our first confirmation hearing that we have for today. That is with Mr. Jim Hellbusch, and Mr. Hellbusch, I believe you're on the line. What I would like you to do, please introduce yourself, tell us a little bit about yourself and why you would like to be on the Nebraska Environmental Trust. I believe this is both a original appointment and a reappointment because of he was appointed last year. We did not appoint him-- or confirmed him last year, and then it's reappointment for this year. Mr. Hellbusch, please.

JIM HELLBUSCH: Thank you, giving me the time. My name is Jim Hellbusch. I own Duo Lift Manufacturing Company, Columbus, Nebraska, and co-owner of Busch Equipment Company, Columbus, Nebraska. Born and raised in Columbus, I'm 74 years old. I've served on several councils. I'm on the Small Business Compliance Advisory Panel for the NDEE. I'm on MEP panel and-- and this one, very excited about conservation, state of Nebraska. There's a lot of work we've done. We've done a great job. There's a lot of work to be finished still. To clarify, this was my second term. My first term is six years. And they asked me to remain on a second six-year term, and I agreed to do that. That's where I'm at. I think that the Trust is a tremendous avenue for promoting and perpetuating conservation for Nebraska in all facets. And I'm just excited about doing it, and there's a lot of work to be done. And I think it's a great opportunity to let the citizens of Nebraska have a say-so in how things are done and why they're done, and even when they're done. So with that, I'll turn it over you.

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BOSTELMAN: Thank you, Mr. Hellbusch. Are there any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Mr. Hellbusch. I'm sorry that-- it's just weird to not-- talk to somebody who's not there. So just to clarify, you were on the committee for six years and then you left and then came back? Or--

JIM HELLBUSCH: Oh. No, I am sorry. Yeah, no problem. I've been on it for six years and without a-- without a break, I'm back on it again. You can have two six-year terms in succession, and that's what I am doing.

J. CAVANAUGH: OK. Could you give us an overview of what the role of the Environmental Trust is?

JIM HELLBUSCH: Yeah, that's a really long answer. The Environmental Trust is to promote conservation, whether it's vegetation or fowl or land use-- land, water and [INAUDIBLE], anything to do with conservation in the state of Nebraska, to perpetuate and-- create and perpetuate conservation practices, and as well as the education. We have given grants to school districts and so on, to have programs and policies for education of our youth. If you increase and promote that waterways may become polluted via chemicals, even through a species or anything like that. We keep it the best-- pristine as we possibly can, so there's no species, no [INAUDIBLE]. For example, the mussels, we don't like that-- on boat bottoms; we can't do much about that. But that's [INAUDIBLE]. We see weeds, trees that are brought in for various reasons, that are not indigenous to the state of Nebraska, but they have infiltrated into our ecosystem. And some of those plants and species are very, very difficult to eradicate, and they are damaging our original landscape of Nebraska. So I don't know if that answers your question or not, but--

J. CAVANAUGH: Thank you.

JIM HELLBUSCH:--[INAUDIBLE] be good custodians of the conservation of our state.

J. CAVANAUGH: And thank you, Mr. Hellbusch, that-- that's helpful. And you accomplish these conservation objectives through the grant process?

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JIM HELLBUSCH: Yeah. We receive approximately-- every year is different-- but approximately 300 grants, usually anywhere from a couple thousand dollars to \$6 or \$8 million dollars from all walks of life, so to speak. And we have a grants committee. We spend a lot of time on-- on reviewing each grant and look at the value of the mission. Some are extremely well done and some are very poorly done. We have a grading system and we each-- review each application and we grade it. This year was particularly difficult because of COVID. We couldn't reach one-- I've been on the grants committee-- kind of can rotate different members. I've been on it twice. And we would meet together for-- virtually a whole day, four or five times and then go to each one, discuss each application, the-- the merits of them or the lack of merit. And we'd grade them. At the end of the day, we'd grade them. And we have-- all depends on the year again-- but approximately \$20 million a year that we will issue in grants. And we start with the best-graded one, going down, and when we run out of money, then the grants stop and those applications can either reapply next year or whatever the case may be. But we have so many dollars to grant, and we-- we don't-- we look at the dollar value of the grant, but we also look at the value of the grant itself, the purpose and the scope of that grant. And then we-- we-- like I said before, we grade that, we rate that. And then the first 3, 40, 50, 70 grants that make it, they make it, and the rest of them don't make it. So we kind of sort through all the applications the best we can.

J. CAVANAUGH: So to clarify, you have a-- basically an objective process by which you score particular proposals. And then the grant committee makes a recommendation to the entire body about which ones are the highest scoring and how you can allocate those \$20 million to the top-scoring projects.

JIM HELLBUSCH: Yes, that's correct.

J. CAVANAUGH: OK.

JIM HELLBUSCH: The-- the grants committee submits their recommendation to the board, as a whole, and the board, as a whole, has the right to question it-- I shouldn't say question it, but evaluate them, and look at them and ask the grant committee questions about why, if this will make it, why did not this one make it, and so on and so forth. And so it's an open discussion. I was going to say, this year, the grants committee-- I was not on it this-- there at this time because of

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COVID, but it had to do it individually, not face-to-face. They did have one face-to-face meeting-- I think it was a week or two ago-- to finalize the end result. The thing about grants committee is, you meet together, you meet face-to-face and you look each other in the eye. And you-- if you disagree with someone, you [INAUDIBLE]. And a lot of times they change your mind, you change their mind. But at the end of the day, you want the best application to be granted, you as a whole. So that's kind of how that, you know--

J. CAVANAUGH: Thank you for that overview, Commissioner-- Commissioner Hellbusch, correct? Is that what I call you?

JIM HELLBUSCH: Director, yeah.

J. CAVANAUGH: I've got other questions, if I may.

BOSTELMAN: Um-hum.

J. CAVANAUGH: So unrelated to the-- specifically to the grant process, a number of projects, in terms of con-- well, your objective is conservation. I guess my question is: What's your interpretation of the project that it advances conservation?

JIM HELLBUSCH: Oh boy, that's a tough one. My interpretation of the value of a-- of the grant, did you say?

J. CAVANAUGH: Well, I'll just ask a specific question. Do you believe that conservation easements are a method of preserving or to-- to advance conservation?

JIM HELLBUSCH: Yes, there's various-- there-- I didn't understand the question. There's various ways to do that. There's temporary easements, permanent easements, acquisitionings [SIC]-- all the above and that's-- some of it is nothing-- none of that. I'll give you an example of Ducks Unlimited, Pheasants Forever. They just applied for a grant to improve the marshlands we already have. But yes, those acquisitions or [INAUDIBLE] or whatever, they're all-- they're all part of the process of how we evaluate if we can move forward in that particular application.

J. CAVANAUGH: So I apologize. The sound here is terrible. So to clarify, you do believe that conservation easements are a valuable tool for conservation.

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JIM HELLBUSCH: I think that each-- each application has the same amount of merit.

J. CAVANAUGH: Well, I'm not asking about particular applications. I'm asking if, as-- as a con-- as an idea, if an application that is for conservation easement is one that you would consider, or if you would have dismissed it out of hand because of the nature of that-- that application.

JIM HELLBUSCH: Oh, no. You-- you look at the-- at the [INAUDIBLE]. It depends on the application. If the application is good, valuable, promotes conservation for the state of Nebraska, then all the above is possible, easements or whatever. Yeah. There's-- there's-- I'm not sure what you're getting at. If you're trying to say that I'm total-- I'm set against easements, no, that's not right.

J. CAVANAUGH: I apologize, Mr. Hellbusch. I'm not trying to get at anything, and the sound is bad. I'm just trying to get a feel for the process in your-- and your philosophy about how to implement that process. My interpretation of our-- of our role here is to provide oversight of the appointment. And I'm just trying to understand. I-- I'm new here. You don't know that, probably. But I'm trying to understand what the role of the Environmental Trust is and how the process works. So that--

JIM HELLBUSCH: OK.

J. CAVANAUGH: --that's what I'm getting at. I just happen-- I'm just trying to get a philosophical question about what types of grants you think are appropriate to that--

JIM HELLBUSCH: OK. Did I-- did I answer your question, or not?

J. CAVANAUGH: I-- I think you did. And so I-- I appreciate you taking the time and in this less-than-ideal process. Thank you.

JIM HELLBUSCH: [INAUDIBLE].

BOSTELMAN: Are there other questions from committee members? Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Good morning, Mr. Hellbusch-- or Commissioner Hellbusch. I just want to get just a little-- a couple

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more questions into the funding process. And you said that you spend \$20 million a year. Is that while you-- while you approve the grants, is the \$20 million, is that spent up right from the-- from the present grants 'till it's gone or do you hold monies back? And once you make priorities and assign that monies to that specific grant, do those priorities change during that year?

JIM HELLBUSCH: Yes. That's a-- that's a very good question. Grant application-- an applicant will ask for a one-year sum of money or X-amount of dollars, but over a three-year period. Sometimes their projects are construction projects, whether it's moving, building buildings. Some projects take longer than others, and so they will ask for a one-, two- or three-year grant [INAUDIBLE], you might say. And we go with that, we're very happy with that. There are times-- today we just had a-- it was an all-day meeting yesterday for a grant modification. By that I mean COVID had destroyed efforts of the conservation people this year in the state of Nebraska-- and I'm sure across the country. But projects aren't getting done, raw materials aren't being shipped, people can't come to work. So they ask for an extension. Well, we may give them a three-year grant and they may come back and say, we're not through here and we're on track [INAUDIBLE]. Could you possibly grant us an extension and give us a fourth year? [INAUDIBLE] but could you [INAUDIBLE] for a fourth year or whatever? [INAUDIBLE].

BOSTELMAN: Mr. Hellbusch, sorry. You're breaking up pretty bad. So maybe it's the location. If you could start over.

JIM HELLBUSCH: I haven't-- OK, I haven't moved at all.

BOSTELMAN: It's the system. It's-- it's our system.

JIM HELLBUSCH: What was the last-- what was the last you heard me say?

GRAGERT: Yeah, that's OK, I can't hear it anyway.

BOSTELMAN: Senator Gragert, if you want to ask him anything that-- that you didn't hear.

GRAGERT: No, no thank you. I'm OK.

JIM HELLBUSCH: Thank you. Thank you. I--

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BOSTELMAN: All right. Are there any other questions?

JIM HELLBUSCH: Should I ask the-- should I ask the question again? I'm not sure how much you heard, but we grant-- grant either one-, two- or three-year payout grants as asked by the application submission, and we will grant them-- let's make it a number of \$100,000 a year for three years. And we would do that if there is a problem like this year with COVID that it-- that if it stretched it out, we will give them an extension. We're very-- we'll work with our recipients as much as we can. In case things happen, that construction is delayed or whatever the case may be, we can extend the grant through an extension process-- no more dollar amount, just let them have a second or a third or a fourth year because of the timing on their part. I don't know if that answered your question or not.

GRAGERT: Yes. Thank you very much.

BOSTELMAN: OK. Thank you, Senator Gragert. Senator Moser.

MOSER: I just wanted to comment that Mr. Hellbusch is an acquaintance of mine. I've served on boards both with he and-- with him and his wife, and they're good thinkers and good people, and I would support them to be nominated. Thank you.

BOSTELMAN: Are there other questions from committee members? So I will say this is the reappointment. I was looking through, there's a different member that's-- has the two. Correct?

JIM HELLBUSCH: That's right.

BOSTELMAN: So this is just a reappointment. So with that, thank you, Mr. Hellbusch, for your testimony. You can hang up now, and we'll ask for any proponents. Anyone who would like to testify in-- as in support of the confirmation of Mr. Jim Hellbusch, please step forward.

JIM HELLBUSCH: Thank you, everyone. I'm going to jump off. Thank you.

BOSTELMAN: Thank you. Seeing none to testify in support, anyone like to testify in opposition to Mr. Hellbusch's appointment confirmation? Good morning.

AL DAVIS: Morning, Senator Bostelman, members of the Natural Resources Committee. My name's Al Davis. I'm the registered lobbyist for the

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Nebraska Sierra Club. And I'm submitting this letter as a registered lobbyist for the club. The Nebraska chapter of the Sierra Club is opposed to the confirmation of two of the three nominees for the Nebraska Environmental Trust Board. Unfortunately, the recent appointments by Governor Ricketts have radically altered the composition and function of the Environmental Trust Board. If these three appointments are confirmed by the Legislature, the entire board will be composed of white, mostly middle-aged and older males. The statutory requirement for board members is that they shall represent the general public. Sadly, the board is absent of diversity in terms of gender, age, and people of color, disconcerting, as well as the lack of representation from the western two-thirds of Nebraska. Remember, the mission of the Nebraska Environmental Trust pertains statewide, from sparsely-populated, rural ranching areas to densely-occupied urban ones. Thus, the board must represent the diversity of Nebraska's population. This lack of diversity tends to lead to rigidity of thought and a lack of progressive environmental ideas. The rigidity of thought it-- is our second concern with the individuals before you today. Again, one of the statutory requirements for a trust board member is that they shall have demonstrated competence, experience, and interest in the environment. Moreover, board members must represent the will of the people that voted for the formation of the trust, and must carry out their duties to fulfill the intent of conserving Nebraska's environment. Unfortunately, the Governor has loaded the trust board with followers of his anti-conservation easement and anti-land acquisition ideology. The trust board is now filled mostly by these anti-environmental members. One of these members is here before you today and the other is scheduled for confirmation on Thursday. Rod Christen led the effort to have the Trust Board abandon the statutorily required, science-oriented award system for judging the relative merits of proposals in favor of a convoluted process that punished extremely worthy and extremely beneficial conservation projects. Highly ranked projects that were focused on permanent conservation protection, using conservation easements and land acquisition, were unceremoniously stripped of their ranking in favor of an unfunded legislative mandate project dealing with ethanol distribution pumps with dubious environmental benefits. Rather than object to this abusive use of authority, Jim Helbusch voted to support these decisions, which generated significant public opposition. Plain and simple, these individuals, as well as a majority of the board members, were carrying

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out the will of the Governor, not the will of the people who expect the Trust Board to employ a wide range of conservation options to conserve Nebraska's precious natural heritage. Regrettably, two of the most valuable tools to carry out conservation in a state like Nebraska, which is overwhelming-- overwhelmingly privately owned, conservation easements and land acquisition has been revoked by the individual seeking reappointment. We believe the Natural Resources Committee and the Legislature must send a resounding message to the Governor that such anti-conservation board authority is inconsistent with the long history of the Nebraska Environmental Trust Board's operating principles, and as antithetical to the wishes of the Nebraska citizens that enabled a financial mechanism to protect Nebraska's unique natural resources. Thank you. Please see that this letter becomes part of the official record of this hearing.

BOSTELMAN: Thank you, Mr. Davis. Are there questions from committee members? Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thank you, Mr. Davis. Would you know or do you know how many applications were actually taken by the Governor for these three positions?

AL DAVIS: I do not know the answer to that.

GRAGERT: OK. Thank you.

BOSTELMAN: Thank you. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Mr. Davis, for being here. You probably heard my side of the conversation. It's unclear if anybody could hear the other side. But I asked Mr. Helbusch about his-- I guess-- his philosophy on conservation easements. My interpretation of what he said was that he is not opposed to them and that he looks at a project on a case-by-case basis. Are you saying that that is not true?

AL DAVIS: So I'm saying that what happened with-- with the Trust last time around was, there were certain projects that didn't make the specific grades, according to the guidelines of the Trust. So changes were made. I was not on top of this issue at the time, but there were changes made. And so these projects were elevated above those which

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involve conservation easements on-- or purchases of land. So I think
that goes against the Trust's purpose, which is why we're here today.

J. CAVANAUGH: And my interpretation asked-- and when I asked Mr.
Helbusch about the purpose of the Trust and he said: to promote
conservation of vegetation and fowl-- and foul of the state of
Nebraska, certainly I understand-- I guess, for the record,
conservation easement is where-- well, do you want to-- I guess maybe
I should have you say what it is.

AL DAVIS: Well, there are different types of conservation easements.
So you know, there are temporary conservation easements, permanent
conservation easements. There are some people in the state of Nebraska
who are opposed to permanent conservation easements which, maybe, take
land out of production. And that sort of seems to be the--

J. CAVANAUGH: I'm just asking--

AL DAVIS: --direction of the Trust.

J. CAVANAUGH: For the record, can you just say what a conservation
easement is? That's what--

AL DAVIS: It's a-- it's an agreement between a landowner and an
organization like the Environmental Trust. The landowner is required
to do specific things that benefit wildlife or the environment, and
that-- there are payments associated with that.

J. CAVANAUGH: So conservation easement, the way it serves the purpose
of conservation, is that it would take land that may be used for other
purposes and use it specifically for wildlife or runoff or something
along those lines. Right?

AL DAVIS: Yeah.

J. CAVANAUGH: Which seems like a clear benefit to the vegetation and
the fowl of the land. And the other one that you stated was land
purchase, which I guess would be that it would-- the land would be
held by the Environmental Trust.

AL DAVIS: So sometimes property is purchased by another organization--
we'll say the Nature Conservancy or we'll say the Ducks Unlimited
purchased-- and taken out of production. And so Environmental Trust

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funds sometimes go to help purchase those properties or-- or enact
some of the activities that need to take place on that to convert that
back to a natural environmental status.

J. CAVANAUGH: So-- and that was kind of going to be my next question
is, some-- so these funds can be used for the purchase, for the-- I
guess the word is encumbrance of the land where-- meaning you can't--
you can determine the future use. And the third purpose is
remediation, right, where you take--

AL DAVIS: Yeah.

J. CAVANAUGH: --land from one-- one state and return it to, say,
wetland or something like that. So those are-- you represent the
Sierra Club. Those are in the Sierra Club's definition or any
respected, I guess, environmental organization. Those are acceptable
forms of environmental protection.

AL DAVIS: Yes.

J. CAVANAUGH: OK. And they would be highly valued, I guess, for that
preservation?

AL DAVIS: The-- as?

J. CAVANAUGH: That those would be high-- highly valuable uses of those
funds for future preservation.

AL DAVIS: Certainly, if their-- you know, if their funds are tied to
environmental projects. And you can find an environmental project that
meets the grading scale of the Environmental Trust. It should probably
be fund funded if it's high enough.

J. CAVANAUGH: And that would be preservation for generations to come.
And that's--

AL DAVIS: Correct.

J. CAVANAUGH: --the intention of the creation of the Environmental
Trust.

AL DAVIS: I was around at the time it was put together, but I wasn't
you know, [INAUDIBLE],--

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J. CAVANAUGH: Even I was around at the time it was put together.

AL DAVIS: --but I would assume that was the case.

J. CAVANAUGH: It was-- it's only been around since the '90s, right?

AL DAVIS: Yeah.

J. CAVANAUGH: OK. And your opposition to the changes and divergence from the gradation system is-- is it based on that, going outside of the system, or is it specifically the projects that the money then was diverted to?

AL DAVIS: So I think if you're going to set up a procedure and policies and to conduct business in-- in governmental-- a quasi-governmental entity like the Environmental Trust, then, you know, if these are laid out in a very orderly manner-- and-- and I've observed the Trust for years-- in terms of how it's done, it's very competitive. But if, you know, if you're-- if you have these guidelines and you suddenly decide, well, I think we need to do something else with this-- you know, this was a-- a-- an ethanol project. The Sierra Club has long been concerned about ethanol because it convert-- it-- because of the conversion of grasslands to grazing crops, you know, which is damaging to wildlife and-- and plant life. And so those are our concerns.

J. CAVANAUGH: Just to summarize, your concerns are process, not adhering to their own process, but additionally to act-- the nature of the projects. So it's twofold.

AL DAVIS: Yes. And of course, you know, where we do have diversity issues, which I think is important. The Trust used to have a number of women, you know, on the Trust board; none now.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. So are-- are you alluding to, then, that all the projects didn't go through the same ranking system?

AL DAVIS: Senator Gragert, I'm not an expert on this issue. You know, I'm representing the Sierra Club.

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GRAGERT: Um-hum.

AL DAVIS: The Sierra Club is concerned that specific projects were credited with additional points or, in some way, there were some changes made which lowered the ranking of other projects and raised the ranking of the ones connected to this ethanol project.

GRAGERT: But you're not sure of, and specifically, what was changed, and you're-- you're just saying something [INAUDIBLE].

AL DAVIS: I-- I'm not-- I'd-- I'd have to do the research.

GRAGERT: OK. Thank you.

BOSTELMAN: Other questions? Senator Moser.

MOSER: So if the ranking system was changed and they picked one field to conserve for pheasants or quail or deer over another field for pheasants or quail or deer, you wouldn't complain. But since you didn't like the project they picked, then you're complaining?

AL DAVIS: I think it's more about the process, Senator Moser, that was-- that was gone through to do that.

MOSER: So did you say the process or the projects?

AL DAVIS: The process.

MOSER: The process, OK. Thank you. It's hard to hear you through the plexiglass.

AL DAVIS: Yeah.

MOSER: Thank you.

BOSTELMAN: You know, are most of the easements-- are they-- are there more agricultural easements than, say, I guess you would call it a wildlife easement? Are most of the easements we see agricultural easements?

AL DAVIS: I'm not quite sure I follow your question, Senator.

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BOSTELMAN: For the Trust, and other than that, do they not-- a majority of those go as an agricultural easement? Is that what the-- is that what they're finding?

AL DAVIS: As opposed to-- as opposed to wildlife or other things?

BOSTELMAN: Specific [INAUDIBLE].

AL DAVIS: So, you know, a number of years ago, there was a lot of controversy in the Prairie Pothole area where there were purchases of some of those prairie lakes and potholes being conducted through the Environmental Trust. And there was a significant amount of concern about that among some people, taking them off the tax rolls, giving them special considerations. And permanent easements are quite a bit different from a, you know, a 20-year easement.

BOSTELMAN: But yeah, I guess my thought is, is that they were-- they're really an ag easement that are used for that--

AL DAVIS: In-- in-- yes, in many-- in many ways.

BOSTELMAN: --for that-- and for that purpose, if you will. OK.

AL DAVIS: Yes, they are.

BOSTELMAN: All right. Thank you.

AL DAVIS: So in my part of the world-- I come from the Sandhills. You know, the Sandhills task force has-- has used a lot of conservation easements to-- to do different things back in that part of the state.

BOSTELMAN: OK. All right. Super. Thank you. Any other questions? Seeing none, thank you for your testimony.

AL DAVIS: Thank you.

BOSTELMAN: Is there anyone else would like to testify in opposition to Mr. Hellbusch's reappointment? Seeing none, anyone who would like to testify in the neutral capacity? Seeing none, we do have two written testimonies in support of Mr. Hellbusch, one by Mr. Mark McHargue of Nebraska Farm Bureau and one from Mr. Roger Berry of the Nebraska Ethanol Board. This will close the confirmation hearing on Mr. Hellbusch. We would like to recognize Senator Hughes for joining us.

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Next, we'll have confirmation hearing on Mr. Mark Quandahl. Will you please step forward? Good morning.

MARK QUANDAHL: Thanks, Chairman Bostelman and members of the Natural Resources Committee. Mark Quandahl; that's Q-u-a-n-d-a-h-l, and I'm here for appointment to the Nebraska Environmental Trust Board. So I have a little bit of a prepared statement, just to tell you who I am and-- and what I'm about. But before I start that, on my drive down here this morning, I-80-- you know, I've driven it many times from Omaha to Lincoln. Coming across the river, quite often, but not all the time, there's eagles that fly in that part. And so there was one that was flying over this morning. And I was reminded, when I was a kid, eagles were on the endangered species list and you never saw one. And while they're more plentiful today and they're all across Nebraska and particularly along the Platte and the Missouri Rivers, it's always a special thing to see the symbol of our country flying above. And it just kind of set the tone for me for this morning. So I'm a lifelong Nebraskan, lived in Nebraska all my life. I'm a product of Ralston Public Schools and the University of Nebraska-Lincoln. Married-- I've been married for 34 years to my high school sweetheart. I have three grown children. I've lived in Douglas, Lancaster, and Saunders Counties in Nebraska, currently have farms in Otoe and Johnson Counties. I've been involved in a number of different businesses, primarily law practice that's taken me to all 93 counties of the state of Nebraska. I'm currently with Dvorak Law Group. It's a law firm that has offices in Hastings, Columbus, North Platte, Sutton, and Omaha. As far as public service, I was a Nebraska state senator, actually served with Senator Aguilar, so good to see you. Was on the State Board of Education. Most recently, I served a stint for five and a half years as-- as director of the Department of Banking and Finance for the state of Nebraska. As far as NET board, I was appointed in just September of last year, I'm a new guy by Governor Ricketts. And then I was appointed to fill out the term of Bob Krohn from Omaha. And unfortunately, Mr. Krohn just recently passed away, too. And then I was reappointed by Governor Ricketts for this current term, the Nebraska Environmental Trust. And so there have been questions about what it's all about. And I'm one of those people that I look just right at the mission. If you look at the Nebraska Environmental Trust, our mission is to conserve-- conserve, enhance, and restore the natural environments of-- of-- of Nebraska. And how that's done is primarily through-- there's been some-- some conversation on it

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already this morning-- is by grants. The funding comes from lottery proceeds. And those grants, they go to five primary areas: habitat, water, waste management, air, and soil-- habitat, water, waste management, air, and soil. And so the grants, that's-- that's where they go. Just to tell you a little bit about myself, I'll tell you about my Gallup strengths, because I think it tells a lot about me. A maximizer, context, deliberative, focused and strategic. And so what do I want to do? What's my goals for the Nebraska Environmental Trust? What I-- how-- I want to help it fulfill its mission. And I want to help the Nebraska Environmental Trust do the most good it can with the resource-- resources that are granted to it. And so that, in a nutshell, is-- is what I'm about. And like I said, I'm a new guy. And so I've just been to two meetings so far, as a matter of fact, one just yesterday. And so I'm not an expert on all things Nebraska Environmental Trust, but I'm excited to be a part of a great organization. And as a maximizer, the Nebraska Environmental Trust has done great things in the past. And-- and I'm looking forward to doing even greater things in the future.

BOSTELMAN: OK. Thank you, sir. Are there any questions for Mr. Quandahl? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thanks-- thank you, Mr. Quandahl, for being here. You know, there's a lot of people who are making the change to come back to the Legislature, like-- like Senator Aguilar and Senator Flood and Senator Lathrop, and seems to be really helpful. So I appreciate your service and your being here, and I understand, being the new guy, I know you were here and you heard my questions about conservation easements. And I would just say I-- I like your story about the eagle and it-- you know, I'm clearly somebody who's interested in conservation easements. The reason that-- that-- that it's gone from endangered to more prevalent is because we've spent effort in the last 20, 30, 40 years working on habitat preservation. One of the big habitat preservations in the state of Nebraska, in particular, is the-- the flyways, Central Flyway for the cranes in western Nebraska. These are the types of projects we're talking about, right, when we're talking about conservation easements?

MARK QUANDAHL: It's a--

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J. CAVANAUGH: And so my question is, and the question I asked Mr. Hellbusch is: What-- what's your opinion about the value of conservation and easements?

MARK QUANDAHL: Yeah, what's thought is-- is, there's a lot of different kind of tools in the toolkit that the Environmental Trust has used in the past. Conservation easements are one of those. And so it's-- it's-- it-- it-- it's-- it's one of the tools in the toolkit, so--

J. CAVANAUGH: So it's a tool that you would continue to use going forward?

MARK QUANDAHL: I-- I would imagine so. I mean, it depends on-- just last night we reviewed a number of different kind of grants. And so certainly conservation easements were a part of the con-- you know, part of our-- our conversation at the time, too, so--

J. CAVANAUGH: And-- OK. Obviously, you're new and you heard the conversation from Mr. Davis about the-- the grant process. I assume you haven't even been part of any of that kind of conversation.

MARK QUANDAHL: You know, just-- just someone last night, the-- the-- the grants committee-- and I'm not a part of the grants committee, I'm on the finance committee-- came forward with recommendations. And what I would kind of analogize it to, you being in-- in the Legislature, it's-- it's kind of like the Appropriations Committee, right? The Appropriations Committee comes forward with recommendations. And then, from that point, the entire board gets a chance to kind of use their own discretion on whether to adopt all of the recommendations from the board. Changes are made, but it's-- it's-- it's-- definitely, it's an entire board decision, ongoing forward.

J. CAVANAUGH: Well, and I appreciate that. And you've done a fantastic job of, I think, of explaining the mission of the-- the Environmental Trust and the objectives and, of course, the funding source, which is the lottery funds. And it's about-- we've heard \$20 million dollars a year, which I think is a tremendous responsibility. It-- this is a public trust in both the literal and the-- and the actual sense-- the figurative sense, and there are-- the-- the idea is to set up an objective rubric by which to allocate that money, which is for purposes of determining quality of projects, outcomes, but it also is

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to eliminate things of special interest. Right? Do you think that's
fair?

MARK QUANDAHL: Yeah, and I'd say, just for example, there's-- there
are different regions in the state, too. And so the grants committee
and actually the entire board, we do our best to try to ensure that
there's-- that the grants are located across the entire state.

J. CAVANAUGH: There's, in fact, objective points associated with
biogeographic distribution. Correct?

MARK QUANDAHL: That's correct.

J. CAVANAUGH: So my question is, if we have an objective process, and
things come out of that objective process, and we decide to go back
and change the-- the determinations of that process-- is that clear
what I'm saying?

MARK QUANDAHL: Yeah, I believe so.

J. CAVANAUGH: OK.

MARK QUANDAHL: I believe so.

J. CAVANAUGH: So the question is: Should we then go back and say,
well, clearly the process isn't working if we need to make a change,
as a whole board, out of the recommendations? Is there a
backward-looking process that you're undertaking to say, let's find
out why this did not return the best projects?

MARK QUANDAHL: That's a great question. That's a great question. As a
matter of fact, yes. One of the things that we did at last night's
meeting is, actually, we passed-- there was a motion made that we ask
the Department of Administrative Services to come in and do somewhat
of a performance audit on the Trust and then, also, to the Auditor of
Public Accounts to come in and actually just look at our finances. You
have to understand my background, right? I was just most recently
the-- the head bank regulator in the state. And so I always think that
there's value to outsiders coming in, taking a look at and examining,
and giving a report card, because there's always something that you
could learn. If we're doing it great, we can always do it better with
input from others. And so there's that. I believe also, too, there was
a-- a performance audit or an audit from the Legislature-- I believe

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it was in 2012-- and so that's also out there, too. But I'd say just-- just my thoughts as being on the Trust, having the state auditor and having the Department of Administrative Services come in and help, kind of help us examine the way that we're doing things right now and maybe give us hints on how we could do things better in the future, I think that's a good thing.

J. CAVANAUGH: I agree with that. Can I have one more?

BOSTELMAN: One more.

J. CAVANAUGH: If anyone-- nobody answered this question [INAUDIBLE]. As to kind of that impartiality question, a number of the people who sit on this board are also directors in departments in the state. Does that seem like a good idea, considering that they are also some of the partners in the applications?

MARK QUANDAHL: I did-- I guess I'm aware that on the applications where there is some sort of a connection with one of the-- any of the state agencies, with the agency directors, they abstain from voting on those. And then, too, I guess I'd have to go back to the Environmental Trust has been around since the early '90s. Right? And so when it was originally set up, it was-- it was originally set up, you know, this-- this body, the-- the Legislature is the one that set up the membership on the Trust board. And included in that, the department directors that are part of that. So as far as the membership, that's a public policy decision for the Legislature and that was made back in the '90s. And so I-- I understand what you're saying. I understand what you're saying.

J. CAVANAUGH: We're not infallible.

MARK QUANDAHL: Yeah. No, I get it.

J. CAVANAUGH: But I-- and I appreciate that they-- that they abstain. But I mean, you can recognize, I can recognize that even when somebody abstains from a vote, they're still there all the rest of the time having conversations, as other-- making other decisions that pertain to other people's interests. And so there's a potentiality for some sort of conflict there.

MARK QUANDAHL: That-- some sort of conflict, but what I'd say to that is, is that also, for some sort of a perspective or an enlightenment

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that they can provide. So Department of Natural Resources certainly has perspective and kind of a mission that is-- that's helpful to the mission of-- of the NET. Right? I mean, same for Department of Environment and Energy, same for Department of Health and Human Services. Dr. Gary Anthone is on there, too. So air quality, water quality all has to do with health. Right? Department of Agriculture, that makes sense. Right? And so-- so I understand why the Legislature had those department directors placed on the board.

J. CAVANAUGH: I-- I-- I could keep going if nobody else has any questions.

BOSTELMAN: Senator Moser.

MOSER: Coming into this, are you able to fairly consider projects without using, maybe, preconceived notions about what's an environmental issue that needs to be funded? I mean, would you be against something that helps the quality of the air and favor something that helps the quality of pheasant habitat or eagle habitat or--?

MARK QUANDAHL: Again, it's kind of a discretionary question, you know. I'm-- I'm pretty much, you know, tabula rasa. I'm-- I'm-- I'm-- I'm the new guy. Right? And so I'm just first entering into that. So I'd say anything is a possibility. I understand, you know, there's constitutional provisions that deal with the Environmental Trust. There are statutory provisions, there are rules, there are policies-- as long as it fits in that bucket.

MOSER: OK. Thank you.

BOSTELMAN: OK. Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. have a real quick question, and I don't know if it's real fair because you're coming on brand new. But you know, with what I used to call it in my profession-- the swamp-- or not, I but-- but you know, the soil, water, air, plants and animals, concept of everything, you know, into the environment, how is the ranking utilized as far as the biggest bang for the buck? You know, we-- we get-- where we're-- we get to bring in sole plants and animals versus just water, you know? And could you just-- and this might not be fair either-- but what-- what other kind of projects,

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what type of projects rank high or would rank high in this ranking scheme? You know, I know we talked easements; I'm familiar with easements. wetland reserve programs, stuff like that. But what other-- what other kind of projects rank in [INAUDIBLE]?

MARK QUANDAHL: Yeah, it would-- and-- and I think it's a fair question. I don't know that I can answer that. But I mean, I can tell you the one-- one-- I believe it was the city of Tekamah have a number of water wells around. And so one of their projects that they want is they were going to cap those off so that they didn't have the back flow in them. Water quality, right? So something like that. And I think, you know, if you look at how the Trust is operating right now and how it's going to operate in the future, I mean, right now it's lottery funds. Right? And with-- from last November, gambling in Nebraska is going to change over the next couple of years. And in other states where that's happened, lottery participation and the funds provided by the lottery are going to decrease, I think, anywhere from 10 to 40 percent. We can-- we can expect that once the casinos open up. And so we're going to have to do more with less. Right? And that's-- that's something where we're really going to have to sharpen our pencil to make sure that we take the resources that we do have and get the most impact, to get the most bang for the buck for the citizens of Nebraska out of the Environmental Trust.

GRAGERT: Thank you.

BOSTELMAN: OK. Senator Cavanaugh.

J. CAVANAUGH: I'm going to try and wrap it up, but I really do appreciate you being here. Thank you, Chairman Bostelman. Thank you, Mr. Quandahl. And I'm really having a good time talking with you, so hopefully we can talk some more later. Just sort of a statement, I agree with your statements about the--the department heads. Perhaps they just don't get to vote. They could be there to consult, but not voting. That's-- but that's not your purview. That's just my thought for this conversation. Did-- you were appointed to fill a unfilled term. Did you apply to that? Were you recruited? How did that--?

MARK QUANDAHL: I applied; I applied. I went-- you know, how it-- how it works is you go and you-- you-- you fill out the application, the boards and commissions application on the-- on the Web site. So that's how. So as far as-- far as recruited, no. I retired as director of the

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Department of Banking and Finance in September. And that's one of the things is that, you know, five and a half years at the department, I got to tell you, that was the greatest job I had. I really-- I really enjoyed it. And one of the things that I have is, I have a penchant for public service. Right? And so just in looking around for public service opportunities, this was one that presented at the time, and it was available. And also, too, it's an area in which I have a great deal of interest. And so that's-- that's how it happens.

J. CAVANAUGH: So you were on the lookout for some way to be of use.

MARK QUANDAHL: You got it.

J. CAVANAUGH: You heard Mr. Davis talk about the necessity for greater diversification. Obviously, that may require some kind of active recruitment of other folks. Do you have any thoughts on how we could the next-- next round, next time there's a vacancy, we can maybe reach out to more folks out from western Nebraska, more people with different backgrounds?

MARK QUANDAHL: Not really. But I'll just say I'm-- I'm-- my-- I'm the-- I'm a 2nd District representative. And so it's pretty hard for me to live west of Hastings and be in the 2nd Congressional District.

J. CAVANAUGH: And I would never ask you to.

MARK QUANDAHL: No.

J. CAVANAUGH: But I appreciate it. Thank you.

MARK QUANDAHL: Sure.

BOSTELMAN: OK. Thank you. Thank you, Mr. Quandahl, for your testimony. And we'll see if there's any proponents. Thank you. I would ask now if anyone would like to testify in support of Mr. Quandahl's confirmation to the Nebraska Environmental Trust Board. Seeing none, would anybody like to testify in opposition to Mr. Quandahl's confirmation to the Nebraska Environmental Trust Board? Seeing none, anyone like to testify in the neutral capacity? Seeing none, that will close the hearing on the confirmation hearing on Neb-- Mr. Quandahl for the Nebraska Environmental Trust Board. Next we will open the hearing on Mr. Thomas Knuts-- Knutson for the Nebraska Natural Resources Commission. Sorry, before I interrupt on the-- there were two

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letters-- testimony, written testimonies-- on Mr. Quandahl's, proponents of support by Mr. Mark McHargue of the Nebraska Farm Bureau and by Mr. Roger Berry of the Nebraska Ethanol Board. With that, we'll open the hearing on the confirmation of Mr. Thomas Knutson. Thank you.

THOMAS KNUTSON: Thank you, Mr. Chairman. My name is Thomas Knutson, T-h-o-m-a-s K-n-u-t-s-o-n. I'm from St. Paul, Nebraska. I first got appointed to the Natural Resource Commission in 2010, and I'm up for reappointment. I've enjoyed serving on the commission, and we still have a lot of work to do. My background, basically, is that I do represent surface water on the commission, and I'm a former general manager of irrigation districts in central Nebraska, and at Farwell, Nebraska, for the Farwell-Sargent Irrigation Districts and the Sherman Reservoir. I spent 29 years there. And other backgrounds that I serve on in that National Water Resource Association board of directors in Washington, D.C., for the western states in the United States. And I represent the Irrigation Caucus and was chairman of that caucus for 17 years. I can say that there's a lot of things that I think we do that are important in regard to our water sustainability grant program for the commission, and we feel that we do the best we can with the dollars that are available. Normally that-- that a dollar amount is around \$10 million. And it's an interesting process, as you serve on the scoring committee, to review the project proposals for grants and things of that sort, which I've done about three times. But all in all, I can only say that my interest is to continue to serve on the commission, representing surface water. And I'd be happy to answer questions if you have any.

BOSTELMAN: Thank you, Mr. Knutson. Are there any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Mr. Knutson. I'll try and be a lot briefer with you than I was with Mr. Quandahl. Just as it pertains to the grants that-- the water sustainability grants, could you just describe the processes of the similar that-- that Mr. Quandahl described about a scoring-- objective scoring process and then going on by the whole committee?

THOMAS KNUTSON: Yeah, there's a scoring committee that's appointed by the chairman of the commission, and that scoring committee actually gets together once a year to review all the project proposals. And having served on that committee, we sometimes are there for two days,

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and we go through quite a-- quite a scoring process to make sure that, basically, we're fair to all the project proposals that are presented to us. And any event, the individual-- individuals that are scoring it may end up changing their minds as far as some of their scores, as a result of going into, basically, a committee discussion about, well, I think this project does score higher here. And you may not agree with me but, after listening to my proposal or my thoughts, all of a sudden you might say, I think I'll change my score. And subsequently, that whole committee process changes the score for the scoring committee.

J. CAVANAUGH: That's in the committee process.

THOMAS KNUTSON: Right.

J. CAVANAUGH: After you vote on a recommendation to the whole body, they can vote to adopt or change that recommendation.

THOMAS KNUTSON: Right.

J. CAVANAUGH: How often do you-- do you-- or do you know how often they diverge from the recommendations of the grant committee?

THOMAS KNUTSON: I think, from my experience, I can only remember one time where we thought, as a-- as a commission, as a whole, that we ought to take a look and change the score on one of the projects.

J. CAVANAUGH: Do you have a recollection of what that was about?

THOMAS KNUTSON: No. No, I don't at this point.

J. CAVANAUGH: And I can ask my next question, because it really-- as a matter of course, what-- what is the purpose of the grants? What purpose are they supposed to serve?

THOMAS KNUTSON: Well, basically, the entities or groups that provide applications are normally natural resource districts, sometimes irrigation districts, sometimes for water-type proposals and sometimes private entities that-- that are concerned about sustaining water within the rivers and the creeks within the state. And so what we do is, we review those proposals or the project proposals. And again, the scoring committee has a-- it's a scoring process that we go through to determine whether this one outscores this one, etcetera.

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J. CAVANAUGH: And then the determination of how much to give has to do
with the scoring, coupled with the amount of money available?

THOMAS KNUTSON: Right.

J. CAVANAUGH: OK. Thank you.

THOMAS KNUTSON: You bet, Senator.

BOSTELMAN: Other questions from the committee members? Seeing none,
thank you for being here today.

THOMAS KNUTSON: You bet. Thank you.

BOSTELMAN: What is-- I would ask anyone who would like to testify as a
proponent in support of Mr. Knutson's reappointment to the Nebraska
Natural Resource Commission, please step forward. Seeing none, would
anybody like to testify in opposition? Seeing none, would anybody like
to testify in the neutral capacity? Seeing none, this will close a
hearing on Mr. Thomas Knutson's reappointment to the Nebraska Natural
Resource Commission. Thank you for coming in today. Next, we'll open
the confirmation hearing on Mr. Greg Moen, of the Nebraska Power
Review Board. I believe this is a reappointment. Please step forward.
Good morning.

GREGORY MOEN: Good morning. Thank you, Mr. Chairman and members of the
Natural Resource Commission. Can you hear me?

BOSTELMAN: We can. It's a little difficult, but--

GREGORY MOEN: OK.

BOSTELMAN: --speak up and you'll be good.

GREGORY MOEN: Yes. My name is Greg-- Gregory Moen, G-r-e-g-o-r-y
M-o-e-n. A little background in my-- from from-- about myself. I grew
up on a farm, South Dakota. I went to South Dakota State University,
received a B.S. in electrical engineering. My first job was in Texas,
working for an industrial facility as an electrical engineer for 11
years. And then I got a job in Norfolk, Nebraska, working for Nucor
Steel, and I've been there for almost 20 years now. I hadn't really
served in any public service other than church boards, church
president, things of that nature. And my kids were all grown, so I was

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at a point in my life where I could look at some public service and, being an electrical engineer, I've always-- and worked with utilities, always had a little-- little interest in that. So there was a vacancy available in 2017, which I was confirmed for and been on the board ever since. So I'd like to be reappointed for another term. I've learned quite a bit, and I believe I've added some value to that board. My goals are really quite simple, just to make sure that the state of Nebraska is getting safe power, that we're following the rules of the Legislature, the state of Nebraska statutes, and to make sure we're doing it in the most economic and environmentally friendly way.

BOSTELMAN: OK. Thank you for your testimony, Mr. Moen. Is there any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Mr. Moen, and thank you for your service. Can you just give us a brief overview of what the Power Review Board does?

GREGORY MOEN: Yeah, mainly we're overseeing the public utilities and when there-- there's changes of supply agreements. So Nebraska is completely served by public power. So we have several public utilities that serve all of our customers. And there's service agreements between those power companies on who's going to serve what customers, so to speak. Sometimes that changes, and that will come before the Power Review Board for approval. We also would approve public power generation facilities that are being-- being built.

J. CAVANAUGH: So you guys have probably had a lot busier last decade than the decade before that, really, with the distributed generation of the solar or the wind.

GREGORY MOEN: I don't-- I-- guess I don't know the previous dec-- I mean, we don't do private-- we don't approve private generation of wind facilities.

J. CAVANAUGH: OK. You don't have a role in that?

GREGORY MOEN: But there is-- it is changing lands. I mean, there's a lot-- a lot of change. It is different. The landscape is different today than ten years ago, that's for sure. And with the-- Nebraska is now part of the Southwest Power Pool and has been for a while. So--

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J. CAVANAUGH: Do you have a role in ensuring that the high capacity transmission from those wind farms is sufficient or is that not part of your purview?

GREGORY MOEN: We don't. When you say it's sufficient, the wind farms are sufficient, we don't really look at that in particular. We do get an annual report from the utilities, making sure that they can supply the needs of Nebraska, that you know, that they have the-- enough generation to supply the needs and are-- and are looking out in the future that they can meet the future needs. We do look at that, but we don't individually look at wind farms and say we have enough of them.

J. CAVANAUGH: Well, I'm not asking about the capacity of that. I'm just asking-- one of the oppositions to wind farms is generally the transmission lines required to connect those to the general power grid. I'm just asking, do you have any role in the siting of those, in the oversight of those, making sure that they are sufficient to connect those projects, even though you don't have oversight of that project, connecting that project to the grid in the broader grid?

GREGORY MOEN: There's a-- there's a connection agreement that the utilities would work with the wind farm, that there's an agreement of that. Other than that, I don't think we get involved unless something comes before us from a utility saying we need to, I would say.

J. CAVANAUGH: So somebody brings you in.

GREGORY MOEN: Yeah. I haven't-- my experiences really haven't been involved in that. So--

J. CAVANAUGH: Thank you.

BOSTELMAN: Other questions from committee members? So do you get a briefing or a-- I guess an annual report or from-- something from the SPP? Do they come up and-- or do you have a representative from Nebraska--

GREGORY MOEN: Yeah. The Southwest--

BOSTELMAN: --from-- on the-- on the SPP? Right.

GREGORY MOEN: Yes. The SPP will provide us an annual report, as well. The utilities provide us one and SPP will-- will give us one, as well.

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BOSTELMAN: And is there a representative either from the-- from the PRB or in the state that sits on the SPP?

GREGORY MOEN: Yes, one of our board members, Dennis Grennan, has-- he serves on some of those committees. We also have-- we also have a contract with an engineering firm that was established when Nebraska joined the Southwest Power Pool to make sure Nebraska, Nebraska is being included, and representing Nebraska to make sure that we're being treated fairly. It's a very complicated process. I'm, you know-- I think that was a wise move to make sure we have somebody that understands the power utility industry and regional transmission organizations industry to represent us and and make sure we have a voice in that.

BOSTELMAN: OK. Thank you very much for your testimony today. I think we'll see if there's any proponents. Thank you.

GREGORY MOEN: Thank you.

BOSTELMAN: I would ask anyone who'd like to testify as a proponent in support of Mr. Moen to be reappointed to Nebraska Power Review Board, please step forward. Any proponents? Seeing none, would anyone like to testify in opposition to Mr. Moen being reappointed to the Nebraska Power Review Board? Seeing none-- seeing none, is there anybody who'd like to testify in the neutral capacity? Seeing none, that will close the reappointment hearing on Mr. Moen for the Nebraska Power Review Board. I will now turn the committee over to Vice Chair, Mr.-- Senator Moser.

MOSER: Thank you, Mr. Chairman. We will open the hearing on LB507. Senator Bostelman is the-- how many people are here to testify on this bill today? One, two, three, four. Does the committee have a feeling on whether we should allow five minutes for them to speak or three? Five, you think is fine? OK. Seeing no other objections, we'll consider testifiers speaking five minutes then. Senator Bostelman.

BOSTELMAN: Good morning, Vice Chairman Moser and members of Natural Resources Committee. My name is Bruce Bostelman, spell that B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. I'm here today to introduce LB507, which would prohibit the use of treated seed corn in the production of ethanol if the resulting byproduct, commonly known as distillers grain or wet cake, cannot be fed to livestock or

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applied to the land. I am bringing this bill as I've been made aware of at least one ethanol plant in the state that is using treated seed corn in the production of ethanol. The byproduct resulting from this process cannot be fed to livestock, nor applied to the land, due to the chemical residue that remains and has become an environmental concern. Mature-- material is currently being stored on the property of the ethanol plant. To give you an idea of the amount of byproduct being stored, I've passed out some photos for you. There's three photos. On the first photo I have marked, with an orange highlighter, the byproduct being stored adjacent to the large white buildings. Those buildings are about three stories tall, and that cover-- covers several several acres of ground, which is this-- the second is the-- I've also highlighted with orange, the distillers grain or byproduct that's there on the ground south, as you look at it, on the other side of the lagoon, with the ethanol plant beside it. And the third one is a photo that is from the ground level of the photo, of the distillers grain or the byproduct that sits on the ground. And these photos are not my photos. They are photos that we received in different ways, just for that information, that have been provided to us. I think one is by Dr. Wu-Smart, who may be here today to testify. 40 CFR 180.586 and 40 CFR 180.565 provide for the maximum amount of residual for clothianidin and thiamethoxam. They're both insecticides that can be on a specific commodity before it presents a health hazard. These two chemicals are designed to be persistent in the environment and have been found present, in unsafe levels within the byproduct, at this location, resulting in it not being able to be fed to livestock or to be applied to the ground. I would mention that several seed companies provide labels for their treated seed corn, which states that-- that excess treated seed corn can be used in the production of ethanol only-- only if the byproduct is not used for livestock feed and that no measurable residues or pesticide remain in the byproducts that are used for agronomic practice. In an effort to dispose of the large quantities of distillers grain that are being produced, the company was selling the byproduct to local farmers who were applying it to their land as a soil conditioner. This product was found to be 85 times-- eighty five times the maximum allowable-- the maximum annual field load allowed by typical registered pesticides. As noted in May 2019, you'll notice on the handout that I gave you of the notice of violations which begin-- which begins in 2018, and they go through October 2020. But May 17, 2019, is-- is when the Nebraska Department of Agriculture was issuing a stop-use and stop-sell for the soil

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conditioning. The product was in violation of the Nebraska Commercial Fertilizer and Soil Conditioner Act, as the product contained commercial fertilizers and/or pesticides. The byproduct has been classified by the Department of Environment and Energy as a special waste and must be disposed of at a lined landfill. The byproduct was taken to a local landfill that has now refused acceptance. Without having the ability to dispose of the product-- byproduct, it is now being stored on-site, causing concerns of water contamination and other environmental impacts. I would like-- I would ask for your support in the elimination of the treated seed corn in the production of ethanol. This process is not environmentally safe, nor is it commonly used in the production of ethanol. By eliminating the use of the treated seed corn, we can make certain that ethanol producers do not use treated byproducts now and will not use them in the future. It will be-- it will prevent potential harm to the environment of Nebraska. With that, I ask for your support of LB507 and its advancement to the General File. And I'll answer any questions that you may have.

MOSER: Questions for Senator Bostelman from the committee? Mr. Gragert-- Senator Gragert, sorry.

GRAGERT: Thank you, Vice Chair Moser. Thank you, Senator Bostelman. I was just wondering-- my first question is, is there anyone that you know of, from the Nebraska Department of AG, following you?

BOSTELMAN: Not that I know of.

GRAGERT: OK. So maybe I'll ask you the question then. This started in July 2018, and it's still going on as of October then. And is this still out there, your pictures?

BOSTELMAN: It's still operating.

GRAGERT: I was just wondering, what's the timeline on getting rid of this? Do they have any authority for making them move that-- or address it?

BOSTELMAN: The removal of the material on the-- that's being stored on the facility now is-- the Department of Environment and Energy has given them until the first of March, of this year, to remove it all.

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GRAGERT: And if that doesn't happen, it's cease and desist? Or what--
what's the plan? What's the condition of the plant right now?

BOSTELMAN: I believe that the-- the plant, I believe, that that goes--
perhaps may go to the Attorney General's Office for action.

GRAGERT: OK. Thank you.

MOSER: OK. Other questions? Senator Hughes.

HUGHES: Thank you, Vice Chairman Moser. So as-- what do other states
or what do the seed corn companies do with their leftover seed corn if
they don't use it for ethanol? Is there another process? Or how is it
disposed of? I'm sure it's not all coming to Nebraska.

BOSTELMAN: Incineration.

HUGHES: OK.

BOSTELMAN: There's two-- there's two other plants, small plants, do
small quantities, I believe in Kansas, that do it, but basically
it's-- it's incineration.

HUGHES: So incinerating the byproduct or incinerating the seed corn?

BOSTELMAN: The seed corn.

HUGHES: OK.

BOSTELMAN: And-- and also, it's my understanding that the-- the seed
corn companies are-- are changing that on the production of that.
And-- and instead of-- I think previous years, they may have treated x
tons of-- of seed before orders came in. Now they're doing it--
they're moving to do it more by demand. So the-- the amount of excess
treated seed corn should be reduced in the near future.

HUGHES: OK, thank you.

MOSER: Other questions? Seeing none, thank you, Senator. Are you going
to stick around and close?

BOSTELMAN: Yes, Thank you.

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MOSER: I hope so. OK, other proponents, supporters that would like to testify? Welcome.

LORAN SCHMIT: Thank you, Senator Moser. I have a tendency not to speak too clearly anyway, and this mask doesn't help you any more. So I'll try to be more outspoken, I guess. I wanted to thank Senator Bostelman for introducing this bill.

MOSER: Name and address, and spell your name, please.

LORAN SCHMIT: I'm-- pardon me. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t, from Bellwood, Nebraska. And again, I appreciate the introduction of this bill. Approximately 30 years ago, surplus seed corn was offered to the ethanol industry in Nebraska. At that time, NDEQ officials and ethanol producers immediately rejected the offer, which is because it was NDEQ at that time. And the NDEQ--none of the-- none of the NDEQ representatives indicated that they had a problem not being able to prohibit the use of the material. I was given to understand that they had to approve it. And as time went on, the-- until 2015, I was-- actually it was the ethanol industry-- and I never heard another offer of surplus seed corn being made to an ethanol plant. The ethanol producers were very jealous of protecting the distillers grain that they provide to the livestock industry in Nebraska. They had a good market there. The ranchers and cattle feeders depended upon it. And any ethanol producer that I've spoke said they absolutely would not take a chance prohibiting-- or pro-- would not take a chance to use a contaminated source in their plant for fear of contaminating the plant and never being able to clean it up. And so the-- during the next 25 years that I worked with the ethanol industry, it never did-- the issue never came up again, and I never heard from another seed corn company. I became very concerned when I heard about the problem at the Mead plant, and I'm very pleased that Senator Bostelman has introduced a bill and that it contains the emergency clause. I think it's important that the practice stops and stops immediately. I also urge the NDEQ to use their authority to stop further contamination and to prevent further problems-- potential problems, either with the health of the local people or the underground water or with contamination of the soil. The Mead area already has a problem with underwater-- underground water contamination that resulted from the disposal of chemicals when the federal government operated the Ordnance Plant there during World War II. We've spent-- the government has spent millions of dollars, tens

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of millions, cleaning it up. And it's been-- it will never be cleaned up in the lifetime of many of us in this room. And so we do not need another problem. And I understand Senator Bostelman said that the land use-- landfill at David City does not want to take any more of this residue. I hope that they will not bring it there. We do not need that problem in the Platte Valley. And I think, Senator, you'll agree with me that the underground water in Nebraska, Platte Valley in particular, is very important to the state and to-- and to our nation. If the-- if the distillation problem is causing health problems, that should be remedied immediately. And I would hope that the NDEE would be perhaps more aggressive in enforcing the rules and regulations. I worked with many ethanol plants on construction permits. I never saw an ethanol plant construction permit approved that did not provide a satisfactory disposal plan for their waste, either solid or liquid. And I don't know how that plant could have been approved for operations without having an adequate disposal program, as has been discussed by Senator Bostelman. They-- whatever they planned hasn't worked and ought to be terminated immediately. I would make several recommendations: immediate termination of the use of the seed for ethanol production; identify all areas where waste has been discarded, both who-- both solid and liquid; terminate any activity that might pollute the underground water; test the waste which was incinerated and determine the level of contamination remaining, if any. If that process works, then that should be used. I do not have any information as to the efficiency of the incineration. I understood, by the news article, that it was stored off-site, so that should be investigated.

MOSER: OK. Thank you very much for your testimony. Senators from the committee have any questions for Senator Schmit? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Mr. Schmit, for being here. I just-- yes, obviously you have a lot of knowledge and expertise. I just-- what's the basis of your knowledge? You didn't--

LORAN SCHMIT: Pardon?

J. CAVANAUGH: You didn't say what your background is. I'm just curious what your basis--

LORAN SCHMIT: Well, I've--

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J. CAVANAUGH: --of the knowledge is.

LORAN SCHMIT: --been a farmer all my life, a cattle feeder. I had an aerial application business, and flew helicopters for many years and provided agriculture-- agricultural services in-- from the Gulf of Mexico to-- to Canada and from the Rockies to the Mississippi River. I operated a gambling business for a while until my colleagues put me out of business back in 1984. And 35 years later, this Legislature has reinstated that business. And I hope now you tax it properly, that I was when I was operating it. Never overestimate your friends, and never underestimate your opposition. The-- let's see. Yeah, my family and I operated a hotel casino in Deadwood, South Dakota, when it became legal up there. We restored the Bullock Hotel, and my family-- I have seven daughters and three sons-- and six of them were up there operating that hotel. And I guess that just about takes care of it.

J. CAVANAUGH: Thank you. Thank you for your testimony.

MOSER: Well, despite the length of the answer, there are a couple of good points that he might have omitted. He served in the Legislature for two terms.

LORAN SCHMIT: For 24 years.

MOSER: OK, 24 years. Well, divide that out, it's a bunch. And he was really-- Senator Schmit was really involved in the birth of ethanol. So he's got-- and he was head of an ethanol group of some kind for a long time.

LORAN SCHMIT: Yes.

MOSER: So he was being a little modest there, discussing his capabilities. Any other questions?

GROENE: I've got one, Senator.

MOSER: Yes, Senator Groene.

GROENE: I've always admired your wisdom, Senator Schmit-- over here. I learned from you just now: never leak your resume about that you were a politician.

LORAN SCHMIT: Wasn't very successful, Senator.

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GROENE: What's that?

LORAN SCHMIT: I wasn't very successful. I got bounced out after 24
years.

GROENE: Anyway, we've had conversations earlier when I first got
elected, and they didn't get me yet. But anyway, that's between me and
you. But anyway, couldn't they distill the-- the-- this-- the grain is
there-- get the ethanol out of it, because I-- I don't see the problem
with pollution there. And then on site, bring an incinerator in and--
and get rid of the humus or the byproducts.

LORAN SCHMIT: I don't know, Senator, why they have not had an
effective disposal [INAUDIBLE] operation-- in operation now, and it's
been operating for several years, two or three years. And all of the
permits that I ever worked with had to have an effective, approved
disposal plan for waste, and they had-- had to be approved by the
NDEQ-- and now it's the NDEE-- or else you wouldn't get a permit. I
don't know how these gentlemen got that permit.

GROENE: Well, that's a question, that leads to a question, sir. A
normal ethanol plant, you've got your ethanol and then you've got your
humus, or whatever, and that's fed to cattle. What is the waste? Then
what is left that you would consider a waste from a normal ethanol
plant?

LORAN SCHMIT: There is very little waste, Senator, but there is water
that has to be disposed of. And the distillers grains is a very
valuable feed additive. Cattle feeders have told me, when the
transportation system slowed down because of the pandemic, the need
for ethanol dropped and the production of distillers grain declined.
And many cattle feeders were unable to get that for their rations. I
didn't get many complaints from people who ran out of ethanol, but I
got complaints from ranchers and cattle feeders because they ran out
of distillers grain. It's a very effective additive, and it's not a
waste product; it's an important product. And the ethanol industry has
created to the success of the livestock industry in Nebraska to the
point that we have replaced Texas as the number one cattle-feeding
state in the nation. And so the ethanol industry is very protective of
that and very cautious in any system that might cause reluctance to
use their product. They've got enough trouble selling ethanol-- or to

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the oil companies-- without trying to-- without doing something that
might lose their cattle feeder market.

GROENE: Thank you.

MOSER: OK, other questions? OK. Seeing none, thank you, Senator
Schmit.

LORAN SCHMIT: Thank you, Senator; appreciate it.

MOSER: Yeah. Appreciate your coming to our hearing today. Next
proponent?

JOHN HANSEN: Vice Chairman Moser, members of the Natural Resources
Committee, good morning. My name is John Hansen, J-o-h-n; Hansen,
H-a-n-s-e-n. And I am the president of the Nebraska Farmers Union. And
I wanted to also point out, Senator Moser, that Farmers Union worked
for some years to raise the visibility of-- and the-- sort of educate
the public about the benefits of ethanol. And we did work with Senator
Loran Schmit, who was the chair of the Ag Committee, and he brought
the original legislation to create the Nebraska Ethanol Board in 1971.
So there isn't anybody who has done more for ethanol in the state,
over a longer period of time, than Senator Schmit. And we-- we agree
with his analysis of this history and this situation. We regret that
it exists. I share his-- is questioning how it is that they're able to
operate and how it is they got the permit. I remember the discussions
that we had 30 years ago, about whether or not the ethanol industry
should ever get into the business of using seed corn as a fuel stock
in the first place. And it was generally agreed by everyone it was
just a bad idea for a whole host of reasons, most of which Senator
Schmit already has described. And so because of the way that this
situation has drug on for such a period of time without resolution, we
thank Senator Bostelman for bringing this bill forward, and we hope
that this helps force the issue. But it is an issue that, I'm sure,
Senator Bostelman's phone has rang a good deal over this issue; mine
has, as well. A lot of folks have been very concerned about the impact
on groundwater, on bees, on human beings in the neighborhood. So this
is not a good situation. It is something that does require, I think,
appropriate and immediate action. And so we would suggest that you
move it up to the top of your consideration, and we thank Senator
Bostelman for bringing this forward. And unfortunately, this bill is

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needed. And with that, I would end my comments and be glad to answer
any questions, if I could.

MOSER: OK. Questions for Mr. Hansen from the committee? No questions,
but thank you for coming to testify today.

JOHN HANSEN: Well, I think Senator Schmit answered all the questions
today, Senator. Thank you very much.

MOSER: Yes, thank you. Next proponent.

JODY WEIBLE: Hi, my name is Jody Weible, J-o-d-y W-e-i-b-l-e. I'm from
Mead. I live approximately three quarters of a mile northwest of the
ethanol plant. I have been fighting, with everything I have, since
2018, to get something done. Thank you for giving me the opportunity
to speak. There is tens of thousands of tons of this toxic waste
sitting on the ground with no barrier; there's no plastic, there's no
cement. Our well is 40 feet deep, our water well is 40 feet deep. That
toxin is going to leach into that aquifer. That's going to take
Ashland's water, Gretna's water, West Omaha, Lincoln, and further on
down. The NRD has consistently refused to do anything. They say they
can't do anything till the water's contaminated. That's closing the
barn door after the horse is out. You have to prevent the
contamination. And it is out of control. I have met with the general
manager of AltEn. I have gotten nowhere. He assures us this is a 100
percent safe byproduct that they can feed to cattle. It cannot be fed
to cattle. It is poison. They spread it on the field within a mile of
my house. I have coughed for three years. It's environmental. The
neighbor next to me, her daughter had pus dripping out of her eyes. It
was environmental. I have a letter here from a Paula Dyas. She's a
senior scientist at Merck Animal Health in Elkhorn. Her dogs went into
a field with this stuff and had severe neurological issues for quite
some time. She said that it's currently processing pesticide-treated
seed corn for ethanol. The wet cake or distillers grain generated from
this process is not allowed to be fed to livestock due to potential
carryover. To my knowledge, little research has been done to determine
the levels of pesticides that can be found in this distillers grain,
following this type of ethanol production. We need to understand the
environmental impact, and the environmental impact is huge; it is
humongous. It will-- there's people with nice lake homes just directly
southeast. Everything will be affected, and nobody has helped us to
date. And I just beseech you to please-- Senator Bostelman has been

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great. We've had meetings with him. He's gotten us together with the
heads of departments of NDEE. But nothing gets done, and we really
need it to be done as soon as possible.

MOSER: OK. Thank you. We have questions for the testifier from--
Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chair Moser. And thank you, Miss Weible,
for being here. I'm really sorry this is going on right by your house.
Obviously, you're here in support of this bill that will stop the--

JODY WEIBLE: Yes, sir.

J. CAVANAUGH: --forward production. Do you have, I guess, thoughts
about how, going forward, 'cause it's-- this is not necessarily going
to eliminate the--

JODY WEIBLE: No, I'm afraid they will go bankrupt and leave it sit
there. And the town of Mead is 600 people. We don't have the funding
to be able to do anything to get rid of it. I don't know what they can
do, but they have to be forced. They've been in violation of their
lagoons for two years. They still don't have them repaired.

J. CAVANAUGH: When did you have the conversation that-- with the
manager that this was safe for animal consumption?

JODY WEIBLE: 2018.

J. CAVANAUGH: OK. So they-- from my understanding of what Senator
Bostelman presented, is that they were at least-- we know they were
told on May 17, 2019, I think. So it's potentially possible that they,
at that point, thought it was.

JODY WEIBLE: No.

J. CAVANAUGH: OK.

JODY WEIBLE: No. I lost my train of thought-- terribly nervous up
here.

J. CAVANAUGH: You're doing great.

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JODY WEIBLE: Thank you. It-- the original ethanol plant, not this one, the original one that the town of Mead gave a permit for, and I was on the planning commission. I was the chair of the planning commission for years. I was on the planning commission for 24 years. The original permit was for someone that was going to use the methane gas from the cow manure to power the ethanol plant, and then the leftover from the ethanol plant would be fed right back to the cattle and it would be a self-sustaining entity. When they went bankrupt, it was gone for a while. And then this new company came in, and they were going to use corn. No one knew that you had to make them to specify field corn because we've never heard of seed corn. So they got a permit from the town of Mead to do this. We had spot annexed the first company for TIF regulation. So that's how they got their permit from us. I don't know what they did when they got it from DEE.

MOSER: So--

J. CAVANAUGH: So--

MOSER: Sorry, go ahead.

J. CAVANAUGH: So this bill would prevent a repeat of this particular [INAUDIBLE].

JODY WEIBLE: Exactly.

J. CAVANAUGH: Thank you.

MOSER: Other questions? Senator Groene.

GROENE: So when did you first see the first green corn show up? Or how long has that been operating?

JODY WEIBLE: They started spreading in 2018, and that's when-- it was before they started spreading that I started to complain.

GROENE: So about 2017. How long have they owned it and started operations?

JODY WEIBLE: I believe they took possession in 2015, but I'm not positive.

GROENE: Started operating right away with regular corn.

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JODY WEIBLE: That's what I was under the impression. And they have two big, big buildings, the three-story-tall buildings that are full of seed corn waiting to be processed.

GROENE: Thank you.

MOSER: Other questions from the panel?

JODY WEIBLE: I have a petition here that we put out online. There's over 700 signatures from people that are supporting--

MOSER: Give that to the clerk as you go out then,--

JODY WEIBLE: OK.

MOSER: --and we'll put that into the record.

JODY WEIBLE: That's it.

MOSER: Thank you very much. Other proponents of this bill that would like to testify? Welcome back.

AL DAVIS: Thank you. Always great to see Senator Schmit and hear his history. I learned a lot more about him today that I didn't know from prior times-- remarkable man. And thank you for your service, Senator. Chairman Moser, members of the Natural Resources Committee, I'm Al Davis, A-l D-a-v-i-s, and I'm testifying today as the registered lobbyist for the Nebraska Chapter of the Sierra Club, in support of LB507. We want to thank Senator Bostelman for bringing this bill. LB507 may be one of the most important bills introduced in the body this year, because the so-- issues associated with the AltEn Ethanol Plant are extremely concerning and a threat to wildlife, domestic animals, and perhaps the residents of Mead. Simply put, the state of Nebraska must prohibit the conversion of pesticide-treated seeds into ethanol unless there is a safe disposal system for the neonicotinoids and other pesticides like those which are accumulating today at the Mead site but could pop up at any other ethanol plant which chose to convert this seed to ethanol. The use of neonicotinoids is relatively new in the world. The use of these pesticides began in earnest sometime in the 1990s, and very little research has really been done on the ramifications of the use of this pesticide and what types of damages might-- it might do over the course of several years. However, enough studies have been done to demonstrate that the use of these

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pesticides is not without risk. And there is the potential for grave damages to the bees and other insects which fertilize our crops and are responsible for much of the food that we eat in this country. Many other countries have placed severe restrictions on the use of neonicotinoids. And Canada put in a partial ban in 2018, as did the European Union, because enough research studies and documented anecdotal evidence demonstrates that neonicotinoids are toxic to invertebrates, insects, birds, and mammals by binding to central nervous system cell receptors. If a significant quantity is ingested, paralysis, twitching, lethargy, and death will often follow, which is why feeding the byproducts to livestock is prohibited. Birds consuming only minute amounts of neonicotinoids, as little as three canola seeds, lose up to 17 percent of their body weight in six hours and take several days to recover from the consumption of the product. One result is the late arrival of the affected birds at a breeding site, which might preclude them from successfully producing chicks and contributing to the disturbing collapse in bird populations which have occurred in the United States since 1970. Research on neonicotinoid usage also shows that these pesticides are becoming much more common across the country, in farm ponds and in woody shrubs-- and shrubs and trees which abut these ponds. Invertebrates living in these ponds are consumed by birds or other insects. And the neonicotinoids travel up the food chain. Neonicotinoids are now found in 85 percent of all honey produced in the United States. A controlled experiment in Canada with does and fawns indicates that relatively low levels of neonicotinoids found in some farm ponds there are still capable of producing smaller, more frail fawns, with some facial deformity, in deer populations when the does drank from a controlled water supply in the experiment. It is obvious, from the information provided here, that the neonicotinoids can damage living creatures even in low-to-moderate doses. The massive amount of neonicotinoids which may have accumulated at the-- at the Mead facility must be addressed and removed before they contaminate the aquifer any further and require an expensive cleanup, which could go on for decades, to try and purge the area of neonicotinoid poisons. Residents of Mead and Saunders County should be very concerned that little has been done to date-- to date to stop production of ethanol from these treated seeds at this plant or to address the multiple violations documented by DEE. It is very possible that the cleanup costs will be 5 to 100 times the profit made by selling ethanol manufactured there. In the meantime, birds, bees, butterflies, frogs, toads, snakes, turtles, dogs, cats, rabbits, deer,

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and countless other animals are exposed to the toxic substance every day as they navigate around the fetid stockpiles of contaminated grain. There have been countless examples of poor management by both government and business in the handling of toxic chemicals. Often the first to show these effects are children with life-changing disabilities. We can't let that happen in Mead, and we must immediately cease the production of ethanol from pesticide-coated seeds at this plant and across the state of Nebraska. LB506 [SIC] is the first step in a long road to remedy at Mead. Rachel Carson's "Silent Spring" came out in 1962, about 20 years after DDT was developed as a miracle remedy. It took decades of research for the truth to come out about the drawbacks to the use of DDT and other pesticides of the period. We're now about 30 years into the use of neonicotinoids, and we're beginning to see what they do to creatures. Thank you, and I'd-- we appreciate your-- take any questions.

MOSER: Any questions? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser, and thank you for being here, Mr. Davis. And you might not know the answer to this, but your comment about "Silent Spring" made me think. Is the-- are these neonicotinoids a relatively new invention? So I guess my question is, why are they not currently regulated?

AL DAVIS: In my research on that, it looks like they were-- they were developed in the '80s and not really used extensively until sometime in the '90s. So on a typical [INAUDIBLE], when a farmer plants a field of seed corn that are treated with those, about 5 percent of the product is absorbed by the plant and 95 percent remains in the-- in the soil. So that's--[when you see these rising levels in these farm ponds and areas like that, that's because you're getting residue that remains in the-- in the field itself. But they start-- as to your question then, in the '90s, that was when they started to really become more common in usage.

MOSER: Go ahead.

J. CAVANAUGH: And this bill would solve this particular problem about these treated seed corn for all treated seed corn, not just treated with neonicotinoids. Correct?

AL DAVIS: Yes.

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J. CAVANAUGH: And it also would, I guess, conversely, would not address the use of the neonicotinoids as a-- is it a pesticide?

AL DAVIS: No. I-- I mean, I think that's something that we'll eventually see coming, probably from the federal level, you know, that-- that they're the ones that do most of the testing. It's a problem that the country is going to have to face. But what this will do is just stop the egregious examples of what's happened at Mead from going on. A couple of points I would like to make. One is, I did learn that this plant does process about-- over 95 percent of all the treated seed corn in the United States. I think there was an advertisement put out about that. So if I can find that, I'll get that to you and-- and so that the committee can have that. The other thing that I think is important in this bill, that needs to be looked at, is that, well, eff-- corn is largely what is used. Other seeds are treated with it. So this limits-- this bill limits it to seed corn. Maybe it needs to be broadened to say any seed that's been treated with these pesticides.

J. CAVANAUGH: OK, just one more.

MOSER: OK.

J. CAVANAUGH: Perhaps I don't know enough about ethanol. My impression of ethanol plant is that it is corn.

AL DAVIS: Ethanol is corn. Yes.

J. CAVANAUGH: OK.

AL DAVIS: But-- but, you know, other seeds, maybe other seeds are brought in, too. Those have to be disposed of, also.

J. CAVANAUGH: OK.

AL DAVIS: So I don't know whether those are going in the mix or not, but I think, if I were on this committee, I would be looking at broadening that definition a little bit so that we don't end up with another Mead somewhere else.

J. CAVANAUGH: I'm sorry. Could you say that again?

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AL DAVIS: I said I would probably broaden the definition to include--
to say seeds that have been treated in this way-- any seeds cannot be
converted into ethanol.

J. CAVANAUGH: OK, thank you.

MOSER: Other questions? Thank you, Senator. We appreciate your
testimony today.

AL DAVIS: Thank you, Senator Moser.

MOSER: Other proponents? We received 14 position letters on LB507, 12
proponents and 2 neutrals. The neutrals were from: the American Seed
Trade Association; Renewable Fuels Nebraska. The supporting letters
were received from: Audubon Nebraska, Kristal Stoner; Dana
Christensen; Debra Anderson; Julie Hindmarsh; Janece Mollhoff; Mary
Pipher; Nancy Meyer; Kristen Ohnoutka; League of Women Voters, Megan
Lyons; Mahmud Fitol-- I hope I pronounced that correctly; Nebraska
Wildlife Federation; George Cunningham; and from Trisha Etringer.
Anybody else to speak in support of this bill?

_____ : One thing I forgot to say.

MOSER: I'm sorry. You got your chance.

_____ : I know. OK.

MOSER: OK, thank you. Anybody here? One last call for proponents. OK,
anybody here to oppose this bill today? OK. Is there anybody here to
testify in a neutral capacity? We'll be around after the hearing. If
any of you people want to talk to the panel, you can. Greetings,
welcome.

JUDY WU-SMART: Hello. Thank you. My name is Dr. Judy Wu-Smart, spelled
J-u-d-y W-u-- hyphen-- S-m-a-r-t. I'm an assistant professor and
extension specialist at the University of Nebraska-Lincoln, at the
Department of Entomology. And I'd like to thank Senator Bostelman and
the committee for the opportunity to testify regarding LB57-- LB507,
the Ethanol Development Act. I'm testifying today in the neutral
capacity, and I'm acting in my own personal capacity, as an expert,
and not as a representative of the university. I run the UNL bee lab
and began my position in the-- well, I-- can I-- can I ask for a

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modification on the time? I know that this testimony might go a little longer.

MOSER: You have five minutes.

JUDY WU-SMART: OK. I'll-- I'll do my best.

MOSER: So I would get it in in five minutes, if you would.

JUDY WU-SMART: Oh, all right; thank you. I run-- I started my position in the fall of 2015. My appointment is equally split between research and extension education efforts related to pollinator health. More specifically, my research focuses on better understanding the factors contributing to managed bee colony losses and stressors to wild bee communities. These factors include: pest pathogens; nutritional stress; and pesticide exposure. Pesticide exposure, particularly insecticides, can cause an array of responses from acute mortality to critical high functions, including behaviors like foraging and mating. Furthermore, immune suppression in bees have been observed with exposure of pesticides, causing them more susceptible to pests and pathogens. Poor management can exacerbate these pests and diseases. Therefore, much of our research and extension training efforts have focused on addressing applied management issues and emerging issues within the beekeepers and agricultural crop production industries in the Midwest and beyond. We typically manage between 60 and 85 hives, situated approximately-- 10 research and teaching apiaries in Nebraska. Over the past three to four years, we've experienced consistent losses of beehives at our research apiaries at the Eastern Nebraska Research Extension Center, also known as ENREC, in Mead, Nebraska. Since 2017, we've lost every single hive-- a total of 36 hives, each containing roughly 40,000 to 60,000 bees-- placed on the property with zero percent annual survivability. For comparison, my predecessor, Dr. Marion Ellis, success-- successfully kept bees and made ample honey at ENREC prior to his retirement in 2013. These colony loss incidences have significantly impacted our program. Aside from the loss of bees, we've had to delay projects, replace equipment, and significantly inhibited our fundraising for student-led projects and extension workshops. On May 20th-- oh, I'm sorry. A placement of colonies at ENREC was necessary for funded projects after subsequently, investigations into timing, extent and duration of these losses ruled out on-farm practices and pesticide applications that occurred at ENREC as potential causes for our losses. Milkweed leaves

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collected from intermittent ditches yielded 3,000 to 5,000 parts per billion clothianidin, which is the highest known level from field-collected samples, while milkweeds closer-- closer to the fields had much lower levels, around 20 to 40 parts per billion, which led us to suspect that there may be pesticide contamination issues originating from the waterways, streams, ditches and channels running through ENREC. Clothianidin is a systemic neonicotinoid insecticide known to be highly toxic to invertebrates, including pollinating insects. To put these numbers in perspective, toxicological studies show monarch butterflies and honeybees are highly sensitive to clothianidin with LD-50 values-- or the value, the lethal dose killing 50 percent of the test population observed at concentrations around 15 and 40 parts per billion, respectively. However, developmental effects and behavioral impairments may occur as low as 1 part per billion. Systemic insecticide residues in water and soil-- soil may be translocated into all parts of plants, nearby vegetation, including the leaves, pollen, and nectar, all of which are critical resources for pollinators and beneficial insect communities. On May 20, I inquired with the Department of AG[-- Department of Ag Pesticide Division regarding the potential of city or county pesticide applications that might explain the losses. During these discussions, I was informed about the ethanol company located directly north of ENREC and approximately 1.1 miles from our closest apiary. Honeybees typically forage within a two to three mile radius of their hive. So this property is within the foraging range of our apiaries. On June 8, I met with NDA and EPA- both Region 7 and national program officers-- to discuss my concerns related to these bee incidences, and to seek assistance investigating causes for losses. The NDEE connected-- I connected with NDEE officials after that to discuss liquid discharge waste from lagoons, to determine whether milkweed contaminations could be related to practices originating from the plant. What we found, because I'm short on time, was that the NDEE samples from April 19 showed lagoon and overflow tanks found levels of neonicotinoids, including clothianidins, 10 times is what we found in our milkweeds, as well as several fungicides as high as 200,000 parts per billion. The solid wet cakes were 2 to 11 times higher than was detected in the lagoons.

MOSER: Ma'am, I think we'll stop here because the red light is on. We do have to be fair to all the testifiers and give them equal time. Possibly, senators' questions will bring out some of your comments to

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help fill out your testimony. Senators who want to talk-- somebody
besides Senator Cavanaugh [LAUGHTER]? Senator Groene.

GROENE: Oh, that's funny.

MOSER: We'll come back-- we'll come back to Senator Cavanaugh.

GROENE: He had it first, but I don't--

J. CAVANAUGH: Age before beauty.

GROENE: No, no.

MOSER: Somebody called him handsome the other day.

GROENE: Yeah.

J. CAVANAUGH: I was-- I was there sitting next to you.

GROENE: I'm waiting for the transcript so I can put that on my wall.
But anyway, I'm doing a little Internet research, which made it
meaningless; you're the scientist. But these-- I'm not even going to
try to pronounce it. But this chemical is a derivative of nicotine.
Right? Or--

JUDY WU-SMART: It is metabolite of thiamethoxam. But they are both
used as common products.

GROENE: But they're-- it's the nicotine family.

JUDY WU-SMART: It's nicotine-based, yes.

GROENE: And I read in here, it says nicotine is more-- I'm not a
proponent of this. Don't get me wrong. I'm just getting the facts. I
don't want the environmentalists attacking me. But anyway, nicotine is
more toxic than this-- these-- these chemicals.

JUDY WU-SMART: I don't know that; I'm not a toxicologist. But there
are-- yeah. I mean, I don't know the comparison between the natural
compound nicotine and the syn-- synthetic compounds.

GROENE: And it's pretty obvious it affects beehives, which is really a
no brainer, you stop it. But anyway, I was just wondering what you
knew. But you're not into the-- your expertise is what again? It's--

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JUDY WU-SMART: I'm an entomologist, so I study the health and
management of bees and the conservation of pollinators.

GROENE: And you specialize in bees.

JUDY WU-SMART: I study insects, correct.

MOSER: Bugs.

GROENE: So do you know if there's a-- there's a more natural way that
the seed industry can replace these chemicals?

JUDY WU-SMART: I don't think we have time to address those questions.
But no, I-- I don't. Off the top of my head, I don't know what would
be a good-- a suitable replacement. Yeah.

GROENE: One last question. So nationally, is this-- is this becoming
more that-- we've heard all sorts of reasons why the bees are
disappearing. Might be a reason why my pheasants aren't out there
either. But-- but is this coming down to the focal point of what's
happening to our bee populations nat-- nationally versus the natural
funguses of mites? And-- and what's the other one? They-- there's a
killer be-- kill--

JUDY WU-SMART: Pesticide exposure is certainly a contributing factor,
but it's not the only factor that-- that bees challenge-- that are
facing what managed and wild pollen-- populations.

GROENE: Your hives-- you've pinpointed at this-- eliminated a lot of
other factors in the local hives. You're pinpointing it towards this
right now.

JUDY WU-SMART: I sus-- I-- I-- I've suspected and narrowed down
pesticide exposure. I have not identified the route of exposure.

GROENE: All right. Thank you.

MOSER: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Moser. And thank you, Dr.
Wu-Smart. So I've got your written testimony and, obviously, I was
following along-- didn't get to-- I haven't read it all yet. But you,
being a scientist, you're basically laying out the facts here. You're

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not making an assertion. Right? So-- and in terms of the timeline, it certainly seems compelling that correlation is causation. But my guess-- my question is, do we need-- is there an action item, like do we need to do a study to determine that this is actually the cause here? What-- what would give us an answer?

JUDY WU-SMART: Right. Unfortunately, I wasn't able to outline the main areas of concern and that they are also our research priorities. I have listed four in those testimonies. And the-- I would say that the fourth is probably the one that has not been addressed today regarding-- so we-- we've already talked about surface water and groundwater contamination issues. The fourth one would be airborne particles. And so from our studies-- now reminded, you know, remember that we are on the research property just south of the plant and we're doing research on pollinator health. So this study was not designed to look at inhalation risks. But I do suspect that there could be some, based on preliminary data from our student that shows concentrations of airborne particles being higher and closer to the plant in proximity than further away. Of course, again, just to tell you that this experiment was very limited in its pesticide sampling and not designed to look at that. But it does bring concerns to that.

J. CAVANAUGH: What would we need to do to get the answer you're referencing there?

JUDY WU-SMART: Funding.

J. CAVANAUGH: I'm sorry?

JUDY WU-SMART: Funding.

J. CAVANAUGH: OK.

JUDY WU-SMART: I think this is one of those problems where it falls between kind of a regulatory gray area-- and maybe you've experienced it yourself trying to figure out if this falls under Natural Resources, environment or Ag. That's also kind of a complication with funding proposals, is that this is looking at an environmental issue in an ag production area. And so there's blending of that-- of those priorities that don't really fit in one or the other. The other thing is that I've heard a lot of, you know, comments about the state officials and what they are or aren't able to do. One thing I do want

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to point out is that, you know, these state officials are working within their oversight powers, within their regulatory divisions. So there's situations where they can't follow the science, you know. So my biggest concern is that if NDEE is watching the water contamination issues and the contaminants, who's following the potential movement of those systemic residues into the soil and into the vegetation? That's where I think the wildlife is becoming exposed or becoming kind of in contact. So there's-- there's the issue of water contamination, soil contamination, vegetation, and now-- and as well as air contaminants.

J. CAVANAUGH: Thank you.

JUDY WU-SMART: Um-hum.

MOSER: Senator Gragert.

GRAGERT: Thank you, Vice Chair Moser. Thank you for your testimony. There's a couple of things I just want to clear up. You're going awful fast, but-- and I appreciate that. But I was able to visit your facility at Mead before I deployed to Afghanistan. We got some bee training, actually, out there. So I'm wondering-- you-- have you lost all your bees in the last two years?

JUDY WU-SMART: No. We run 85 col-- 80-- you know, 60 to 85 colonies a year. And we recovered those-- those losses with new purchased hives. The only losses I've had was at that particular site. There are six other external apiaries that do very well and have normal survival rates, you know, anywhere between 60 and 70 percent survival. So 30 to 40 percent losses is pretty average.

GRAGERT: But all your-- all the bees were currently at Mead?

JUDY WU-SMART: They're not-- that they don't survive the summer, so they're usually gone by the-- by fall.

GRAGERT: Oh, OK.

JUDY WU-SMART: Yeah.

GRAGERT: OK. But this chemical was showing up in the honey?

JUDY WU-SMART: No, it is actually being shown up in the pollen, and that has to do more with the biological attributes of the foraging

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behavior, because bees have to consume the nectar in order to bring it back to the hive, whereas pollen is packed on the legs of the bees and brought to the hive. So we suspect that there's a discrepancy with what we're seeing in the hive. Pollen that's contaminated might be brought back because they're not consuming it. But if these levels are really high in nectar, they're consuming it. They'll be knocked out before they come back to the hive.

GRAGERT: OK. All right. Thank you.

MOSER: Other questions? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman. And thank you for all of the information here, and I'm sure there's a lot more conversation to be had. But this seems like-- what's the, I guess, broader implications of-- this seems like an area where it's a concentration of this chemical and a concentration of bee population. I mean, bees generally are not in that concentration that you have at your lab. Is that correct?

JUDY WU-SMART: No. People actually-- you know, commercial apiaries will hold anywhere between 20 to 30 colonies within an area. Our-- our ENREC site is 93,000 acres, and we have six locations where we keep hives. And each of those six locations, we keep anywhere from four to-- two to four hives just to look at the spread of-- of the health of resources. But yeah.

J. CAVANAUGH: Well, I guess my question is more about the concentration of the chemical as it, you know, piles up. Is this a, I guess, just a coincidence that allows us to see the broader implications of applying it to fields around the country and around the state? Is this, I guess, inadvertently an experiment that we're going to learn this from, that we shouldn't be putting this on fields?

JUDY WU-SMART: Yeah, yes, I think this is an isolated issue with national implications because, you know, as mentioned before in one of the testimonies, that the company was soliciting and touting 98 percent of all treated seeds in North America is going through their facility. And so that-- there's-- it's got to go somewhere after, you know.

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J. CAVANAUGH: Well, I guess my question is about the seeds that are going in the fields.

JUDY WU-SMART: The seeds that are going into the fields are applied. And there's a lot of, I would say, toxicological studies that look at that process and determine safety of-- of-- of applying the seed. I think there's less examination or research in terms of how this product is going through ethanol processing and the byproducts that come out of it. There's been a lot of studies on-- on the use of neonicotinoids in fields and the field relevancy and the residue rates that you would see in vegetation around crop fields.

J. CAVANAUGH: OK. So those studies have been done.

JUDY WU-SMART: Yes, and those studies show pretty, you know, minimal residue levels in comparison to what we're seeing on the site.

J. CAVANAUGH: Thank you.

MOSER: Other questions from the panel? I guess I have one kind of question and kind of a corollary to Senator Cavanaugh's question. What's the solution? You know, what do you think should be done to-- do you think hauling all this treated seed corn or this residue off that property is going to help? Is there going to have to be a cleanup after that seed corn is all gone?

JUDY WU-SMART: That's a really good question. I think there's-- there's, you know-- like I mentioned, this is an area of regulatory grayness. And I think that there's things that need to be addressed at the federal level. But in-- in terms of Nebraska, there has to be restrictions in place, because there really isn't, and a lot of clarity on the enforcement in this area.

MOSER: OK.

JUDY WU-SMART: So yeah, I don't know what needs to be done, but there-- there is high concern for the environmental issues in the site.

MOSER: OK. Thank you very much for your testimony. Anybody else here to speak in the neutral? No other questions from the panel. OK, thank you very much for your testimony.

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JUDY WU-SMART: Thank you.

MOSER: Anybody else to speak in the neutral capacity at our hearing today? Seeing none, Senator Bostelman, would you like to close?

BOSTELMAN: Thank you, Vice Chair Moser. I would like to thank all the testifiers that have come here today and for the committee members both. I think there were some really engaging questions and answers put forth on this issue. This is a very, very important issue for my district and especially in Saunders County. I think how-- what-- they've got two choices in the sense of what they can do with this, incinerate it or put it in the landfill. DEE has given them a directive, I believe, or there's that they have to, by the first of March. And I think they've said it should be-- it's a-- it's a-- it's a waste product and it needs to be put into a lined landfill. But I think they also have the option of incinerating it. Those are two areas that I think is what their options are to do, at this point in time, with that material, the byproduct that they made that's sitting on the ground. With that, I'll close. And I would like to say this is-- this is not an anti-ethanol bill. You know, they can still bring yellow corn in and they can still-- untreated corn-- or they can still run that through their system. That doesn't cause that. It's not that. It's just that we need to take care of this treated seed corn issue. And I'll answer any questions you have.

MOSER: You don't want us to be a dumping ground for all the excess seed corn from all across the state and the country.

BOSTELMAN: The country.

MOSER: Yeah. Questions for Senator Bostelman from the panel? Thank you very much for bringing this bill; appreciate your testimony.

BOSTELMAN: We do have another bill that we'll be hearing. We have one more bill this morning, so if you'd please clear the turnover so that we can get our next bill started. If we could [INAUDIBLE]. Please step out in the hallway if you have a conversation. Senator Erdman, you're welcome to come up so we can open on LB615. I will make one more comment at this time. It's at noon, there was an Exec Board hearing scheduled for this-- this hearing room. That is going to be moved across the hall to 1524. So if you're here for the Exec Board hearing, please go across the hall to 1524 at noon. And I'll try to remind you,

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if I see anyone coming in at noon, the same. Senator Erdman, you're well-- welcome to open on LB615.

ERDMAN: Thank you, Senator Bostelman; I appreciate that. And thank you for the committee, for listening to my presentation today on LB615. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent District 47, which is ten counties in the Panhandle of Nebraska. Today I bring you an opportunity for the commissioners that serve on the Game and Parks Commission to be elected by the people. Currently, the board is appointed by the Governor. I don't have any animosity or hard feelings against those people that currently serve on that commission. I find them to be honest and straightforward people. Commissioner Kreitman and I have become very, very well acquainted and I appreciate what he has done there. And it's an issue that I think needs to be dealt with, that the people that represent us on Game and Parks are elected by the people that are being represented. I did some research on the group that serves now on Game and Parks, and it says in the current statute that they shall have agricultural pursuits. Not sure exactly the total definition of that, but I think it is about anything that you want to consider agricultural would qualify. The nuts and bolts of this bill is on-- on the last section, and I'll get into that in a minute. But let me just describe to you the occupations or the endeavors that these commissioners now are involved in: Dana [SIC-- Donna] Kush is the president of Omaha Community Foundation; Jim Ernst is the president of Ernst Auto, Toyota, in Columbus; John Hagert [SIC-- Hoggatt] is president of Pinnacle Bank-Kearney; Robert Allen, retired John Deere dealer in North Platte; Pat Berggren, Broken Bow Homebuilders; Doug Zingula, Sidney, retired Cabela's vice president, a member of the Big Game Society and the Wild Sheep Foundation, and a member of the Sierra [SIC-- Safari] Club; Rick Brandt-- he is chairman of the Nebraska Environmental Trust Board and state chairman of the Rocky Mountain Elk Foundation, and is foundation president for the Big Game Society; and Scott Cassells, Omaha, executive vice president, Kiewit Corporation and president, Kiewit Infrastructure Group, Inc. None of those people-- and Commissioner Kreitman has ag holdings throughout the state, and I understand that. And he has holdings in Dawes County, which is north of where I live in Chadron. None of those people are involved in production agriculture, and so they make decisions about wildlife based on those things I just read to you. I belong to the Elk Foundation or the Big Sheep Foundation, their goal is to have more wildlife. We need people on the board of the

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commissioners that are concerned about the damage and what it costs people to sustain this wildlife. And I'll give you an example of how this works. When I was on the school board-- and I served 16 years-- in my last couple of years, the school district that I was on the board decided that they would no longer allow students who did-- who attended class but didn't graduate to have a certificate of attendance. And when they made that presentation, the first thing that came to mind is, don't make any difference to me, my kids all graduated. So the point is, after my kids were out of school, I made different decisions about the school than I did when they were there, because my first consideration when something came to the school board is, how does that affect me? And that's the same thing that happens on the Game and Parks Commission. When you are a member of the Elk Foundation, your goal was to grow more elk and produce more wildlife. So consequently, we need to have agricultural people who are involved in agriculture and understand the pressures that these wildlife are placing on their properties. And so therefore, that's why I brought the bill today. And if you'll turn-- if you have the-- if you have the bill, I'll just go briefly over that. But the-- the gist of the bill starts on page 5, and it talks about the beginning of 2022, members of the Game and Parks Commission shall be nominated in a statewide primary election and elected on a state [INAUDIBLE] general election, and shall take office on January 15, 2023. And it goes on to describe-- for the sake of time, I won't go through that. The odd number and the even number districts will be elected at different times so that they can stagger those. And so that is exactly what we're going to do. It says, also, that they must have 50 percent of their income is derived from agriculture. That's different than the current statute requires. And so it's an opportunity for us to put agriculture producers on the board who understand the ramifications of having more wildlife in our-- in our state. And so those are the issues that we're dealing with. So I think it's the fairest and best way for people who are being overrun by wildlife to have some input from somebody that they have elected. These gentlemen and ladies are appointed now by the Governor; they answer to the Governor. I think it's important that, if they're doing those kind of things and making those decisions, that they should be elected by the-- by the voters, and the voters have a chance to vote whomever they think would best serve their needs. And so that is what the bill is about. It is an opportunity for us to have some commonsense application to what we do in Game and Parks. Game and Parks has, for years, managed their

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wildlife in a manner that is very peculiar because they don't know how many they have. And it's almost impossible-- it is impossible to manage something if you can't measure it. And so I think this is an opportunity for us to make some commonsense decisions. So with that, I'll finish. If you have any questions, I'll try to answer those.

BOSTELMAN: Thank you, Senator Erdman. Are there questions from committee members? Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thank you, Senator Erdman, for your testimony. And I visited with you earlier on this, but I-- I still want to get it on record that I would have reservation. I have reservation as far as every member has to have 50 percent of their income come from agriculture. Personally, I'd be-- personally that would take me out of running if I so desired to run for commissioner of the-- after the career I've spent, I feel I would be--

ERDMAN: Right.

GRAGERT: --eligible to, but not with this. I wouldn't be eligible because I-- no, 50 percent, I--

ERDMAN: Got you.

GRAGERT: But anyway, I would-- would you be open to half of the members, you know, having 50 percent of their income coming from agriculture?

ERDMAN: Yeah. Senator Gragert, well, that's a great question. And yeah, you did ask me this morning. I went through that process again. I remember what the bill drafter told me when I asked that, because that's exactly where I was when I set the bill up. I wanted five to have agricultural production ties and four not. And as the discussion went with the bill drafter, the question is, so if you have three positions up for election and you have four people on the-- on the commission already who have agricultural ties and those three people are up for election, how do you decide which one of those three districts allows someone with agricultural background to be elected? And so if you had three running, you could very well have seven with agricultural ties or you may not get any and all you would have four, and the statute calls for five. So that's the issue we have to-- we have to overcome and figure out a way to solve.

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GRAGERT: Yeah, I agree. That'd be-- that'd be a logistic nightmare,
possibly.

ERDMAN: Right.

GRAGERT: But when you're staggering, you-- couldn't you stagger those
with, you know, with-- every two years that those with agricultural
ties and those without agricultural ties? I mean, I think there would
be a way around that.

ERDMAN: Yeah, I-- you know, I-- I would agree with you. And like I
said, when I originally sent it to Bill Drafting, it had five and
four.

GRAGERT: OK.

ERDMAN: So I was-- I was on your page. But when I got it back and we
talked to the bill drafter, that was his scenario. If you had an
opportunity to have three elections and you just needed one more ag
producer and you didn't get any, then you wind up being in violation
of the five, because you don't have those people. So that was the
issue. But we can-- we can try to work through that to see if there's
some kind of common ground we can come with and understand how it'll
work.

GRAGERT: Or-- or actually, could it be worded, also, a minimum not to
exceed a maximum of--

ERDMAN: Right.

GRAGERT: --you know, this many or so?

ERDMAN: Yeah, I'm willing to work with you on that because that was my
original intent.

GRAGERT: Thank you.

BOSTELMAN: Other questions? Senator Moser.

MOSER: Considering the way you've worded this, there might be a
problem with requiring that 50 percent of their income come from
farming. Just because you're involved in agriculture doesn't mean you

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have a profit. So you could be really involved in agriculture and may not have 50 percent of your income come from farming.

ERDMAN: So Senator Moser, are you saying farmers don't always make money? Is that what you're saying?

MOSER: Exactly. You said it more quickly than I did, but yes.

ERDMAN: Yes, I understand that. I understand that. So, you know, maybe we need another qualifier there, but some method we need to use to make sure that these people are involved in agriculture. And I understand just owning ag land doesn't make you a farmer. All right? And-- 'cause it's just like going in the car-- in the garage don't make you a car. But so we got to-- we have to figure it out, and perhaps we can make some other ramifications or qualifications that would be better suited to qualify that.

MOSER: OK. Thank you very much.

BOSTELMAN: Other questions from committee members? So I guess my question is, on the commissioners right now, anyone can apply for that position. And with those who are out west, who I understand they have issues and problems with depredation, with crop damage, why aren't we seeing more of them file to be a commissioner? And how do you see that now, if it's an election process, that that was going to increase any interest in those people to actually run?

ERDMAN: Well, currently, those people are appointed by the Governor.

BOSTELMAN: But they-- every one of them have the opportunity to submit an application--

ERDMAN: Correct.

BOSTELMAN: --through the process on commissions. The last time I checked-- and I'll check on these again-- is some of these, even from out west, there's only one person that applies. So how do you see this encouraging or getting more people to actually run for a position that they-- currently, all they have to do is to fill out an application, send it in?

ERDMAN: Right.

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BOSTELMAN: And then I would understand, if we had a bunch of them and there were certain individuals being selected that were not farming, I understand the issue. You know, that could be a bigger issue. But I'm not sure this is going to solve the-- solve what you're getting at.

ERDMAN: We-- we seldom-- where we live in the western part of the state, we seldom have a whole lot to do with the eastern part of the state. The Governor picks the person who serves on there. And unless you have some kind of relationship with somebody who knows the Governor, to recommend that you're going to be appointed, it's difficult to get appointed to that position. If one was up for election-- and I would hope that people would step up if we make the opportunity available to them to be elected-- that they would step up, put their name in.

BOSTELMAN: I-- I hear what you're saying, but I guess my comment back still is, if they haven't applied, we don't know. There's not the interest. I'm not sure that they're going to want it to go the other route. The other one, I'm kind of curious as to how you define 50 percent of the income or whatever it has to come from ag. How is that going to be defined and how is that going to be determined when a person files to run?

ERDMAN: There was a-- this is the example that I will give you. I was going to put my name in for a position on a nonprofit organization-- farm organization-- and they had a requirement that 50 percent of your income was derived from agriculture and you had to show them your-- your-- you had to show to their accountant your income tax form, showing that you had 50 percent of your income.

BOSTELMAN: So that would be the same thing that, when you file with the secretary, that you would have to have some documentation with you to justify.

ERDMAN: Some proof from your accountant would say, yes, they are. They don't necessarily need to show their-- show their document, but they just have to have verification that that's the case.

BOSTELMAN: OK, thank you. Any other questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Senator Erdman. I-- actually, I really like the idea of making more things

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electable and, you know, making it accessible to more people. I guess I'm concerned that this isn't going to achieve, necessarily, your objectives. I share Senator Gragert's concerns about those requirements. I'm just looking at the districts here, and I just quickly looked up another. So the State Board of Education has eight districts as well. Basically, three of them come from the Douglas County area. And so I'd be worried. Is the intention to have these districts be geographically dispersed across the state in-- as districts or statewide elections?

ERDMAN: The-- the district would stay the same, Senator.

J. CAVANAUGH: So I'd be concerned that that doesn't comply with the-- the federal district-- districts being equitably distributed by population.

ERDMAN: Yeah. I'll-- I'll give you this list. Here's-- this is a map of the districts now.

J. CAVANAUGH: So--

ERDMAN: Does that help?

J. CAVANAUGH: Well, that-- that basically is what the-- I mean, the districts are laid out by county in here. I'm just looking-- District 2 is Douglas County. And if you look at the-- I'm just looking at the State Board of Education. District 8, 4, and 2 of the State Board of Education comprise portions of Douglas County. So what I'm saying is, I don't think your districts are going to be the size of-- the State Board of Education District 7 would comprise your Districts 6, 5, and 7, which would in fact maybe decrease the number of people that are representing the geographic footprint that you're saying is being diminished in representation.

ERDMAN: And I'm not sure whether the-- the geographic area that's represented in each district is equal in population. I don't know that.

J. CAVANAUGH: Well, I'm telling you it's not. I mean, I-- I'm just eyeballing it. It's-- it's not. [INAUDIBLE].

ERDMAN: I didn't draw those lines up.

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J. CAVANAUGH: And-- and so I'm saying I-- I-- that's a consideration
to think about--

ERDMAN: OK.

J. CAVANAUGH: --in how we would approach some sort of election like
this, that we don't-- I-- you-- I'm always on the lookout for ways
that we're going to screw something up by trying to fix something. And
I'm just pointing out to you that I wonder if you would actually end
up with more people from my part of the state than your part of the
state if we did this.

ERDMAN: Yeah, I don't know the answer to that one. We'll take a look
at it.

J. CAVANAUGH: I just-- it's something to be on the lookout for.

ERDMAN: Yeah.

BOSTELMAN: OK. Other questions? Seeing none, will you stay around for
close?

ERDMAN: Yes. Thank you.

BOSTELMAN: Thank you. I would ask anyone who would like to testify as
a proponent for LB615, as soon as we're done with the table there,
please step forward. Good morning.

JOHN ROSS: Good morning. Chairman Bostelman and fellow senators of the
Natural Resources Committee, thank you for letting me be here. I want
to thank Senator Erdman for introducing LB615. This has been on my
mind for quite a while. On February 7, 2018, I sent an e-mail to
Senator Bob Krist: I have been listening to debate on LB775. At times
I have issues with some of the things Game and Parks does. They do a
lot of good things. I helped them with a great thing. I have been a
hunter education instructor since 1987. What I don't understand is
that the Game and Parks-- our commissioners are appointed by the
Governor. To the best of my knowledge, almost everyone else that
spends taxpayers' money is elected by the people. I am a county
supervisor and I have to answer to the voters. He read this entire
e-mail to the legislative body during debate that day.

BOSTELMAN: Could you state and spell your name, please?

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JOHN ROSS: John, J-o-h-n R-- Ross, R-o-s-s. Sorry, Senator. There is a reason that 14 bills pertaining to Game and Parks have been introduced this year. Game and Parks has lost-- lost touch with owners and farmers. They provide almost all the land that our wildlife lives on, bearing most of the cost of feeding this wildlife when there's damage to their property and crops. However, on farmland-- and I've farmed since 1971-- I saw the first deer on this farm in the late '50s. By the '70s there was a deer season. It was 100 percent buck only. As the herd grew, more permits were issued. As the herd got bigger, a few either-sex permits were issued. Eventually, the herd got so big that I was losing 3 to 5 acres of my 250 acres of farmland. Game and Parks tried several things to reduce the herd: bonus tags, earn a buck, buy either-sex permits. None of them really worked in my area on my farm. What would have worked was 100 percent antlerless-only permits for one or two years. Game and Parks said that won't work because too many people will not buy a permit unless they can shoot a buck. We will have-- we will lose too much money. I was losing a lot of money at that time. Game and Parks listen to the special interests. If you will only shoot a buck, and maybe only shoot a great big buck, in my opinion, you are not a true sportsman. You need to read the book "The Measure of the Hunt" or watch videos I use when I teach hunter education. In the early days of deer hunting in my area, permits were issued by a drawing. Sometimes I would not get a permit. And when I did, I had to pay full price. In time, landowner permits-- landowners to get a permit every year. I wish you would have been present when I was told: Why should you "blank" farmers get a permit every year? And the same thing when the price was reduced on the landowner permit. Landowners and farmers, for many years, were on the bottom of the list to get changes made. When there is a blowup like the elk problem last year, Game and Parks listens to farmers and landowners. This is not a good way to get things done. More and more landowners will go to a fee or lease hunting if some things are not changed. I live in northeast Nebraska. I have heard the people around Lake McConaughy ask for help for many years. When are changes that really help them going to happen? And now I'm going to go to the handout I gave you, pages 1 through 3. In 2018, Nebraska managed 75 sites and had 1,468 employees. They spent \$97.6 million. In comparison. South Dakota, which managed 63 sites, had 1,173 employees. They spent \$56.2 million. With only 13 more sites and 295 employees more, I don't understand why we have to spend \$41.4 million more than South Dakota. Maybe this can be explained. I think someone needs to look at where Nebraska Game and

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Parks is getting their money, and how and where they are spending it. On the back page of my handouts, the last one is commission contacts in South Dakota. And basically, if the commissioner gets an email, they have to forward it on to get an answer. I asked Deputy Director Tim McCoy if we could use this rule here, and his response was, we cannot tell a volunteer to do this. When Game and Parks-- Game Commission first started, I realized that they had to appoint people. There was nobody else there. But I think the time has come for a change, and I would ask you to forward this bill and let the elected senators decide the issue. Thank you.

BOSTELMAN: OK. Thank you, Mr. Ross. Are there questions from committee members? I do see, on your handout, that the commissioners in South Dakota are appointed, as well. Is that what you're seeing?

JOHN ROSS: Yes, they are. I do think, though, Senator, that having that e-mail process there, that they have to forward it on and respond and get a response back, as complaints or questions come in, there's a record of the question or complaint, and then there's also a record of what the response was. And I think this is maybe where our commissioners have gotten a little disconnected from the public, which is-- I'm a landowner, but the rest of the public has got rights, too, for Game and Parks. So I-- I-- I'm offering that as-- as an improvement.

BOSTELMAN: Understand, good suggestion. Seeing no more questions, thank you very, very much for being here, Mr. Ross. I appreciate your testimony.

JOHN ROSS: Thank you.

BOSTELMAN: I'd ask for anyone else who would like to testify in support of LB615, please step forward. Seeing none, I'd like to ask anyone who'd like to testify in opposition to LB615, to please step forward. Welcome.

MARK PINKERTON: Thank you. Chairman Bostelman and senators of the Natural Resources Committee, my name is Mark Pinkerton, M-a-r-k P-i-n-k-e-r-t-o-n. I live at 1258 Bob White Circle, Firth, Nebraska, 68358. I served as District 1 commissioner from the Nebraska Game and Parks Commission from 2002 to 2015. I got caught in a lot of legislative change or changes, and so I ended up being there for a

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long time. I was actually appointed by Governor Johanns, Governor Heineman, and Governor Ricketts. So I started out as the third youngest commissioner ever and ended up now as a white-haired, old has-been-- no offense to some of you guys. Senator Erdman, you bring up a lot of interesting questions. And I spent a lot of time on the commission, and I'm testifying in opposition because of some of these concerns. My grandfather was on the commission from the late '50s to the early '60s as a-- as a farm manager and farmer. And I understand the intimate ties with agriculture. I'm going to specifically address some of my concerns. And I will--, I will preclude this by saying when it comes to electing the commissioners, I could have been on the commission earlier or sooner if I would have been elected. At the time I got on, I was well supported by many ag people, many people in all walks of life. So I waited a little longer to get on. But my-- my thought to you or my question to you is to-- to think about this, because sometimes you may be unhappy with the results you get. The one other thing I can see, if we go to elected commissioners that-- that really concerns me is, is this going to cause a process of millions of dollars of out-of-state money coming in from special interest groups to try and derail something like a commission? You could have somebody elected on out-of-state money that was gun control or animal rights, a lot of things. And where they-- if they had enough success, could possibly make it hard for the commission to do business as usual. So that's-- that's my big concern there. Senator Gragert, I have concerns, too, about the 50 percent income from agribusiness to be a commissioner, because there are many great candidates that have a passion for wildlife and conservation, and understand how it affects farming and agribusiness, that have a lot to contribute to the commission board. And it almost becomes an issue. It's a stretch, but taxation without representation, which is something that we never liked in this country, everybody should have-- somehow have an opportunity to be able to serve on one of these boards if they want to put the effort into getting there. So that is my other major concern. I'm representing myself, I'm not representing the commission board. This is me, from a lot of years of serving on the commission, going to a lot of national meetings and seeing how other commissions function. And I will say in doing that, that the less political we can make it and the more we leave management to the wildlife and conservation professionals, the better result we get as a whole. So in closing, I would say to you, I ask each and every one of you senators and you, Senator Erdman, I'm not unaware of what's going on. I know there's a

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lot of friction right now between the Legislature and some of the things going on with Game and Parks. Please help us find a way to come up with solutions for that. And let's work together so that we can provide the most opportunities for the state. We can be the most responsible to the landowners in the state. And we also can make Nebraska one of the best places to live. I've grown up here, spent my whole life here, and this state means a lot to me. I don't even want to start to imagine how much money I spent, of my own, being out of my office when none of my employees were working, so I could volunteer because I wanted to make a difference to the citizens of Nebraska by volunteering on this board. So again, thank you for letting me testify. And if you have any questions for me, I do have some historical perspective. I'd be glad to visit with you about it.

BOSTELMAN: Thank you for your testimony. Any questions from committee members? My question would be, the time you served on-- how much of an issue was crop loss, depredation? How-- how often did that come before the commission? How-- how did you deal with that?

MARK PINKERTON: It depended on the price of corn, quite frankly. When corn was really cheap, we didn't have a lot of issues. When corn became more valuable, we had more issues. I will-- and I'll go on and say, kind of in relationship to that, when I got on, to me, I felt like whether I was appointed or elected, I needed to answer to my constituents. So I tried to answer all their questions and be available for them and be places where they could talk to me. And for me, unfortunately, on the Web site, if you look, the phone numbers of the commissioners are listed by district, and I was District 1. So when it was a three-day weekend and the phone wouldn't ring at Game and Parks and you couldn't get anybody, guess who got all the calls? So I became really good at answering all the questions for the Game Commission. But I-- I think I more than adequately acquitted myself of being available to my constituents. But yes, depredation is difficult, and it's hard to deal with, and it's very political because you're dealing with the landowner who is taking the loss for crop depredation, and you're dealing with the sportsmen who feel like they have a-- a place in the fight. And a lot of states do it differently, and some more successfully than others. But I don't know the perfect answer. I think Wyoming does quite a bit more[-- but I think they get some some revenue from some other sources, other than than permits-- and places like that, so--

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BOSTELMAN: How would you say the makeup of the commissioners was when you were-- during-- during the past years? Has it-- has it been an ag influence? Has it been a-- you know, farmers on there? Has it been, typically, business people? We are kind of heavy on the eastern side of the state--

MARK PINKERTON: Sure. There--

BOSTELMAN: --when you get out of Lincoln and Omaha.

MARK PINKERTON: Yeah, there is a tremendous ag influence. And of course, you have to be appointed by district. I believe right now, as the statute sits, and as you said, Senator Erdman, the definition of it may be a little loose, but at least three members still have to be in agribusiness pursuits on the commission. There's a minimum of that number. And how you define that, that may be difficult. But when I was on, we had Jerrod Burke, who was a farmer out at Curtis, Jim Ziebarth, whose dad is a past state senator, who is a farmer at Wilcox. We had a lot of people-- Bill Zutavern that was in ranching-- a lot of people that had a strong ag influence, and that's important. I think-- I think, though, you need to have a good diversity on that board because a diversity of thought processes, and ideas, and experiences, and backgrounds makes for a stronger, better board because you have areas of expertise and you have concerns for a lot of different people and they feel like they have their representation. I thought it was really great that a woman was appointed to the board because I think that's long been lacking. It had been since Gloria Erickson that there was a member on the board that was a woman. And when I went to the national meetings, most commission boards had women on that were-- women do the best job because they get it done when they say they're going to do it. Us guys, sometimes we say we're going to get it done and-- and it gets put on the back burner. So I think the diversity on the board is really, really important. And when I was on the board, I will say that every one of those commissioners there had a passion for it. And before I got on the board, sometimes they'd meet for their-- two days, for their six times a year, and then wouldn't talk to each other much. And I was young and hustled. And by the time we got done, everybody was involved and we were doing things and we were out there; and I think that should be. And I'm not-- I'm not patting my own-- myself on the back. I just think that's how it should be. And that's where we got it to be. And that's when it really functioned well. We're not ever all going to agree on everything, but we got to work together.

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BOSTELMAN: Sure, all right. OK. Thank you. Senator Cavanaugh.

J. CAVANAUGH: Just-- thank you for being here.

MARK PINKERTON: Sure.

J. CAVANAUGH: And thank you, Chairman Bostelman. The language in the current statute is: at least three members of the commission shall be actually engaged in agricultural pursuits, which is basically what you said.

MARK PINKERTON: Right.

J. CAVANAUGH: Do you think that the stated objective of this bill could be achieved by maybe putting in a more robust definition of agricultural pursuits and maybe some teeth to accompany that to make sure [INAUDIBLE]?

MARK PINKERTON: Possibly. I just hate to see it go to completely all ag, because then so many people would lose out on the opportunity to serve. And let's face it, with nine members on that commission board, eight districts and one at-large, and you can serve two consecutive four-year terms, the-- the way of states right now-- that's eight years-- not very many people get the opportunity to do it. So we need to find ways to make at least the opportunity or the potential to serve on the board available to as many people as possible.

J. CAVANAUGH: Thank you.

BOSTELMAN: OK. Thank you for your testimony.

MARK PINKERTON: I appreciate all your time, Senators.

BOSTELMAN: But the next proponent for LB615-- or opponent for LB615 to step forward.

DAN KREITMAN: Good morning, Mr. Chairman and members of the board. My name is Dan Kreitman, K-r-e-i-t-m-a-n, and my address is 1689 County Road E, Wahoo, Nebraska, 68066. I'm going to have to agree with Mark Pinkerton. I took over his position as District 1, and I get a lot of phone calls, a lot of texts and e-mails. And I want it to be publicly known, if you Google Nebraska Game and Parks Commission, my-- my home phone, my cell phone, my e-mail is all there. So I respond to-- this

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is my sixth year on the commission. I have responded to every text, every phone call, every e-mail I have ever received, voice mails also. I've never not responded. So I'm here representing the Game and Parks Commission, in opposition to this. I think there's a lot of things that I'm going to-- I have a list here I'm going to go over. But I think the diversity that we have is really important. If we had all farmers on the board, my-- my income is probably right approximately 80 percent derived from agriculture. Now, am I an active farmer? I'm 50/50 on a lot of fields. I put-- I pay for the fertilizer, I pay for the seed. I pay for the combining. I just don't drive the machine. So I consider myself an active farmer with the-- in those regards 'cause I-- I share the expenses, and I share the losses, and I share the income. The Governor's role in reporting-- in appointing board members of an independent commission has been in place since 1929 and has worked well. The commissioners are well-informed and interested in the matters under their jurisdiction. Governor appointments to the board have brought interest in the state's natural resources and outdoor recreation. They also bring broad experience-- experience from many sectors, including agriculture, business, marketing, community development, and public relations that strengthen the agency's operation and direction, and help propel it forward. The limits to board participation via elections, limitations to engagement and income from agriculture, does not reflect the agency's broad mission or-- as stewards of the state's fish, wildlife, park, and outdoor recreation and resources for all the citizens of the state. Elections would provide an opportunity for advocacy groups to put forward and support candidates that are opposed to consumptive use of fish and wildlife resources. If commissioners are to be elected by districts, it would seem like some redistricting would be required based on population, which you brought up, so that all the-- all votes count equally relative to representation. This would likely shift board representation away from rural parts of Nebraska. And it's my understanding that rural parts of Nebraska want to be represented more. S-- I think. I think doing it by elections would shift it the other way. I think your-- your legislative is-- is by that-- by population. I did want to say something to Mr. Erdman-- Senator Erdman. As a member of Ducks Unlimited, Pheasants Forever, Rocky Mountain Elk Foundation, yes, I support it. I donate money, I-- I spend time, I've served on boards. But it all doesn't just go to Nebraska for the wildlife. That's a nation-- most of those are nationwide organizations. So that money is distributed through--

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through other states. So I'm not just supporting to have more elk in
Nebraska. If anything, we need less, and we're-- and we are working
aggressively towards that, as a commission. Thank you.

BOSTELMAN: Thank you, Mr. Kreitman. Are there any questions? Seeing
none, thank you for coming here today.

DAN KREITMAN: Thank you.

BOSTELMAN: Next opponent, please.

SCOTT SMATHERS: This young man is like a NASCAR pit crew.

BOSTELMAN: Good afternoon.

SCOTT SMATHERS: Good afternoon, Chairman Bostelman. Members of the
committee, my name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s,
resident of Lincoln, Nebraska. We are here today on behalf of the
Nebraska Sportsmen's Foundation, Nebraska Pheasants Forever, Big Game
Conservation Association, Nebraska Bowhunters Association, and the
National Wildlife Turkey Federation.

BOSTELMAN: Go ahead.

SCOTT SMATHERS: OK. We're here to oppose Senator Erdman's bill, LB615.
As you've heard from several of the other testifiers, when non-comp
positions are put through elections, like regents, NPPD, OPPD, we've
seen in the past of outstate dark money, in-state and out-of-state,
agenda-driven organizations apply a lot of money to some of those-- to
races of elections, which is not always a positive outcome. We're very
concerned with this fact that, if we take appointed positions and make
them elected positions, that we're going to have an influence, as
Senator-- as Chairman Kreitman stated, of not necessarily the most
populous viewpoints. Folks. I want to remind this commission--
committee, also, that this year, one of your new senators spent over
half a million dollars to obtain a \$12,000 dollar seat. It raises
concerns for me, raises concerns for our membership base. In addition
to that, when you start to have elections for these type of positions,
which are covered, such as-- such as regents and NPPD, we've seen in
the past history that big-name individuals from the state, i.e., Coach
Osborne and some other folks, decide to run for those positions
through the elections. The average individual that represents a
district that wants to serve on the commission, versus a Tom Osborne,

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stands very little chance without spending a tremendous amount of money. I don't know about you, but spending a tremendous amount of money for an election with nonpaid compensation is not a positive outcome. If the goal of LB615 is to increase representation, we have our strong concerns, as you've already heard, in regards to the election formats with districting issues, and we could actually end up with less representation in central and western Nebraska, which is not what they wanted-- what Senator Erdman wants to achieve. It's certainly not what we want to achieve at sportsmen's organizations or the Game and Parks. If you draw the districts by population like the Legislature and regents do, we have the questions you brought up before that was about the State Education Board. Suddenly we have more representation on the I-80 corridor than we do in western Nebraska. Part of the current statute states that five members of the commission can no longer-- can no-- no more than five members can be a member of the same party. Senator Erdman wants to add 50 percent of income. When we go to elections, how are we going to determine who those folks are? And do we limit folks' ability to run for said office because of those parameters? I'm just curious. In closing, I'm not going to repeat the current testimony we've already heard. We have a system that works. We have a system that is by appointed. I take offense at the fact that there was a comment made that, as an appointed individual, you answer to the Governor. I'm appointed to the Natural Resource Commission, which is, as you heard last Friday, it'll will be my third term. I do not answer to Governor Heineman or Governor Ricketts, who I've been appointed by both, nor do the other thirteen members that are appointed to the commission. We report to our stakeholders. We answer to our stakeholders as a group with the common sense that we have to achieve goals for the betterment of everybody, not just our stakeholders. So with that said, appointed individuals do not have to answer to the Governor. And I will tell you that we have a difficult time finding individuals willing to go through the process for a nonpaid position to be on the commission. And we have-- in fact, we've had a-- two open seats on the Natural Resource Commission for a better part of a year because of the lack of availability of individuals that want to do a nonpaid position with the time frame it takes. With that, I'll close and ask you that you do not forward LB615 to the floor. And I'll answer any questions.

BOSTELMAN: Thank you, Mr. Smathers. Are there any questions from committee members? A question I would have asked you-- what you

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mentioned before, obviously, would one of your concerns be someone who
is completely opposed to, say, hunting--

SCOTT SMATHERS: Yes.

BOSTELMAN: --or fishing? As we've seen before, a certain senator was
opposed to certain types of hunting of certain animals.

SCOTT SMATHERS: Yes.

BOSTELMAN: But these individuals would then come onto the board with--
or be elected with an agenda that probably would actually create more
problems by, say, they don't want-- don't want you to hunt deer. So
now they eliminate deer hunting. And now we have a problem because we
can't hunt deer, so now that population grows. Is that what I'm
hearing?

SCOTT SMATHERS: Yes, sir. That's what you're hearing. In fact, if you
look at the state of California, which their-- their commissioners are
elected, they're currently in a debate over whether to stop harvesting
of black bears in the state of California. And if you look at the
black bear population, California is similar to other states with our
elk population and/or apex predators, of growth. And there creates an
issue, but the decision will be made by elected officials, not
science-based/driven decisions.

BOSTELMAN: Have you had, in your conversations-- I-- I might take as
you've traveled the state of it and had the opportunity to speak with
farmers, ranchers, and sportsmen across the state.

SCOTT SMATHERS: Absolutely.

BOSTELMAN: One-- one question that I had asked Senator Erdman-- which
I think I want to ask again-- is, you know, you need to apply--

SCOTT SMATHERS: Yes.

BOSTELMAN: --to be a commissioner. So I'm not for sure-- I'm going to
look again. But I'm not sure that we're seeing a lot of farmers or
sportsmen, either one applying for these positions. Now, I would see
if-- if we had five or six that did and certain ones were being
selected, I could see there could be an issue. But if we-- have you

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heard from people why they won't? Or are they concerned to not-- to
not apply?

SCOTT SMATHERS: Yes, I've traveled the state extensively and I'm from every corner to every corner, from large to small, working with small groups to large groups. The comments, the common conversation-- the first word we start is: Why do you not attend, then, Game Commission meetings to state your opinions, to ask questions, to be a part of the process? They're not silent, the commissioners. They will speak their mind, they will listen to you. They will find solutions. Find out that, you know, there's a lot of factors. It's easy to say you want to be involved until you actually have to be involved. And when it comes down to the fact of you have to spend time and it's a nonpaid position. And that's what we found the most, is that, as an-- as an ag producer, your hours are not 9:00 to 5:00. Again, 60 percent of our members are ag producers. It's not 9:00 to 5:00; you don't punch in and punch out. You work when you have to work. So it makes it difficult to schedule for ag producers. To even be a part of the local volunteer groups, whether it's Pheasants Forever, do you, because of that time frame? And that's the biggest issue we find. In addition, it is a noncompensated position, which it should be. And they'd rather effect change through local conservation groups and/or with their senator represent-- or their commissioner. That's the biggest issue.

BOSTELMAN: OK. Thank you, Mr. Smathers.

SCOTT SMATHERS: Yes.

BOSTELMAN: Any other questions? Thank you for your testimony.

SCOTT SMATHERS: Thank you.

***KRISTAL STONER:** Mr. Chairperson and Respected Members of the Natural Resources Committee, On behalf of the more than 12,000 members in Audubon Nebraska, a state office of the National Audubon Society, we oppose LB615 and request this be included as a part of the public hearing record. The National Audubon Society is a conservation organization focused on bird conservation, which seeks to improve habitat and to bring awareness to the condition of our environment and how changes impact birds, natural resources, our economy, and communities. The Nebraska Game and Parks Commission has a broad mission that includes the stewardship of the state's fish, wildlife,

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park, and outdoor recreation resources in the best long-term interests of the people and those resources. The Commissioners need to be members of communities statewide, and they need to bring diverse interests, perspectives, and expertise from many sectors including agriculture, ecotourism, community development, public engagement, science, and outdoor recreation. The proposed legislation limits the perspective and expertise to only agriculture and specifically those that derive 50% of their income from agriculture. Individuals with firsthand knowledge of family farms and ranches should absolutely be represented on the Commission. But, there should also be individuals with a science background, experience and a passion for outdoor recreation, community engagement, education, and recreation business expertise. The concept of electing commission members is one worthy of discussion if the purpose is to increase Commission diversity and perspectives. If you consider the individuals that have served over the last several decades, there have been few, if any people of color and only one woman to my knowledge. We can do better at ensuring decision-makers represent their constituents. As written, LB615 would instill narrower perspectives, and representation, and would not serve the broad mission of the Nebraska Game and Parks Commission. Thank you for your consideration of my testimony.

BOSTELMAN: Is there anyone else who would like to testify in opposition to LB615? Seeing none, anyone like to testify in the neutral capacity on LB615? Seeing none, Senator Erdman, you're welcome to close.

ERDMAN: Thank you, Senator Bostelman. I appreciate being in this room. I could hear; that's amazing. The one the other day wasn't so good. So Mr. Pinkerton said that he served for years on the Game and Parks Board and things worked real well when he was there. I want to share with you something. Game and Parks has been out of control for 30 years. We've had issues with Game and Parks for 30 years, which included the time Mr. Pinkerton served. To get elected-- or appointed, excuse me-- to this board, you need to be a contributor to the Governor-- you need to have some connection to be appointed. What we're talking about here today is that Game and Parks has been poorly organized and managed for a long time. Things have not changed. I've been to commissioner meetings. The employees run the agenda. They run the meeting, very little input from the board. So for those people to sit here and say the commission is working fine just the way it is, we need to keep employing these people, isn't true. And the Sportsmen's

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lobbyist, that came last week and testified against the bill for carrying a weapon when you bowhunt, is back today. And they said they could get dark money and they could elect somebody that doesn't want to hunt. Well, let me tell you what happens. People get appointed that have a desire to have more wildlife, but that's OK. But it's not OK to elect somebody who wants to take care of those who suffer damages from wildlife. To say, by Mr. Pinkerton, yeah, I understand what they're suffering under, and we have greater depredation requirements or requests when corn prices are higher, may be true, may be not. But this organization needs to have someone that's able to answer to those people who are having the losses and to manage this organization right. We passed the laws and they're supposed to adhere to them and apply them. This is not about electing the board members 'cause they're worried that somebody is going to take away their hunting rights. This is about keeping doing what they've always done, and we continue to have the same results. Over 30 years, we've been working to try to get control of the Game and Parks and have some common sense applied. So for them to say, yeah, we have people on there that understand what those ag producers are going through, that's not true. Unless you walk in their shoes, you don't understand. That's why I don't care how many e-mails they respond to or how many calls they make back, nothing changes. And it's time for us to allow the membership-- or the voters in the state to vote for people who represent them. That excuse about the dark money coming in with the regents, they get a bunch of money to put a regent in place, so be it. Senator Chambers wanted to stop mountain lion hunting for years-- didn't happen. This is a commonsense bill. I'm willing to work with you to come up with a solution for the definition of what ag producer is. I'm willing to work with you to figure out where the line should be drawn. But need to move this forward so that the people who spend our tax dollars are elected and not appointed. Thank you.

BOSTELMAN: Any questions from committee members? I will say we do have one written testimony from Kristal Stoner, in opposition, from Audubon Nebraska.

ERDMAN: Did you get a letter from Terry Jessen in support?

BOSTELMAN: There is a-- position letters from proponents, from Terry Jessen, and opponent from Eric Zach, and opponent from the Congressional Sportsmen's Foundation, Kent Keene. Those are position letters.

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Natural Resources Committee February 3, 2021

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ERDMAN: Thank you.

BOSTELMAN: That will close the hearing for today.

ERDMAN: Thank you.

BOSTELMAN: See you back at 1:30.

BOSTELMAN: All right, good afternoon, everybody. We're going to be starting. Let me read our COVID-19 hearing procedures first and we'll get started on our first bill coming up for this afternoon. For the safety of our committee, members, staff, pages and the public, we ask those attending our hearings to abide by the following procedures. Due to social distancing requirements seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the hearing in progress. The bills will be taken up in the order posted outside of the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance and exit to the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reach a seating capacity or near seating capacity, the entrance door will be monitored by a Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow hearing room for hearings, which attract several testifiers and observers. For hearings with a large attendance we ask only testifiers enter the hearing room. We ask that you please limit or eliminate your handouts. Welcome to the Natural Resources Committee. I am Senator Bruce Bostelman and I'm from Brainard. I represent Legislative District 23. I serve as the Chair of this committee. The committee will take up the bills in the order posted. 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. The committee members might come and go during the hearing. This is just part of the process

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as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. 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 sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the page or the committee clerk. This will help us to make more-- a more accurate public record. If you do not wish to testify today, but you would like to record your name as being present at the hearing, there is a separate white sheet on the table that you can sign for that purpose. This will be a part of the official record of the hearing. When you come up to testify, please speak clearly into the microphone and I want to stress that. Please speak loudly and clearly, especially with the plexiglass, and that it's hard for us to hear. If you leave your mask on, please speak loud as well for us to hear. You may remove your mask, tell us your name and please spell your first and last name to ensure we get an accurate record. We will be using the light system for all testifiers. You'll have five minutes to make 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 your time has expired. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves starting on my left.

GRAGERT: Good afternoon. Tim Gragert, District 40, northeast Nebraska.

AGUILAR: Ray Aguilar, District 35, Grand Island and Hall County.

BOSTELMAN: And on my right.

MOSER: Mike Moser, Platte County and parts of Colfax and Stanton Counties.

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

BOSTELMAN: Senator Moser also serves as Vice Chair of the committee. To my left is the committee legal counsel, Cyndi Lamm, and to my far

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right is committee clerk, Katie Bohlmeier. I'd like to thank Noa and Savana today. They are our pages for this afternoon for our hearings and I'd like to thank them for their support. With that, I think we are ready for Senator Morfeld to open on LB627.

MORFELD: Great. Thank you, Chairman Bostelman, and members of the Natural Resources Committee. For the record, my name is Adam Morfeld. That's A-d-a-m M-o-r-f-e-l-d, representing the fighting 46 Legislative District here today to introduce LB627. LB627 allows voters in the cities of the primary class, so Lincoln, and the metropolitan class, Omaha, in order to be able to vote in the Public Power District board elections of the Public Power Districts with an annual gross revenue of \$150 million or more. For many years, voters in Lincoln and other areas were included within the Public Power District board elections. Lincoln Electric System was in partnership with the Nebraska Public Power District in a variety of ways, including the Sheldon Power Station. Qualifying my constituents and other Lincoln voters to participate in Public Power board elections, the law was changed in 2009 to allow voters to participate in these elections only if 50 percent or more of their electric utilities annual energy requirements were being met by the Public Power District. The consequences of this change was to disenfranchise hundreds of thousands of voters who even if they did not rely directly on the Public Power District for their immediate utility needs, were still impacted by the outside effect of such large utilities. The Sheldon Power Station right here in Lancaster County is one of the major factors in air quality for Lincolnites, yet they have no voice in determining the leadership of that plant. LB627 correctly restores the fundamental rights of hundreds of thousands of Nebraskans to directly have a voice in the management of Public Power District boards. I urge your favorable consideration of this proposal and be happy to answer any questions.

BOSTELMAN: Thank you, Senator Morfeld. Are there questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman, and thank you, Senator Morfeld, for being here and for bringing this. So I'm from Omaha, so we already elect our Public Power board in Omaha so-- and I see-- I don't think this would affect Omaha, correct?

MORFELD: Well, I think it would affect. So are you talking about your local public power board?

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J. CAVANAUGH: That's what I'm talking about, yes.

MORFELD: Yeah. So this is the Nebraska Public Power board. So-- so you would still elect your local. And in Lincoln we have-- we appoint the mayor, but we would have the ability to be able to vote for the Nebraska Public Power.

J. CAVANAUGH: And that was my question was to clarifying that.

MORFELD: Yep. Yeah, definitely.

J. CAVANAUGH: So currently, Lincoln-- residents of Lincoln do not get to vote for anybody that makes decisions about their power.

MORFELD: Well, not for-- well, that's a good point. So we-- we do not get to vote for NPPD elections and we vote for the mayor who then appoints and I believe the city council confirms. I'll have to double check on that.

J. CAVANAUGH: OK, thank you.

MORFELD: So the technical answer to your question was, yes, you're correct. We do not.

BOSTELMAN: So how-- about how many eligible voters would this add?

MORFELD: Well, I mean, however many there are in Lancaster-- in Lincoln. Lancaster County, I guess, so it'd be about 300,000.

BOSTELMAN: So do they-- LES serves Lincoln.

MORFELD: Um-hum.

BOSTELMAN: What area out this is-- what portion of Lincoln or the county is not-- does not receive power from LES or does receive power from NPPD through maybe it's through Norris Public. Do you know?

MORFELD: I don't know. We'd have to look into that a little bit more.

BOSTELMAN: That-- I'm just curious, yeah. So will the voters added by your bill be qualified to be a candidate for the NPPD District 4?

MORFELD: I would assume so, yeah.

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BOSTELMAN: OK. Senator Moser.

MOSER: Would you make Lincoln one district, or would you have more than one district considering how much population is here? What-- what districts would they vote-- you know, in what districts could they try to vote for a director for NPPD?

MORFELD: Yeah, that's a great question. I think that we would have to look to-- when they redistrict, which is probably coming up pretty soon. I think everybody has to redistrict within the next year. So that would have to be factored into-- to their redistricting process. But I don't think that that's a decision that we would make. I don't think we redistrict. I'm on the Redistricting Committee. We have not had our first educational meeting. So I don't think that we're the ones that redistrict Nebraska Public Power, but maybe we are. And in that case, that's something we'd have to take into consideration.

MOSER: OK, thank you.

MORFELD: It's a good question.

BOSTELMAN: Other questions? My last question would be, so currently anyone who does not live in the chartered territory but who can vote has to be a retail customer served by the public power-- by the Power District. And it looks like that will not be the case for the voters that were being added, is that right?

MORFELD: You know, I think somebody from the Power Districts behind me, I think that that would be a good question. I think I know the answer, but I don't want to say the wrong answer.

BOSTELMAN: OK. Any other questions? Senator Cavanaugh.

MORFELD: You guys have a lot of great questions in this committee.

J. CAVANAUGH: So I apologize, I'm trying to get up to speed on this. I was, I would tell you, shocked to find out that the Lincoln board was not elected-- directly elected just because it seems like the election of our Public Power Districts is such a fundamentally-- like defining characteristic of Nebraska. Did you-- correct me, if I'm wrong. Did you say in your opening that previously the City of Lincoln was able to vote and then through some change at some point was taken out of the ability to vote in NPPD?

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MORFELD: Yeah, so I think it was in 2009 there was a change. Double check that. Yeah, it was around 2009 that basically they made it so that they could no longer vote in a Nebraska Public Power District elections.

J. CAVANAUGH: Do you have any idea what the justification at that time was?

MORFELD: I don't. I mean, it appears as though they're cut off at that time was 50 percent or more of the power that was supplied, so.

J. CAVANAUGH: OK, thank you.

BOSTELMAN: Any other questions? Seeing none, will you stay for closing?

MORFELD: Yep, I will close.

BOSTELMAN: Thank you. Want to invite anyone who would like to testify as a proponent in support of LB627, please step forward. Anyone like to testify in support. Seeing none, would anyone like to testify in opposition to LB627? Good afternoon.

JOHN McCLURE: Good afternoon, Chairman Bostelman, and members of the committee. My name is John McClure, J-o-h-n, M-c-C-l-u-r-e. I'm executive vice president and general counsel for Nebraska Public Power District, and I appreciate the opportunity to be here today and visit with you about our opposition to this proposed legislation. The bill really only impacts directly one county, Lancaster County. It mentions cities of the metropolitan class, which would be Omaha, but all of Douglas County is already served by OPPD. And maybe it was written this way because Lincoln could grow and become a metropolitan class city. But the effect is in Lancaster County only and the direct effect is on the board of NPPD only. No other Public Power Districts would be affected by this. The-- but the indirect effect is really on all of the customers we serve and-- and Chairman Bostelman, I think you alluded to this, you would see a significant dilution of the representation interest of the citizens who are directly served at retail or directly or indirectly at wholesale from NPPD and I'll speak to that issue. Present law passed in 2009 did put in place a standard that anybody who receives retail power or receives 50 percent or more of their wholesale firm power and energy under a 5-year contract is

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eligible to run for and vote for a Public Power District board. So let me give you some examples. Senator Bostelman, I believe you're served by Butler Public Power District. Senator Moser, you're served by Loup Public Power District. Both of them are total requirements wholesale customers of NPPD. So each of you vote for a board member for your retail utility, Butler and Loup, respectively, but you're also eligible to vote for a-- an NPPD director because we provide all of the power supply for those utilities. And about 70 percent of a retail electric bill can be the power supply costs for the generation and the transmission. So there's a significant stake there. So to the issue of why has Lincoln been excluded? Back in 2009, it was recognized that Lincoln's interest in NPPD was shrinking significantly and had over time. If you go back to the history, our predecessor, consumers was actually the retail provider in the City of Lincoln at one time. Then it was the wholesale supplier. But then Lincoln Electric System emerged in 1965, and it is the utility serving the City of Lincoln. NPPD does not provide retail service in Lincoln. It does not provide wholesale service and especially at a level of 50 percent. So the concern was Lincoln was likely going to have three of NPPD's 11 directors coming after the 2010 census and Lincoln's interest in NPPD's operations was significantly different than our other wholesale and retail customers. Nobody from LES objected in 2009 when the legislation was passed. And today, Lincoln's involvement with NPPD is even smaller. When NPPD sets wholesale or retail rates, it doesn't affect the citizens in Lincoln. They're not paying those rates. They're paying their rates to the-- to the City of Lincoln. We estimate we have 550,000 citizens or so. When we look at the 2020 census data, as we look at our 11 subdivisions, we would be adding 300,000 if we were to add in Lincoln and the cities and communities in Lancaster County served by Lincoln. That would be diluting the voice of the customers directly served or at more than 50 percent. I don't have an exact number, but-- but LES's power supply interest from NPPD is under a contract or a couple of contracts, and it's a minimal amount. So with that, I would be happy to answer any questions you may have.

BOSTELMAN: Thank you, Mr. McClure. Are there any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Mr. McClure, for being here. So, well, first off, does LES purchase any wholesale power from NPPD?

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JOHN McCLURE: LES has a power purchase agreement for the Gerald Gentleman Station. They purchase 8 percent of the power. All the rights are spelled out in that contract. LES also has some participation in our Ainsworth Wind Farm, and we've done some other wind power purchase agreements that they're purchasing a fraction of. But as an example, NPPD purchases almost 24 percent of OPPD's Nebraska City 2, also under a power purchase agreement. NPPD's customers don't vote for OPPD's customers-- OPPD's board.

J. CAVANAUGH: So 8 percent of this one power plant and some percent of Ainsworth. Do you have any idea what percentage of LES's consumption that is?

JOHN McCLURE: I'm going to estimate. It's probably in the 10 to 15 percent range.

J. CAVANAUGH: Of their totals.

JOHN McCLURE: Of their total.

J. CAVANAUGH: Because, I guess my question is the total kilowatts they consume could potentially that-- that LES consumes of NPPD's power could exceed the amount being consumed by both of the previous districts you referenced that Senator Bostelman and Senator Moser are serviced by, correct?

JOHN McCLURE: Oh, it may be greater, but-- but you're talking about a lot more people to begin with and the size of LES.

J. CAVANAUGH: Well, I'm just asking if the amount of consumption of NPPD's production that is constituted by LES is equal to or greater than some of these other people that you referenced?

JOHN McCLURE: Well, let me answer it. Butler and Loup buy all of their power from NPPD so they get a-- their customers have 100 percent interest in NPPD's power supply decisions. They're affected 100 percent by any rate decisions we make. There's no rate decision that NPPD's board makes. There's no new power resource decision that NPPD's board makes that affects operationally or financially the customers in Lincoln, because all of the decisions that affect them are made by the Lincoln Electric System.

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J. CAVANAUGH: OK. I'm not asking you to make a qualitative assessment about the merits of the argument, I'm asking you a numerical question. The numerical question is, is 8 percent of this power station equal to the amount consumed by some of these other entire entities?

JOHN McCLURE: I'd have to look at specific data for the-- for the entity. Is 8 percent greater than our smallest total requirements, wholesale customer? Probably, yes. But all the rights are spelled out under a contract. And again, you can always revisit things. The Legislature looked at this issue in 2009 and I think came up with a very reasonable assessment that if you're not getting 50 percent or more of your wholesale power from a Public Power District, you shouldn't-- and under a firm contract for five years or more, there isn't a basis to be engaged with that district from a board governance standpoint.

J. CAVANAUGH: Just to be clear with you, Mr. McClure, I don't have an opinion about which way to go on this. I mean, I generally would say I'm amenable to your argument. I'm just trying to get the facts.

JOHN McCLURE: Well, I appreciate that. And I want to get you the facts. I'm-- I do have a fundamental concern when Lincoln-- the citizens of Lincoln are not served by NPPD and the decisions we make at NPPD do not affect financially or operationally the electric service in Lincoln, other than a decision we might make about Gentleman Station. And again, Lincoln chose to have-- Lincoln chose to separate from NPPD. So I'm not sure why Lincoln, and especially with its size, should have a significant voice in how NPPD is run, which dilutes the voice of the customers who are served directly or wholesale at 50 percent or more by NPPD.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Moser.

MOSER: So does Lincoln Electric System buy power from other power suppliers?

JOHN McCLURE: Yes, obviously. They-- and I want to be careful speaking for them. But basically what I know is they have ownership in other power plants that are operated actually by other utilities, both in Iowa and Wyoming. They also have power purchase agreements for wind

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farms in Nebraska and in other states. And so, yes, they get power
from a variety of sources.

MOSER: Can they get power in from the same power pool that NPPD
belongs to?

JOHN McCLURE: Yes, Lincoln Electric System is a member of the
Southwest Power Pool.

MOSER: And do they independently bid and decide what power to buy
there? I mean, NPPD--

JOHN McCLURE: Yes, they would be like any of the rest of us who are
members of the Pool. We bid in our generation and we purchase our
energy from the market.

MOSER: So you don't have any influence over how they buy their power?

JOHN McCLURE: No, they make those decisions as LES.

MOSER: Thank you.

BOSTELMAN: So are your board of directors divided up by districts?

JOHN McCLURE: We--

BOSTELMAN: Do they represent districts?

JOHN McCLURE: Yes, sir.

BOSTELMAN: So, do I have a--

JOHN McCLURE: We have 11 subdivisions. Again, they are-- every-- every
census when it comes out, we look at the populations within those 11
subdivisions to see if they are approximately equal in size and we'll
be doing that again. So, again, we would estimate if you put another
300,000 citizens into what I'm estimating will be 550 or so in our
current base, that would be the voice that the citizens of Lincoln
would have when, in fact, the decisions being made at NPPD don't
affect their rates, they're not paying for it, etcetera.

BOSTELMAN: So, it sounds like there's roughly 250,000 customers in
those districts you currently have, because you just referenced

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550,000. If you add 300,000 from Lincoln plus 250,000. As I follow
that map-- I am following your--

JOHN McCLURE: There's 550-- 550,000 population is my estimate for our
service territory currently.

BOSTELMAN: Current one.

JOHN McCLURE: Current. So we would add 300,000 or so if you put
Lincoln in.

BOSTELMAN: So in a district, what's the approximate number of
population in that district?

JOHN McCLURE: About 50,000.

BOSTELMAN: So if Lincoln would be added in, there would be six more
districts or one with this bill.

JOHN McCLURE: It would have-- you would have to take the-- it would be
adding 300,000 to 550. So arguably, to keep it the same, you would add
six if it was 50,000 a director and we're 11 with about 550, adding
300,000 more would add six. So they would have six out of-- in
addition to the 11, it would be six out of 17 if you increased it.

BOSTELMAN: OK. And then would you agree or not if this bill would be
passed that those Lincoln voters then would be qualified to be a
candidate for the-- for the district's board?

JOHN McCLURE: Yes. If they could vote, they could run for the board.

BOSTELMAN: OK. Other questions? Senator Moser.

MOSER: What would be the reason to allow somebody who doesn't do
business with NPPD to control-- have more control over what NPPD does?
Wouldn't you want to have NPPD controlled by the customers that you
serve?

JOHN McCLURE: Well, that-- that's been the philosophy of the Public
Power District boards, is that they-- the folks entitled to vote for
and run for the board are the customers of the Power Districts,
whether it's a retail Power District or a wholesale supplier to that
retail Power District.

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MOSER: Has the-- this is kind of a subjective question and you can answer it or decline. Do you feel like the NPPD board composition has changed over the years and has kind of changed their philosophy a little bit from where they used to be?

JOHN McCLURE: Well, certainly the board has changed. We have different directors. They all bring their own individual experience and viewpoints and so I don't know. I'd have-- it's difficult to say if the philosophy of the board has changed. They're elected to represent the customers we serve.

MOSER: It seems as though that NPPD is attempting to be more ecologically friendly or green energy friendly. It seems like they're doing more wind and solar generation that's becoming a higher percentage of your generation, is that true?

JOHN McCLURE: Ours hasn't changed much recently, but there's certainly the possibility it could change going forward. But that's kind of the general transformation happening across the entire industry.

MOSER: What-- what percentage of your generation is renewable power now?

JOHN McCLURE: Today-- I can get you the numbers exactly, but between hydro and wind, I think we're around 15 percent or so of our generation is renewable, but a significant chunk of it is what we call clean energy because of our nuclear power plant that has no emissions.

MOSER: OK, thank you.

BOSTELMAN: Could you tell me what-- what are the Public Power Districts in the state? There's more than two.

JOHN McCLURE: There are 29. And the two largest, obviously, are Omaha Public Power District and Nebraska Public Power District. OPPD serves in-- in 13 counties in eastern and southeastern Nebraska and even into kind of east central Nebraska. They're primarily retail. So they-- they build their generation and system to serve those retail and use customers in metropolitan Omaha and then in the rural areas and a number of communities in southeast and east central Nebraska. NPPD is a-- both retail and wholesale supplier. We have 79 communities in the state that we serve retail from Plattsmouth to Scottsbluff, McCook, York, Kearney, Norfolk, Chadron. I just mentioned a few. We also serve

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40--some wholesale municipalities. If Senator Groene were here, North Platte is a wholesale customer of NPPD. We have a number of those around the state and then we serve 20--some Public Power Districts as I've mentioned, Butler and Loup, two examples. They get all their power supply from us. The majority of all the rural Public Power Districts in the state buy all their electricity from NPPD.

BOSTELMAN: In the southwest portion of the state, there's a-- is it tri-state? There's another--

JOHN McCLURE: Yes, the Panhandle of the state is-- the power supplier out there is Tri-State G&T, which is out of Colorado. Even though they're called Tri-State, they actually serve as a wholesaler in about four states. Most of the rural power entities in the Panhandle are supplied by Tri-State. So there's a combination of Public Power Districts and cooperatives, mostly in the Panhandle, who get their power supply from Tri-State.

BOSTELMAN: OK. So they're purchasing power from a different generator, different Public Power District.

JOHN McCLURE: From-- actually from an electric cooperative G&T that's out of state. And, of course, they don't have the same governance structure in a cooperative that we do in a Public Power District.

BOSTELMAN: But you had said that you-- did I hear you right, that you from-- do purchase some power from OPPD?

JOHN McCLURE: Correct. We-- we purchase-- it's roughly 24 percent of the Nebraska City 2 coal unit at Nebraska City. And that's a wholesale, so that's a wholesale purchase by us. We take it and we turn around and sell that to our customers.

BOSTELMAN: And how many-- approximately how many customers that provide to--

JOHN McCLURE: How many-- well, it's blended in obviously with our resource mix. But it's-- it's-- that plant I think it's about 650 or 70-- 700 megawatts, so we're buying 24 percent of that.

BOSTELMAN: OK. All right. Thank you. Any other questions? Senator Cavanaugh.

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J. CAVANAUGH: Thank you, Chairman. And thanks again, Mr. McClure, for being here. Are you aware of anybody that is serviced by LES who does not vote in the City of Lincoln?

JOHN McCLURE: I'm sorry. That does not--

J. CAVANAUGH: Does LES serve anybody outside the territorial borders of the City of Lincoln?

JOHN McCLURE: Yes, Lincoln is the retail supplier for Waverly and I believe a few other smaller communities around the City of Lincoln.

J. CAVANAUGH: Do you know, do the folks who live in Waverly get to vote for NPPD then?

JOHN McCLURE: No, again, because they're in Lincoln, they're not served by NPPD, they're served by Lincoln.

J. CAVANAUGH: Do those folks have any representation in their Power board?

JOHN McCLURE: I don't know if Waverly has. Well, if Lincoln Electric System is the retailer, I don't know that they would have a representation.

J. CAVANAUGH: Thank you.

BOSTELMAN: OK, thank you, Mr. McClure, for testimony.

JOHN McCLURE: Thank you.

BOSTELMAN: Next opponent, as soon as we get the table cleared off.
Good afternoon.

JAMES DUKESHERER: Good afternoon, Chairman Bostelman, and members of the Natural Resources Committee. My name is James Dukesherer, J-a-m-e-s D-u-k-e-s-h-e-r-e-r. I'm the interim director of government relations for the Nebraska Rural Electric Association. NREA is testifying in opposition to LB627. Our association represents 34 rural Public Power Districts and electric cooperatives throughout the state. Together, the more than a thousand dedicated employees of our system serve about 240,000 meters across 87,000 miles of line. I will say the history, I think, was adequately covered already regarding this issue

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by both Senator Morfeld and Mr. McClure. So I'll simply say that it is true that prior to 2009, NPPD chartered service territory included the entire state with-- with a few exclusions and the citizens of Lancaster County were able to vote for and serve on NPPD's board of directors. However, at that time, the Legislature, they changed this by adopting LB53, sponsored by, interesting enough, then State Senator, Deb Fischer. They did this to ensure that only those with a vested interest in the decisions made by the NPPD board would be allowed to vote for and serve on that board. And as has already been said, that vested interest was defined as having-- receiving 50 percent of your power from the utility. Direct representation is the foundation of our democracy. Those that are impacted by the decisions that a board makes should be allowed to vote for and serve on that board. Consumers of Lincoln Electric System should be represented by their board of directors and the retail wholesale customers of NPPD should be the ones that are able to vote for and serve on their board. So with that, I thank you for your time.

BOSTELMAN: Thank you, Mr. Dukesherer. Is there any questions from the committee members? Seeing none, thank you for your testimony. Would invite anyone else who would like to testify in opposition to LB627 to step forward. Seeing none, is there anybody like to testify in the neutral capacity? Seeing none, Senator Morfeld, welcome to close.

MORFELD: Thank you, members of the committee. Interesting discussion and good history. I just want to touch on a few different points that the opposition testifiers discussed. First, I-- I think the gentleman from NPPD when he was speaking about Lincoln not opposing this, must have been LES because I know that there was fervent opposition from some of the Lincoln delegation of senators during the debate on this issue. So it certainly wasn't-- it certainly wasn't a decision that was widely accepted by the people that represent the City of Lincoln and the Legislature. The other thing I would say is that I just find it odd. And one of the reasons why I introduced this is that while it may be less than 50 percent, I would say 10 to 15 percent of our power is still a significant amount in that the voters of Lincoln should be able to have a say in the Nebraska Public Power District. And the gentleman that testified just before me here, he said that direct representation is the foundation of democracy. It is, and I have questions on whether or not this violates the equal protection clause of the United States Constitution, because voters that are similarly situated are not provided and afforded the opportunity to have

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representation. So I think that, you know, I'll probably be asking for an Attorney General's opinion on the statutory scheme in the Constitution-- constitutionality thereof, because I had serious constitutional concerns about this as well. Again, I think 10 to 11 percent, 10 to 11 or maybe 15 percent is not a small number in terms of the amount of power and I think that voters should have a say in that. Also, I believe that NPPD has a fairly large coal plant in Lancaster County, which does have an impact on air quality and other things. And so I think that we should also have a say in the representation in terms of how that is governed. And I personally think that-- well, I made that argument a little bit earlier, but I just think that people should have the opportunity, particularly when you have a body that is created by state law and statute. This isn't a private organization or a private company that gets to decide who their shareholders are and who can vote in their private board elections. This is a public company that is created by statute and it should have representation from people across the state on that board. So that's all I have to say. Thank you.

BOSTELMAN: Thank you, Senator Morfeld. Are there any other questions from committee members? Senator Moser.

MOSER: You do have people on the LES board that are elected by people in Lincoln, correct?

MORFELD: No, our system, which I think Senator Cavanaugh was getting to a little bit. Our system, Senator Moser, is that they are appointed by the mayor and I believe confirmed by the council, but they're appointed by the mayor. The people on the LES board in the City of Lincoln.

MOSER: But if you had an objection as to where they bought their power, if you didn't want them to buy any power from NPPD, couldn't you go to the board of directors of LES and say, you know, we want you to buy your power from-- you know, somebody else, if you don't like how NPPD is run, you know.

MORFELD: I mean, you certainly-- you certainly could. You could go to them or you could go to the mayor who appoints them, I suppose.

MOSER: So you have some redraft, re-- you know, form of redress, I guess.

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MORFELD: Yeah, but we don't have the same level of redress in terms of the voter that's similarly situated in the county next to us. And so I think that that's where the the equal protection-- the equal protection concern comes to my mind. So, yeah, you do have some form. I'll-- I'll-- I'll readily agree with you on that. But it's not the same type of power that a similarly situated voter in the next county over has to have an impact on NPPD in their decisions and-- and the way that they operate their public power.

MOSER: There may be a better way to address this would be to enter a bill requiring LES directors be elected by the people.

MORFELD: Well, I'm not so concerned about that because we have a system of being represented right now in Lincoln. Now, whether you think it should be elected or appointed, that's-- yeah, I think that's a reasonable debate. But right now, there is no representation from Lincoln on Nebraska Public Power District, either elected or appointed. So to me, it's not so much how those people are represented, it's the fact that they're represented at all. And right now, we're not represented at all.

MOSER: They could change the name of Nebraska Public Power District to Central Nebraska Power District.

MORFELD: They certainly could. But the fact of the matter is, is the Nebraska Public Power District and they're a creature of statute and they're a state entity. They're not a private entity. And so therefore, they should be accountable to the people of the state. Including the Lincoln voters that they get 10 percent of their power from and they run a cooperative plant within our jurisdiction.

MOSER: Well, it's not good practice to argue with presenter, so I'll leave it at that.

MORFELD: No, I enjoyed the back and forth, Senator Moser. I'm not-- I'm not frustrated although I think it's-- I think it's-- I think it's an interesting discussion. And I think that it's an interesting issue. I was surprised because I was talking to some people and they were talking about voting for their Public Power board member. And I'm a voting rights attorney and so I was thinking, man, I've never voted for Public Power or at least that I can remember. And so it's been a while.

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MOSER: You weren't a voting age in 2009?

MORFELD: I was. I was a voting age in 2003 and then I moved here in 2005. So I probably got a few years of exciting NPPD board elections before then.

MOSER: Thank you.

MORFELD: Yes. Thank you, Senator Moser.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Senator Morfeld, do you feel like it's reasonable that the City of Lincoln only 8 percent but they have a third of the directors? You think that's reasonable?

MORFELD: I don't know if it is or isn't. I mean, I think that-- I think that personally, that-- that the line of questioning that I think Senator Cavanaugh was going down is that, yeah, we have only 8 or 10 percent or 11 percent or somewhere around there. I know we don't have the precise numbers, but that's a significant amount of power compared to a bunch of other customers that have maybe 100 percent.

GRAGERT: And that's one way to look at it.

MORFELD: Yeah.

GRAGERT: But the other way is, is that the other customer, whether it's 4 percent or 20 percent, doesn't add up to your 8 percent. You know, the eight percent in Lincoln, but a100 percent of their-- of their electricity is coming from that company, you know, so that's the other way to look at it.

MORFELD: So they-- maybe they have more of a stake in it, is what you're saying.

GRAGERT: Exactly.

MORFELD: No, I-- I understand the argument. And I think you also go down kind of a slippery slope when you start thinking about that, though, because what about the-- what about the place has 51 percent of their electricity, so they're just right over the threshold. But yet they have a voice-- vote, as opposed to somebody who has only 49

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percent. That's the problem with these arbitrary cut offs and-- is
that you run into these comparison arguments, which become illogical.

GRAGERT: Exactly and how you're looking at it, but I just-- it just,
my first thought, if you only have 8 percent, whether it be-- but you
have a third of the directors, that just seems like it's little odd.

MORFELD: Yeah. And there's probably and quite frankly, if you start
doing it by proportion, then you probably run into some other
constitutional issues as well.

GRAGERT: Yeah.

MORFELD: OK.

GRAGERT: Thanks.

MORFELD: Thank you, Senator.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman, and thank you, Senator Morfeld, for
this discussion that I was, I guess, caught off guard by but I'm
interested in. The clarifying the limit of the gross revenue of 150
million, is that of the amount of the Public Power entity in this
example that we're talking about is NPPD, is that reference to how
much their gross revenue is, or is that the amount that is purchased
by the municipality or county that we're talking about that deserves
voting?

MORFELD: I believe it's the county or municipality. Again, I've sent
this up to Bill Drafters to fit Lancaster County and so there may be
something there that we need to tweak in.

J. CAVANAUGH: I-- yeah, I'm just trying on the fly here, trying to
understand what that's a reference to and I'm wondering if that is
more of a constraint, that kind of what Senator Gragert was talking
about is saying, making sure there's a sufficient amount of skin in
the game to-- to make sure that the interest is there. I guess I join
your concern about a slippery slope and I wonder about other
governmental services that, you know, people pay taxes and vote in
cities that don't own cars and the city addresses the wheel taxes.
People live and pay taxes and vote in school board races and they

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don't have children in the school board districts. So I guess I mean, as I told Mr. McClure, I guess I don't know where I'm at on this, but I'm trying to kind of figure out what questions I would like to know the answers to to figure out how you make this decision. But I do-- I am concerned about the thought of saying someone's not sufficiently concerned to deserve an interest in an elected office. I think that there is a fairness question that Senator Gragert addresses and that Mr. McClure was talking about, but elections are not a one to one, even though it was one man, one vote, which is what Senator Bostelman-- Chairman Bostelman and I were talking about at the break. There's still an important-- to make sure that the system fundamentally make sure people have representation, whether or not that they are taking advantage of this. That's not a question, that's a statement, but you can address it.

MORFELD: No, and the only thing that I'll address is-- is that, again, we're not talking about a private corporation, we're talking about a public entity and with the public entity comes the protections of the Constitution and of being able to have equal protection under the laws and being able to have participation in the electoral process. This is not a private company. It's not a private election. And so there are constitutional concerns and limitations that I have, which is why I introduced this.

J. CAVANAUGH: Thank you.

BOSTELMAN: OK, seeing no other questions, thank you.

MORFELD: Thank you.

BOSTELMAN: That closes the hearing on LB627. OK, we're ready to open on LB513. Senator Brewer.

BREWER: Third bill, today and I'm starting to feel it.

BOSTELMAN: Good afternoon.

BREWER: Thank you, Senator-- thank you, Chairman Bostelman, and good afternoon, fellow Senators from the Natural Resources Committee. I'm Senator Tom Brewer. For the record, that is T-o-m B-r-e-w-e-r, and I represent the 13 counties of the 43rd Legislative District of western Nebraska. I'm here today to introduce LB513. This is a very simple bill about public power organization. They have a very special status

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in our-- our state law. They're defined as a subdivision of state government. They are independent from all three branches of Nebraska government and this body created them. When this new category of an independent state government organization was first created, the Legislature made sure to have a check on the power to ensure that there was accountability to the citizens of Nebraska. There are two modes in this law to accomplish this. Our public power organizations can be a cooperative with a wholesale customers making up their boards, or they can have a popular elected board and be called a power district. Old news for you guys. We have chosen the second mode here in Nebraska. If you turn to page 2 in the bill, lines 11 and 12, explain my intent. I believe a member of an elected power board should face the voters no less often than state senators do for that exact reason. This power-- this check on the power our predecessors put into law for a reason, I believe it strengthens the voter's ability to have a voice. The second thing, this bill does start at the bottom of page 2, line 31, the intent was to change the law so that power board members also had to be retail customers. I was surprised to see this wasn't already a requirement. The idea an elected board member could avoid the consequences their voters-- from the voters and the decisions that are made by the board bothered me. I have since learned that a number of the public power organizations do not have retail customers. As written, this bill would present serious problems so that these or-- to these organizations so I have brought an amendment for the committee to consider. It strikes and changes and simply makes the bill about changing from elected terms for power board members from six to four years. Nothing else. Thank you for your time and I'll be happy to answer any questions.

BOSTELMAN: Thanks, Senator Brewer. Are there any questions? Senator Moser.

MOSER: Maybe you and Senator Morfeld should have duked it out and then the winner bring their bill back?

BREWER: Well, actually, I just caught part of his when I came in, but there were things about his bill I did kind of like.

MOSER: Well, he's wanting to add electors that are not served by NPPD and you're saying you want them to be customers of NPPD in order to be eligible to serve on the board. So it's kind of--

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BREWER: Well, and-- and I actually, of course, that was a part I amended because I did get a call from a couple of the different power cooperatives or power-- Public Power Districts. And-- and when they finished explaining it, I realized that if you did that, it wouldn't work because they truly don't have customers in the sense that-- that I intended the bill. And that's just learning more about public power and how it works.

MOSER: OK, thank you.

BREWER: You bet.

BOSTELMAN: Other questions? Seeing none, will you stay for closing?

BREWER: I will.

BOSTELMAN: Thank you. Would ask for anyone who would like to testify as a proponent for this bill to please step forward. Good afternoon.

JEFF BUETTNER: I have to be very careful about taking off my mask because of my glasses and my hearing aids, so I don't want to pull anything loose. My name is Jeff Buettner. I am the government and public relations manager for the Central Nebraska Public Power and Irrigation District. My name is spelled J-e-f-f B-u-e-t-t-n-e-r, and good afternoon, Senator Bostelman, and the rest of the committee members. Appreciate the opportunity to come up and address you. And I guess the important thing is we're kind of the poster child for just what Senator Brewer talked about. Central Nebraska Public Power and Irrigation District, as some of you know very well, is the owner and operator of Lake McConaughy, Johnson Lake, Jeffrey Lake, the Supply Canal system and four hydro plants, three of which are along a 75-mile long Supply Canal between North Platte, approximately Lexington. We also have about a 1,000 irrigation customers on the south side of the river in south central Nebraska and a similar number of cabin owners who lease property on the shores of Lake McConaughy, Johnson Lake, Jeffrey Lake, etcetera. We irrigate about 110,000 acres on the south side of the Platte River. Our hydroelectric plants generate power that is sold at wholesale to other customers. We do not have any retail electric customers. And that's one of the things that Senator Brewer mentioned, is it would if-- if advanced as it stands right now, would basically strip our board of representation because we don't have any board members who are retail customers, retail electric customers of

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the district. There are a couple other public power and irrigation districts in Valley County, Senator Briese's district, I believe, that were created under Chapter 70, just as central and a lot of other Public Power Districts were that never had hydroelectric facilities built. The North Loup Public Power and Irrigation District and the north or the Middle Loup up in Valley County. Whether Congress ran out of money or whatever reason, they never had hydroelectric facilities associated with it. Nevertheless, being Chapter 70 entities, they would be affected as well. They wouldn't have anybody eligible to be on their board because they don't have any retail customers. So the amendment that Senator Brewer proposed goes a long way towards alleviating that potential issue. As for the 6- to 4-year term that he referenced, we're-- we don't have a huge problem with that. The only thing is, is that when you get out to our neck of the woods and some of you are familiar with that, you don't have a lot of people lining up to run for a Public Power and Irrigation District board. You know, there's-- there's long hours, a lot of education, investment of time and energy, and they get a small stipend to offset some of their expenses. So the long hours, low pay thing is something I think that some of you folks would probably be familiar with. But vacant seats on such boards are often filled by uncontested elections. So it would create another obstacle, I guess, for finding candidates that want to sit on our board of directors and others that find themselves in a similar boat. So with that, if for some reason the bill does come out of committee, we believe that it's imperative that the amendment that is proposed would be attached to it. But, you know, we believe that it's probably not necessary under the current circumstances, so with that I'll stop.

BOSTELMAN: OK, thank you, Mr. Buettner. A point of clarification. On your green sheet you have listed as an opposition. Are you an oppose or are you a proponent.

JEFF BUETTNER: We are opposed to the bill.

BOSTELMAN: You are opposed.

JEFF BUETTNER: Yes.

BOSTELMAN: OK. Other-- are there any questions from the committee? Seeing none, thank you for your testimony.

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JEFF BUETTNER: Thank you.

BOSTELMAN: I would ask for any proponents to please step forward. Is there anyone wants to testify in support of LB513? Seeing none, I would invite anyone who would like to testify in opposition to LB513. Good afternoon.

JOHN McCLURE: Good afternoon again, Chairman Bostelman, and members of the committee. My name is John McClure, J-o-h-n M-c-capital C-l-u-r-e. I'm executive vice president and general counsel for Nebraska Public Power District. I'm here today in opposition to LB513. Senator Brewer in his introduction addressed certainly a primary concern that we had, which was that this would require directors to only be retail customers of a Public Power District. Presently and 11-- we have 11 directors. Seven of them actually come from wholesale customers and it's not because we designate them that way. It's just the way the elections have happened. Only 4 of our current 11 directors are actually in retail communities of NPPD. So again, we believe all of our customers are entitled to not only vote for our directors, but serve should they choose to do so and be elected. Regarding the change from 6-year terms to 4-year terms, I don't know how long it's been 6-year terms, whether it goes back to the beginning of the Public Power District statutes in the 1930s, but for the 40-plus years I've been at NPPD, the Power District terms for all Public Power Districts have been 6 years. I don't recall anyone ever saying that they thought that was a problem, that they were 6-year terms and they should be 4-year terms. Obviously, that's a matter for you as the policymakers to-- to determine, but we think it's working well today. And in our case, we like the fact that only a third of our board is up at any given time, roughly with 11 directors. And it just allows for good, smooth transition processes where there are turnovers in terms of retention events, institutional knowledge and leadership transition. With that, I think I've covered my points and because I was not expecting an amendment might be proposed, I wanted to testify on the bill as introduced and-- and our opposition. But we certainly do appreciate that Senator Brewer recognizes having it limited to retail only would not be a good policy. With that, I'm happy to answer any questions you may have.

BOSTELMAN: Thank you. Mr. McClure. Are there any questions from committee members? I do have a question for you. It's in the same area of statute speaking of board of directors and perhaps you can clarify

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the thinking behind this on this part of the statute, if you will. And you'll understand that portion once I get to it. If you go to page 4, Section 3, subparagraph-- subsection 2(a), it says in there no person who is full-time or part-time employee of the district shall be eligible to serve as a member of the board of directors for that district, and no higher-- high level manager employed by a district may serve as a member, and on it goes. Could you explain to me why that is?

JOHN McCLURE: Well, the-- the first part is, is that you can't be both an employee and be a board member of a Public Power District. That would just be a problem. And so it's again, we've heard references today that were not-- it may have been in a prior hearing that, you know, this is a political subdivision, public corporation. It's not a private corporation. In a private corporation you may have an executive who's also on a-- on the board, but that is not allowed under our statutes.

BOSTELMAN: So-- I'm sorry, go ahead.

JOHN McCLURE: I was going to read the second portion that you were making reference to. I think that has to do with certain folks being on other Power District boards, but I'd have to look at that more closely.

BOSTELMAN: Yeah, I guess my-- I guess I was kind of curious what that-- why-- why they would be conflicted out. If they're not an employee of NPPD, why they being conflicted out?

JOHN McCLURE: Well, there was-- my recollection is and I'd have to go back and look at this, but this was a-- may have resulted from a situation a few years ago where a general manager of a wholesale customer of NPPD was running for NPPD's board. And there was a question whether that was a good policy to have to have a senior manager of a wholesale customer actually on the board and what kinds of conflicts might arise because of that.

BOSTELMAN: So why would a board of director be allowed to serve if they're selling power to you or representing someone who's selling power. Wouldn't they have the same conflict?

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JOHN McCLURE: I think that could be. And again, I haven't given this a lot of thought and I'd rather, you know, noodle on it if I could, and I'd love to have a follow-up conversation.

BOSTELMAN: OK, thank you. Any other questions? Seeing none, thank you, Mr. McClure for your testimony.

JOHN McCLURE: Thank you.

BOSTELMAN: Hello again.

JAMES DUKESHERER: Hello again. Good afternoon, Chairman Bostelman, and members of the Natural Resources Committee. My name is James Dukesherer, J-a-m-e-s D-u-k-e-s-h-e-r-e-r, and I'm the interim director of government relations for the Nebraska Rural Electric Association and we are testifying today in opposition to LB513. Our association represents 34 rural Public Power Districts and electric cooperatives throughout the state. Together, the more than a 1,000 employees of our system serve about 240,000 meters and more than 87,000 miles of line. LB513 would require that Public Power District board terms be 4 years, and board members be retail customers of the district in which they serve. On the first issue, on issue of 4-year terms, most all of NREA's member system have board members that are 6-year terms. This would impact pretty much all of our districts. Years of service and knowledge can be vital in making a successful board member and ultimately a successful board. Likewise, in rural areas, it can be at times difficult to find new individuals to serve on our boards. In recent years, we've seen an influx of money coming into the state for PPD elections. We believe LB513 would exacerbate this problem by increasing the frequency of elections held for these seats. Four-year terms versus 6-year terms means more time will be committed to elections and less time will be committed to learning more about our-- our industry. So we'd like to keep the statutes just as they are. As for the second stipulation in the bill that individuals have had to be retail customers to serve on the board, we appreciate the amendment that Senator Brewer mentioned in his opening. A little history here. In 2009, as we talked about earlier today, the Legislature altered these Public Power governance statutes by adopting LB53 to ensure that only those that received at least 50 percent of their power from generator could vote for and serve on that board. NREA represents 23 member systems that have signed total requirements contracts with NPPD. We buy all of our power from NPPD. Approximately

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70 percent of the cost these members charge their customers is the cost of power. It's just a pass through, 70 percent of that final bill to that customer. These electric-- electric consumers are not retail consumers of NPPD, yet they have a vested interest in serving on and voting for NPPDs board of directors. The decisions made by that board directly impact the rates that they pay. So it's for these reasons we oppose the advancement of LB53-- oh, LB513. Thank you for your time.

BOSTELMAN: Thank you for your testimony. Are there any questions? Questions would be, I don't know. I'll just ask off the top of my head. School board members, 4-year term, mayors, 4-year term, planning commission, county supervisors, commissioners, I'm not sure on those. Do you know, are they 4-year terms, 6-year terms?

JAMES DUKESHERER: Nor do I know.

BOSTELMAN: Well, the reason why I ask is, you know, the comment is, is that it's going to be too hard to find people to serve. Well, if our school boards or mayors or planning commissions, county supervisors, county commissioners and so forth, if those public office are 4-year terms, and they can find it, I don't know why there would be an issue to this. Just a question. I just didn't know, I just wanted to--

JAMES DUKESHERER: I would just respond by saying currently at six years, it is difficult for members to find those-- those next members to run. It's often the son or daughter of an existing member that ultimately fills that seat. So I can see how doing that more frequently would mean a greater issue.

BOSTELMAN: OK, thank you. Any other questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Just as my own personal information. The only officers that I'm aware of that are 6-year terms are-- at least where I come from, OPPD and Board of Regents. I think everything else is either two or four years in Omaha at least. Isn't there kind of a counterargument that a shorter term is a shorter commitment, therefore people may be more likely to undertake it?

JAMES DUKESHERER: I think that that is a solid argument. But again, my experience with our board members is that these members tend to be on the board for a very long time. We certainly have members that sit on Power District boards across the state that have been on that board

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since before I was even born. It's not uncommon at all to have them on
there for 20 years or so.

J. CAVANAUGH: And it would-- your contention then be that they stay
there because there's nobody coming up behind them to take the job
from them when they leave?

JAMES DUKESHERER: There's a lot of reasons why they stay. There are--
my contention would be they stay there because they care about their
district. They care about the decisions that are being made. And
they-- they like-- they like being a member of that board.

J. CAVANAUGH: And they-- but they don't want to walk away because
there's nobody else to do it. I mean--

JAMES DUKESHERER: Absolutely.

J. CAVANAUGH: --trusted that somebody coming behind you is going to do
a good job, you might say, OK, I don't have to do it anymore.

JAMES DUKESHERER: It's a valid argument.

J. CAVANAUGH: Thank you.

BOSTELMAN: Any other questions? Seeing none, thank you for your
testimony.

***RUSSELL WESTERHOLD:** Senator Bostelman and Members of the Natural
Resources Committee: My name is Russell Westerhold, and I appear
before you today as a registered lobbyist for Southern Public Power
District, or SPPD, in opposition to LB513. SPPD opposes the
requirement in LB513 that a public power district board member must be
a retail customer of the public power district. If passed, LB513 would
prohibit any customer served by Southern from serving on the board of
Nebraska Public Power District. That takes away SPPD's ability to be
represented on the board of our power supplier. Currently, about half
of NPPD's Board members are not retail customers of NPPD. This would
also prevent anyone living in the wholesale towns that we serve,
Franklin, Wood River, Campbell and Giltner, from serving on the SPPD
Board. That strikes us as being unfair to the citizens of those towns
as well. For those reasons, SPPD asks that you not advance LB513 from
this Committee.

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BOSTELMAN: Would anyone else like to testify in opposition to LB513, please step forward. Seeing none, would anyone like to testify in the neutral capacity? Seeing none, Senator Brewer, you're welcome to close.

BREWER: All right, thank you, Mr. Chairman. I get it. The Power board doesn't want to change the length of their tours. The reason that they came to me was that they said that they ran into problems where someone would run for that position and express certain desires about how he was going to handle things, he gets the position and then does almost the opposite. And then they're there for 6 years and that's a long time. I agree with Senator Cavanaugh that if you're doing a good job and you're doing what the people ask you to do, then at 4 years it won't be a problem, you'll be reelected. Six years is a long time and especially with technology and the things that are changing, having fresh ideas and bringing in fresh faces I don't think are a bad thing, or at least have to compete to hold those positions. So that's why I was approached about the bill. Understanding the second half of it isn't an issue with being a retail customer.

BOSTELMAN: OK, thanks, Senator Brewer. Are there any questions-- remaining questions by committee members? Seeing none, that will close our hearing on LB513. Thank you, everyone, for coming this afternoon.