

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources Committee February 4, 2021  
Rough Draft

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**BOSTELMAN:** OK. Good morning, everyone. We'll-- I've got some COVID hearing procedures to go over first before we get started this morning. 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 bill hearing in progress. The bills will be taken up in the order posted. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We req-- excuse me. We req-- 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. We ask that you please limit or eliminate handouts. Only handouts submitted electronically to our committee clerk by noon on the work day prior to the public hearing will be available for-- electronically to the committee members for the hearing. Thank you for your cooperation in our desire to maintain a safe environment for our hearings. Welcome to the Natural Resources Committee. I am Senator Bruce Bostelman. I'm from Brainard and 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 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-- 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. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the sign in sheet to a page or the committee clerk. This will help us to make a more accurate public record. If you do not wish to testify today but would like to record your name as being

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present at the hearing, there is a separate white sheet on the tables that you can sign for that purpose. This will be a part of the official record of the hearing. When you come up to testify, please speak loudly and clearly into the microphone. You may remove your mask. Tell us your name and tell-- and please spell your first and last name to ensure we get an accurate record. We'll be using the light system for all testifiers and you'll have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means that you have one minute remaining, and the red light indicates the time has expired. Questions from the committee may then 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, far left.

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

**HUGHES:** Dan Hughes, District 44, ten counties in southwest Nebraska.

**AGUILAR:** Good morning. Ray Aguilar, District 35, Grand Island, Hall County.

**BOSTELMAN:** And on my far right?

**GROENE:** Mike-- Senator Groene, representing the people of Lincoln County.

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

**MOSER:** Mike Moser, District 22, Columbus, Platte County, and bits of Colfax and Stanton County.

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

**TIMOTHY KRAUSE:** Hello.

**BOSTELMAN:** Mr. Krause, just hold on just a minute, I'm just about ready for you.

**TIMOTHY KRAUSE:** Sounds great.

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**BOSTELMAN:** Thank you. And I'd like to recognize our pages for this morning. Both Loren-- Lorenzo and Brytany are with us and we'd like to thank them for serving the hearing room and for the committee this morning. With that, we will open up the appointment letter for Mr. Timothy Krause of the Nebraska Natural Resource Commission. Mr. Krause, we would ask that you please introduce yourself, tell us a little bit about yourself, and then why-- what your interests are for the commission, please.

**TIMOTHY KRAUSE:** I'm Tim-- Timothy Krause from Mason City, which would be southeast Custer County.

**BOSTELMAN:** And would you-- I'm sorry, I'll interrupt you because you didn't hear before. Could you please spell your name for us?

**TIMOTHY KRAUSE:** Full name would be Timothy, T-i-m-o-t-h-y, Krause, K-r-a-u-s-e.

**BOSTELMAN:** OK, please proceed.

**TIMOTHY KRAUSE:** OK. As I mentioned before, I'm a farmer/rancher from Mason City, Nebraska, which would be south-- a small town in southeast Custer County, for people not familiar with it, fourth-generation farmer and rancher, moved back to the farm and took over full time farming approximately about ten years ago and have-- have been-- since moving back, I've been heavily involved with Farm Bureau. And I guess the-- the reason for applying for the commission was that I really care about the Nebraska environment and Nebraska agriculture. So I thought it would be a good fit with some of the past experiences that I've had, and I guess I look forward to sitting in on the board.

**BOSTELMAN:** OK. Thank you. Are there questions from committee members? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you, Mr. Krause. Can you hear me?

**TIMOTHY KRAUSE:** Yes, I can.

**J. CAVANAUGH:** OK, well, thank you for being here and thank you for your willingness to serve. Can you just briefly describe what the role of the Natural Resources Commission is?

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**TIMOTHY KRAUSE:** It's-- it-- it was set up with some funding to kind of give a little more insight on some other projects in the state besides what just the Natural Resource Committee is doing. And from what I read and researched on it, a lot of it is dealing with water issues with-- within the state. And as you know, and as well as I know, there's not a more important resource to the state of Nebraska than water.

**J. CAVANAUGH:** So just to clarify, so this is a first-time appointment, not a reappointment?

**TIMOTHY KRAUSE:** Yes.

**J. CAVANAUGH:** OK, so you-- you've basically been on the board since you were appointed in October, it looks like?

**TIMOTHY KRAUSE:** Yep.

**J. CAVANAUGH:** OK. Had-- did you apply, look-- search-- seek out this opportunity or did somebody approach you and ask you to apply?

**TIMOTHY KRAUSE:** I was approached by then-president Steve Nelson with Nebraska Farm Bureau.

**J. CAVANAUGH:** OK, and-- but he's not on the board, correct?

**TIMOTHY KRAUSE:** Right.

**J. CAVANAUGH:** So it's an organization that you're a member of that's kind of helping out by looking for interested people to par-- to be involved.

**TIMOTHY KRAUSE:** Yes.

**J. CAVANAUGH:** OK. Do you know if anybody else applied?

**TIMOTHY KRAUSE:** The only other person that I know-- for this particular position or on the board as a whole?

**J. CAVANAUGH:** For this particular position.

**TIMOTHY KRAUSE:** No, I don't.

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**J. CAVANAUGH:** OK. That's it. Thank you.

**BOSTELMAN:** OK, are you-- Mr. Krause, are you filling a position, a certain position on the commission? And what is that?

**TIMOTHY KRAUSE:** The-- the grazing animals/livestock position on the board.

**BOSTELMAN:** OK. Are there other questions from the committee members? Seeing none, that's all that we need from you for today, Mr. Krause. Thank you very much for your willingness to serve and for calling in this morning.

**TIMOTHY KRAUSE:** All right. Thank you. You guys have a great day.

**BOSTELMAN:** Thank you. You too. I would ask that anyone who would like to speak as a proponent for the appointment of Mr. Timothy Krause to Nebraska Natural Resource Commission to please step forward. Seeing none, would someone like-- anyone like to testify in opposition? Seeing none, anyone like to testify in the neutral capacity? Seeing none, that will close the hearing on the appointment of Mr. Timothy Krause to the Nebraska Natural Resource Commission. With that, I would invite Senator Erdman to come up and we'll open the hearing on LB562.

**ERDMAN:** Thank you, Senator Bostelman. Good morning, committee. I appreciate being here. As I've said in the past, I appreciate this room a lot because I can hear. I bring to you this morning an opportunity that we have to make a difference in western Nebraska. We have an opportunity to relo-- relocate a state agency that would help not only put them in a position to be closer to what seems to be the most pressing issues with Game and Parks, but also to help a community that is struggling with loss of population because of the closure of a major business. And so today I bring you this bill. And as I begin to consider what we should do with moving of Game and Parks, I reviewed the current statute that we have and it said in the statute that Game and Parks shall be located north of Holdrege Street and 33rd in Lin-- in Lincoln. I think that's correct. So the statute currently says where it should actually be located. So after I read that and seen that, I thought it would be appropriate that when we go to move the Game and Parks headquarters, we specifically say where it should be located. So that's why in the bill on page 2, starting on line 20, it

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says, beginning on January 1, 2023, the headquarters of Game and Parks Commission shall be located in Sidney, Nebraska. And so that is the goal and my goal is twofold. One, when-- and I've said this in the past. I'll say this again. When you drive into Lincoln, no matter which direction you come from, when you get to the city limits and roll your window down, you smell taxes. And all of our taxes, all of our fees are collected and they're spent in the city of Lincoln. And the city of Lincoln and eastern Nebraska functions under a different economic strategy than we do in western Nebraska. We're under agriculture. And so I thought it was appropriate. We could put some of these employees of a state agency in a location that has facilities, that has the ability to serve their needs, also put some of those people there to solve that population drain and fill in some of those gaps. And so it's a great opportunity for us as a state to move a-- an agency to the western part of the state. And as we have dealt with COVID over the last almost year, now we have discovered that you can manage things remotely. We have technology, and I don't know-- I can't tell you how many Zoom meetings that I've attended in the last eight, nine months. And so with technology being what it is, I don't believe that the Game and Parks headquarters needs to be located in Lincoln. I believe some of these other state agencies could be located around the state as well. And so that is my purpose for bringing this bill this morning. I see the fiscal note that was sent out, and I believe most of those costs and those move costs are presented and-- and put together by Game and Parks themselves. And it would remind me of a state agency, and that's why it looks like it did. There are people here this morning that have driven all the way from Sidney to speak to you about this issue. You know, some have said, are you just trying to poke Game and Parks in the eye? That's not the case. I am serious about moving Game and Parks to Sidney. And if I weren't serious, those people from Sidney wouldn't have driven in that far to talk to you. So Game and Parks headquarters, as I said, is now located here. We have an issue with wildlife in western Nebraska. We have issue in Senator Hughes's district as well. And it would locate Game and Parks headquarters closer to where those issues are. We have significant parks there in-- in western Nebraska. And I was visiting with a gentleman this morning from Scottsbluff, happened to stop by my office, and he said we are-- we have always been concerned in western Nebraska that we get the short end of the stick when it comes to dealing with our state parks. And if you look at Mahoney State Park

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and some of our parks and the facilities we have compared to what they have in the east, it's a huge difference. And so we've had even issues at Box Butte Reservoir just getting the Game and Parks to dumpsters there. And so maybe it's an opportunity for them to be closer to where the people are having the biggest issues so they can-- they can deal with those. So as we move forward, I hope you have questions about the move. I-- I would say that those questions that are raised in the fiscal note about the square footage cost and those kind of issues will be dealt with, and you can ask those people from Sidney about those issues. They are very familiar with what they have available and they have come to make that presentation to you today. And so I will tell you this, that if this happens and we move 180 people to Lin-- to-- from Lincoln or wherever they're located here in the state to Sidney, it will be an economic boost for our community. We have been struggling. It looks to me like the census-- that the preliminary census indicates that Cheyenne County, where Sidney is located, has lost nearly 2,000 people in the last ten years. That's a pretty significant drain on that community. And so this is an opportunity for us to fix two things. One of them, it puts Game and Parks in a position to be where the problems are; and secondly, it also helps with that little community to recover from the issue that they had with Cabela's leaving. So I'll leave it at that. If you have any questions, I'll try to answer those. And those questions about facilities and those kind of things will be better answered by the people from Sidney. But if you have questions, I would try to answer those. Thank you.

**BOSTELMAN:** OK, thank you, Senator Erdman. Are there questions from committee members? Senator Groene.

**GROENE:** Thank you, Chairman. Senator Erdman, in light of the fact we gave \$300 million to Omaha, to a hospital, and in this budget there's \$50 million for an Air Force Sky [SIC] Command, and we're expecting to spend another \$230 million for a jail facility for eastern Nebraskan employment-- and excuse me, Senator Aguilar, we've spent \$50 million for move the State Fair to the western edge of eastern Nebraska. Do you think \$6.3 million is a lot of money for rural Nebraska to move the committee [SIC]--

**ERDMAN:** I-- I don't. I don't, Senator, and--

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**GROENE:** --headquarters?

**ERDMAN:** --and I appreciate you bringing that up. No, I don't, and-- and we in the western part of the state, especially myself, I very seldom, if ever, have ever come in and asked for any kind of contribution or appropriations for my community. I am a for-less-government kind of a guy and-- but this is an opportunity. And if it's \$6 million or whatever their fiscal note says, and I don't believe that to be the case, but if it is, so be it, so be it. We need to make a decision that's best for the community, is best for the Game and Parks, and that's best for the people who suffer under the mismanagement of that organization, which has happened for 30 years.

**GROENE:** Thank you.

**BOSTELMAN:** Other questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you, Senator Erdman. It's always a pleasure to see you. Does this fiscal note include the-- whatever decrease would be realized by the people not using that office on 33rd and Harmon [SIC]?

**ERDMAN:** There's a comment in there that the building was built by federal funds and that would have to be-- I think they said that had to be repaid. It's like \$1.6 million, and I think they-- I think they included that in the fiscal note. I read that this morning. I didn't get this thing, the fiscal note, until yesterday.

**J. CAVANAUGH:** Right, and I'm reading it now for the first time as well and I'm trying to internalize it. I-- I guess I'm trying to understand how it would-- it would cost us money to stop using that office?

**ERDMAN:** That-- I think that would be a question you ask Game and Parks management.

**J. CAVANAUGH:** OK.

**ERDMAN:** I think that's-- that's a way of saying we can't afford to do this. I think that's what it is.

**J. CAVANAUGH:** Thank you.



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**ERDMAN:** Thank you.

**BOSTELMAN:** I guess my question would be, is that there's other parts of the state that have the same issues with animals, depredation, and that I know-- I think Blair has probably, if you look at the insurance indexes, the-- the-- the largest number of deer strikes is in Blair along the-- the river there. You move up into other parts of the state, there-- it's the same thing. So I don't-- I guess it's the first table to ask for the move, but it seemed that Wayne could be a place that would-- would be interested; Blair would be a place that would be interested. So my question is-- I understand that there's issues in the western part of the state. There's also issues in the eastern part of the state with-- with the depredation and with crop loss and that. So why is that you think that-- that Sidney would be the best place?

**ERDMAN:** Well, that's-- that's pretty easy for me to answer. Sidney is the best place because they have the facilities, first of all. Second, it's a great location for those people to be and they need to be somewhere. They'd just as well be in Sidney. So you're closer to Lincoln than we are and you're having the same problems with wildlife that we do, but the opportunity for them to be closer to where those significant damage is, and I don't think you have that kind of damage where you live or in Wayne, and so I think Sidney is the best location in the state.

**BOSTELMAN:** Do you know how many of the 180 employees do not live in Lincoln, that-- that live out?

**ERDMAN:** I don't. I don't ask the-- ask the-- Mr. McCoy. He can tell you that.

**BOSTELMAN:** OK, thank you. Any other questions from committee members? Senator Groene.

**GROENE:** Senator Erdman, one of my concerns about the Game and Parks and the-- and the growth of urban areas is that be-- it's going to be start being called Parks and Game because, like, I mean, the big entertainment with swim parks and slides and hiking trails. And I think we're seeing it already that game has taken-- you know, pheasants, upland game has taken second nature, second seat behind--

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back seat to parks. Would you think, because these individuals and-- would live in-- out there where nature is, instead of in the urban city and go to work every day, where nature is, that it might keep emphasizing Game over Parks?

**ERDMAN:** Yeah, it very well could. I think Game and Parks, you can ask the director, but I think Game and Parks has two-- two issues. One is game and the other is parks. And I think-- I think you're exactly right. I think in the eastern part of the state, the parks have taken over the majority of their time and their concern. And-- and so you can't serve two masters. And so the wildlife damage and the wildlife population has taken second fiddle and a back seat to that. And consequently, management is what they need. And perhaps if we move them there, they can learn what management looks like in the western part of the state.

**GROENE:** But, sir, there's also those of us that think there's not enough game, there's not enough pheasants, there's not enough quail--

**ERDMAN:** Yep.

**GROENE:** --there's not enough fishing, stocking. So anyway, there's two sides to that game issue.

**ERDMAN:** Two sides, yep.

**BOSTELMAN:** Senator Moser.

**MOSER:** Senator Erdman, did you-- you looked through the fiscal note?

**ERDMAN:** I did.

**MOSER:** And did you notice the rental rate for the building that they were talking about requiring?

**ERDMAN:** I did, sir.

**MOSER:** Did you have an impression of the numbers they put in that estimate?

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**ERDMAN:** I have an impression. It's not good. That-- that-- that's exorbitant. That-- that's downtown Lincoln square footage charge right there.

**MOSER:** Yeah, it--

**ERDMAN:** We're not talking downtown Lincoln. We're talking Sidney.

**MOSER:** Sixteen--

**ERDMAN:** So I think the-- the-- the people from the city will be able to answer that question. But-- but it's exorbitant. You got to remember, they don't want to move. Right? So when they put the fiscal note together, they're going to put as high numbers as possible to make it look as bad as possible. That's my opinion.

**MOSER:** Yeah, I would just about bet \$20 a month for a year would probably buy you a building in Sidney--

**ERDMAN:** Yeah, correct.

**MOSER:** --per square foot.

**BOSTELMAN:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. Senator Erdman, do you think there's a potentiality for if you ask 180 people to move to Sidney, that you might have some attrition or some folks not want to go and, therefore, leave employment at the Parks Department?

**ERDMAN:** Of course I do. I believe there will be people who won't want to live in Sidney.

**J. CAVANAUGH:** And do you think that's a worthwhile risk to take then? I mean--

**ERDMAN:** I do, and I'll tell you why. There are people in Sidney looking for jobs. OK? And so if we have different employees, it doesn't make a lot of difference if they're different. We still have employees. And so I don't-- I don't believe-- I don't believe, because we may lose a few employees, we need to make a decision to stay in Lincoln.

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**J. CAVANAUGH:** Well, you would agree that not all employees are the same and some people are suited to some jobs and some people are suited to other jobs and it's not just a--

**ERDMAN:** Can you say that again?

**J. CAVANAUGH:** Well, not all people are suited for the same jobs.

**ERDMAN:** Right. Correct. I understand.

**J. CAVANAUGH:** And so just a vacancy and an individual do not necessarily make a match.

**ERDMAN:** I understand that. I understand that.

**J. CAVANAUGH:** So I understand the desire for economic stimulus by creating jobs in the community. But are they-- the two suited to each other?

**ERDMAN:** Well, it'll-- it'll be interesting to see who moves and who doesn't. But there will be-- there'll be attrition. I understand that.

**J. CAVANAUGH:** Thank you.

**BOSTELMAN:** OK. Senator Groene.

**GROENE:** Thank you, Senator Bostelman. Follow-up to Senator Cavanaugh's question, my experience has been most people go into-- into forestry, game management do it because they want to be in Sidney, Nebraska. I had a friend once that got promoted to Lincoln. He was depressed because he did not want to leave North Platte Game and Parks and have to move to Lincoln. So I would assume there's some people down at Game and Parks in Lincoln would very appreciate getting to move to Sidney. Would you agree?

**ERDMAN:** I would agree. I-- you know, for those of you who haven't been out there, it's not the end of the earth, OK? And we do have electricity and we have indoor plumbing. We have some of those amenities. We got that last year, so we have things to offer. It's not like you're moving to the backside of the desert with Moses leading you through the wilderness. And so there is amenities there. We're not far from Cheyenne. Sidney's not far from Denver. And in my area, when

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the University of Nebraska closed the experimental lab in Scottsbluff, they thought we were all going to bring our stuff to Lincoln. What we did is we went to Fort Collins, closer, quicker, cheaper. And so we do things with other states out there because we're so far away. Where I live-- this is crazy. Where I live, I live closer to three state capitals than the one that I serve in. And so, you know, we have things to offer. Sidney has things to offer. And people, as Groene-- as Senator Groene said, would like to move there just for the opportunity to be in the outdoors.

**BOSTELMAN:** Senator Wayne.

**WAYNE:** How would this-- so how would this boost the private economy? I mean, these are government jobs. How-- how-- how-- you know, I'll wait for the Sidney people to come up to ask that. Never mind. That might be an unfair question to you. I'll--

**ERDMAN:** [INAUDIBLE]

**WAYNE:** I'll wait for the Sidney people to come up. I was thinking, how do you-- and you can try-- take a shot at it. How would this improve the private industry out there, like what are the-- the secondary benefits, not just the government jobs but the secondary benefits?

**ERDMAN:** Well, Senator Wayne, those people who live there have to have haircuts. They have to buy vehicles. They have to do those kind of things in the community and shop there that those-- those taxes and the fees that are collected from Game and Parks would be spent in that community, which would enhance those services. They have a brand-new school, brand-new swimming pool. They have amenities to offer. And it's an opportunity for those employees to pay taxes and contribute to the community and do those things that would fulfill some of those businesses that haven't been able to make it because the population has decreased.

**WAYNE:** All right. Thank you.

**ERDMAN:** Thank you.

**BOSTELMAN:** Seeing no other questions, thank you, Senator Erdman. You will stick around for closing?

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**ERDMAN:** I would, yeah--

**BOSTELMAN:** Thank you.

**ERDMAN:** --glad to.

**BOSTELMAN:** All right.

**ERDMAN:** Thank you so much.

**BOSTELMAN:** Would ask anyone who would like to testify as a proponent in support of LB562 to please step forward.

**ROGER GALLAWAY:** I've got something prepared [INAUDIBLE]

**BOSTELMAN:** No, sir, you give it to the page.

**ROGER GALLAWAY:** Sorry. Absolutely. Thank you.

**BOSTELMAN:** Good morning.

**ROGER GALLAWAY:** Good morning. Roger, R-o-g-e-r, Gallaway, G-a-l-l-a-w-a-y. I'm Roger Gallaway, the mayor of Sidney, Nebraska, and we'd like to thank Senator Erdman for bringing Sidney into the spotlight with his proposal to move the Nebraska Game and Parks Commission headquarters to Sidney. We also thank all the state senators and the Nebraska Game and Parks Commission officials for considering this proposal. While Sidney stands ready with much to offer in the way of available office space, housing, transportation, communications infrastructure, a talented workforce, we do understand the enormity of undertaking a task such as this and the challenges this type of move would present. That being said, though, we see this as an opportunity, not only for Sidney but also the state. We are more than capable to do what it takes to make such a facility a success. And with that, I'd like to speak more about Sidney and let you know more about our community. When you mix a desirable business location with a small-town infrastructure that is both collaborative and receptive, you get Sidney's community model, small town values, big-time opportunities. Because of our history and our successes and Cabela's rise to-- into a global enterprise, Sidney became a community of 6,000 to 7,000 people, but we are providing infrastructure and services to nearly 16,000 people on a daily basis, so challenges are

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nothing new to us. Sidney maintains a hometown feel with a unique blend of a quiet, rural lifestyle, an inviting business atmosphere, and it's a great place to live, work, and play. Of specific interest to our bills today, LB562 and LB668, would be the two former Cabela's corporate campus buildings located just off of Interstate 80 in Sidney. They consist of more than 450,000 square feet of office space, sitting on 35 acres of land. And adjacent to that, the corporate campus, is an additional eight parcels of land totaling approximately 25 acres that are already zoned commercial, with utilities on site and ready for development. Because of the size and scope of Cabela's worldwide operations for more than 50 years, the telecommunications infrastructure there would surpass anything that is available in the rest of the state. And, yes, I include Lincoln and Omaha in that, to be honest. In addition to this, Bass Pro Shops recently just spent under \$720,000 in upgrades to electrical service on the campus so that they could provide even more redundancy to their servers, as well as establish electrical service from two independent substations. However, with the sale of Cabela's to Bass Pro Shops, thousands of Sidney jobs were eliminated or moved to Springfield, Missouri. So aside from those servers, the two largest buildings are today almost entirely vacant. All of the other remaining Bass Pro and Cabela's offices, facilities have been sold, bringing in a number of new businesses, and some still with office and commercial space available. But in short, the vast amount of top-quality office space is still available from these two state-of-the-art facilities, which I believe creates an incredible and unparalleled opportunity for the Nebraska Game and Parks Commission, if not the state, as well as other companies. Sidney also benefits from many other significant demographics, logistics which are quite attractive. We're located just off of Interstate 80. We reside next to Highway 385, which serves as a trade corridor from Mexico to Canada. We also enjoy access to both Union Pacific and Burlington Northern Railroads, something that only occurs in a few places across the country. Over the last ten years, Sidney has seen \$48 million of infrastructure improvements, \$15 million in recreational developments, \$14 million in housing developments, and \$175 million in business developments. But is the work ethic and resiliency of the people that stands out. The population is well-educated, extremely talented, hardworking and dedicated. These residents have truly built the foundation and success of Sidney. With a qualified labor pool of over 25,000 people located

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within a 70-mile radius, Sidney and Sidney employers have had great success in attracting employees for recent relocation and expansion projects. We believe we are more than capable of meeting the needs of an organization such as the Nebraska Game and Parks Commission, as well as many others. I'd like to thank you for your time today and I'd be more than happy to answer any questions about Sidney. Otherwise, I also have two other gentlemen who will add to a greater picture of all of the capabilities and things that Sidney has to offer.

**BOSTELMAN:** OK, thanks, Mr. Gallaway--

**ROGER GALLAWAY:** Yes.

**BOSTELMAN:** --current mayor. Thank you. Questions? Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you for your testimony. I'm just wondering, so you own this build-- the city owns the building now? You-- did you buy it from--

**ROGER GALLAWAY:** No. Currently these are the only two buildings that have not been sold. Bass Pros made quite clear that everything was for sale. And to date, these are the only two that have not sold. All of the other buildings have been sold, mostly to private development. The city did buy one of the buildings. It was the original downtown building. And in the process, we were able to secure a long-term tenant, which my colleagues will speak to, UST Global, who provide back-end insurance processing of claims and such. So there's been a lot of work, there's been a lot of progress, but the sheer size of these two buildings obviously makes it a little bit more difficult to find either a buyer for private development or somebody for purchasing the building for themselves. That being said, we have close contact with a number of developers who have indicated that if we were able to provide a long-term tenant, it would make it much easier for them to move forward in the purchase of the-- of the facilities.

**GRAGERT:** So the option is there to either buy or rent?

**ROGER GALLAWAY:** Yes, I believe so.

**GRAGERT:** And do you know what the, by any chance, what the conditions would be if Game and Parks decided to rent instead of purchase the-- as far as longevity, how many years--



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**ROGER GALLAWAY:** Right. You know, I-- I can't speak with any certainty of that without knowing who the exact owners would be. But we feel that average rental space would be somewhere probably within the \$8 to \$11 a square foot versus the \$16 to \$20 a square foot. Now that's just my best guesstimate, but I don't think that would be inconsistent with anything that we've seen.

**GRAGERT:** You have-- you have two buildings there in Sidney. Do you know, would they have to purchase? Could they purchase just what they wanted or do they have to-- is it all or none?

**ROGER GALLAWAY:** We've contacted Bass Pro before about breaking up the buildings into pieces. Their preference is to sell the buildings in whole and let somebody else manage and lease those out. And as I said before, we do have some local private developers who have purchased a lot of the other properties and done some of the same type of work, because obviously these facilities are much larger than we're talking about for the scope of the Nebraska Game and Parks Commission. So we have had some private development that has come in, purchase properties, and then been able to offer them in breaking them out into smaller parts.

**GRAGERT:** OK. Thank you.

**BOSTELMAN:** Senator Aguilar.

**AGUILAR:** Thank you. Thank you for driving this distance, Mayor. What can you tell us about the availability of housing for 180 families?

**ROGER GALLAWAY:** Yeah, I-- one of my colleagues will also speak to that. We actually, despite the loss of Cabela's and a lot-- and a lot of people, we actually have a housing development that is ready to go, over 100 parcels that have utilities and brand-new streets, a whole new housing development. Prior to being acquired by Bass-- Bass Pro, Cabela's was in the process of a housing development to accommodate 650 to 800 homes on the west side of Sidney. And this is where this development that I'm talking about exists. Obviously, it got shut down somewhat in the-- in the process. But the first phase of that development is already in place and ready to go, as I stated, on the west edge of Sidney. It is located right near the-- the brand-new hospital.

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**AGUILAR:** Thank you.

**BOSTELMAN:** Senator Groene.

**GROENE:** Thank you, Chairman. So you lost 2,000 people [INAUDIBLE]--

**ROGER GALLAWAY:** Roughly that, yes.

**GROENE:** --say most of that's out of Sidney--

**ROGER GALLAWAY:** Yes.

**GROENE:** --the surrounding area. There's got to be-- there's got to be--

**ROGER GALLAWAY:** A lot-- there were a lot of-- there were a number of employees within the region that commuted into Sidney. That's what--

**GROENE:** But they wouldn't have been counted in your census.

**ROGER GALLAWAY:** For the county but not the city.

**GROENE:** Oh, Chey-- from Chappell and--

**ROGER GALLAWAY:** Right, Chappell, and to be honest, we were even seeing employees driving as far as North Platte, Scottsbluff, Alliance and further north.

**GROENE:** Sterling, Colorado.

**ROGER GALLAWAY:** Yeah, we were actually-- we were truly a regional employer. It was not just specific to Sidney.

**GROENE:** But-- but--

**ROGER GALLAWAY:** And that-- that's kind of why I mentioned that although we were a community of 6,000-7,000 people, we truly did service approximately 16,000 people on a daily basis, which--

**GROENE:** But the people from North Platte, they don't count in your census. It's--

**ROGER GALLAWAY:** No.

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**GROENE:** --2,000 people you lost.

**ROGER GALLAWAY:** Right.

**GROENE:** There's got to be vacant homes there--

**ROGER GALLAWAY:** You know, we-- what--

**GROENE:** --up for sale.

**ROGER GALLAWAY:** What we-- and this-- this may surprise you. At-- at the-- the peak of the sale, when all of that was happening, there were approximately 255 homes that were on the market. Today, there would be actually less than 55. What we have seen and were able to do, we have-- we've had a lot of people moving up from the Front Range who were able to sell their houses, come up and buy very nice houses, very nice properties. We're talking, you know, these were white-collar jobs, so the development in Sidney was significant.

**GROENE:** So my assumption is they're retirees, because they didn't come there for a job.

**ROGER GALLAWAY:** A number of them, a lot of them-- a lot of them were. However, our school numbers within the public school system are actually very close to what they were pre-Cabela's sale.

**GROENE:** Airport?

**ROGER GALLAWAY:** We have an airport, a very nice airport. It is certified as a refueling station for Black Hawk helicopters that the Air Force base in Cheyenne takes advantage of. And with improvements that the airport authority made to the runway and the taxi system, we actually can accommodate a 737, an emergency landing, so we don't lack for facilities there at the airport. In fact, they also built a new-- it's called a pilot's lounge. It's a facility where pilots can come in, refresh themselves, take a break, and then plan-- provide equipment and things for them to planning out the rest of their trip. It's been commented on. It was a very nice facility and actually has been taken advantage of by a number of pilots that use it as a stopping point on their way to air shows in Wisconsin and such. Cabela's actually had two private jets that they flew out of Sidney on

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a daily basis. We also have UPS airmail out of Sidney on a daily basis.

**GROENE:** Thank you. Thank you.

**BOSTELMAN:** Senator Wayne.

**WAYNE:** I want to thank you for-- or Sidney area for supporting LB156, which is the Inland Port Authority, and I just think that the combination of the two would be a good thing for Sidney--

**ROGER GALLAWAY:** Thank you.

**WAYNE:** --just wanted to say.

**BOSTELMAN:** Other questions? The-- I guess the one question I'd have, and it's more just to employee outreach or that within 50 miles, so that reaches into Wyoming, Colorado--

**ROGER GALLAWAY:** Yes,

**BOSTELMAN:** --Nebraska, all-- all those areas?

**ROGER GALLAWAY:** Yeah, we recruit throughout the entire Front Range area.

**BOSTELMAN:** And are there are a number of smaller towns in that area?

**ROGER GALLAWAY:** Yes.

**BOSTELMAN:** OK.

**ROGER GALLAWAY:** You know, within our county we have Dalton and Gurley, Chappell. These are all small-- small communities, Class D schools, to put in perspective, Potter, Dix. To the west of us, Kimball, an adjoining county, is only 30 minutes to the west; Scottsbluff and Gering within 70 miles; Bridgeport, another community to the north of us, 40 miles; Senator Erdman's hometown of Bayard, Alliance, Chadron. Everything is within very easy reach of Sidney. Sidney, for a long time, served as a center towards the southern Panhandle.

**BOSTELMAN:** Do you see a lot of employees coming from out of state?

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**ROGER GALLAWAY:** We've had some and we've actually had success in recruiting employees from out of state. One of the things that Cabela's found during their time located in Sidney was that they had great success in recruiting employees from the upper Midwest. They found those people enjoyed the atmosphere, the culture. It was very similar to where they came from, and their retention of employees was much better when they focused on those areas, but from the upper Midwest and the Front Range areas specifically, yeah.

**BOSTELMAN:** OK. Any other questions? Seeing none, thank you, Mayor Gallaway, for your testimony and for coming here today.

**ROGER GALLAWAY:** No, thank you for the opportunity today. Two more gentlemen from Sidney will speak and give you even further information just as far as what types of capabilities Sidney has, a better insight into the community and a lot of the type of businesses and amenities that we offer, so thank you.

**BOSTELMAN:** OK. Thank you. Next proponent, please. Morning.

**BOB OLSEN:** Morning. Can't wear a mask with glasses. It slips. Mr. Chairman, Senators, on behalf of my fellow city council members, we appreciate your time today and we are proud to represent the citizens of Sidney, Nebraska. My name is Bob Olsen, B-o-b O-l-s-e-n. I'm the vice mayor and 25 years-- a 25-year resident of the community. It's no secret, as the mayor pointed out, that the city and the county was faced with a large challenge several years ago as our main employer, Cabela's, merged with Bass Pro. We saw the loss of thousands of jobs. But to the credit of our fellow citizens and community leaders, we rolled up our sleeves and went to work on recording-- recruiting all forms of businesses. My part of the presentation today is to give you some insight into Sidney's ability to accommodate a wide range of businesses ranging from manufacturing to commerce to ag-related production to e-commerce. Let me illustrate the uniqueness of our city and our county. We have an industrial park just west of town that features Adams Industries, who, among other things, serves as the country's third largest rail offloading site, with their own rail line and storage facilities and hopefully the locomotives. Recently, we helped them become a certified commercial free-trade zone-- or foreign trade zone, as I recall. Other companies that found our city and county attractive to locate and were Commercial Resins, who produces

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specialized coating for oil pipes, Bell Pole & Lumber, who produces utility poles and sells them nationally. Whenever there is a disaster in the area of the country, such as tornadoes or floods and that, you can see a lot of utility poles being shipped out from their facility. They also were recruited out of the upper Midwest. They had their mind set to go to the Front Range of Colorado. We made a presentation to them and they came out and they chose us over the Front Range. Vitalix, a livestock feed manufacturer who produces cattle feed supplements and minerals, when their facility and Alliance burnt down tragically and that, they needed to reestablish themselves. They contacted us and-- and between the two of us, the city and them, we had them running-- up and running with a new facility within 30 days. UST Global, an expanding company that provides major insurance carriers with back-end processing of medical insurance claims, has recently joined our business community. Lukjan Metal Products, who produces numerous HVAC products, ducts and fittings, is also a key Sidney business at this time. Agri-Plastics, a Canadian company located in Sidney, they produce calf- and ag-related products. Pennington Seed has two facilities. One of them is located in Sidney, and they provide their product primarily to the Walmart organization. Sandhills Global, a print and digital company providing auction-related services for agriculture, heavy machinery and many clients. And Nelnet, a company that deals with repayment of student loans and educational financial services being their main products but they have many more in their portfolio, they tapped into Cabela's labor pool, hiring full-time IT analyst associates to help their growing business. The quality and number of available applicants has encouraged them to open a facility in Sidney, which I believe is right around the corner, as far as an opening is concerned. Out of strong desire to stay in Sidney, we also have seen the creation of a number of other businesses after Cabela's merged with Bass Pro. Nexgen, an outdoor outfitters company, has opened up. Highby Outdoors, another company specializing in outdoor products and items, also opened up; Walleye Gear and Lured In, just to name a few of them. The city is very dedicated. We're-- we have created a strong economic foundation to improve the quality of life for our residents and the business community. We also realize that there is more than one way to solve a problem, and we've been flexible in the past and we've adapted to the economic changes that we've been forced to face. Our city is financially sound. It has an A-plus bond rating, and Sidney is an

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Economic Development Certified Community. I will tell you, the spirit to remain in Sidney is a common bond that has strengthened our citizens and fueled our comeback. Sidney is thriving today. New businesses are locating there. New residents are moving in. We are extremely confident of our ability to provide-- provide services to organizations such as Nebraska Game and Parks Commission. Let me state that again. We are very confident. We have good experience with economic development and locating businesses from all around the country and that. So I thank you for the time and effort and I'm ready to answer any questions you may have now.

**BOSTELMAN:** Thank you, Mr. Olsen. Are there questions from the committee? Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you for your testimony, Mr. Olsen.

**BOB OLSEN:** Certainly.

**GRAGERT:** Reading through and listening to your testimony, it-- it sounds like you took a big hit when Cabela's closed.

**BOB OLSEN:** We did.

**GRAGERT:** But you're back. I mean, you're coming back.

**BOB OLSEN:** We're coming back.

**GRAGERT:** Two-- 250 homes and now only 55 homes vacant, that's-- that's quite impressive to me.

**BOB OLSEN:** Right.

**GRAGERT:** Looking through your-- looking through your resume here or-- or all of the businesses that are out there, man, that's super, you know, to keep those and attract-- and be able to attract those businesses. I-- I'm just wondering if-- you know, I come from northeast Nebraska and communities not as well off as-- as what I've just heard here, that 180 people would be a shot in the arm for up in-- in northeast Nebraska. So I appreciate your progressing us for Sidney and-- and I really do. Thank you.

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**BOB OLSEN:** I-- I will-- I will add to that, Senator, that, yes, we've recruited these companies and we're appreciative of them. But the salary basis of those companies doesn't match anywhere near where the lost jobs were with Cabela's and that, so there is an economic hit there to--

**GRAGERT:** Yeah.

**BOB OLSEN:** --our city.

**GRAGERT:** OK. Thank you.

**BOSTELMAN:** Senator-- Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you, Councilman Olsen. And just to clarify from my comment with Senator Erdman, I don't think people wouldn't want to live in Sidney. It looks beautiful and obviously I'm a big fan of western Nebraska, though I'm from Omaha, but I've spent quite a bit of time out there and enjoy it. My comment was more than just move-- anybody moving anywhere is going to have an attrition rate. But to your presentation, kind of what Senator Gragert was saying, Sidney sounds fantastic. And particularly the thing that sticks out to me is your-- your connectivity as it pertains to the Internet. It seems like you may be too good for this particular project, that there may be a higher, better use in terms of-- I mean, obviously, I know Cabela's was a-- a-- a, I guess, Internet sales type of-- you know, you have the infrastructure for, in terms of your connectivity of rails, highways, things like that, to-- to transport things out, but you also have this fiberoptic connection that a lot of communities don't have and a lot of places would be looking for. Is there a possibility that if we were to move the Game and Parks there, that we would be taking up space that would otherwise be more profitable as a private Internet company, essentially?

**BOB OLSEN:** Well, I would say to you that that's a possibility. But you take them as they come and to-- to build your community back and that. And-- and that's our-- our theory on that. We don't throw anyone away. And-- and, you know, we've had these spaces available for a while and-- and nobody is taking them so far. They-- they are a large product to sell, no doubt on that. They are-- they are large buildings



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and that. But, no, I think-- I think the Game and Parks Division [SIC] would enjoy being out there. The facilities are great and that.

**J. CAVANAUGH:** Thank you.

**BOSTELMAN:** Senator Groene.

**GROENE:** Thank you. Thank you, Chairman. Yeah, you sounded like you don't need us, but-- 'cause you've done such a great job. But--

**BOB OLSEN:** Should have downplayed that, huh?

**GROENE:** Yeah, you should have. You-- I know in your position, you're always a cheerleader, but maybe today, it wasn't the best time to do it. But anyway, those buildings, they could easily be subdivided into different-- like every office building is.

**BOB OLSEN:** Oh, yeah. Oh, yeah. Yeah.

**GROENE:** And-- but-- but the own-- present owners want to sell it as an intact unit, and then whoever would be-- develop it or whatever-- it wouldn't take much, all the office spaces are there-- would then subdivide it into sections.

**BOB OLSEN:** We-- we have-- as the mayor stated, we have several [INAUDIBLE] developers there that are very active in buying up these empty facilities and that. Matter of fact, one of these developers has bought the warehousing out there that Cabela's used to own, and they're leasing that out to another new business, as well, too, so--

**GROENE:** So what--

**BOB OLSEN:** So I don't think that that would be a problem, having a developer invest in the buildings and then, you know, Game and Parks just leases.

**GROENE:** If they could have an anchor bu-- anchor renter like the Game and Parks, it would really help.

**BOB OLSEN:** Yeah, it really would.

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**GROENE:** Yeah. And businesses can come and go, but government seems to stay around.

**BOB OLSEN:** And about 300 people is-- is a big chunk of people for Sidney and that, and they will fit on that. Most of the businesses that we've brought in so far are a lot less than that.

**GROENE:** So one thing I got from your presentation was, if somebody moves out through family, it wouldn't be hard for the spouse to find a job, would it--

**BOB OLSEN:** Oh, no. Oh, no.

**GROENE:** --in any profession, it sounds like, they-- they-- or education level they have?

**BOB OLSEN:** We have a great retail community. We have a good banking industry out there, you know, and other service operations, you know, farming.

**GROENE:** What-- the buildings that sold, what-- how much on the dollar that they bring, I mean, on value compared to--

**BOB OLSEN:** Any idea on that?

**BOSTELMAN:** Sir, yeah, you-- you need to answer the questions.

**BOB OLSEN:** Oh, I need to answer. OK. [INAUDIBLE]

**GROENE:** So my assumption is--

**BOSTELMAN:** You could-- you could-- the-- you could-- maybe you can pass it to the next testifier [INAUDIBLE] answer that.

**BOB OLSEN:** I'll pass it to him and he can answer that.

**GROENE:** And so it is-- my assumption is it didn't bring anywhere near what office space would bring in Lincoln and Omaha?

**BOB OLSEN:** Oh, no, no.

**GROENE:** So, therefore, the rental-- rentals would be a lot less too.

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**BOB OLSEN:** Yeah, and I think the mayor touched on that, too--

**GROENE:** All right.

**BOB OLSEN:** --in his presentation.

**GROENE:** You know, I, for 30-- going on 35 years, I've done business in that area and I've stayed in your hotels I don't want to count how many times. But my recent business trips there, I lost two of my favorite restaurants out by the interstate. The hotels are not full, so--

**BOB OLSEN:** Right.

**GROENE:** --because always the hotels were full of salesmen flying in for to-- trying to sell their fishing lures to--

**BOB OLSEN:** And that's where we lost big time, was-- was the vendors that came in.

**GROENE:** So that part of your business is still harmed?

**BOB OLSEN:** Oh, yes, yes.

**GROENE:** Yeah.

**BOB OLSEN:** You know, I wouldn't address the hotels being-- that's the only reason. I mean, COVID has played a, you know--

**GROENE:** Yeah, COVID has played a big part.

**BOB OLSEN:** ---played a big part in that, too, as well, too, so.

**GROENE:** All right. Well, thank you.

**BOB OLSEN:** You betcha.

**BOSTELMAN:** Senator Moser.

**MOSER:** Do you have any idea what Cabela's is asking for those buildings that remain?

**BOB OLSEN:** I do not. Maybe they can address it coming up, yeah.

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**MOSER:** OK. Thank you.

**BOSTELMAN:** Other questions? Senator Hughes.

**HUGHES:** Yes, thank you, Chairman Bostelman. Thank you, Mr. Olsen, for driving down today.

**BOB OLSEN:** You bet.

**HUGHES:** You said that you had relo-- relocated to Sidney 25 years ago. Why and from where?

**BOB OLSEN:** I was offered a position with my employer, Security First Bank at that time. I've been there since then and that. Does that answer? I--

**HUGHES:** Yeah. Appar-- apparently you liked it.

**BOB OLSEN:** Oh, I loved it.

**HUGHES:** Great community.

**BOB OLSEN:** I loved it. That's the longest I've ever lived anywhere and that. I consider it my hometown.

**HUGHES:** So the relocation is not-- was not a problem?

**BOB OLSEN:** Not at all.

**HUGHES:** OK, thank you.

**BOB OLSEN:** No, and I'm not the only one that thinks that way, so.

**BOSTELMAN:** OK. Seeing no other questions, thank you, Mr. Olsen, for your testimony, for coming to Lincoln, appreciate it.

**BOB OLSEN:** Thank you, Senators, Chairman.

**BOSTELMAN:** Next proponent.

**BRAD SHERMAN:** All right, thank you, Mr. Chair, Senator. My name is Brad Sherman, B-r-a-d S-h-e-r-m-a-n. First like start with I was a citizen of Lincoln, Nebraska, for ten years. I moved out there in

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2007, you could say, dragging my family, kicking and screaming. But I now have three children and three grandchildren all living in the Sidney area. One thing you're-- if you move out there, you're not going to miss the humidity. But anyway, this is a-- you've gotten a glance of the businesses in Sidney. Sidney also exemplifies a high quality of life and maintains its small-town values. Community is a home-- the community is home to extraordinary people with awe-inspiring sense of community and pride. Many of our residents have had the chance to relocate and chose to stay in Sidney because of all that Sidney offers, often reinventing themselves in other careers in order to do so. Sidney is a safe place to live, a great place to raise a family, a home to top-notch schools, beautiful neighborhoods, and award-winning healthcare facilities. A new \$17 million high school was completed in 2009. In 2019, Sidney High School received the National Blue Ribbon Award, given to the top 100-- 1 percent of schools. A new 25-bed critical care hospital was completed in 2015. Sidney Regional Medical Center features over 20 outpatient services and features a modern, top-level physical therapy department. Residents have access to the Dowart Cancer Center, where they can receive daily treatments, eliminating the need to travel long distances. The Sidney Housing Authority increased their offerings with the recent construction of Canterbury Estates, providing affordable housing to residents with special needs. Other recreational events and activities in the community include: a new aquatic center; the Hillside Golf Course, an 18-hole, championship level-rated course nestled in the Crested Butte; Near-- Deer Run Golf-- Disc Golf Course; Cheyenne Community Center, offering a full range of fitness classes, activities, has an indoor and outdoor walking track; Legion Park, with a stocked fish pond, horseshoe pits, sand volleyball courts, tennis courts, baseball and softball fields; there are more than seven miles of walking, running, and biking trails connecting to the interstate interchange with Western Nebraska Community College and an easy access through town extending all the way out to the community-- to the county fairgrounds at the west end of town; an annual Oktoberfest celebration with the largest tent we can rent from Lincoln Tent and Awning; a Super Summer Downtown Sounds concert series; registered historic downtown shopping district; and more than 35 restaurants, lounges, and sports bars. Also, Sidney offers abundant and affordable housing options with prices considerably lower than the U.S. average. The median home value in Sidney is \$145,000, with a cost-of-living

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index at 78.2. The city of Sidney is currently executing a comprehensive housing needs assessment to identify and evaluate the quantity and quantify the number of housing units, rentals, for sale, currently available. Currently, there are more than 100 parcels of land plotted and ready for housing developments with new streets. Hard work, dedication, and love of our community keeps Sidney determined to continue to build on our reputation as the pride of the Panhandle. You can be assured we're ready to meet the needs of the Nebraska Game and Parks Commission and any other opportunities that come our way. We are true to our motto: Small-town values and big-time opportunities. So again, I thank you for your consideration and we'll take any questions, if you have some.

**BOSTELMAN:** Thank you, Mr. Sherman. Senator Moser.

**MOSER:** I might have missed it in your presentation. What's your occupation?

**BRAD SHERMAN:** Oh, I'm sorry. I'm-- I manage the UPS operations in the Panhandle, extending all the way to-- from Grant all the way up to Gordon, Nebraska.

**MOSER:** Do you have a UPS distribution point then in Sidney or--

**BRAD SHERMAN:** Yes, there-- there are centers in Sidney, Scottsbluff, and Alliance, and then we have satellites and Ogallala and Chadron.

**MOSER:** And did you-- thank you. Did you have any idea what-- or do you have any idea what the buildings are going to cost that Cabela's has for sale?

**BRAD SHERMAN:** There-- I've heard numbers around \$15 million for both, like 10 and 5. But again, they're-- they're completely negotiable. I'm certain-- certain they might take 14 for both.

**MOSER:** OK, thank you.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you for your testimony. I'm going to just maybe jump on to Senator Cavanaugh and with the idea that the city-- the city sounds in great-- great shape for what it

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went through and, you know, Cabela's and all the shenanigans that went on there and you lost Cabela's. I'm just wondering, you know, with an airport that can accommodate Learjets and the hospitals and-- and everything like that, that-- do these buildings, are they a little too big for, you know, trying to move Game and Parks into, would be my question, and has-- and have there been attempts to, you know, bigger corporations, you know, to maybe sell these buildings to and maybe even Cabela's? Why did-- I know there-- there was things behind, like Cabela's left, and I understand that, but they were there for years, right?

**BRAD SHERMAN:** Correct, 50 years.

**GRAGERT:** Fifty years. And that's where it started, actually, wasn't it, in Sidney?

**BRAD SHERMAN:** It actually started in Chappell, but their-- their first sell-- or retail store was in Sidney.

**GRAGERT:** So has there been any talk about the possibility of them even possibly moving back to Sidney?

**BRAD SHERMAN:** No, I-- I doubt that.

**GRAGERT:** OK. Yeah, thanks a lot. I appreciate it.

**BRAD SHERMAN:** You bet.

**BOSTELMAN:** Are there any other questions? Seeing none, thank you, Mr. Sherman, for being here today. Thank you for traveling--

**BRAD SHERMAN:** Thank you.

**BOSTELMAN:** --over to Lincoln. Ask anyone who would like to testify as a proponent, please step forward. Seeing none, would anyone like to testify as an opponent to LB562? Please step forward. Good morning.

**TIMOTHY McCOY:** Good morning, Chairman Bostelman, members of the Natural Resources Committee. My name is Timothy McCoy, T-i-m-o-t-h-y M-c-C-o-y. I'm the deputy director of the Nebraska Game and Parks Commission at 2200 North 33rd Street here in Lincoln, Nebraska. I'm here on behalf of the-- the legislative committee of the-- of our

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board of commissioners and-- and-- and the agency opposing this. And I do want to start with this is-- this is-- my testimony is going to be focused on the concerns we have as an agency, not intended to be directed towards Sidney or any other community in the state. We have great communities across the state. The commission's mission involves serving all the citizens of the state, and-- and this change would-- would require additional agency cost. I believe it would-- we believe it would have an impact on the efficiency in our coordination with the Legislature, the Governor, other state offices and agencies, the University of Nebraska, and the USGS Cooperative Research Unit at the University of Nebraska-Lincoln. You know, we-- we coordinate and collaborate broadly with a wide variety of state agencies, the Attorney General's Office, the State Treasurer's Office, Secretary of State, in terms of the rules and regulations, the State Auditor, a lot of work with Department of Natural Resources, the Department of Energy and Environment relative to health standards or-- at facilities in our park system for both water quality and potable water and also for sewage disposal. We also work a lot with the Department of Transportation. The-- we-- we work under all the rules of the Department of Administrative Services, State-- State Personnel, the Office of the-- the OCIO's Office. So-- so our-- the proximity of those to the rest of state government does, I believe, have some advantages for the agency. Moving-- moving away from Lincoln will make-- will create some new challenges in that coordination, some of which, as-- as people say, there's-- there's a lot of things that can be done by Zoom. I think it's very difficult, from-- from what I see even working with our own employees, to develop a really strong relationship if you've not met the person and had a personal conversation with them. And I may just be a dinosaur. I don't know. But-- but I do sense that. And-- and so there will also be additional travel costs for-- for doing that. My biggest concern and the concern that's already been raised through our ranks is the personnel cost and-- and impacts to agency employees. We have dedicated, passionate, professional employees that are invested in what our agency does. But I would say that-- I would say a high percentage our-- of our employees, I'd say probably 80 or 90 percent, have working spouses that also have professions. Many of them have professional degrees and are-- and-- and have employment in Lincoln and the surrounding area. They have-- they have homes, families, children in school. A change like this where we require them to move is going to require them to



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have really difficult decisions about do we-- do we go or do we stay. As a-- as an employer, that-- that-- that is a concern. The cost will-- will be, in our estimate, significant. And I believe I'll get a lot of questions on the fiscal note, but I will-- I will start out with, you know, based on the state's-- the-- Nebraska's Department of Administrative Services, who we are required to go through for any rental space or leased space, the estimate, that's where that estimate came from, based on that-- their square-- square footage estimate for outstate Nebraska, which would be a cost annually of \$11.4-14.4 million a year, given that range. I would note that the current estimate from the fiscal analyst is for a six-month-- six-month period. And those costs would-- you know, maybe the relocation cost will be significant. If we force employees to move, we will have to pay those and could be higher if local housing is not available and we'd have to pay for temporary lodging and storage needs for-- for folks to move. These are no-- those are new costs. We own the buildings that we-- that-- that the agency is at right now. They were built by the-- built by the agency using-- using state funds and agency funds. I would also point out that the two buildings that we have, one, the-- there is one that does have a federal nexus because it was built with Pittman-Robertson and Dingell-Johnson funds. However, the-- the buildings are totally interconnected in terms of both physically connected, but also the heating, cooling, sewer, water systems are all combined among the buildings. And we've continued to make investments there to maintain our boiler system, to have-- you know, make sure that it's ready for the next 40 years. In the last ten years, we've been doing that. We replaced the-- the-- the-- the-- the compressor and-- and-- and cooling-- cooling tower for-- for all the air conditioning in the two buildings. So we have continued to make those and-- and update those. So I think separating those buildings will be a difficult challenge in terms of if there's-- there's the thought that we would, you know, make a sale. There are challenges there and I want you to be aware of them. And the other thing-- point I would make is that this-- the-- the bulk of our agency staff are not in our Lincoln office. They're out across the state at various parks, wildlife locations, district offices, service centers. And-- and I just wanted to make that point. With that, I will stop.

**BOSTELMAN:** Thank you, Deputy Director McCoy. Are there questions from committee members? Senator Wayne.

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**WAYNE:** So I pulled up the list of agencies and we have a lot of government. Phew. I'm-- I'm a Democrat. So what is your interaction, your agency interaction with the Natural Resource Commission, the-- we'll start with that one. Do you guys interact, like how-- and if so, how?

**TIMOTHY McCOY:** The Natural-- not-- not specifically with the Natural Resources Commission, mainly with the Department of Natural Resources and the staff.

**WAYNE:** OK, so the Department of Resource-- OK, so I can cross that one off. And how do you guys interact with the Department of Natural Resources?

**TIMOTHY McCOY:** We interact with the Department of Natural Resources on-- on water issues. We interact. We have a-- we have requirements to review any state permit under the Nebraska Nongame Endangered Species Conservation Act for any potential impacts. Those are coordinated by our environmental review section.

**WAYNE:** OK. And then so Department of Environmental Quality, do you guys interact with them?

**TIMOTHY McCOY:** We in-- yeah.

**WAYNE:** So how do you--

**TIMOTHY McCOY:** Now I think Energy-- Department of Environment and Energy. They changed their name.

**WAYNE:** Oh. They haven't updated their website.

**TIMOTHY McCOY:** But, yes, we interact-- we interact with them a lot regarding, you know-- you know, both-- both water quality issues, fish kill issues, deal-- in many cases, if there's-- if there's things going on with-- with pollute-- any pollution in state waters, we can be involved with that because of impacts on fish and aquatic resources. And we work with them extensively in terms of making sure we meet-- currently we work with Health and Human Services for-- for potable-- making sure we need potable water quality standards. I believe Senator Bostelman has a bill to move some of those, to coordinate them within the Department of Energy and Environment.

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**WAYNE:** And then I'm assuming no, but because I'm just sure, Department of Agriculture, do you interact with them?

**TIMOTHY McCOY:** We-- our main interaction with the Department of Agriculture is actually with the-- the state veterinarians on any animal health issue that potentially crosses between wildlife and-- and livestock. That can be things like anytime there's a TB concern raised in the state, also with feral hogs that have the ability to transfer dis-- diseases to-- to domestic pigs.

**WAYNE:** Is there any other agency that-- because I-- I only pulled up the website and it took a while to scroll through how many agencies, like the Wheat Commission [SIC], the Brand Board. There's a lot of stuff, the Corn-- I didn't know we had a Corn-- Corn Board. But is there any other agency you guys interact with and what's that relationship? I'm just-- I'm just trying to put my head around all this.

**TIMOTHY McCOY:** No, we-- we-- we have to-- for anything that's technology related, we have to interact with the-- the OCIO Office, obviously, and-- and-- and through their process regarding state telecommunicat-- state communications. We have to-- we work with the Secretary regard-- or the Treasurer sorry, Treas-- State Treasurer regarding banking requirements, meeting-- meeting banking standards, especially the credit card standards to protect the safety of people's information.

**WAYNE:** OK. Thank you.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you, Mr. McCoy, for your presentation. I just had a couple of questions and-- and one being most of your communications, yeah, can be handled over Zoom. We've-- we've done a lot of Zoom here lately. Correct? I mean, it could be done. It's not-- it's not to be--

**TIMOTHY McCOY:** It's-- it's-- I'm not saying it's not possible.

**GRAGERT:** OK.

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**TIMOTHY McCOY:** I-- I-- I'm-- I'm not-- I can't tell you that. I-- I can tell you how I'd prefer to communicate, but I know it's not the same for everybody else but--

**GRAGERT:** Right. And-- and also, Senator Wayne looked up a lot of the state entities, but you also do a lot, as I know with the NRC, as natural resource conservation, which are feds stationed here in Lincoln, with CRP, WRP and the other programs there. But what are the-- what-- what do you see beyond the meetings, and-- and how many people come to your meetings here in Lincoln that moving yourselves 343-point-some miles away, to the other end of the state, what-- what kind of logistics that Zoom won't take care of?

**TIMOTHY McCOY:** Well, in terms of-- I'm going to focus par-- specifically on public meetings, which we do move around the state for our commission meetings. I will tell you that historically the meetings that we have that get the most attendance are those that are held in-- in Lincoln. We have held a couple of meetings in the Omaha area. Those were very well attended. Part of that I tie back to our agency role is for those fish, wildlife, and outdoor resources and park resources for all the citizens of the state.

**GRAGERT:** OK, thank you.

**BOSTELMAN:** Senator Moser.

**MOSER:** Before, when I asked about the-- the rental cost and the fiscal note, there was kind of a chuckle when I said a year's rent, by your estimate, should buy the building. And from the testimony from the people from Sidney, it's not really funny because I think it's true. A 60,000 square-foot building at \$16 at 12 months is \$1.--or \$11.5 million, and that's more than-- of course, these are not real estate agents. They're not here to make offers on behalf of the owners of the building. But my point is, we want to believe our agencies when they come testify before the Legislature and-- and that they're testifying in good faith and they're using reasonable estimates. And when you come in with a rental that's, I don't know, ten times higher than it probably would be, it kind of calls into question everything you say. If-- if you're that far off on something that I can quantify-- quantify, you know, it-- it-- it calls into question everything you say. So I would say, if you want to argue a point-- I understand you

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don't want to move. I'm sure you're insulted by the fact that a state senator would recommend you move your office to-- to Sidney. But I think you should stick to your best arguments and be reasonable of what evidence you offer, because otherwise, again, I think it calls into question, you know, everything you say. So I'd encourage you going forward to be a little more up-front about your testimony.

**TIMOTHY McCOY:** Well, I-- I would-- I would just respond that we do have somebody that works in realty that was a formal-- former-- formerly worked in commercial real estate and in-- with our interactions, looking at lease rates, this may be different because of the size of the building and the situation and-- and what-- what our staff and our fiscal staff based this on were the DAS rates. We didn't-- we didn't come up with those independently. They-- they searched to see if there was available lease space of that size in the area and-- and were just looking at listings because--

**MOSER:** In Lincoln or Sidney?

**TIMOTHY McCOY:** In Sidney.

**MOSER:** OK, well, thank you.

**TIMOTHY McCOY:** I-- I'm-- I mean, I-- I hate to be defensive, but I-- I-- I feel I-- I don't--

**MOSER:** You should be.

**TIMOTHY McCOY:** I don't sit here and make up fiscal notes.

**MOSER:** I-- I pretty well laid it out there. I-- if you've got anything to say to defend yourself, I'd say bring it.

**TIMOTHY McCOY:** Thank you.

**MOSER:** Thank you.

**BOSTELMAN:** So I have a couple questions for you. So you mentioned that you have several offices across the state. Correct? Now what are those offices used-- what's the-- what's the purpose for those offices?

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**TIMOTHY McCOY:** We have-- we have district offices. And-- and I will-- I will kind of go through this a little bit off the top of my head. We have a-- we have a district office in Alliance where we have our headquarters for our fish-- our-- the western-- western Nebraska, northwest Nebraska fish and wildlife divisions and law enforcement. We have a district office that's in North Platte, Nebraska, for the southwest part of the state that is similar. Those-- those offices also have customer service counters. We have an office in Kearney that at one point previously was a district office, and there was-- there was shrinkage of our administrative districts done by the-- previously by the commission. That one still has fisheries and wildlife division staff. I believe it has a law enforcement district manager in it and has permits sales folks. We have the Lincoln office that's our headquarters that also has-- obviously we have a permit counter and-- and houses. The majority of our-- the majority of our divisions, you know, our field divisions are spread out across the entire state. Omaha has a service center office that-- that has a public information officer and-- and does customer-- just a customer service counter. We have an office in Norf-- Norfolk, Nebraska, that has fisheries, wildlife, and law enforcement. There are also, in terms of fisheries, we have fish hatcheries, several fisheries around the state in different locations, Valentine Calamus, Rock Creek, Grove Lake, and North Platte that-- that have, you know, fish production cap-- capabilities. We also have a service center in Bassett that-- that has some parks-- parks, fisheries, and wildlife staff that also has a customer service counter in terms of those. And then we also have offices at many of our parks locations, and I will miss some of those if I try to go through them.

**BOSTELMAN:** So in your headquarters in Lin-- here in Lincoln, that's primarily division heads, not--

**TIMOTHY McCOY:** There-- there are, for fisheries and wildlife divisions, there-- there are some-- some district staff that are in the-- the-- but a small number. I'd say it's probably less than 10 of that 180. Otherwise, when we look at our Lincoln office, we have our administration, our-- our-- my offices, the adminis-- and our director's office. We have our whole budget/fiscal division that does central processing for all of our fi-- all of our fiscal revenue coming in, any expenditures, our IT and GIS team that serves the

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entire state, engineering, communications, planning and programing that-- that are all providing that centralized statewide service.

**BOSTELMAN:** So what I'm hearing from you is that really the people who have the boots on the ground, the people who do the work out in the field, are-- are in those district offices across the state and the people in-- in your headquarters are really that administrative function, not the ones who actually go out and do the work that needs to be done, as far as-- as what we hear. As far as for crop manage-- you know, damage management, depredation, those type of things, those people are already out across the state in-- in district offices.

**TIMOTHY McCOY:** Yeah.

**BOSTELMAN:** So we're not going to gain-- we may not, per se-- per se, gain the-- the exposure of-- of those people who will actually be-- that are out doing work in the field by moving your headquarters out there. It's really the people in your divisions, perhaps, that need to move.

**TIMOTHY McCOY:** It-- it could be. I-- I would agree that I think it's mainly-- it's mainly our administrative oversight when you look at our field divisions of wildlife, law enforcement, fisheries and-- and-- and parks. It's mainly just their administrative top level that's-- that's-- that's working there. They're not necessarily-- we do have some-- we do have some researchers in Lincoln and some program specialists that do statewide work that are also on the ground across the state at different times.

**BOSTELMAN:** Do you do research with the university? Is there buy-in with the university?

**TIMOTHY McCOY:** Yes, we do-- we do a lot of research working with the University of Nebraska-Lincoln. They have a-- they have a fish and wildlife program. We also have a Cooperative Fish and Wildlife Research Unit funded by the U.S. Geological Survey that under-- we help support that, the university helps support it, and-- and we actually can-- can do research projects with them without having to pay the university overhead, which is a huge advantage for our agency.

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**BOSTELMAN:** And do you know, for the people who work in your buildings here, where do most of them live, employees? They live in Lincoln? Do they live outside of Lincoln?

**TIMOTHY McCOY:** I'd say the majority-- the-- based on just off the top of my head, the majority of them actually live in Lincoln. Some of them live in Lancaster County. I actually live in Hickman, south of Lincoln, but-- but I know we have-- we probably have 10 percent of those 180, I would guess, that are-- that are living in locations outside of-- of-- of Lan-- of Lincoln. Outside of Lancaster County, it might-- it would be a much smaller group.

**BOSTELMAN:** And of the positions that you have, are these specialty degree or is it-- or is it just a bachelor's, master's, no degree needed?

**TIMOTHY McCOY:** It's across the board depending on the type of position. We have admini-- you know, we have we have some office administrative staff that-- that are-- that-- that may not have a degree. We have some customer-- a lot of our staff do. Just from being in the Lincoln area, we have-- we have a lot of-- a lot of-- most of our staff have at least a bachelor's degree. A lot of our staff that are upper level have master's degrees or doctorates.

**BOSTELMAN:** OK. Senator Hughes.

**HUGHES:** Thank you, Chairman Bostelman. Thank you, Director McCoy, for being here today. How long has the Game and Park headquarters been-- been at its current location? Do you know?

**TIMOTHY McCOY:** Yes, the-- the buildings, the-- those buildings were built in-- and-- and I don't know the exact completion frame of the two buildings, 1969 to 1970.

**HUGHES:** So where was it located prior to that?

**TIMOTHY McCOY:** Prior to that, my understanding is, because I wasn't here then. I am looking old, not quite that old. My understanding is the-- the several of the fisheries and wildlife division and maybe some of the law enforcement staff were on the former-- on a building in the-- at the former Lincoln Fairgrounds and that there were-- we had-- our administrative divisions were-- were either-- I can't tell



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if it was in the Capitol, the Capitol Building itself, or State Office Building down by the Capitol.

**HUGHES:** OK, so in your discussion of the two separate buildings, sounded like one was kind of paid for with federal funds and the other was state funds. Is-- is-- is that accurate?

**TIMOTHY McCOY:** It was paid for with-- I know they were-- I know the other one, the-- the-- the-- the main-- what people think for our main headquarters building, I do not know the source of funds it was paid for from that time. I would presume it was cash funds, but that's an assumption that I probably shouldn't make. I-- I don't know.

**HUGHES:** But-- but one of them is--

**TIMOTHY McCOY:** The other--

**HUGHES:** --is federal, the matching funds or grant funds.

**TIMOTHY McCOY:** Yeah, we-- we have a-- we have a building that-- that is-- is actually named the Wildlife Laboratory that was primarily funded-- funded with Pittman-Robertson and Dingell-Johnson funds for our fisheries and wildlife divisions, includes a lot of lab-- includes lab space; it includes a necropsy room, chemistry room.

**HUGHES:** So are-- are-- is there not an opportunity to access those funds again to-- to build another site?

**TIMOTHY McCOY:** I don't know the answer to that. I believe there might be, but we would have-- we would obviously have to pay back any of the funds, ba-- based on whatever the current appraised value of that building is, if we were to abandon the site.

**HUGHES:** OK. And the-- this is just speculation on my part. I don't expect an answer. But it-- it certainly appears that the tying of the two buildings together was a deliberate plan to force the continued headquarters in one site. And I-- I'm not expecting you to answer that, but from the outside looking in, and when I see deals like that, it does concern me; it does make me think that there should be a change made. So thank you for coming today, apprec-- it's always good to see you.

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**BOSTELMAN:** Are there other questions from committee members? Seeing none, thank you, Mr. McCoy.

**TIMOTHY McCOY:** Thank you.

**BOSTELMAN:** Anyone else like to testify in opposition to LB562? Seeing none, would anybody like to testify in the neutral capacity for-- on LB562? Seeing none, Senator Erdman, you're welcome to close.

**ERDMAN:** Thank you again, Senator Bostelman. Thank you, committee, for your time, and-- and the questions you asked were very significant. Just received a text from somebody here in Lincoln that's watching the hearing and said, I'd like to move to Sidney. So I appreciate the people from Sidney driving down here to describe to you what that community has to offer. I think, Senator Bostelman, the-- the question has been answered by those making the presentation. That's the reason it needs to be in Sidney. They answered those questions quite thoroughly. They have state-of-the-art facility there, second to none, and it's an opportunity for us to relocate this agency. And they never talked about in their fiscal what the value of that building would be in Lincoln. And it's quite surprising to me that there wasn't somebody from the city of Lincoln here, or maybe the county, wondering about what's going to happen to the taxes over there if it-- if-- or whatever happens. So I would say it's an advan-- an advantage for the city of Lincoln and the county if that goes into private hands and collects some tax dollars. But he mentioned that-- the director mentioned that they have a lot of meetings with the university and they've worked with the university, hand in hand. Well, I can tell you this. Over the last nine months, they didn't meet with them in person, because I tried that and the university had a moratorium on meetings. And so they did it all by Zoom and they did it by telecommunications and they can do the same thing. So the question is, why not move to Sidney? Instead of saying, why should we move to Sidney, I think Sidney-- I think the folks from Sidney described to you in a fashion you can understand about what-- the facilities they have to offer and how they will take care of the Game and Parks' needs as far as facilities are. And so my question is, why not? Why not move to Sidney? It makes a lot of sense. There's an opportunity there to fill a void and get a state agency in the outer parts of the state. We have-- the-- the Brand Committee is in Alliance and we have other agencies that are not in Lincoln. And I think, Senator Hughes, you

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described it quite well. When they tied those together, there was an intention there to stay here forever, but that's the way government works. Now I'm a fiscal conservative. I like to save money. And I can tell you right now, Senator Moser, you picked out exactly what I seen in that fiscal note. You could buy the building in a year or half-- one-year-and-a-half's rent, you could buy the whole building, didn't make any sense, but supposedly somebody researched that and found out that's-- that's the rent in Sidney. And not sure, maybe it was Sydney, Australia, but anyway, so be it. But so my question is-- advance this to the floor. Maybe this is a consent calendar bill. Move it to the floor, we'll move to Sidney, and we'll see how things go there. Thank you.

**BOSTELMAN:** Any questions for Senator Erdman? I guess my question would be, typically, when a company or a business or that moves into a-- into an area or to a state, they kind of-- they put a-- you know, let the cities know, request know, let the DED know that, hey, we want to move in, so other cities, other towns have the opportunity to come in and-- and present also what they have to offer. I guess I'm kind of curious as why that isn't something that we should do here as-- as a-- fiscally or otherwise, that we shouldn't allow other cities to come in and make a-- make an offer. I'm not so sure that-- that that's a place that we're ready to be at, but more DED would be at that-- at that opportunity.

**ERDMAN:** OK. Well, I-- I'll speak to that. I tell you what. I'm willing to put Sidney up against any other community that wants to put their name in. That's a fact. You heard what they have to offer today, second to none, state-of-the-art facility. If you find another community that has that kind of state-of-the-art facility to offer in that location for that price, let me know where they are. That's why it needs to be in Sidney.

**BOSTELMAN:** Well, but my-- I understand your point. My point is, is we don't have that opportunity as a committee to know that for certain, that no one else has come in, and so is that something we should consider as a committee that--

**ERDMAN:** That's up to you. I can't answer that question for--

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**BOSTELMAN:** I understand, understand. Thank you. Any other questions? So we do have three position letters from-- in opposition from Carina McCormick, city of Lincoln; Eric Zack [PHONETIC]; Sierra Club; Sportsmen's Foundation. And we have one written testimony in opposition from John Hansen, Nebraska Farmers Union. And that will close our hearing on LB562. Thank you.

**ERDMAN:** Thank you for your time, appreciate it.

**BOSTELMAN:** Do you mind if we take a couple minutes' break before we open?

**HUGHES:** That'd be great.

**BOSTELMAN:** Well, we're going to take-- we're going to take five minutes and-- for a break and we'll be right back.

[BREAK]

**BOSTELMAN:** Are we back on? All right. All right, after that short break, there, Senator Hughes, you're welcome to open on LB668.

**HUGHES:** Good morning, Chairman Bostelman, members of the Natural Resources Committee. I'm Senator Dan Hughes. That is D-a-n H-u-g-h-e-s, and I represent the 44th Legislative District. I am here today to introduce LB668. LB668 would require the Nebraska Game and Parks Commission to move their headquarters to a county that has a population of less than 10,000 people and is located at least 200 miles or more from a city of the metropolitan or the city of the primary class. And lastly, the co-- commission should also consider the value of the economic development incentives provided by a qualifying city or village. Currently, there are 67 counties in Nebraska with populations under 10,000; 23 counties with less than 10,000 are farther than 200 miles from a city of the metropolitan or primary class. We've had quite a discussion this morning on Senator Erdman's bill, and these two bills are very similar, and the best I can do is great minds think alike. The reason that I brought this bill was to have a philosophical discussion about how we spend our state government dollars. I don't care where Game and Parks is located, as long as it's outside of Lincoln somewhere, and that certainly was reinforced for me this morning in the testimony that I heard, I think

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Sidney would be a great location. I think Grand Island would be a great location. I don't care. But I think we need to have a philosophical discussion about the money that we spend in state government and how it's concentrated in a very small area. I'll-- I'll use examples of WEC in McCook, which is the Work Ethic Camp. It's a small prison in McCook, Nebraska, in my district. There's no reason why we shouldn't have facilities, state-owned facilities that create jobs, provide state services, all across the state. One of the things that Senator Erdman failed to mention was the Nebraska Oil and Gas Commission is located in Sidney, Nebraska. You know, it's located there because that's close to oil and gas-- where the oil and gas production in the state of Nebraska is, although the largest producing county in my district. But having state agencies, state commissions, state headquarters, state facilities outside of Lincoln is-- is a good idea. A lot of the pushback that we get from Lincoln and Omaha senators is, well, people in outstate of Nebraska don't pay any income tax, all the income and sales tax comes from Lincoln and Omaha, therefore, we should have these state headquarters within the area because that's where the money's coming from. And I always like to point out that, as a farmer, roughly 50 percent of the land owned in the state of Nebraska is not owned by the people working the land. It's owned by absentee landowners, their widow ladies, their family, people who have inherited it. A lot of them live in Lincoln and Omaha, and the money generated from that agricultural production is sent to Lincoln and Omaha and the taxes are credited in Lincoln and Omaha. There's a couple of companies that I deal with in my business. I-- we sell a lot of-- of our grain to Scoular corporation. The profit made on our grain sales supports Scoular Company in Omaha, so the income that was derived on our property is being credited in Omaha. We do a lot of business with Farmers Mutual Insurance, which is just, you know, down the street here. We have a very sizable amount of-- of book with that company. The profit that is made off of our business pays the salaries of the individuals who work in that building. So there's a tremendous amount of support for the metropolitan areas that does come from rural Nebraska, and all this bill is wanting to do is to provide some support to outstate. Nebraska. And the Game and Parks Commission is a first step, in my opinion. I think there's a lot of state agencies that could be located outside the city limits, out-- and-- and I don't care where it's at, but we need to quit concentrating state government in one or two places. It needs to be

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diversified. We look at what other states do. A lot of other states do diversify their state government across the state, providing jobs and opportunities and, quite frankly, stabilization of the population. So I-- it-- this is-- yeah, we have two bills that are very similar, but the intent of my-- my bill is different. And-- and we got into that this morning. This was one of the best discussions, the best bills we ever had this morning, on Senator Erdman's bill about the philosophical need. And we've got a community. You know, Sidney's a great community. I've been there. And what happened when Dick Cabela died and the family chose to liquidate and sold to Bass Pro and, you know, the headquarters of that company moved, that was devastating. But my hat is off to the-- the people of Sidney to not, you know, just fold up their tent. I mean, they picked themselves up by the bootstraps and they have worked hard, extremely hard, to come back and they're making it. But this is how it happens when you drive 350 or 400 miles to come make your case. So my hat's off to them. Like I say, I don't care where Game and Parks headquarters goes; it just needs to be somewhere outside of Lincoln. And after the discussion about the federal funds on half a building and state funds on the other half a building being tied together to be forced into a place, that does set off some red flags for me. So with that, I'll be happy to answer any questions.

**BOSTELMAN:** Thank you, Senator Hughes. Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you, Senator Hughes, for your testimony. This is the bill I've been waiting for. I think you wrote this bill for northeast Nebraska.

**HUGHES:** Could be.

**GRAGERT:** You know, Knox County is up there with 8,168 people, under your 10,000. It's over 200 miles from Lincoln. So what I'm looking at, and to go on record, is that if we move the agency out of-- out of Lincoln, we move it to Niobrara, Nebraska. And the state parks there, we could build a weed center there. They could build their office space there. And I'm going to kill two birds with one stone. I'm going to get tourism increased up in some of the most beautiful part of the state as far as the Missouri River and the Niobrara-- the Niobrara River, economic development where if I-- if I bring-- if we bring in 180 people into Niobrara, Nebraska, we just doubled-- we just doubled

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the population of 300, you know, close to doubled, 387. I really, truly believe, yeah, we need to-- we need to invest in outstate Nebraska, and-- and I guess I'm going to go on record, right up into northeast Nebraska. So thanks for bringing this bill.

**HUGHES:** You're welcome. I guess one of the other state agencies that's located here in Lincoln is the Board of Education Lands and Funds. You know, that should be located-- there are no school lands left in eastern Nebraska. It's all located in western Nebraska. Why is the Board of Educational Lands and Funds located in Lincoln? Let's-- let's move them to wherever, but get them outside of Lincoln, get those jobs moved out, get some economic development, help us stabilize our population.

**BOSTELMAN:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you, Senator Hughes. This is a very interesting discussion that is educational for me. And I was talking to Senator Erdman in the-- the break about this kind of broader conversation. You're talking about economic development. Senator Erdman had a bit of a conversation, obviously, about economic development. But there's also the idea of-- I guess I don't know if it's-- be groupthink, but it's basically the-- the-- the fact that-- or I always think of the example of the NCAA when it was located in Kansas City. For whatever reason, the state of Missouri, Kansas City was always the best place to have NCAA championships in lots of different sports. They've moved to Indianapolis. And since that time, for whatever reason, now Indiana is a great place to have every NCAA championship. And so I think there's merit to that argument of everything is located in one spot, therefore-- and it's not really, you know, saying there's anything wrong with the individuals making those decisions, but your neighborhood looks great, right? I mean, the-- everybody-- if everything's in Lincoln, everybody's going to think we should focus on that general area. So I think there's merit to not just the economic development part you're talking about but getting people out into the places where the services are being done and where the things need to be talked about, just to get you outside of that insular environment where everything is going to be thought about the same way by the same people. So I guess my question is, shouldn't we do a broader study about these other-- identifying potential entities and just general, like just a more cohesive

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discussion about where we should be going with this, as opposed to an ad hoc that we're doing right now as it pertains to just Parks and Rec--

**HUGHES:** That's one way to--

**J. CAVANAUGH:** --or Game and Parks?

**HUGHES:** --you know, tackle this problem. And-- and, you know, I-- this-- like I say, this is a philosophical discussion for me. And, you know, I'm-- I'm planting seeds, you know, that hopefully other people besides this committee are thinking about. But, yeah, I-- I think we can do one or two of these and see how they work and then look at the broader scope. You know, I-- I'm not one-- philosophically, back to that discussion, I'm not one that-- you know, paralysis by analysis just drives me nuts. I'm let's try it, see if it works; If it doesn't, we'll make changes and we'll continue to make it work; we'll fix it as we go along. But trying to study something to death, that's-- that's not my personality.

**J. CAVANAUGH:** I like that phrase.

**BOSTELMAN:** Senator Moser.

**MOSER:** Well, at-- I guess both bills are very similar, so I kind of comment on both of them at once. Senator Erdman is, I think, famous for coming up with some bold, innovative, thought-producing, provoking, sometimes kind of out-there solutions, and I don't think this is as crazy as I thought it was. I mean, at first it just sounded like, you know, launching a rocket to the sun, to me. I mean, I just thought it was, you know, crazy. But-- and then adding what Senator Cavanaugh said to it, I think, is-- another thought I had is we should probably look at all state agencies and see if they need to be located in Lincoln or in Omaha, if they couldn't be spread around the state, because it is kind of a tax shift for all the citizens of Nebraska to support these agencies and then they always wind up in Lincoln or in Omaha. And I'm sure there would be some political pushback to that because those towns would campaign to keep those headquarters in their towns, but-- so I-- I appreciate Senator Erdman bringing this and Senator Hughes for bringing that. I think it-- it is innovative, it's



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bold, it's a little out there, but maybe it's something we should look at.

**BOSTELMAN:** Senator Aguilar.

**AGUILAR:** Thank you, Senator Bostelman. This is not a state agency, but I'd be remiss if I didn't mention the fact that we successfully moved the State Fair to Grand Island out of Lincoln, and that issue was also championed by another Senator Erdman.

**HUGHES:** [LAUGH] That-- that's a very good example that, you know, the world did not come to an end when the State Fair moved out of Lincoln. The Lancaster County Event Center has flourished because of that. So to me, that is a win-win. But, you know, the-- the philosophical discussion about the amount of income tax dollars that flow into Lincoln to pay for all of this government, a huge amount of that comes from outstate Nebraska, and that's-- that's a point that I need to reinforce.

**BOSTELMAN:** Other questions? So-- you don't get off that easy. [LAUGHTER] Deputy Director McCoy mentioned before, of all the outstate districts and other things, the fish hatcheries and that, they're not all in-- and he's-- I'm sure he'll come up perhaps and testify. But my question is, is the number of-- of employees in Lincoln versus-- there seems to be there is a large footprint across the state and what that number may be. And there is, you know, that economic impact; there are-- there is that-- those district offices, those fish hatcheries, those-- whatever they may be that's across the state. I don't-- maybe the biologists or the-- the law enforcement officers live in the district in different communities. One lives in Brainard, I know. And so there is-- there is that portion of the-- the commission being spread out across the state. So there are employees that work at the different parks or whatever it is across the state, some-- so there-- I think there is-- those opportunities are out there. I just don't know what those numbers are. I mean, you can move a handful perhaps from here, but does that really answer the-- you know, the question you're-- you're asking? Is it better to consolidate or to move things that already exist out in other parts of the state to develop something, a district office, bigger district office, diff-- different centralized office on the-- in another part of the state, whether it

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be for tourism, whether it be for whatever, but we have that type of a-- of a development, a department being established there.

**HUGHES:** Well, and that-- those are the type of-- of philosophical discussions of how do we make state government as efficient as possible because it is being run by, in the case of Game and Parks, a small amount of-- of General Fund dollars, but most of it's user fees. So-- and there are-- there are tremendous assets that Game and Parks does have across the state and district offices and fish hatcheries and all that stuff. And that's good. That's where it should be. But the headquarters, you know, would it be more efficient if it was located in-- in Kearney, the-- the center of Nebraska, rather than clear on the eastern end? You know, those are the types of discussion that I'm trying to foster, you know, and, you know, my point is that concentrating government in one place, just because that's where everybody else is at and that's the way we've always done it, is not a good enough reason to do it today.

**BOSTELMAN:** And I don't-- I don't disagree with that. I guess, come back to efficiencies and costs, you know, is it-- is-- I guess you mentioned other states spread theirs out across different areas. Do you have some examples?

**HUGHES:** I--

**BOSTELMAN:** And, I'm sorry, I'm going to interrupt you real quick, but because my question is, or where it goes to, is if-- if we're dealing with fiscal or other type of things, interagency things that we're dealing with, now we're having to travel more because you have to have an in-person sit down, are we increasing cost? But I'm just kind of curious of what other states-- what you've seen in other states.

**HUGHES:** I-- I don't have any specific examples off the top of my head. You know, I've-- I've had conversations about how Kansas spreads their state government out across the entire state, but I-- I don't have an example of top of my head. But, you know, what-- the one thing that the COVID pandemic has taught us is that we can function remotely. You know, in Transportation Committee, we're-- we're dealing with broadband, you know, and getting that built out so people can work from anywhere, you know, and the idea that you have to go to an office, you know, to-- to do your job is not necessarily factual

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anymore. People are more productive at home because you're not having the travel time. You know, there's-- you don't have the distractions of, you know, the water cool and-- cooler and the, you know, fellow employees, you know, gossiping and those type of things. And, you know, I-- I-- I'm like Director McCoy. You know, I-- I'm not a big Zoom fan. I'm-- I'm getting there. But I like to be able to sit down and look people in the eye and talk to them, and there is a place for that and that will continue. But, you know, it-- it's-- it's the same distance from Sidney to Lincoln as it is from Lincoln to Sidney. You know, a lot of people from Lincoln or Omaha think, oh, that's too far, I can't go that far. Well, it's the same distance and we've got very good roads.

**BOSTELMAN:** Senator Wayne.

**WAYNE:** In fairness, the ride, always, back seems shorter.

**HUGHES:** I'm sorry?

**WAYNE:** In fairness, the ride, always, back seems shorter, maybe because I'm sleeping, but it just does seem shorter. [LAUGH]

**BOSTELMAN:** Seeing no other questions, Senator Hughes, will you remain for closing?

**HUGHES:** Of course.

**BOSTELMAN:** Thank you. I would invite anyone who'd like to testify as a proponent for LB668 to step forward. Seeing none, would anyone like to testify in opposition to LB668? Please step forward.

**TIMOTHY MCCOY:** Thank you, Chairman Bostelman, members of the committee. My name is Timothy McCoy. I'm the deputy director of the Nebraska Game and Parks Commission at 2200 North 33rd Street, Lincoln, Nebraska. You know, I'm-- I-- I'm going to-- I'm going to-- I'm going to bring up some of the same issues, and I would-- I would ask the Chair and the committee, would you prefer that I don't be redundant with that and I just get to the point?

**BOSTELMAN:** If you'd like to take questions, we'll be sure to take questions, or if you'd like--

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**TIMOTHY McCOY:** Well, I have one thing that I need to do. I need to apologize to Senator Moser and I need to make sure-- and I'm glad Senator Erdman is here. I had a frantic phone call from our-- our budget and fiscal division administrator. They were checking the lease rate information. I do not like saying this. You were right. There was a screw-up. This was-- the-- the num-- the square footage rate was per year and somebody assumed that it was per month. It's 12 times higher than it should be. And I want to-- I just want to own that. I want to make sure you know that. I want to apologize to you, Senator Moser. Yeah. And-- and the other-- the other point I would make, and I think Senator Hughes brought it up, is, you know, anything that-- that gets into spending additional cash resources from our cash funds on administrative costs, I think, is something that-- that the users that pay those fees won't like. And I noticed as I looked through the fiscal notes, there were as-- they were assuming it would just-- these things, additional costs would be paid for cash-- with cash funds. And-- and the other question is whether there's support from, you know, this body and the citizens of the state of using General Funds for-- for something like that. And with that, I will close my testimony.

**BOSTELMAN:** OK. Thank you, Director McCoy. Questions. Senator Moser.

**MOSER:** Well, just a comment, the apology is not necessary because I wasn't insulted and I'm sure it put you on the spot and I--

**TIMOTHY McCOY:** Yeah.

**MOSER:** --you know, I may have amplified the comment a little bit, but I'm glad that they did figure it out. It-- it is a little dismaying, though, that you'd be off by a factor of 12 and somebody in your office wouldn't catch that, you know, because it was kind of a glaring number there. But thank you and I appreciate you correcting that. I think that says a lot about you and your agency that you'd admit when you made a boo-boo.

**TIMOTHY McCOY:** Yeah, we got to be big enough to own our mistakes.

**MOSER:** Thank you.

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**BOSTELMAN:** So do you function off of tax dollars, you at the commission, or is it user fees? Do you use State General Funds or not?

**TIMOTHY McCOY:** We do. We-- about 12 percent of our budget comes from General Funds right now. I believe that's about \$10.9 million a year, approximately. The remainder is primarily we-- we have permit fees; we have stamp fees, fees within our parks. We also do get, from a capital side, we-- we-- we have been getting through the-- into the capital maintenance fund, the-- the sales taxes on motorboats and U-- nonfarm ATVs. And that's targeted at meeting our-- our capital maintenance needs primarily in our parks system, to continue to upgrade those and meet the demands that are out there.

**BOSTELMAN:** And I'm-- we may have mentioned the last hearing, we did talk about it briefly, do you know-- and I don't-- I'm sorry I didn't write it down. How many employees do you have in Lincoln versus how many employees you have across the state?

**TIMOTHY McCOY:** We have, if I-- and there-- there's two-- two groups of employees that-- that I will focus on. We have-- as an agency we have about 475 total employees, 180 of those in our Linc-- in our Lincoln office, so it's about 38 percent. Of our temporary employees or seasonal employees that we hire every year, those are-- those are-- they can vary through the year from about 280 to 1,050, depending on the year. I will tell you, last year, in July, when-- when we-- when I-- I looked at our totals, we-- we had, you know, in our quadrants across the state, in our northeast district, we had 58 permanents, 179 temporary staff; in the northwest district, 40-- 54 permanents, 176 temporaries; in our southwest district, 63 permanent employees and 133 temporaries. And in our southeast district, not including those staff that are in our Lincoln office, we have-- we have 100 employees in that district and 377 temporaries, and-- and a lot of that is due to the Mahoney Park, Platte River Park. Rock Creek State Historical Park is in that same-- same district. So there are a lot of resources there, Branched Oak Lake.

**BOSTELMAN:** OK, thank you. Are there-- Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you, Director McCoy, for being here. I didn't ask any questions on the first bill, but this kind of, I guess, applies to both. You have referenced that

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some of the jobs in Lincoln are research based and associated with the university. So if we were to move the Game and Parks Department [SIC] to Sidney or some other city at 200 miles outside of the Omaha/Lincoln area, how many of those employees would actually move?

**TIMOTHY McCOY:** Well, I-- I-- I-- I struggle you-- giving you a quick answer, because I think some of it depends kind of what happens in terms of it would require, I think, a thorough review and reorganization of our agency structure right now. I will tell you, we do have-- we have-- we have, you know, our program manager that deals with pheasants and quail and upland game right now is-- is locate-- located in, you know, Alma, Nebraska. Our-- our big game disease research person is actually in Alliance. Our waterfowl specialist are-- is-- is in-- is in Lincoln. We have a nongame specialist in Lincoln. I'm just going through those main ones. And we have a big game program manager that's also in Lincoln that-- that deals a lot more with a lot of our data-related issues.

**J. CAVANAUGH:** So-- but not everybody would move. Some of them would have-- would stay in Lincoln at this-- the new district office.

**TIMOTHY McCOY:** There's-- there's-- there's potential they would. My take when I read-- my take when I read the-- you know, at least the first bill-- I'm-- I'm not going to get into those details-- was that it was required that we would move those-- those staff away from Lincoln. And-- and that could be just a difference of how I interpreted it, of moving our headquarters buildings.

**J. CAVANAUGH:** OK. So secondarily, you mentioned Alliance, that somebody's already based in Alliance. If we were to, say, move the headquarters to Sidney, there's the potentiality of shrinking some of the offices that would be surrounding that area, correct? That if there's offices, if you have somebody officed somewhere, you would consolidate them to the new headquarters in Sidney then?

**TIMOTHY McCOY:** Well, there's always that potential based on space availability and needs. I don't know that we would specifically go into it looking at that, but that would be part of the thorough analysis that would have to be done on any-- on any location, as well as, really, a thorough business analysis of-- of cost of moving, any forgone cost from-- from abandonment of our current site, and-- and

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what the opportunities would be to do with that site. To my knowledge, the building that is our headquarters building, and I believe the other building is, too, are on land that was provided by the city of Lincoln. I do not know if we own the underlying land or if the city of Lincoln still owns it. I'm just being honest with you. There's-- there are-- there are some complexities of challenges with things that were done in--

**J. CAVANAUGH:** Thank you.

**TIMOTHY McCOY:** --in 1960-something.

**J. CAVANAUGH:** Thank you.

**BOSTELMAN:** Other questions? Are there any-- I guess on the administrative side of things, Senator Wayne alluded to it earlier when he was talking about your work with other agencies and that. What type of interactions that are-- how often do you have meetings with or you're-- or those who are here at the-- at the headquarters have meetings with the different agencies? Is it a more fiscal timeframes that-- and working on budgets and stuff or is it-- I mean, the need is-- a question is, is-- is just really the, you know, Zoom meetings are one thing, but I think we all can agree there's a lot left on-- left on the-- to be desired on-- on those type of things and I don't know if we can really conduct all of our business there. So there would be amount-- amount of traveling, I would think, that would have to be done, and that's kind of where I'm-- where I'm about, bringing my question from.

**TIMOTHY McCOY:** I-- I think there would be that, you know, in terms of the things I can think of that are-- that-- that are pretty frequent interactions that we have with university folks and the Coop Unit folks. Actually, with the university folks, you know, I-- I-- think that there were some things that were still going on in the field and-- and we may have had some conversations in our offices. You know, we didn't-- you know, as-- as-- as the COVID understanding got better, it was-- it was a little easier to meet with people. We meet-- you know, our-- our director has a role with the Environmental Trust. I'm just trying to think of recent meetings, you know, and a lot of these are not meetings I'm having. Our engineering staff are meeting within NDEE. Our-- our-- our park staff are meeting with them to-- to look at

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any-- any issues on-- on water issues, you know, just a-- just a variety. And-- and sometimes, you know, like when they interact, the State Emergency Center, then we're involved in, you know, depending on what the situation is, and meetings with those that are pretty quick response in terms of floods, fires, and those other things.

**BOSTELMAN:** OK. Thank you. Seeing no other questions, thank you for your testimony.

**TIMOTHY McCOY:** Thank you.

**BOSTELMAN:** Does anyone else like to testify in opposition to LB668? Seeing none, anyone like to testify in neutral capacity? Seeing none, Senator Hughes, you're welcome to close. He waives. That will close our hearing on LB668. That ends our hearing for this morning. Thank you all for coming to Lincoln, and thank you for being part of our Natural Resources Committee.

**BOSTELMAN:** For the safety of our committee members, staff, pages and the public, we ask those attending our hearing to abide by 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 bill hearing in progress. The bills will be taken up in the order posted outside 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 and-- the identified entrance and exit doors 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 reaches 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 available-- availability of an overflow hearing room for hearings, which attracts several testifiers and observers. For hearings with a



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large attendance, we request only testifiers enter the hearing room. We ask that you please limit or-- or eliminate your handouts. Welcome to the Natural Resources Committee. I am Senator Bruce Bostelman. I am from Brainard and I represent the 23rd Legislative District. 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 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. Introduce-- Introducers will make initial statements followed by proponents, opponents and then neutral testimony. Closing remarks are reserved for the introducing Senator only. If you're 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-- sign-in sheet before you testify. Please print and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the page or the committee clerk. This will help us to make a more accurate public record. If you do not wish to testify today but you would like to-- like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign for that purpose. This will be a part of the official record of the hill-- of the hearing. When you come up to testify, please speak loudly and clearly 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 use the light system for all testifiers. You'll have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means that 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 afternoon. Senator Tim Gragert, District 40 in northeast Nebraska.

**HUGHES:** Dan Hughes, District 44, 10 counties in southwest Nebraska.

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

**BOSTELMAN:** And on my far right--

**GROENE:** Mike Groene representing the people of Lincoln County.

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

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

**BOSTELMAN:** Senator Moser also serves as the 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. This afternoon we'd like to thank Noa and Savana, who are pages for the afternoon hearings, for being here today. With that, we will open our first confirmation hearing, which is a reappointment of Mr. Bradley Dunbar to the Natural Res-- Nebraska Natural Resource Commission. Mr. Dunbar, please step forward. Good afternoon. If you would, just please tell us a little-- a little bit about yourself since this is reappointment, what you-- what you've done on the commission, just a little bit of information along those lines.

**BRAD DUNBAR:** Absolutely. Good afternoon, committee. My name is Brad Dunbar. Brad, B-r-a-d, Dunbar, D-u-n-b-a-r. I live in Omaha and I work for Lindsay Corporation. While there I've had two different positions as regional sales manager and also director of North America Aftermarket. We also have a farming operation in-- excuse me, in Frontier and Dawson County with my family. I have served as a govern-- Governor appointment here for the last four years and I'm up for reappointment. While on the commission, I've had two different types of leadership opportunities, one being in the government affairs, chairing that committee, and then also as the Water Sustainability Fund on chairing the scoring committee. I've been really impressed with the committee overall. As far as the commission, some great people from the NRDs as well as from different appointments throughout the state. So I look forward to potentially having the opportunity to serve another four years. With that, I'll open up to any questions.

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

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**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you, Commissioner Dunbar, for being here and for being willing to serve on the Natural Resources Commission. Just start out asking you, generally what does the Natural Resources Commission do?

**BRAD DUNBAR:** So the commission is responsible for a number of different-- different responsibilities dealing with state funds, with through the Natural Resources. We-- the biggest responsibility that we have is the Water Sustainability Fund. And that was set up here about six years ago through the Legislature appointment and that distributes funds throughout the state. Different applicants apply for those funds. We go through a very rigorous application process that is open in July typically. And then we-- we score those on the scoring committee usually in November or October. The full commission comes together and then votes on approving that recommendation for the distribution of those funds. When an applicant applies for those funds, they-- they have to come up with 40 percent of the project funds and then the state comes up with the other 60 percent.

**J. CAVANAUGH:** What kind of people apply for those funds or organizations?

**BRAD DUNBAR:** It's very-- it varies throughout the state. NRDs apply for a lot of those funds. We've seen municipalities. It can be individual entities, but typically it's NRDs. We see some big-- big funds that occur through the municipalities as well.

**J. CAVANAUGH:** And you said you chaired the scoring committee. What-- what's-- what's the basis for the score?

**BRAD DUNBAR:** The score is put together through questions that were in state statute and the Legislature put together how that scoring needs to-- needs to occur.

**J. CAVANAUGH:** And how-- about how much money do you give out a year?

**BRAD DUNBAR:** In the past several years, it's been around \$11 million.

**J. CAVANAUGH:** And you score these projects and then do you just award the \$11 million down the score until you run out of money?

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**BRAD DUNBAR:** We don't. That's just something I think that's very unique with the way that our commissioners operate is, we make sure that these different projects are-- are really-- we were very fiscally prudent, I would say with the funds. So it's not just, hey, we got this much money, we're going to award it all. And we've proven that over the last several years that we make sure that they qualify for the project.

**J. CAVANAUGH:** OK. So at what stage do you make that determination about qualifying? Is that at the scoring?

**BRAD DUNBAR:** That's at the scoring committee level. We'd take that-- that recommendation then to the full commission.

**J. CAVANAUGH:** OK. OK. So you report out just projects you want to fund then at the scoring committee.

**BRAD DUNBAR:** We have a recommendation, yeah, on-- on--

**J. CAVANAUGH:** A recommendation.

**BRAD DUNBAR:** Recommend-- recommended as far as what projects we'd recommend funding to the commission.

**J. CAVANAUGH:** And then the commission decides whether to adopt the recommendation or not.

**BRAD DUNBAR:** Right, they vote on that.

**J. CAVANAUGH:** Do-- have in your four years has the commissioners diverged from the recommendations of the scoring committee?

**BRAD DUNBAR:** They have not.

**J. CAVANAUGH:** OK. Do you have a mechanism for which they could diverge from the commission?

**BRAD DUNBAR:** They do have to-- the whole commission does vote on and we've have gone through it. I want to see it as a couple of years ago where we've gone through and had various questions on individual projects from the full commission.

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**J. CAVANAUGH:** OK. I have different line of questioning so if somebody wants to.

**BOSTELMAN:** Go ahead.

**J. CAVANAUGH:** OK. Oh--

**GROENE:** No, I have one, but go ahead. Going to be asked sometime later.

**J. CAVANAUGH:** So this is reappointment. How did you come to know about the Natural Resources Commission?

**BRAD DUNBAR:** So water has been definitely in a forefront in my family for a number of years. We are, again being a family farm, very dependent on the state's aquifer system for irrigated agriculture. And then also through my line of work with Lindsay, obviously that's very critical to-- to our success as well as a manufacturer. And my family is very in tune to just economic development in the state as well. And irrigated agriculture, making sure that we conserve that resource of water and be able to continue on for further generations, really instilled my interest in running for the commission.

**J. CAVANAUGH:** So you sought out the appointment or did somebody ask you to apply?

**BRAD DUNBAR:** I had some encouragement along the way to apply for it, but it had been on my radar for a while.

**J. CAVANAUGH:** Do you recall who that was?

**BRAD DUNBAR:** There are several different folks, if I remember right. I was encouraged internally as well as other people throughout the--

**J. CAVANAUGH:** Internally, meaning by your employer, or internally by the commission.

**BRAD DUNBAR:** By my employer.

**J. CAVANAUGH:** OK. And do you know if anybody else applied originally?

**BRAD DUNBAR:** I'm not sure.

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**J. CAVANAUGH:** OK. Thank you.

**BOSTELMAN:** Senator Groene.

**GROENE:** Thank you, Chairman. On the Water Sustainability Fund a couple of years ago back, there was bill or one of the senators wanted to cut it from urban area, but after we looked at the numbers, it heavily favors urban areas it has. The City of Hastings, MUD. I mean, if you looked at it, rural Nebraska, with its water problems and sustainability problems, was really left out-- out of it, which I had originally thought when I had heard of the bill when Carlson was the-- held this chair when it was created, that it was-- the issue was sustainability of the groundwater and our rivers. But it doesn't seem like you guys favor that. In your scoring system, is there any favoritism towards rural product-- projects and conservation and sustainability of rural water?

**BRAD DUNBAR:** Yeah, I'd say with the-- way the original statute was set up on the scoring, it's-- it's pretty black and white. We-- we follow the scoring exactly how it is in statute. And some of it, I think it's been based on just it being a young fund and just the type of applications that we're receiving. And that's why I think we as a-- as a whole have to really encourage other entities to apply throughout the state. And I will agree with you that there has been some larger projects have been funded for more metro type projects, but we need-- we need the whole state in different areas to apply for these grants.

**GROENE:** So it was a lack of applications that you didn't have a chance to give more to projects that would sustain our irrigation and our--

**BRAD DUNBAR:** I'd say a lot of it has been, yeah, the lack of-- lack of application for-- for those projects.

**GROENE:** Thank you.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you for your testimony. I just had a couple of questions on earlier, OK, you spent \$11 million a year somewhere around in there, but you don't spend it on just any kind of applications until, you know, you don't go down the list until

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it's gone. So in other words, all these projects or applications got to meet a threshold?

**BRAD DUNBAR:** They-- we have a-- when we score out all the funds, we'll see where the scores actually rank at. And then there has to be a dividing point as far as, OK, here's how much funds are available. And if there's a-- you know, we may have enough funds to support some of the lower scoring projects, but if we don't think that there's good merit for those projects to spend the money wisely, in prudence, we-- we have traditionally not spent those funds-- improve those projects.

**GRAGERT:** So is that type of ranking going to favor a large-- a larger project?

**BRAD DUNBAR:** Not necessarily. One of the scoring points that's in there is there's two different scoring categories, one for larger projects and one for smaller. So there is a-- a-- I don't want to say a bias towards the smaller projects, but it gives them an upper leg in the scoring process.

**GRAGERT:** OK, thanks a lot.

**BOSTELMAN:** OK. Senator Cavanaugh.

**J. CAVANAUGH:** I-- sir, one more question. Senator-- Senator Gragert asked good questions. It makes me think of other questions. Do you recall if there were ever projects that scored qualified, but you didn't fund?

**BRAD DUNBAR:** As far as qualified.

**J. CAVANAUGH:** Well, you said that sometimes there's lower scoring projects and you choose not to fund those.

**BRAD DUNBAR:** Yeah.

**J. CAVANAUGH:** Are there ever higher scoring projects that you opted not to fund despite the fact that they scored high.

**BRAD DUNBAR:** No, they-- the scoring, when we go through that and score-- rank them, we're going to rank-- we're going to fund them down to a certain level. So it's not going in and picking and choosing

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which ones you like. It very much follows the state statute of the-- of the-- the scoring.

**J. CAVANAUGH:** OK, so--

**BRAD DUNBAR:** Now, I will-- I will make a comment on-- these projects have to be before they even go before the scoring committee, have to clear Natural Resources and the Game and Parks even for us to view those projects. So there's-- there's not just all projects that submit applications don't automatically show up at the scoring committee.

**J. CAVANAUGH:** So, not everybody gets scored. Can I ask one more question, sir. What's the composition of the Natural Resources Commission Board? Is it all appointed gubernatorial-- gubernatorial appointees or--

**BRAD DUNBAR:** So there's a total of 27 that sit as commissioners, 13 are appointed through the NRDs. And they are-- they have a caucus to elect those positions. And then there are 14 that are gubernatorial appointed and there's a range of different gubernatorial appointees. Again, I was manufacturing interest. Cities of the first class water users is-- is one. Groundwater users is another. I can't remember all of them right off, but there's-- it's a variety of water holding interest across the state.

**J. CAVANAUGH:** Did you say you represent one of the manufacturing interests?

**BRAD DUNBAR:** I represent manufacturing interest as the appointee.

**J. CAVANAUGH:** Thank you.

**BOSTELMAN:** OK, thank you, Mr. Dunbar-- Dunbar, for coming in this afternoon for willingness to serve.

**BRAD DUNBAR:** Thank you.

**BOSTELMAN:** And that's all for now, yes. We'd like to ask anyone who like to testify in-- as a proponent in support of Mr. Dunbar's reappointment to the Natural Resources Commission. Seeing none, would anyone like to testify in opposition? Seeing none, anyone to testify in the neutral capacity? Seeing none, that will close our confirmation



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hearing on Mr. Bradley Dunbar for the Nebraska Natural Resources Commission. We'll start now with our second reappointment to Rodney Christen to the Nebraska Environmental Trust Board.

**RODNEY CHRISTEN:** Good afternoon. My name is Rodney R. Christen, Rodney, R-o-d-n-e-y, Christen, C-h-r-i-s-t-e-n, of Steinauer. Are you OK if I just read some thoughts that I had put together?

**BOSTELMAN:** Please do.

**RODNEY CHRISTEN:** Thank you. In Pawnee County, Nebraska, where I continue a generational family farming operation with an emphasis on beef production, I am here today seeking confirmation for my reappointment to serve on the Nebraska Environmental Trust Board. Many times over the years of serving on this board, I have been ignored while also being intimidated by people in or around the trust that work to promote the premise that Nebraska's most beautiful and precious resources would be all but lost if not for the work of certain nonprofit groups. Using NET funding as it-- using NET as a funding source to purchase land, restore, sell, transfer and/or fund a perpetual easement promotes the idea that private landowners cannot protect the resources. Only the elites and academics that utilize public money can. The fact is, many private landowners work a lifetime with complete dedication to improve the land they own, live and pay taxes on. I am a true conservationist, cattleman, farmer, rancher, dedicated to improving our grasslands and farm ground. Managing and improving native rangeland and prairies is a full-time commitment and passion of mine. Accordingly, it is no surprise that I am not particularly fond of using NET grants to fund land acquisitions or perpetual easements. One of the main reasons, as I see it, is NET's guidelines on not funding a grant that would be a direct benefit to a private person or to someone that could afford the project on their own. The premise that a nonprofit can care for the land and its resources better than a private owner is simply not true. I have personally been to a property that a prominent nonprofit received NET funding to purchase, witnessed an apparent shortfall in maintenance, and ultimately the nonprofit gave the property away. If a landowner wants to put their property in a perpetual easement, they can do that without NET funding. I do not promote or agree with NET trying to sell the idea. In many cases NET funding on an easement is utilized to purchase the development rights. As justification, it has been said

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that funding is necessary to pay down debt, buyout siblings, fund the operations, reduce real estate taxes and acquire other property, none of which are the mission of the trust. There's no tangible public benefit, no guarantee of maintenance, no public access except in certain limited situations and rarely, if any, follow up from the trust. While land acquisitions and perpetual easements are hot button topics relative to NET, they should not overshadow the many, many worthwhile projects that have been accomplished with NET support across our great state of Nebraska. Service on this board has been a learning experience and I wish to continue with your confirmation today. I reiterate, I am a true conservationist. I belong on this board representing what I believe is right for Nebraska. And thank you for your time today.

**BOSTELMAN:** OK. Thank you, Mr. Christen. Are there questions from the committee members? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you for being here, Mr. Christensen or Commissioner Christensen, is that the right--?

**RODNEY CHRISTEN:** Just Christen.

**J. CAVANAUGH:** Christen, sorry. Thank you for being a conservationist and thank you for your willingness to serve. And I guess I have a lot of questions, but I'll start out by saying I share your consideration of the environment and I guess we probably have a different philosophy. I'm of the school of thought of a lot. There's a lot of options in terms of things that we can do for preservation and land acquisition, may be one of those. I would like to ask, so what in terms of on the environment-- well, I'll ask you the same question I ask everybody. Can you just give me an overview of what the trust is?

**RODNEY CHRISTEN:** The trust utilizes lottery proceeds to allocate through grants, through an approval process to fund resource concerns across the state.

**J. CAVANAUGH:** And that-- those grants, what is an average year amount of those grants?

**RODNEY CHRISTEN:** Roughly, it's been running around that 20 million.

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**J. CAVANAUGH:** 20 million. And the process for allocating those grants begins with an application process similar to what--

**RODNEY CHRISTEN:** Correct.

**J. CAVANAUGH:** --was stated about the Natural Resources Commission. And then it goes through a scoring process, is that correct?

**RODNEY CHRISTEN:** Yep.

**J. CAVANAUGH:** Do you sit on that scoring committee?

**RODNEY CHRISTEN:** It rotates. I mean, grants committee, so that changes and I have been on that committee, yes.

**J. CAVANAUGH:** OK. And this is a six-year appointment.

**RODNEY CHRISTEN:** Yes.

**J. CAVANAUGH:** Is it a second six-year or you just been on for six years or have you been on longer than that?

**RODNEY CHRISTEN:** This is-- this is going into my-- it was redistrict there at one time, so I'm-- I'm into my third appointment.

**J. CAVANAUGH:** OK, so this would be for year 13.

**RODNEY CHRISTEN:** Yeah.

**J. CAVANAUGH:** OK, but how many years do you think you sat on the grants committee?

**RODNEY CHRISTEN:** I think three times that I can recall.

**J. CAVANAUGH:** Do you recall when the most recent one was?

**RODNEY CHRISTEN:** Not off the top of my head, but--

**J. CAVANAUGH:** Just curious.

**RODNEY CHRISTEN:** Yeah.

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**J. CAVANAUGH:** Who else sits on the environmental trust besides appointees like yourself?

**RODNEY CHRISTEN:** All agency directors.

**J. CAVANAUGH:** Every agency director, whether they have some kind of oversight of environmental issues or not.

**RODNEY CHRISTEN:** Right.

**J. CAVANAUGH:** OK, for a total of how many people?

**RODNEY CHRISTEN:** 13 on the board.

**J. CAVANAUGH:** And for these grants, you give out about \$20 million a year, you-- they go through this scoring process. Can you describe the scoring process to me?

**RODNEY CHRISTEN:** I don't have the list in front of me, but I mean, there's-- there's things they have to meet. Duration of benefits, public and private partnerships, long-term gain, a series of those kinds of checklists that it goes through.

**J. CAVANAUGH:** And they're scored as it pertains to each category. Does that sound-- is that right?

**RODNEY CHRISTEN:** The-- the grants have to meet at least one of the categories, the funding categories or habitat, surface and ground water, waste management, recycling, air quality and soil management.

**J. CAVANAUGH:** You're talking about the categories as to be qualifying for an environmental trust grant in general. I'm asking for the scoring categories. I guess maybe that's the wrong term.

**RODNEY CHRISTEN:** So the scoring, they put a number to each one that you go down.

**J. CAVANAUGH:** Criteria maybe.

**RODNEY CHRISTEN:** Right.

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**J. CAVANAUGH:** And then you aggregate those scores overall and then kind of create a list of where everything ranks as it pertains in order of their score.

**RODNEY CHRISTEN:** Correct.

**J. CAVANAUGH:** And the score would be considered an objective determination of the value of that project.

**RODNEY CHRISTEN:** Yes.

**J. CAVANAUGH:** OK. And then that grants committee reports that out with the recommendation of what to fund, does that sound right?

**RODNEY CHRISTEN:** Right.

**J. CAVANAUGH:** And to do that, they would do that score and you would go down the list and essentially draw a line once you run out of the \$20 million, or is it more like the Natural Resources Commission where they draw a line at eligible projects and just don't fund after that?

**RODNEY CHRISTEN:** They would typically draw the line, but they've got year one, year two and year three so that-- the 20 million is budgeted, you know, also in year two and three.

**J. CAVANAUGH:** OK, so that's a wrinkle I probably should have asked the Natural Resources Commission then. So the 20 million-- so you have a bucket of \$20 million that you are allocating that may be eaten up not just in-- what is this year, 2021, but maybe 2022, 2023.

**RODNEY CHRISTEN:** Correct.

**J. CAVANAUGH:** OK. So the question I guess still stands is you go through the list and you draw a line at where the dollar amount runs out or where the eligibility runs out.

**RODNEY CHRISTEN:** Where the dollar amount runs out.

**J. CAVANAUGH:** So potentially below that line are projects that you would consider meritorious, but not as meritorious as the projects above it.

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**RODNEY CHRISTEN:** Correct. And there's some discrepancies, you know, every-- with a diverse board, you know, every board member sees them differently. And along with that ranking comes, you know, significant conversation on the grants and sometimes it goes back and forth one way or the other.

**J. CAVANAUGH:** In the grants committee that's where that happens.

**RODNEY CHRISTEN:** Right.

**J. CAVANAUGH:** And correct me if I'm wrong, everyone would score and then the members of the grants committee would get together and they'd report it out score is an aggregation or an average of everybody's score.

**RODNEY CHRISTEN:** Yes.

**J. CAVANAUGH:** OK, so that discussion happens. The projects that are pointed out are receiving the benefit of that conversation to determine which ones are the valuable projects.

**RODNEY CHRISTEN:** Yes, it changed a little bit this year because usually when we would meet on grants committee, it would be multiple meetings on different areas. This year, NET it did it a little bit different where they-- everybody on grants committee had their scores on their own ahead of time when they met and went over everything in one day.

**J. CAVANAUGH:** OK. So the grants committee met and went over it and then the whole committee met and went over it the same day, is that what you're saying?

**RODNEY CHRISTEN:** Say that--

**J. CAVANAUGH:** Can you just clarify? Maybe I didn't understand. Can you clarify?

**RODNEY CHRISTEN:** The grants committee had done it on their own individually, did the scoring and then when they-- when they came to meet in the one day, then they came up with the recommendations.

**J. CAVANAUGH:** OK.

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**RODNEY CHRISTEN:** So that did eliminate a lot of their individual discussions, which we would have done prior to this year. This year, they just did it-- met together on one day to go over.

**J. CAVANAUGH:** And this year you're saying 2021, being--

**RODNEY CHRISTEN:** Yes.

**J. CAVANAUGH:** OK. Early in the year is always a problem for me-- point of saying this year. So last year being 2020 was a byproduct of grants that were submitted in August of 2019?

**RODNEY CHRISTEN:** Yes.

**J. CAVANAUGH:** OK. And then they were scored and subjected to that process and that was reported out. Does that sound right?

**RODNEY CHRISTEN:** Yep.

**J. CAVANAUGH:** And then it came to the full committee and there was a recommendation to diverge from that scoring process.

**RODNEY CHRISTEN:** Correct.

**J. CAVANAUGH:** Can you explain what the justification for that was?

**RODNEY CHRISTEN:** Well, kind of like what I did in my first talk here. In the past, there was a lot of focus towards acquisitions and easements and in fact, it was actually pushed, you know, by a number of people. Well, I made it clear today that there are some projects that I-- and just because of what they are, just because it's a perpetual easement, without looking at it individually and understanding the full thing, just by being perpetual makes it rank extremely high on duration of benefits. Well, how do you-- how do you rank it on duration of benefits? I mean, so the project being what it is, pushes it high on the ranking list and--

**J. CAVANAUGH:** Some would argue that's the point though. The project being what it is, is supposed to be ranked where it's supposed to be ranked based on what the project is.

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**RODNEY CHRISTEN:** But until you get into discussion on it and see what they're all about, you know, that's-- that's when it comes out.

**J. CAVANAUGH:** OK, but last year that discussion did happen, correct?

**RODNEY CHRISTEN:** You're talking on the grants committee or as the full board?

**J. CAVANAUGH:** The 2019 grants that I just referenced that got changed after it came out of the grants committee. The grants committee discussion did happen last year.

**RODNEY CHRISTEN:** Yes.

**J. CAVANAUGH:** OK. So presumably it took into account that sort of discourse to then readjust the value based off of the consideration you're talking about.

**RODNEY CHRISTEN:** Correct.

**J. CAVANAUGH:** OK. So then they were still reported out of the committee at that ranking, correct?

**RODNEY CHRISTEN:** Uh-huh.

**J. CAVANAUGH:** And then the full committee voted to diverge from that vote.

**RODNEY CHRISTEN:** Right. But this is a recommendation coming from the grants committee. You know, we were well within our parameters to review the grants, and that was a recommendation. You know, it's not a rubber stamp at that point--

**J. CAVANAUGH:** Right.

**RODNEY CHRISTEN:** --to just get approved because we-- we go through that and then come up with a recommendation as a full board and then that moves forward as the funding list to be voted on again at the April meeting.



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**J. CAVANAUGH:** OK. You-- what you're saying-- could I continue, I'm sorry, I'm hogging all the conversation. Is it OK if I keep going, Mr. Chairman?

**BOSTELMAN:** Sure.

**J. CAVANAUGH:** OK. OK, so what you're saying is you are empowered to make that change?

**RODNEY CHRISTEN:** Yes.

**J. CAVANAUGH:** OK.

**RODNEY CHRISTEN:** The board is.

**J. CAVANAUGH:** I-- I-- the you is the royal you of the board is, I'm sorry.

**RODNEY CHRISTEN:** OK.

**J. CAVANAUGH:** The board is empowered to make that divergence from the recommendation of the grants committee. So, my question or one of my questions is what-- after you made that change, did you go back and say, well, this-- was it, four or five projects got unfunded that had been recommended to be funded? Does that sound right?

**RODNEY CHRISTEN:** I wouldn't call it unfunded because nothing is actually funded until it's voted on in the April meeting. So they just didn't get approved.

**J. CAVANAUGH:** You're correct. So there was a recommendation for funding that was not accepted.

**RODNEY CHRISTEN:** Right.

**J. CAVANAUGH:** Despite their high score.

**RODNEY CHRISTEN:** Right.

**J. CAVANAUGH:** Relatively high score we'll say. So my question is with that number-- well, first off, is that a normal number of projects to be recommended out that don't receive funding?

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**RODNEY CHRISTEN:** No.

**J. CAVANAUGH:** OK. So I would say it was an aberration. So the question is, did you learn anything from that that you've taken forward to correct in the future so projects that would not be funded wouldn't be reported out in higher score?

**RODNEY CHRISTEN:** I hope so. So, and we just got done with an NET board meeting here the 2nd. So in the past at this February meeting when the grants committee recommendations are brought-- is brought to the full board, staff and other grant members, NET staff and grant members have always discouraged much of any kind of conversation, discussion on grants. If somebody did have concerns because, you know, when your board is split, some people think this way, that way, they say just push the recommendations forward and then you've got a chance to vote on them in April. And that eliminated any discussion on grants. So we-- you know, any board member that didn't approve or think a grant should make that kind of ranking, we had no avenue to voice their opinion or explain why.

**J. CAVANAUGH:** So now you do have that avenue, is what you're saying.

**RODNEY CHRISTEN:** Well, we've always had the avenue. This year, we just took it.

**J. CAVANAUGH:** OK.

**RODNEY CHRISTEN:** So we actually discussed grants. So-- so there'll be no surprise. There's going to be some grants that didn't make it, even though they ranked high again with reason.

**J. CAVANAUGH:** OK, so my question is not whether or not you're correcting after the fact, and correct me if I'm wrong, the scoring process is meant to be dispassionate, objective score.

**RODNEY CHRISTEN:** Yes, but it's a preliminary ranking.

**J. CAVANAUGH:** Right, but it's a tool so that somebody who is not a member of the grants committee can rely upon it and say, OK, these are the projects that are valuable and these are not valuable, right? That-- that's the point. So and clearly, we're both conservationists

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and we have a difference of opinion about the value of certain projects.

**RODNEY CHRISTEN:** Right.

**J. CAVANAUGH:** The point of the score, in my understanding, would be to take your opinion and my opinion out of it and to say these are the projects that have value and therefore, we can all rely upon that score as determination-- objective determination of value and not say this is just John Cavanaugh's agenda, this is just Rod Christen's agenda, this is the objective, valuable standard by which we're going to measure these projects and spend 20 million of our dollars on it. Does that seem fair?

**RODNEY CHRISTEN:** Yes, with some interpretation in-between. So when you look at a project, it may rank high, but I mean, until you look at appraisals, until you see if the numbers check out, you know, do the homework that way, it can still rank high, even though something else might not be explained in the grant. I mean, do you approve it any way just because it ranked high?

**J. CAVANAUGH:** And that-- fantastic point, so you're telling me that the grants process does not take those considerations into account? I'm sorry--

**RODNEY CHRISTEN:** It should, but it's--

**J. CAVANAUGH:** -- the grants for scoring process.

**RODNEY CHRISTEN:** It should, but it's a lot of information for board members to look through and unless you're specifically familiar and you're looking at a grant, it's a lot of information to review.

**J. CAVANAUGH:** I-- I-- fair, I would concede that too. So you're saying that information is available, but it was not necessarily being factored into the score, right?

**RODNEY CHRISTEN:** Right.

**J. CAVANAUGH:** OK. So what remediation have you taken to ensure that when something gets scored out that it is taken into account going forward?

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**RODNEY CHRISTEN:** Well, I think that's the utilization of a broad board member base because you're relying on board members to do their homework. I mean, beyond just the ones that were in grants committee. So that is the time in our February meeting, that is the time for-- and board members, whether they are-- whether they know something about recycling, energy, restoration of Tallgrass Prairie, a number of different things, all of us have, I feel strong suits to look at this. So your grants committee is restricted down to just your certain members, not your full board. So at our February meeting, you got a chance of input from all the board.

**J. CAVANAUGH:** OK, I think there are other questions, I'll let--

**BOSTELMAN:** I'll let Senator Hughes. Senator Hughes.

**HUGHES:** OK, thank you, Mr. Christen, for coming today and for your service and I certainly appreciate as a farmer conservationist myself, I appreciate you standing up for landowners on your board. I guess just a couple of brief questions. So you stated that there are 13 members on the NET, correct? How many normally serve on the grant committee?

**RODNEY CHRISTEN:** I should have that number for you, but I don't have it right now.

**HUGHES:** Well, it's not 13.

**RODNEY CHRISTEN:** No, no.

**HUGHES:** Four or five-- a portion of the board.

**RODNEY CHRISTEN:** There's going to be, if I were to guess, I'm just guessing it's going to be maybe 6.

**HUGHES:** OK. So if the grant committee was the ultimate authority of where the money got spent, what do you need the other 7 members for? If you're going to rely on the grant committee's recommendation to spend the money, why do you need the members who are not on the grant committee? You need a full committee to choose how to spend the dollars is my question.

**RODNEY CHRISTEN:** Yes.

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**HUGHES:** Very good. Thank you.

**RODNEY CHRISTEN:** Yeah.

**BOSTELMAN:** Senator Groene.

**GROENE:** Thank you. So to clarify, the financial part of the application isn't considered by the grant committee for like, I think-- tell me I'm wrong, but an example. Somebody comes in and says, we're going to-- we're a nonprofit, we're going to buy this land, take it off of the free market for generations to come, even though the previous owners had the opportunity to buy it out and make a living off of it, but when you look at it, they want \$10 million for 100 acres. Even though the project is perfect, you take that into consideration that's not-- not-- that's not financially feasible, or is that what you're saying, that when you said the financial part of it could throw it out for you even though it rated high.

**RODNEY CHRISTEN:** So it's my understanding that the NET is to not fund or provide funding for something that's above market value. So we would look at appraisals versus, you know, they're settling price.

**GROENE:** And that might have threw out--

**RODNEY CHRISTEN:** And that could-- yeah.

**GROENE:** -- on that final decision by the board. I have to agree with you about taking land off somebody selfish and they want to live forever take-- because they lived on the land, give it to the-- some kind of nonprofit, and then the next generations don't get to use it for the free market purposes. So would you give me a couple of examples since you've been on the board, really good projects that you thought were really good projects?

**RODNEY CHRISTEN:** Well, I mean, so this is-- this is my approach. I'm not speaking for the rest of the board whatsoever. Actually going through our last funding list on the 2nd here, the-- the one project that I seen amazing was actually Spring Creek Prairie Audubon turned one in. And NET has done a lot of work in that area before and including perpetual easements, and some of it could have been on their building structure and so forth. We had a tour out there last year and they're doing-- this year, they applied for a grant to do education

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and they've always done the education, but their-- their grant this year is to-- so it's prairie restoration. So I'm a livestock producer. And when I see a grassland project that, you know, that is just to preserve it and it has no real use when you're promoting and producing grasslands, I feel there's got to be an animal involved in that to efficiently harvest the grass. And so they're doing signage because I asked them about it last year. And so they're doing-- they're doing more education that is promoting that animals do belong on the landscape. And, you know, the animals can convert the grass and bring it back as beef. And that's a kind of project that they're educating a real story to very young individuals that come through there about a practical land management. Many of the cases, you know, we've seen where they want to try to keep animals off the landscape and just preserve it forever. I-- that I totally don't agree with.

**GROENE:** Thank you.

**BOSTELMAN:** So would you agree with me that on the commissioners you have you probably don't all agree, have the same philosophy as to why you're sitting there?

**RODNEY CHRISTEN:** Exactly .

**BOSTELMAN:** Thank you. Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you for your testimony. Appreciate it. I just have to clarify for myself in a-- you made it absolutely obvious that you are not in favor of spending NET money on acquisition of any kind of perpetual easement, the actual acquisition of these, right? Is that a fair statement?

**RODNEY CHRISTEN:** That is a fair statement.

**GRAGERT:** Now, so you're not necessarily against conservation practices put on that perpetual easement. Say, let me build a scenario for you here. Maybe the-- the Game and Parks walks in and says, hey, we want to do this conservation practice on that easement, would you be against?

**RODNEY CHRISTEN:** Oh, I'm not against conservation practices whatsoever. It's that--

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**GRAGERT:** On the easement.

**RODNEY CHRISTEN:** --the perpetual that, you know, give me a timeline. You know, give me-- you know, I don't see how anybody can imagine forever and make a land use decision. I wouldn't do it myself and I wouldn't ask another landowner to do that.

**GRAGERT:** Right. But to develop the environment on that, perpetually you're not against, you know, and-- and even if you are, I guess I'm going to go to my next question. Isn't that where like Senator Cavanaugh was, you know, many questions there that-- that's bringing out, though, is that the score, the ranking carries more weight than your opinion doesn't it or will it?

**RODNEY CHRISTEN:** I guess that would be fair to say yes, because of the way some of the criteria is set up.

**GRAGERT:** OK. And you-- you made mentioned earlier that because of the perpetual easement, it ranks right up here right now. You know, it takes--

**RODNEY CHRISTEN:** One of our-- one of the criteria is duration of benefits. So you could say you could rank that one extremely high on a perpetual easement, whether it's a good project or not.

**GRAGERT:** Yeah. And so you're-- you're not in real favor of that. You got 12 other people. I understand you got 12 other people, but the conservation practices with that are going to go on that-- that ranks right up when that took the big leap, right, it--

**RODNEY CHRISTEN:** The-- the easements don't necessarily reflect conservation practices on the ground. In most cases, it just restricts development or building. Sometimes there will be a building envelope where maybe you could add a house or something that say a son wants to come back or daughter wants to come back, but it's really restrictive to development and not so much about conservation rights, really just restricting the development.

**GRAGERT:** Certain easements.

**RODNEY CHRISTEN:** Yes.

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**GRAGERT:** Well, I agree. OK, yeah I agree. Yeah, OK.

**RODNEY CHRISTEN:** I mean, it's been said, you know, it's to stop development subdivisions, ranchettes. You can't put feedlots on it. You can't put chicken barns on it. You can't, you know, whatever you may foresee in the future, it's just got to be pretty much restricted to the use it's under now.

**GRAGERT:** But again, and now this is my last, but-- but again, the scoring, the ranking kind of takes the subjectivity out of it.

**RODNEY CHRISTEN:** Until you get in and discuss it, yes.

**GRAGERT:** And I said it was my last question but I got one more. The-- the-- the grant committee, the 6 people, they do all the fact check and they-- and then bring it to the board where they can feed the board all the facts on this grant and then we vote on it, right?

**RODNEY CHRISTEN:** Essentially, yes.

**GRAGERT:** OK, thanks.

**RODNEY CHRISTEN:** Along with-- they do order tech reviews, like two tech reviews, people that are supposed to be, you know, professionals in whatever pertains to the grant. So two different individuals will review them and also weigh in on their opinions and they vary quite a bit too.

**GRAGERT:** OK, thanks a lot.

**RODNEY CHRISTEN:** Yes, thank you.

**BOSTELMAN:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Again, thank you, Mr. Christensen, for all of your information and your candor really. And obviously what Senator Gragert was getting at, and what I've been trying to get at is, when we're spending this kind of money and I said to somebody else I think on the environmental trust, this is a literal trust, but it's also a figurative trust where we are investing you with our trust to spend this money. And so we need to be able to be confident in the result. And that is my interpretation of the



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objective standard, is that it is meant to inspire confidence in the outcome and that it does not reflect other people's opinions. And that kind of brings me to my question about the-- the project that was funded in the place of the five projects from last time. And that was an ethanol blender project, right?

**RODNEY CHRISTEN:** Yes.

**J. CAVANAUGH:** I'm not a huge fan of ethanol. I mean, I'm not opposed to ethanol, but in terms of it as a environmental impact, I would kind of share your skepticism. But on the opposite side, where I would say there-- they-- evidence that it has environmental value is small. So that-- that-- that-- that the folks here who would be in favor of ethanol as an environmental project would probably say, we want an objective process because we don't trust that Cavanaugh is going to score this as well as it deserves. And I'm just saying that-- that's the point of the process, is to take my opinion and your opinion out of it and to score these things on these criteria. The question I have is, since this was an aberration and you haven't made any changes to the grant scoring process since then. Well, who was the recipient of that grant, the ethanol blender grant?

**RODNEY CHRISTEN:** Green Plains, I believe, was the name--

**J. CAVANAUGH:** And they had--

**RODNEY CHRISTEN:** --of the applicant.

**J. CAVANAUGH:** Who was their governmental partner?

**RODNEY CHRISTEN:** The Department of Energy, I suppose.

**J. CAVANAUGH:** And the Department of Energy sits on the board.

**RODNEY CHRISTEN:** Correct.

**J. CAVANAUGH:** And when you had a vote on this issue, on the grants package as a whole, did director-- is it Macy, did he vote on that project?

**RODNEY CHRISTEN:** To my knowledge, he would have abstained.

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**J. CAVANAUGH:** He would have abstained from the grants package as a whole?

**RODNEY CHRISTEN:** From-- from-- to from voting on that grant. I mean, when-- when we get an individual ballot-- ballot vote in April to vote on.

**J. CAVANAUGH:** OK.

**RODNEY CHRISTEN:** Now, I don't know that he'd have to recuse himself, nor does anybody else. Game and Parks is on the-- on the-- you know, and we fund a lot of Game and Parks, you know. And so I don't think-- I don't think they're required to abstain on putting the recommendations forward.

**J. CAVANAUGH:** Abstain on putting the recommendations forward out of the grants committee?

**RODNEY CHRISTEN:** Right.

**J. CAVANAUGH:** OK.

**RODNEY CHRISTEN:** Otherwise everybody would be abstained.

**J. CAVANAUGH:** Right. And that's-- that's a later question that we'll get to, right?

**RODNEY CHRISTEN:** OK.

**J. CAVANAUGH:** So, and we had somebody here from-- yesterday, Mr. Quandahl, and I asked him about this, about the wisdom of having department heads on the board. And he said that they're there to provide advice and I said, that's fair.

**RODNEY CHRISTEN:** Yeah.

**J. CAVANAUGH:** I-- I asked if-- I thought it was unwise to have them there because they have an interest in money-- monetary interest in the outcomes of these-- some of these grants. And as you just correctly pointed out, it's not just Department of Energy and Environment, it's parts, it's ag, all have interest and they all vote on these.

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**RODNEY CHRISTEN:** Yep.

**J. CAVANAUGH:** So if you look at the meeting minutes from February 4, 2020, which is a year ago today, Mr. Macy voted on the motion to have a vote on whether to defund these grants and fund that grant. But he abstained on the vote of the previous question, which is to actually issue the grants. My question is, do you think that abstaining just on the vote of the grants itself is just window dressing as opposed-- when you've already voted, you've expressed your opinion to your other board members clearly that you are in favor of this by voting, that a question to call the question.

**RODNEY CHRISTEN:** So I'm not sure I'm going to answer your question properly, but I'll try. So typically, whenever the recommendation come forward, if you could get that to go forward to the full board, which usually it's been no problem, it never deviated after that. So, but-- but in my mind, is that what makes up a board is ones that are just going to approve it and not look into it, so--

**J. CAVANAUGH:** This is not a question about the appropriateness of whether to approve it or not. This is a question about the appropriateness of people having a financial interest making votes.

**RODNEY CHRISTEN:** So, but you're saying about the vote on dividing the question to be able to vote.

**J. CAVANAUGH:** Right.

**RODNEY CHRISTEN:** So it is a step down from actually a vote on the grant.

**J. CAVANAUGH:** True. I'm not-- I'm not saying he's in violation of the rules that you've stated.

**RODNEY CHRISTEN:** But-- but everybody else would be in the same situation that would have anything to do with the grant, so.

**J. CAVANAUGH:** All of the department has.

**RODNEY CHRISTEN:** Yeah.

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**J. CAVANAUGH:** Would you join me in my supposition that perhaps the department heads should not be voting members of this board?

**RODNEY CHRISTEN:** I think I want to stay neutral on that position.  
[LAUGHTER]

**J. CAVANAUGH:** I'll take-- I'll take that as the best endorsement I could have had, though.

**RODNEY CHRISTEN:** As long as it's fair all across.

**J. CAVANAUGH:** I've got more questions if I can keep going, but.

**BOSTELMAN:** To what point?

**J. CAVANAUGH:** We're talking about confirming somebody who's  
[INAUDIBLE] more on the actions--

**BOSTELMAN:** I understand but it seems like we keep asking the same question to get a different answer. So are we at a point to where you're kind of-- kind of at more direct. I mean, is there something specific?

**J. CAVANAUGH:** I have a few specific questions, so I don't want to keep you here all day and I want to keep everybody here all day, obviously.

**RODNEY CHRISTEN:** I'm fine. You guys-- you guys do what you need to do.

**J. CAVANAUGH:** We'll talk later, apparently. But the-- so this particular project is for the grant, the grant for the ethanol blending. The Legislature, in fact, created an ethanol blending grant in this session, I think it was last year or two years ago. Does that sound right?

**RODNEY CHRISTEN:** It could very well be.

**J. CAVANAUGH:** OK. And so-- but the Legislature didn't fund that grant program.

**RODNEY CHRISTEN:** I don't recall that, but.

**J. CAVANAUGH:** And this-- well, that's not a question, so I'm not going to ask it, but OK. I've asked you all these questions about changing

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the procedure and scoring. As to the scores that just happened yesterday and you alluded to-- or two days ago now, that some projects that scored high came out and didn't get adopted or recommendation. Is there--

**RODNEY CHRISTEN:** Yeah. May or may not be released publicly yet, but it was an open meeting so I can share that, yes.

**J. CAVANAUGH:** OK. Are there multiples or multiple projects or one or how many were done?

**RODNEY CHRISTEN:** What I'm recalling off the top of my head, one had withdrawn on their own.

**J. CAVANAUGH:** OK.

**RODNEY CHRISTEN:** And then two, we voted no.

**J. CAVANAUGH:** Two you voted no.

**RODNEY CHRISTEN:** Yeah.

**J. CAVANAUGH:** Can you tell us what those were? How about this. Were they land possessory-- would they be grants that would be--

**RODNEY CHRISTEN:** One would have been a land acquisition and one would have been a demonstration project.

**J. CAVANAUGH:** OK. And as to the five projects that were not funded last time around, were those all land acquisition projects?

**RODNEY CHRISTEN:** And/or easements, as I recall.

**J. CAVANAUGH:** OK. That would encumber the use of the land in the way that you disfavor, basically. Fair to say?

**RODNEY CHRISTEN:** Yeah, I'm not hiding that, yes.

**J. CAVANAUGH:** I'm not-- and I'm not trying to say it in a bad way, although we-- we clearly disagree about it. I'm just trying to be fair to the description of it. So again, and maybe this is a statement we can-- conversation we have outside of here, I would like to see a grants process where and you're making-- if you are identifying

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projects then that get high scores, the projects that got-- I think one of them was the top five scoring project last time got un-- who got it-- did not get its funding recommendation adopted. And the project that got funded was like the fiftieth scoring project. To me that is an indication of something fundamentally wrong in the scoring process. And what I'm saying is that if you're something fundamentally wrong to that degree and you take no action to remediate it, that's going to further undermine the confidence in a substantial grant process that a lot of people enjoy the benefit of in the state and that it's going to continue to undermine it going forward if it's again happening where projects are having their funding not approved. And further, your statements about your philosophy, them being grants that are specifically to projects that you disfavor, but may objectively meet that standard or a high standard and may by some people's interpretation, be more meritorious than some of them, further undermines the confidence in the grant. So if you get back on the board, what are you going to do? That's the question.

**RODNEY CHRISTEN:** OK. Well, you're losing me in some of that because you've got several things that I'd like to address. One is, I agree with you to the point that we've had discussion within the board that we do need to look at a ranking process, because whether you like the projects or not, it is skewed a little heavily. And that's why projects like that have gotten funded for a long time. So I do think there's some things we can do to perhaps as a board, look at the way we rank grants, to be fair. Now, with this big of a diverse board and diverse projects, it's going to be hard to find a one size fits all without catering and skewing to one. That's why the discussion is very important. But if I may, so does it look like I'm just-- I don't like perpetual easements and that's it. For instance, I'll give you an example. We have perpetual easements out there that have been funded for a long time. The Environmental Trust has a performance review committee in place that is very rarely ever utilized. And the Performance Review Committee was set up and designed specifically to follow up on land acquisitions and easements. And so I'm just being simple here and I'm asking myself the question, so if we fund them that heavily and we have a committee set up to monitor these projects, but we've never done it, why?

**J. CAVANAUGH:** That's a great question.

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**RODNEY CHRISTEN:** It is. Staff can't answer that other than one board member made the comment that if we did that, well, it would overtax the trust. Well, then why are you funding those projects would be my question. So you can't manage what you don't measure and you know in farming, you know, our measurement tools are a lot different. It don't have to make much, but in some of these cases, the project's got to make sense. And if you don't follow up on them, how do we know if they're actually meeting our objectives? But you're making that decision forever. And one-- one more to that would be OK, so this year we had applications from individuals or groups that had received money for perpetual easements, and now they're coming to the trust to ask for maintenance help, because grants that they've-- easements that have been funded, now the maintenance costs have exceeded any kind of income they can generate off of those acres. So now they're getting-- so, so should the trust fund maintenance, fund an easement that they put in perpetuity where it would be assumed that maintenance should be part of the grantees responsibility, but now they're applying to the trust, how do you look at that?

**J. CAVANAUGH:** I just want to clarify too that for special easements for land acquisitions, they do tie up the land forever, but there is an outlet that could be-- if it becomes wildly inappropriate, that this land stays unutilized, I think like a western Douglas County, you know, maybe or something like that. There is a mechanism to take the easement off the property.

**RODNEY CHRISTEN:** Is there?

**J. CAVANAUGH:** Oh, yes, there is.

**RODNEY CHRISTEN:** Well, and how would you do that?

**J. CAVANAUGH:** Well, I don't know the exact process off the top of my head, but there's a judicial oversight as well as actions by the both of the parties.

**RODNEY CHRISTEN:** Those questions have been asked and not answered, so it's a very gray area that can actually happen or not. Yeah, both parties have to agree under these certain circumstances and-- and sometime between now and forever, somebody is going to know who that is.

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**J. CAVANAUGH:** Fair point. But OK, I just wanted to point out that there is a mechanism and maybe we can address it legislatively when I address the other things legislatively.

**RODNEY CHRISTEN:** OK. Well, and on easement, OK, just-- can I give you an example?

**J. CAVANAUGH:** Yeah.

**RODNEY CHRISTEN:** OK, you've got a piece of ground that's just marginal ground, but it's next to-- next to development pressure and you got another piece of ground way out in the country that is perfect, pristine. I mean, couldn't be any better. The value on the marginal one will exceed the purchase price of the other one. Do you see that as fair-- fair?

**J. CAVANAUGH:** The value of marginal land would exceed the purchase price. Yeah. I mean, do I think that that statement is fair?

**RODNEY CHRISTEN:** I'm just asking.

**BOSTELMAN:** Excuse me. Excuse me. Excuse me.

**J. CAVANAUGH:** We can talk about that later apparently.

**BOSTELMAN:** No, no, he can't ask you questions.

**RODNEY CHRISTEN:** OK. Sorry.

**BOSTELMAN:** He's not allowed to ask questions.

**J. CAVANAUGH:** OK.

**RODNEY CHRISTEN:** Sorry.

**BOSTELMAN:** So, Senator Moser, do you have a question?

**MOSER:** Well I was going to bring up the same thing. I think some of these questions are getting more into the management of the Environmental Trust Committee rather than whether he's an appropriate member of the committee. And I think if we as senators have questions how it's managed, I think we should address a bill to the people who were in charge of making those decisions. And I mean, I commend this



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gentleman. He has been so patient and answered questions. Are you an attorney?

**RODNEY CHRISTEN:** I stated in the beginning, I'm a farmer.

**MOSER:** Well, that must be a higher calling. You're doing a great job.

**RODNEY CHRISTEN:** We got to be pretty determined.

**MOSER:** Anyway, that's my comment. Thank you.

**RODNEY CHRISTEN:** Thank you.

**BOSTELMAN:** All right.

**J. CAVANAUGH:** I could go all day, so you got to stop me.

**BOSTELMAN:** OK, thank you. Thank you, Mr. Christen, for being here today. Appreciate it, coming in and for the dialogue. Thank you.

**RODNEY CHRISTEN:** Thank you, guys, gentlemen-- ladies and gentlemen for your time.

**BOSTELMAN:** Would ask anyone who would like to testify as a proponent for Mr. Christen, please come forward. Seeing none, would anyone like to testify in opposition to Mr. Christen's reappointment? Seeing none, anyone like to testify in neutral capacity? Seeing none. I do have two written testimonies for Mr. Christen in support. One's from Roger Berry from Nebraska Ethanol Board, and one is from Bruce Rieker from the Nebraska Farm Bureau Federation. With that, that'll end our hearing on Mr Rodney Christen. Senator Erdman. Good afternoon, Senator Erdman. You're welcome to open on LB305.

**ERDMAN:** Thank you, sir. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I live in Bayard and represent District 47, 10 counties in the Panhandle of Nebraska. I'm here today to present you LB305, which is a change in the way the executive director-- secretary, if you will, of the Game and Parks is selected. What the page is handing out is an amendment to the bill. When we drafted the bill, somehow the Bill Drafter left out the clause in the bill for due process for the secretary. And so that's what the-- that's what the bill-- of the amendment to the bill does. It gives them due process if they are

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terminated, gives them a chance to be heard. So basically, the amendment becomes the bill. And so that's a situation there. You can take a look at that at your own leisure. Let me start with this. Over a period of years, substantial years, 25 or more, we as residents of Nebraska have struggled with how Game and Parks has managed. In the year 2001, there was an Erdman that sat in this same seat in this district that had considered making Game and Parks a code agency and the director appointed by the Governor. They were having issues with the management of Game and Parks in 2000, 2001. And I spoke to people who used to work in the Policy Research Office and they were having the same issues. No one has ever brought forward a bill to do that. And so this last off-- interim, I began to think about what we shall do about appointing the director, because this problem of mismanagement has been going on for years and years and we've left it up to the commission and they have done nothing about it. And yesterday, you heard testimony from a Mr. Pinkerton, I think, and he suggested that everything was fine when he was on there. And I've done some research and it was no different back then than it is now. So there's no indication that leaving it where the director is appointed by the commission, that anything will ever change. And so it is my desire that the Governor appoint the director, the secretary of the Game and Parks. Let me make a declaration to you that the Governor has not been involved in this. It was not his idea. When I drafted this bill, I sent him a copy for his review. And I told him in a phone conversation, this is not intended to look like you're trying to take control of Game and Parks. He had nothing to do with this. And I told him I would make sure that I declared that to the committee that it was my idea and not his. So if you look at all of the people, all of the positions that the Governor appoints, that list is lengthy. The director of agriculture, the director of Department of Labor, the director of engineer and transportation, director of natural resources, director of banking-- banking and finance, insurance, director of motor vehicles. The list goes on and on and on. So the Governor makes appointments to other agencies of the state. And I believe that this would be an appropriate appointment and the Governor can appoint the director and then instead of the director working for the commission, then the director would be working for the people. And that is exactly what the problem is. And most of the time, and I have been in-- in some of the commissioner meetings and what happens there is the-- the commissioners vote on things that the management brings

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to them and sometimes they don't even know what the issue is. And case in point. In 19-- 2019, when they did the depredation of the elk in Monroe County, I was blamed for doing that. I had nothing to do with that. I sent an email to Mr. McCoy and asked him to make a retraction and I asked him to put that in the public notice so people would know I had nothing to do with it. When that all came down, the board of directors, the commissioners never knew any of that ever happened. And so consequently, it's time for us to take control of this-- of this Game and Parks Commission, by having someone appointed there that's interested in serving the people of the state of Nebraska rather than the commission. And so I come to you today with this opportunity for the Governor to make this appointment and I believe this is a common sense decision, and I leave it up to you to make that decision, but I appreciate the chance to make this presentation. Thank you.

**BOSTELMAN:** Thank you, Senator Erdman. Are there questions? Senator Moser.

**MOSER:** So, Senator Erdman, you're saying you think that this bill will make Game and Parks more responsible to the citizens?

**ERDMAN:** Senator Moser, that is my desire. OK. It can't get any worse.

**MOSER:** How would this work? Would this person serve at the pleasure of the Governor-- could he be dismissed--

**ERDMAN:** Yes.

**MOSER:** --only by due process or--

**ERDMAN:** Yes. That's exactly what the amendment says. Gives him an opportunity for due process.

**MOSER:** Can he dismiss other people who he appoints for whatever reason?

**ERDMAN:** Yes.

**MOSER:** Does he-- does he-- they all have a due process.

**ERDMAN:** Yes, that's my understanding.

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**MOSER:** So let's say that the Governor now would appoint a new director of Game and Parks and then two years from now, the new Governor is elected. Does the new Governor get to replace that person or does he serve out his term and then when he's up for reappointment, then the new Governor would have a chance to appoint someone else if he wanted to.

**ERDMAN:** Well, my understanding, Senator, if you read-- if you read what it says here, there are qualifications for being dismissed. And I don't know that changing the Office of Governor is one of those on the list. But I'm not an attorney.

**MOSER:** But you don't have to have removal for cause if their term is up.

**ERDMAN:** Can you say that again?

**MOSER:** You don't have to have cause to not reappoint them if their term is up.

**ERDMAN:** Correct. That's correct. That's the way I understand it.

**MOSER:** That removal for cause is only during the term of their--

**ERDMAN:** Correct. That's the way it looks.

**MOSER:** OK, thank you.

**ERDMAN:** That's my opinion.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Senator Erdman, of the individuals, department heads that aren't elected and I don't know, are there some that aren't elected department-- department heads?

**ERDMAN:** That are not elected?

**GRAGERT:** Right that-- and then the rest that are appointed, they're either elected or appointed, right?

**ERDMAN:** Yes.

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**GRAGERT:** OK. So the ones-- how many that-- you started the list off, there are a number of them that are appointed by the Governor. How many aren't appointed by the Governor?

**ERDMAN:** The agencies that are controlled by the Governor are all appointed by him. The code agency under the Governor, he appoints all those appointments.

**GRAGERT:** But, so what about Game and Parks then?

**ERDMAN:** Game and Parks was appointed by the commissioner. They are not a code agency. They are not under the Governor's authorization or authority.

**GRAGERT:** OK. OK.

**ERDMAN:** That's the difference.

**GRAGERT:** OK, thank you.

**ERDMAN:** This-- this places Game and Parks under the Governor's authority. This makes them a code agency under the Governor.

**GRAGERT:** Thank you.

**ERDMAN:** That's the change. And hopefully we'll know what happened, and we had the issues that we've been having for the last 30 years with Game and Parks, the Governor would stand up and say, hey, wait a minute, something-- something's awry here and we need to make a change. And that's not happened the way we currently do it.

**BOSTELMAN:** Senator Moser.

**MOSER:** Do you think this would politicize Game and Parks?

**ERDMAN:** I don't-- I don't understand-- say that-- say that again.

**MOSER:** Do you think this would politicize Game and Parks. In other words, make them more political than what they do rather than functional. And is that a bad thing? I mean, evidently.

**ERDMAN:** I don't know whether it would make them political or not. I would think that you look at the other agencies that he appoints those

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directors for, have they been politicized? I guess that would be the term-- how you would determine that. And I know I can't answer your question, but I would just-- yeah, I don't know.

**MOSER:** Thank you. That's fair enough.

**BOSTELMAN:** So does a-- wouldn't the Governor now have the-- have the ability to have some discretion with the current director or not?

**ERDMAN:** No.

**BOSTELMAN:** No.

**ERDMAN:** No, the current the current statute, Senator Bostelman, says the commission shall select the secretary, the commissioners.

**BOSTELMAN:** Understand.

**ERDMAN:** He appoints the commissioners and then they in turn hire or appoint the director.

**BOSTELMAN:** So are we looking at-- I'm kind of curious on this bill, and I think I mentioned to you before so you haven't-- you're not-- we talk about this is, you want to elect the commissioners because you don't-- you don't support the Governor appointing commissioners, but now you want to appoint the director, even though you don't trust this. Was it lesser of two evils? Is that what we're looking at? You see what I'm saying. You don't-- you don't trust the Governor in his appointments on commissioners. You want those to be elected, but now you want the Governor to appoint the director and if you don't trust him or her on the one, are we-- are we not trusting them as well on the second? It's-- so the lesser of two evils type of thing, is that why--

**ERDMAN:** I don't-- I don't believe it is. I think it's an opportunity for us to elect those-- elect those directors. And I think it would be a good idea because currently it doesn't appear that a lot of people that don't have some kind of influence or connection with the Governor get appointed to the commission. That's one thing. The second thing is the Governor appoints all these other-- other directors and I don't seem to be-- I don't think that's been a problem.

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**BOSTELMAN:** OK. Other questions? Seeing none. Will you stay for closing?

**ERDMAN:** Thank you.

**BOSTELMAN:** Would ask anyone who would like to testify as a promon-- proponent for LB305 to please step forward. Anyone in support of LB305 like to step forward. Seeing none, would anyone like to testify in opposition to LB305, please step forward. Good afternoon.

**JOHN HOGGATT:** Good afternoon. My name is John Hoggatt, J-o-h-n H-o-g-g-a-t-t, live in Kearney, Nebraska. I'm here representing the commission today. I'm District 4 Commissioner. I want to cover some things and open up for questions. The commission form of governance for the Game and Parks was developed to avoid undue intrusion of politics into our agency, ensure citizen participation to establish policies for the agency, provide recreational opportunities by mandating stewardship for our resources, and ensure ethical, prudent operation of the agency. We think we have-- we think having the director appointed by and working for the board of the commissioners appointed by the Governor has been an efficient-- has been effective and efficient for the state of Nebraska, our natural resources and for the public-- of the public use of those resources. Nationally, the average tenure of a state wildlife agency director is 3.2 years. This is largely driven in changes in the agency director over the-- in 30 states where the Governor appoints by-- Governor appoints a director by the Governor. In 2020, there were 23 new directors due to change of Governorship. When a new directors are appointed senior staff and advisers who also serve at the will of directors are also often replaced. This consistent shift in leadership creates challenges building and maintaining relationships with constituents and city groups, state senators, Nebraska federal delegation, conservation partnerships, donors, foundations, universities, cooperative fish and wildlife resources, federal agencies and other state agencies. The commission's role is to appoint the director and have the stability of leadership in part was why the Game and Parks has been successful in our-- in our size of state and a work force as compared to many other states. Under the current governance of the model, the commission, director, staff, and are all motivated to share a sense of accountability to the agency, our stakeholders and the public trust resources we manage. Many of the issues we deal with are complex and

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diverse, of uses of diversity of users interests that are often have diverse opinions. The director staff agency with the directors responsible-- responsible-- with the director responsible to the Governor, OK, excuse me, many of the agencies dealt with complex. This would create potential division-- division and accountability between the commission's director and staff as he reports to the Governor. I apologize. Commissioners would have-- commissioners would have under this bill, diminished ability to speak to constituents, to shareholders about the issues. Constituents would go directly to the Governor rather than the commission or the agencies. This would diminish the role of the commissioners that would become more like an advisory group. The advisory group would then control the direction-- the Governor would control the direction of the agencies and the act and the-- and the action the director and staff brings to the commission for formal action. I would contend that this a-- this group a couple of years ago here, two years ago getting affirmed and Senator Hughes asked me some questions and who-- this question was profound because it was on my first day be presented and who runs the commission. And I answered the question at that time by saying the commission runs-- the commission runs the agency. And that in fact, is true, and so he serves at our pleasure with the contract. He or she serves the pleasure of contract. So I feel that we have a good relationship. The Governor appoints us. You confirm us. This group confirms us. So you've asked some really good interesting questions today of other confirmation people. I think the rigorance of the-- of the-- the questions for future commissioners should be there as well. Remember, Senator Hughes asked me that question. And I think we hold the commission accountable. And I'd like to entertain any questions because I've watched the last two days, be it remotely, listen to this group. So with that I'll entertain any questions.

**BOSTELMAN:** Thank you, Commissioner. Are there any questions? Senator Hughes.

**HUGHES:** Thank you. Thank you, Director Hoggatt, for coming-- Commissioner Hoggatt for coming in today. So Senator Erdman and I have made no secret about our challenges that we have with the management of Game and Parks, especially in the big game area. Do you feel that's been politically driven at all?

**JOHN HOGGATT:** Your challenges?



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**HUGHES:** Yes.

**JOHN HOGGATT:** No, I think it's your constituents have the-- have the relationship.

**HUGHES:** Very good. I want to get to that. So you said that the director has a contract, the commissioner's contract with the director. How long-- what-- what's the term of that contract?

**JOHN HOGGATT:** My recollection, I-- I'd ask somebody else. I think it's a 6-year-- it's a 6-year term.

**HUGHES:** You hire a director for six years at a time?

**JOHN HOGGATT:** I think I'm--

**HUGHES:** The director.

**JOHN HOGGATT:** The director.

**HUGHES:** He's hired six years out.

**JOHN HOGGATT:** That's-- that's been that way since since 1929. Yeah.

**HUGHES:** That sounds like the tail wagging the dog to quote. Well--

**JOHN HOGGATT:** Yeah, again, that's subject to-- we could-- those are bylaws and laws we can change-- commission change.

**HUGHES:** We need to look at that.

**JOHN HOGGATT:** Yeah. Excuse me. I want to interject something, if you don't mind. When I answer these questions and I'm speaking on my-- on my behalf, I was authorized to do these statements. Further questions, I'm going to speak on my own behalf, OK?

**HUGHES:** Right. I understand that.

**JOHN HOGGATT:** Thank you.

**HUGHES:** Yeah. I have noted earlier, if you're a Governor appointee this year, it's going to be tough. Thank you.

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**BOSTELMAN:** Further questions? Senator Groene.

**GROENE:** Your term is six years?

**JOHN HOGGATT:** No, my term is four years and with a maximum of two terms. I'm in-- I started my third year. This completes two years.

**GROENE:** Thank you. But who made the-- who made the decision to close our parks and not open them up for camping in the spring with COVID? Last spring.

**JOHN HOGGATT:** The director did.

**GROENE:** The director. You guys had no say?

**JOHN HOGGATT:** Well, we-- he recommended that-- we followed his recommendation because of COVID-19 given all the unknown, yes.

**GROENE:** Did you know Kansas was open and they made millions of dollars with Nebraska license plates?

**JOHN HOGGATT:** Several of us-- many of us discussed all those things, yes.

**GROENE:** I know a commissioner in Kansas and he was so happy you guys made that decision to get under a rock.

**JOHN HOGGATT:** Yeah.

**GROENE:** But he made that decision.

**JOHN HOGGATT:** The director made a decision and was ratified by the commission.

**GROENE:** And the Governor had no input in that, the economy of our state.

**JOHN HOGGATT:** My recollection is that the director quoted the Governor's recommendations of-- of-- of health issues, and that was his justification to make his recommendation.

**GROENE:** Thank you.

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**BOSTELMAN:** If a new director would be hired, is their search committee that goes out to do that, how's that-- what's that process?

**JOHN HOGGATT:** That was-- that would be at that time we would develop a search committee, yes.

**BOSTELMAN:** And that search committee would be made up of whom? Would it be commissioners or would be outside of the commissioners?

**JOHN HOGGATT:** I think we have discretion to do both.

**BOSTELMAN:** And do you know and I would-- I would guess that, say you're hiring a new director, you make a recommendation to the Governor, does the Governor have to approve it or can the Governor, he or she deny it and send it back to you and say this one-- look for another person.

**JOHN HOGGATT:** I'm not sure. I'm not sure of that. I think we would be very attuned to what the Governor, the current Governor would be, concerns, but I don't know technically if we would have to do that. Again, this--

**BOSTELMAN:** OK, that's fine. That's fine.

**JOHN HOGGATT:** I don't think so, but that's out of-- it's above my pay grade on that one. So I'd have to ask somebody else.

**BOSTELMAN:** OK. Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you for your testimony. I just wondered, is it-- is it common practice for commissioners to make decisions without going through the director? As far as operation of closing down parks, and--

**JOHN HOGGATT:** Commissioners-- commissioners would not make that direction. We would-- we hire the director to make recommendations and decisions and then we would-- we would approve them or if we felt differently and on occasions, we have, we've challenged status quo.

**GRAGERT:** But yeah, normally you won't make wildlife decisions or anything without checking with-- with the director.

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**JOHN HOGGATT:** We take recommendations from staff and from constituents. We bring-- I mean, as Dan Kreitman quoted yesterday, our-- we're on the website. Everybody has my email and my cell number. And I would say to the 95th percentile if they left it-- I've had all kinds of conversations and voicemails left. 95 percent of them leave their phone number and their-- and their name. The ones that don't leave a phone number or their name, just a little belligerent, don't get re-- but they don't-- but those don't get called back, but everybody else gets called back, friendly or not. And so we take those calls and then we take those calls and forward it right back to staff to say, we need a response to this and we need addition for that. And I can't think of a time they haven't followed through. It may not be the next day, but it's within one week to two weeks.

**GRAGERT:** OK. I can appreciate that, but you either direct the individual calling you to the Game and Parks-- do you let them jump chain in command. I mean, you are the-- you are the top call.

**JOHN HOGGATT:** If they-- if they call me, I will get an answer and they'll oftentimes they'll send a letter from-- from-- from Game and Parks to the constituency, see me on it, or an email, or I'll get back to the constituent because I said I would.

**GRAGERT:** OK. Thank you.

**JOHN HOGGATT:** That's part of being public service in my opinion.

**BOSTELMAN:** Senator Hughes.

**HUGHES:** Yes, thank you. So you mentioned the-- when you receive a call or an email is-- and you forwarded up the chain or for an answer, is there a record kept of those?

**JOHN HOGGATT:** It goes to the dot.gov, Doug, Jim and Tim's email address, yeah.

**HUGHES:** So is there a record that can be searched if someone calls--

**JOHN HOGGATT:** I'm sure-- I'm sure there probably could be. I would assume, Senator Doug-- Senator Hughes.

**HUGHES:** That's been a question that's been asked and--

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**JOHN HOGGATT:** Yeah.

**HUGHES:** --my understanding there is not in Nebraska, but that there is in other states. I would encourage if there's not, that there is some way to make sure that that's followed through on.

**JOHN HOGGATT:** It's just customary business practice that I'm used to.

**HUGHES:** Thank you.

**BOSTELMAN:** Other questions? Seeing none, thank you for your testimony.

**JOHN HOGGATT:** Thanks for your time.

**BOSTELMAN:** Next opponent to LB305.

**SCOTT SMATHERS:** Good afternoon, Chairman Bostelman, and members of the committee. My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I'm the executive director of the Nebraska Sportsmen's Foundation, a nonprofit educational unit working with sportsmen and natural resources throughout the state of Nebraska. I'm also here today on behalf of our NSF partners, the NWTf, BDCA, Nebraska Pheasants Forever, and the Nebraska Bowhunters Association in opposition to LB305. Obviously, we've seen a lot of each other over the last week regarding several different topics and issues regarding the Game and Parks and the outdoors. The sportsmen of the state, the groups that we help work with and partner with on projects both educationally and legislatively and habitat and natural resources avenues, understand that working with the Game and Parks is like a marriage and there's good days, there's bad days, there's days we disagree, there's days we agree. However, we are married at the end of the day and will continue to work forward to working on better projects. I can tell you that the worst enemy we ever have within our-- or my committee is us. We argue a tremendous amount of time amongst issues between whether it's a longbow, crossbow, larger caliber, shorter caliber, mule, deer, etcetera, etcetera. The one thing that's consistent, there's no perfect way to manage wildlife in any given state. However, I've heard Senator Erdman on numerous occasions on the floor and in this room, which I agree with them, less government is better government. Less controlled by the feds, by the state is better and I don't disagree with him. I agree a 100 percent with him. So why are we doing, just as

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Senator Bostelman said, which is our confusion among my groups, but we don't trust the Governor to appoint commissioners because they don't do what we ask them to do. So we want to elect them, but yet we want to then take away and appoint the director of the Game and Parks and make it a code agency. There's 30 states in this country that are code agencies. And to answer a question that was asked earlier, in 2020 of those 30 states, 23 directors of the Game and Parks were removed from duties because there was an electional change of the Governor. They do serve as the term of the Governor if your code agency, whether your term is 2 years in or 6. So there is a concern for that, that we have a wildlife change every 4 to 8 years within this particular state, depending upon the political winds. I'm sorry, I do not want to trust as an end user paying the bill for wildlife in the state, along with our ag producers, to have our rights and passions dictated by political winds every 4 to 8 years. That's not the way it is supposed to work. And I can tell you, I've been to the states where there are code agencies and it is a malfunction system through it, throughout. Is our relationship perfect? No. Senator Hughes and I-- and he's left the room. I'm sorry he left the room, but over the last 18 months, Senator Hughes and I have engaged a tremendous amount of conversation regarding depredation, management of parks, other issues. I just had lunch today with somebody that represents Lake McConaughy that we're working with to help guide some of those conversations with the users and the producers at McConaughy. There's nothing perfect. As you already know, I'm also the commissioner of the Natural Resource Commission and the water issues. You don't see dysfunctional family put water users in the same room and come to agreement between surface ground irrigators and municipalities. But we do it. It's not always perfect. It's not always pretty, but we get there. But changing a system because we don't get the answers, I can load this room up just like any opposition can that says the Game and Parks is wonderful and does everything great. This room can be a loaded up with people that say they hate the Game and Parks and don't want anything to do with them. It's reality of having an agency that controls wildlife or anything. So to strip it out and make it a code agency and make it political, and it will become political, is-- is, in our opinion, the wrong direction. I'd rather see continued conversations that have occurred over the last two years, internal changes within the Game and Parks and mindset and direction continue to happen so we can arrive at a different avenue than being here and arguing over simple things.

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That said, I would like to see the committee keep LB305 in the committee and continue to work in a positive direction instead of change to code agency. With that, I will conclude.

**BOSTELMAN:** Thank you, Mr. Smathers. Are there any questions? Seeing none, thank you for your testimony.

**SCOTT SMATHERS:** Thank you.

**BOSTELMAN:** Next opponent. Is there anyone would like to testify in opposition to LB305? Please come forward. Seeing none, would anyone like to testify in the neutral capacity on LB305? Seeing none, Senator Erdman, you can come up and close. I will remember this time, we do have one written testimony from John Hansen, in opposition from Nebraska Farmers Union.

**ERDMAN:** Thank you.

**BOSTELMAN:** Sorry, hold on. And we do have some position letters on LB305 from the Audubon Society, Eric Zach, Sierra Club and the Sportsmen's Foundation.

**ERDMAN:** Thank you so much. Thanks again for your time. I listened closely when they discussed about how other states do it when they appoint the director, and I believe the comment was they change directors about every 3.2 years. That may be a good thing. That may be a good thing because we have been mismanaged for 30. Had we had a change in that period of time, we wouldn't have what we have. And the commissioners are the ones that are responsible. And I told Mr. Kreitman this on several occasions. I have nothing against Mr. Kreitman, personally, I think he's a great guy. But the buck stops with the commission. And as you've heard many times over, they have not done their job. If they're doing such a good job, why do we keep having all the complaints and why are the wildlife poorly managed? It's because when you heard that farmer said here earlier today, he made a statement that is obviously true to everyone and they understand it. You cannot measure it. You cannot manage something you can't measure. And when you ask Game and Parks management, how many wildlife do we have? And they say, well, I think we have 2,800 or 3,500 or whatever it is, we think. A year ago or two whenever we had a bill that Game and Parks was going to buy another 1,500 acres of land,

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that appropriation had to come through the Building and Maintenance Committee and our committee didn't advance it. And we had a hearing in front of the Executive Committee and Senator Chambers asked Director Douglas, how many mountain lions do we have? And he talked in circles for 3 or 4 minutes before he finally answered. So if we have a change in leadership at the top of the director, maybe we'll get some different results. And so those commissioners come in here and say we're in charge, and then we keep con-- continuing to get what we've been getting. There's got to be something done about it and this is an opportunity when it becomes political, it becomes political, but we can't continue to do what we've always done and expect different results. That's crazy. And so this is an opportunity for us to make a decision on how to go forward and manage this organization or this agency in a way that makes sense for Nebraska taxpayers and landowners. And I understand the hunters are going to be upset and they're going to send me emails and all, then send away because I tell you something. How we manage this wildlife is through hunting. Harvest the animals through hunting. Game and Parks does a poor job of that. So the-- the management of wildlife should be a very much concern for the hunters. They should be on Game and Parks to open it up and shoot more animals, be able to shoot more animals, but they restrict it. Once in a lifetime bull permit. And then Senator Groene asked the question about who decided to close the parks. Well, it was a management decision. OK. So what does the board do? Oh, yeah, we ratified it. All right. And to answer your question, Senator Bostelman, the statute currently says that the commission selects the director and there's no appointment needed, no approval needed by the Governor or anybody else so that-- that director serves at the will of the commission and they can do whatever they wish to do. And obviously, for the last 30 years, they've been doing that. And they keep coming in and they whine about it and they tell you what's going to happen, it's going to-- the sky is going to fall, the world's going to come to an end if you change the director, if you take our authority away. Well, I tell you what. Answer my phone. Sometimes when those ranchers call up and say, I'm losing 100 mill-- \$100,000 a year to elk, and what am I supposed to say to them? Sucks to be you. That's the answer we get from Game and Parks. So if they want to be commissioners and they want to show leadership and stand up and show some leadership, this is an opportunity for someone to have oversight



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on this agency that brings it under control. And I believe it's time to let this person be appointed by the Governor. Thank you.

**BOSTELMAN:** Thanks, Senator Erdman. Any questions? Seeing none, that will close the hearing on LB305.

**ERDMAN:** Thank you.

**BOSTELMAN:** Good afternoon, Senator Groene. You're welcome to open on LB589.

**GROENE:** How are you doing, Senator Bostelman, Chairman Bostelman and the committee? I'm here to fix an injustice again, and maybe this year we will get 'er done. Those of you who have served on this committee in the past know of the 19,500 acre N-CORPE interlocal agreements streamflow augmentation projects to offset streamflow losses in the Republican and Platte Rivers due to overappropriations of those natural resources in the past. And to Senator Cavanaugh and Aguilar, Gragert, I will fill you in on any information you want. I passed out a pretty thick packet. Senator Cavanaugh will appreciate it, got a lot of court cases in it for background information. The project lies in Lincoln County and citizens of my district have shouldered the burden of protecting the water interests of the state of Nebraska and the financial interests of communities and farmers who live outside of Lincoln County. LB589 is intended to bring an avenue of relief for the citizens of my district and other counties where these augmentation projects may exist. I had originally prepared a long dissertation on water law, but I decided it would only confuse the issue. And thanks to some coaching of Senator Gragert, I did pass a packet of background information out to you. I would summarize a few background points that give credence for the need for LB589. I first want to make sure and when they come up and testify against it, this bill does not force any NRD local control to sell land. It gives them clarity that they can sell land. Number one: reasons why we need to do this. State statutes take precedent over common law. When addressing water lawsuits, The Supreme Court has frequently included a statement defining the legal principle that the Legislature's enactment of a statute creates exemptions to common law. *Estermann v. Bose*, which is in 2017, which is a case on N-CORPE itself, states: We have previously stated that Nebraska's common law does not allow water to be transferred off overlying land. However, we have made it clear that the Legislature

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may provide exceptions to this common law, common law meaning water law. Number two: N-CORPE is a public purpose exempt from common law. In the Estermann v. Bose case, the plaintiff claimed, Mr. Estermann, N-CORPE is prohibited under Nebraska's common law from transferring groundwater off overlying land and N-CORPE does not fall under any of the statutory exceptions to common law. The court said-- the Supreme Court agreed with the district court when it stated that complying with Nebraska's obligation under an interstate compact is certainly a public purpose. N-CORPE augmentation projects are now a public purpose, just like municipal water and manufacturing permits. They do not, but they are not tied by common law. Public-- number three: public purpose create, create-- public purposes created by the power of the Legislature to enact statute take precedence over common law. In Sorensen v. Lower Republican NRD in 1985, the court stated: By enacting Municipal and Rural Domestic Transfers Permit Act as part of the Nebraska policy, the Legislature altered certain aspects of common law governing use of groundwater. For Lower Niobrara NRD restricted retention and use of 864,000 gallons on his track, the maximum daily yield extractable from the aquifer, according to NRD's test results each one-half acre well sites-- all they owned was the half-acre well sites-- would be transformed into a veritable Atlantis buried in water. In permitting transfer of groundwater from the site of extraction, the act has removed use of overlying land as an index for the reasonable and beneficial use required by common law. You may hear today that have to own the land because common law has to match how much water you use, has to match the land you own, not when it becomes a public purpose. Common law no longer applies. Case law has made it clear that the four NRDs involved in N-CORPE do not need to own a certain amount of land to operate their N-CORPE argumentation project. Instead of tying water pumped to previous irrigation allotments that they do now that have been retired, they don't even exist anymore, the amount of water pumped can now be dictated by the integrated management plans in the Middle Republican and the Twin Platte NRD where the projects lies. Those are the two NRDs-- I have land from both NRDs in my district-- are the ones that ultimately responsible for that water in their integrated management plans. You may hear quotes about what was in the Upper Republican case in Dundy County about you have to own the land. That is true. That quote in and that comes right out of the Sorensen case. And that section, if you look in the information I gave you, lies right below the part about the

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quarter-acre plots. You have to own land or you have to lease land that is owned by somebody, but the land is always owned by somebody where the water comes off of. But when it's a public purpose, you can own or lease a quarter acre on the well site. It's in the Sorensen case. Then why is there a necessity for LB589 if the case law is there? It's there. You're going to have to ask the people behind me why they think they need to own 19,500 acres and put a burden on the taxpayers and the county of Lincoln County when all the case law says they don't have to. First, you may hear today from the opposition very little about existing law. They'll play on your emotions and your simple-- they think you're simple, but more likely scare tactics. Let sleeping dogs lie they'll tell you. Don't upset Kansas they'll tell you. Or we could be sued over the state's constitution to dictate the domestic and agricultural purposes, take precedence over all other uses. They're going to get sued anyway, no matter how many acres you own. They've already lowered wells for farmers around there because of the constitution's dictate that agriculture takes precedent. Domestic is first, agriculture second, manufacturing and public is-- is last. Or you have to make-- in fact, if LB589, it gives them-- it protects them better because then you would do-- you would mitigate it and they make a financial settlement. If it's common law, an injunction can be put on and your well is shut off versus, versus a public purpose. Quite frankly, the NRD establishment and their attorney is not telling the farmers and ranchers the truth about existing law. They're riling them up, scaring them that somehow we're going to change the law and they'll lose their ability to own land and have acc--the right to use the water on it. False, completely false. There's private use which is followed by the common law and then there's public use, which the statutes of the state have trumped common law. It's common law, case, law, statute, Constitution of the United States in that order. There are good people on the NRD boards, I've talked to them, who want clarity. The best way to do so is to simply put case law into a clear statute that allows elected officials a clear view untainted by the fog of an attorney opinion or the NRD establishment. LB589 by using the exact words of *Estermann v. Bose* clearly defines augmentation prob-- projects as simply to add water to a natural stream in order to offset water depletion. It's a good bill because they defined it basically that, if you read the constitution, it's natural streams of the-- of the-- of the state. It doesn't differentiate between groundwater or, or streams. It's one ecosystem. So what the Supreme

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Court said, a true augmentation project is basically just taking the natural process of spring flow into a river and accelerating it. It's still the water still remains in the ecosystem. So it doesn't apply to common law. It'd be hard for anybody to sue on the principle you're using too much based on the Estermann case that you're using too much water because all they're doing because they're not guaranteeing any water downstream. And why is it good to put this language in the statute? Because there is that fear out there that somebody is going to put an augmentation project on and ship it down river and then pull it out for a beneficial use of some other user and hide behind an augmentation project to do that. This boxes it in. This protects the NRDs. This protects the augmentation projects for its purpose of, of recharging a river. As I said, it also makes clear to the citizens and their elected NRD officials that an augmentation project, project is a public purpose and not bound by common law or tied to the amount of land owned by the NRD. Another reason we need LB589 is that the Tri-Basin NRD has an augmentation project where they do not own land, but instead lease the well sites. Also recently the Lower Republican NRD purchased three abandoned municipal water well sites for the-- from the village of Hardy, Nebraska, with the assumption they will use them for augmentation of the Republican River. LB589 would also offer legal coverage of those projects. It's either or. Is the Tri-Basin correct that they don't apply to the common law, that you have to have a beneficial use over the land and have enough acres? Or is N-CORPE correct that you have 20,000 acres? That's a hard question for them to answer. This law, if enacted, would protect all those projects, period. So the NRD establishment is going to be against it. Attorneys who make the money and like to rile things up will be against it. But this is one of them matters where it rears its head and says, what about the people? What about the minority of people who live in Lincoln County who are being-- and Dundy County who are being unfairly burden put on them of acres, thousands and thousands of acres taken off the tax rolls for the benefit of others? And the benefit of those others control the NRD, control the, the, the N-CORPE project because it's a 2-2 vote. So my two NRDs, if the board members could have guidance that they, yes, by case law, I'm creating no new law here. I think Senator Cavanaugh would agree. It happens all the time. Case laws happens, Legislatures turn it into statute. You're going to see some bills this year from the left. Supreme Court said LBGTQ, you can't discriminate against them. That is case law. But there will be

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attempts for a statute to turn it into state statute. And why do we do these things? For clarity. Why do we do it? Because we make laws for the people, not for attorneys. And what we need to do here is to make clarity for the people that those elected officials that are farmers, housewives, whatever on the NRDs can say, no, we don't have to own this land. We can do an augmentation project. We can take the burden off the taxpayers of Lincoln County. We can cut a half million dollars in management costs for the NRD. We can take away the terrible management of the land that's happened out there and mismanagement. There's even some corruption or notes of it. And let's get back to local control where that land is controlled by Lincoln County commissioners and school board members for tax base. And it's a good bill. And I'll leave it at that. And give me questions and then we'll come back and tell you where they were wrong in their testimony.

**BOSTELMAN:** Thank you, Senator Groene. Any questions from the committee members? Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you, Senator Groene for your testimony. Out of all that common law, I don't know how many times common law was said, but what I-- what I would like to ask and if this is maybe more than your opinion, maybe this is what you feel is fact, but this augmentation project is a public purpose that could be exempt for the mitigation of that augmentation project. It all fits. That is already being done by other projects that are similar and work just like this project?

**GROENE:** They're not owning the land, but they'll come here and tell you they have to own the land in Dundy County and-- and I don't know why. They're not going to be able to defend it, because it actually restricts them because if they're going to tie it to the common law and the acres owned, it makes no sense. It's a-- I don't know, like I-- somebody asked me, there's seven deadly sins and I think four of them are involved here.

**GRAGERT:** OK, that's just what I wanted to clarify for myself and I'll be asking whoever poses the law.

**GROENE:** But this language-- kind of what you said, this language is, comes right out of this. The first part of it comes right out of the decision on the Estermann and Bose case. The second part comes right

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out of the-- the Sorensen and upper and the lower Niobrara, which you're very familiar with because you were involved in that, but-- where you worked the prior. It comes right out of there and it puts it into the statute, which takes the lawyers out of it and takes the conjecture out of it.

**GRAGERT:** Thank you.

**BOSTELMAN:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Bostelman. Thank you, Senator Groene. I think this is the first time I've gotten to question you. So I haven't read this case yet, but I look forward to it. You-- my understanding of the problem you're seeing here is that this is a joint venture between two NRDs?

**GROENE:** Four.

**J. CAVANAUGH:** Four NRDs and they don't want to sell. So-- and you-- you or you think the citizens of Lincoln County would like them to sell it.

**GROENE:** In the past, I don't know, new makeup. There was a majority that I had vetted it. A majority of the two NRDs in my district, two of them have land in my district. Those board members, there would be a majority of those board members so we could get clarity, would-- would try to get to the point where they could start selling off the land and not replace it. Right now they are selling some land because it don't fit the project and they're trying to replace it. They're trying to build the acreage. So it's a two-two block lot. The other two, call them whatever you want, they-- the upper and the lower Republican have no acres of ground, no jurisdiction in my county or in this project, but it's-- it's-- it's a mining operation for them. They're mining our water to satisfy their needs. And they just don't seem to want to work with us and give us-- throws us a bone and let us sell the land.

**J. CAVANAUGH:** But just to clarify so I understand, even if we were to pass this, because your contention is the-- the state of the law currently, it's just not statutory law. But if we were to pass this,

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it wouldn't necessarily force the sale. It would just give them the opportunity to sell what you're telling me they don't want to.

**GROENE:** Two of them would. It would be a deadlock there. So when they-- two of them, I would believe the NRDs would, if they would gave them the clearance and the clarity would say, let's start selling this land. And then it would-- a process of through local elections, we could-- we could get something done. Right now, they are just taking legal advice. And you know what you're on an unelected board whatever the lawyer tells you, that's what you basically have to do.

**J. CAVANAUGH:** That was kind of going to be my next question is, the remedy then is elections of the board members to change the opinion or the desires of the board. So based on your contention that this is currently the state of the law, couldn't an election remedy this anyway then, by electing--

**GROENE:** No, because we've gotten people elected to the boards, all right. They go to the meetings and the attorney says, no, we can't do it. My opinion is you can't do it. Don't kick a sleeping dog because there's no clarity. They don't read court cases like I have. So they sit there and say, well, I want to sell land and then they're threatened by that-- if you do, you're going to get six lawsuits. You're going to lose your ability to save 500,000 acres of irrigation, they scare them. What I'm trying to do, Senator, is take those case laws and put it into statute that is-- I've said since I've gotten to this body and when Senator Chambers told me I wasn't a lawyer, that I always figured we passed laws for the average man to read and understand. When you rely on a sorted case law since 1930s in the Olson case versus-- in Fremont area of water law, the average citizen can't ascertain it. I mean, so I'm trying to clarify it so that elected-- that person gets elected to that NRD board, he says, no. This law is plain and it's clear and I want to seek a policy where we start selling off this land, we keep the augmentation project and we lower the tax burden to the local taxpayers and we lower the cost of the management of this 19,500 acres of ground. As I said and when I clarified earlier, I did-- I-- I'm not dictating they sell the land. I'm putting case law into statute.

**J. CAVANAUGH:** Thank you.



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**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. That brings up-- maybe just ask your opinion once on this question also. You say it's a two-two tie right now. Do you feel that if you get this clarity, the other two will come around and maybe look at opening that or selling this 19,500 acres?

**GROENE:** Let me tell you what would happen immediately. They are looking to buy more land. That would stop immediately because the other-- it would be a two to buy, two to vote. They would not be able to spend it because it would be in debt. Like right now they signed a contract for windmills. That would have never happened because the two of them would have said, no way, we want to work towards selling the land. They don't have that clarity now that they can-- they can stand up against those who want to keep the mining operation there, and for some reason, the huge foothold of land. They don't have the backing or the ability to just say no. This statute would allow them-- give them that backbone.

**GRAGERT:** Now you just brought up another question. You say they want to buy more land, wasn't this water there? You know, the lawsuit for down into Kansas that we have to provide-- Nebraska has to provide so much water, that was set certain years and is it ever updated? And why are we buy-- now why are they going to buy more land? I mean, as far as irrigated land to go nonirrigated--

**GROENE:** To buy irrigated land and then retire the water because they think they can add to their amount of ground-- water they can pump. Now, that brings a good point up. The Upper Republican will come up here and tell you that, well, we got to keep this. Right now they have a program and they're just buying water rights. But letting the farmer keep his land and they're buying the water-- water rights and retiring them so that they can use it in their IMP to settle-- to upper-- yeah, it would be the upper North Platte. Scottsbluff area, they're doing the same thing. They're not buying the land. They're buying the water rights and retiring them. So I don't understand why one-- where they believe one augmentation project has to own land to reach this point where you can, you know, satisfy Kansas, but they themselves are just-- and now say the Upper Republican has a similar project as we-- as this for-- as this interlocal global agreement, the Rock Creek



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project, where they have 7,000-some acres. And Dundy County is the same situation. Lincoln County, they sued over it, over tax base. And-- and they're just outnumbered because we haven't clarified the law.

**MOSER:** Thank you.

**BOSTELMAN:** So are they paying in lieu of taxes now? So, and my question for that is--

**GROENE:** Yes, they have.

**BOSTELMAN:** --how would that change? You said we sold the land, then it would increase taxes and then how would that change?

**GROENE:** We started out having about a-- it would be over a \$1 million in property taxes on that ground right now. We get about 180,000 in lieu of tax for waste grassland. Any time you inject the private buyer free enterprise into it, the land improves land sales. Somebody bids it up. Valuations go up. This ground is stagnant now. It's sitting there owned by government and they have agreed voluntarily to pay, thanks to Senator Hughes and I co-sponsored a bill, they allowed them to voluntarily pay property taxes as in lieu of payment because by our Constitution, a government entity should not be paying property taxes, which makes no sense. But then there goes again they're paying 180,000 to the taxing entities, the school and everybody, the county, rural fire of \$180,000, but you're robbing Peter to pay Paul. You're paying-- you're charging these farmers \$10 an acre too for an occupation tax and they're taking that money and then they're turning around and paying the county's property taxes, which makes no sense. And our forefathers they had common sense. You don't make a government entity pay property taxes, but it's a-- it's a shell game,

**BOSTELMAN:** Senator Moser.

**MOSER:** I know you guys are anxious for more questions so I had to ask one.

**GROENE:** I love it.

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**MOSER:** But wouldn't you have to say that the reason that the value of the ground went down from a million to less than 200,000 is because you can't irrigate those acres?

**GROENE:** Yes, that's what-- that's what the big difference was.

**MOSER:** So there's and there's a value to that water that they're diverting somewhere else that solves the problem for the state.

**GROENE:** Yes. So we're willing to take that. I mean, that's happened. We got big, wide, broad shoulders and we'll -- we'll bail out some of the other counties and towns with, you know, loss of our tax base, but we just want the ground back and put on the tax rolls and get N-CORPE's footprint out of it.

**MOSER:** Well, if you put it back on the tax rolls, if it's just pasture, it may not bring in any more than 180,000 in tax anyway because they can't water it, right?

**GROENE:** But when you put it in the hands of a private individual, all right, we just saved the taxpayer a \$180,000 right there because they don't have to pay \$10 an acre. So that lowered that tax burden to those farmers. A farmer always improves--

**MOSER:** That assumes--

**GROENE:** A farmer always improves the land. I have not seen-- those are the ones that do not improve the land that Senator Hughes said that he's a conservationist, does not survive anymore.

**MOSER:** But that assumes that he would sell for enough to pay off the bond.

**GROENE:** No, I'm not assuming.

**MOSER:** There might be balances on the bonds that still need to be paid

**GROENE:** Oh, there will be. When you build a brand new school, does the bond company take the building as collateral? No, they don't. What they take in as collateral is the ability of that government to forcibly tax somebody and take their property for taxation. What pay-- what-- what the bond company is worried about is the 10 bucks an acre

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to pay that bond. Yes, they have a mortgage on it. Originally, they said you could sell the land and pay down the mortgage or buy another asset. They, the lawyers got-- said that's too-- that doesn't work to our scenario, our story. So they went back to the bond company and said, well, let's just change that deed to the bond so that you can sell 25 percent without any permission from the-- from the-- the bond holders and pay down the bonds. You have to pay down the bonds. Now, you know, if you've ever borrowed money, if you can take that money and pay it off front, you cut 20-- if you get 20 million for the land, you're going to take 40 million off the total bonds. Because you just took-- took the interest off for the next 18 years. So now you've taken that down to the point where instead it's 10 bucks an acre or whatever, you're 8 dollars an acre. There's a-- there's a plus, there's another half a million dollars that's being spent on management, employees out there, equipment out there, gas, a shredder so they can-- tractors so they can shred the [INAUDIBLE] that grows out there where it used to be corn. So there's a lot of benefits for smaller government here.

**MOSER:** So you're saying there are 20,000 acres there and it's worth a thousand dollars an acre that--

**GROENE:** No.

**MOSER:** --that would raise \$20 million.

**GROENE:** It would be close to a thousand. It's coming back up. Two or three years ago it would only brought five to seven hundred, but I would say it's pushing a thousand or more now. It's-- grasslands are coming back. In fact, all farmland is.

**MOSER:** How much do they owe against it?

**GROENE:** There was 80-some million at one point. It's probably still around there, around that 80 or a little less.

**MOSER:** So they could wind up with 60 million and unsecured.

**GROENE:** Oh, it's secured by your-- by a tax levy. A municipal bond is never-- a city doesn't when it builds a new rec center, it does not put the building down as collateral, it puts the-- municipal people buy the bonds, know that that entity can tax somebody, has taxing

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authority to pay their debt. That's worth a lot more than a building to the bondholder. When you were a mayor, when you built something in Columbus, I guess I can't ask you a question, I'm sorry. That was made clear by the Chairman.

**MOSER:** Yeah, we sold bonds. We built roads with bonds.

**GROENE:** I'm sure they took it as collateral, the road, didn't they?

**BOSTELMAN:** Any other questions? All right, thanks, Senator Groene. You will stay for closing, I'm sure. Ask anyone who would like to testify as a proponent on LB589 to please step forward. Anyone like to testify in support of LB589? Seeing none, I'd like to ask anyone like to testify in opposition to LB589, please step forward.

**DON BLANKENAU:** Good afternoon, Mr. Chairman, members of the committee. My name is Don Blankenau, D-o-n B-l-a-n-k-e-n-a-u. I'm an attorney in Lincoln and I focus my practice on water and natural resources. I'm providing testimony in opposition to this bill on behalf of the Nebraska Association of Resources Districts or NARD. The NARD represents Nebraska's 23 natural resources districts and it adopts its positions on legislation based upon the consensus of its members. Nebraska's NRDs oppose LB589 for a variety of reasons, but fundamentally its language and context create confusion that may result in needless litigation. Obviously, the language of a bill is at the heart of what this body does. The Nebraska Supreme Court has repeatedly noted that to interpret the meaning of a statute created by the Unicameral requires that the words of the statute be given their plain and ordinary meaning within the context where that language is found. So let's then start with the context. The operative language of LB589, which is only one sentence long, is placed in Nebraska Revised Statutes, Section 46-715, subparagraph 3, which specifically concerns the process within integrated management plans, or IMPs to track depletions and gains to streamflow. Not to refresh the committee's recollection, IMPs are management planning documents that are jointly developed between the NRDs as the local regulator and the Nebraska Department of Natural Resources, which is the state authority, along with the assistance and input of surface and groundwater users, municipal users, industrial users, environmental interests and all other stakeholders. These IMPs take years to develop. Under the existing statutes, the depletions and gains the stream flows created

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by augmentation projects of all kinds is already addressed. And keep in mind that augmentation projects themselves are not limited to the use of groundwater as the source, nor are they limited to offsets to depletions. They take on many other forms including, but not limited to surface water storage that can be released from reservoirs when needed, or by diverting off season excess stream flows or flood waters into irrigation canals to provide recharge to groundwater that works its way back to a stream at a later time. Because augmentation projects are already addressed by existing law, the additional language of LB589 doesn't fix any deficiency in the law, not to the extent the intent is to do more than tracking stream flow within the IMP process, the language is very confusing and creates legal instability. And I think after listening to Senator Groene, it is intended to do something much different than the language suggests. Simply put, that single sentence doesn't make any sense. As veteran members of this committee know, confusion opens the door to litigation when it comes to water. This is particularly concerning when future augmentation projects may be needed to provide flow support for municipal users like Omaha, Lincoln, Grand Island, Kearney and many other communities along the Lower Platte and the state of Nebraska is presently working with NRDs and municipal users in the Lower Platte to look at a host of management options. As the planning process continues, it is important to note that the state and its NRDs have waged many legal battles. These, like legal battles, have been at taxpayer expense. Notably the augmentation projects in the Republican River basin have already been fully litigated and reviewed by the Nebraska Supreme Court on multiple occasions. The courts ruled on those cases, and the law concerning augmentation projects is largely settled. The resolution of those cases provides the management certainty for the future. This bill, however, injects new uncertainty to that law. For these reasons, Nebraska's NRDs think it's unwise to advance any legislation unless it's been developed by stakeholders who are in agreement that there is a problem that needs fixing and what that fix should be. That has not happened with this bill and the problems are apparent to the many people who manage and protect water for the benefit of all Nebraskans. Accordingly, NARD asks that this bill be indefinitely postponed. Thank you, Mr. Chairman.

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

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**GRAGERT:** Thank you, Chairman Bostelman. I know you sat back of us, you already pretty much heard the question I'm going to ask you. With already integrated management plans out there and different NRDs and with exemptions that are out there due to public purpose, is this project considered-- would this project be considered a public purpose? And if-- and if so, why can't it be exempt like the rest of them, like Senator Groene to Sorensen versus Lower Niobrara NRD?

**DON BLANKENAU:** With due respect to Senator Groene, and he's dead wrong on the law. I think what the Supreme Court has said repeatedly and clearly is that to access groundwater, the volume of water you can access is dependent upon the amount of land you actually own or controls due to leases. So the more land you own or lease, the more access to groundwater you can have. So this is, in fact, a public project, and the Nebraska Supreme Court has ruled that way as well. But in order to access and use that full amount of water, the project needs a lot of land. That's the common law.

**GRAGERT:** OK, and like Senator Groene informed me, I'm somewhat familiar with the Sorensen. I live 6 miles from-- from that project. They don't own but two acres of land where the actual pumps sets on-- or that the tower-- water tower sets on.

**DON BLANKENAU:** And that's because the Legislature enacted a law that allowed municipalities to get a permit for a small quantity of land. So that changed the common law. They didn't do that with respect to augmentation projects.

**GRAGERT:** OK, so this doesn't fit all the rest of the--

**DON BLANKENAU:** No, sir, it does not. It's a public purpose, but it is not a municipal use which is different than an augmentation use.

**GRAGERT:** OK, thank you.

**BOSTELMAN:** Senator Moser.

**MOSER:** I'm curious of your opinion on the effect of the bill. I assume the sentence you're talking about is on page 4.

**DON BLANKENAU:** Correct, sir.

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**MOSER:** It says public augmentation project, that is not attempting to guarantee that a certain quantity of water is used for beneficial use or reaches a certain point downstream for a particular use, but rather-- it's got another subject to the sentence here. The purpose of the augmentation project is simply to add water to a natural stream. It shall be without regard to beneficial use on the overlying land. It's not a straightforward sentence to read, I guess. What-- what do you think the effect of this sentence is?

**DON BLANKENAU:** I have no idea, Senator. To me, it makes no sense placed in that context again. Where it's placed, it is to look at tracking depletions and accretions to streamflow. It doesn't fit there. And even just looking at it from a pure grammatical perspective, I think you're right that the subject gets lost in the qualifiers. I have no idea what it means. I'm confident it doesn't mean what Senator Groene thinks it means because it just doesn't do what what he thinks it does.

**MOSER:** I think his point is he was hoping to clarify that ground could be sold and separated from the mineral rights.

**DON BLANKENAU:** I hate to say what--

**MOSER:** What he's thinking.

**DON BLANKENAU:** What he's thinking, but my my belief is that he wants to allow for full access to groundwater while selling off all of the land or most of it.

**MOSER:** And legally, that's not currently possible or--

**DON BLANKENAU:** That's not the state of the law today. This doesn't-- I would disagree very strongly with Senator Groene. The Estermann vs. Bose case is a case that I wrote the brief on and argued to the Nebraska Supreme Court. And it stands for the proposition, among other things, that the common law is that to own-- to access groundwater, you have to own a proportional volume of land.

**MOSER:** But he's trying to change it to have a statute--

**DON BLANKENAU:** Correct.

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**MOSER:** --that contradict common law.

**DON BLANKENAU:** Correct. And I agree with him completely however, that statutory law does trump common law. That's what this body does. It can modify that common law or change it altogether so long as it's a constitutional change.

**MOSER:** OK, thank you very much.

**BOSTELMAN:** Senator Hughes.

**HUGHES:** So you've been engaged or involved with a lot of the augmentation projects from-- from the beginning. For the members of the committee who haven't heard all this before, would you give us just a little brief synopsis of the court cases that have been dealt with in order to get us to this point where the water is relatively calm, so to speak? No, pun intended.

**DON BLANKENAU:** Certainly, Senator Hughes, this could be a really long story, but I'll try to do it in a nutshell. So this particular augmentation project, N-CORPE, is the product of litigation between Nebraska and Kansas on the Republican River Compact. It's a 1943 agreement between those two states and the state of Colorado, which divides up the amount of water that each state can consume on an annual basis. Kansas sued Nebraska twice before the U.S. Supreme Court in an original action, claiming that Nebraska violated that compact by consuming more water than its annual allocation allowed. Nebraska settled the first case, which resulted in the creation of a groundwater model that looks at depletions to streamflow. Kansas sued a second time when Nebraska admittedly violated that compact for two years. Nebraska never argued to the contrary, but the actual effect of that went all the way to the Supreme Court. We had a full trial. We argued it directly to the Supreme Court. And at the end of the day, although Nebraska prevailed on those particular claims, it left Nebraska in a tough position that in order to achieve compact compliance, it needed a tool like an augmentation project to stay in compliance. And that's because the supply of the Republican River basin varies dramatically from year to year. So it's impossible for the state and local regulators to know whether they're in compliance or not in real time, and if they're not, there's almost nothing they can do to achieve compliance. So N-CORPE was created in order to



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discharge water, which under the compact accounting directly offsets consumption. So each molecule of water that gets discharged by N-CORPE offsets a molecule that is consumed by irrigators. And what that allows Nebraska to do is almost in real time pump water to stay in compliance, which is to the benefit of all Nebraska taxpayers. The problem was, is to develop N-CORPE it took a lot of land because that project requires a lot of water. When that project was developed and acquired, then there was a whole host or a whole series of cases that developed. Several of them argued that the taxation for this project was not proper and not appropriate. Those went to the Supreme Court and got resolved. Whether N-CORPE had the authority to function at all as an augmentation project was challenged and its authorities to actually operate in augmentation project were challenged. In addition to that, there were a whole series of periphery cases that were tried. All of those went to the Nebraska Supreme Court and this occurred over a period of about a decade. So there had been a lot of litigation. At the end of the day, though, these all resolved favorably for N-CORPE and ultimately for the state of Nebraska. And we've got now a really static state of law where there is no present litigation.

**HUGHES:** So is it fair to say that Kansas is watching us like a hawk any time there's any type of water legislation that could affect them as downstream users of-- in the Republican River basin?

**DON BLANKENAU:** Yeah, I will hand it to Kansas. They are watchful and aggressive on that. We meet with them frequently on contract-related issues and they always ask about legislation that comes up-- for this body. Anything that could affect water entering Kansas is a matter of concern.

**HUGHES:** So there's-- there's somewhat of a constant threat of litigation if changes are made.

**DON BLANKENAU:** Yeah. And I think they've shown it. They've sued Nebraska twice. They've sued Colorado, I believe three times on the Arkansas. It's-- it's not an unusual thing for that state, I think, to bring litigation.

**HUGHES:** Very good. Thank you.

**BOSTELMAN:** Senator Gragert.

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**GRAGERT:** Thank you, Chairman Bostelman. If this is all wrapped up, why-- are they-- are they required-- are those four NRDs required to buy more than 19,500 acres of land?

**DON BLANKENAU:** No, and I am at a loss because I don't attend all of N-CORPE's meetings, but I believe they were trying to manage the land, not to grow its size, but rather to consolidate it so that it's under a more sensible ownership structure. I don't believe they're adding acres, though. And perhaps one of the other testifiers will have some information on that.

**GRAGERT:** But as far as you're concerned, they don't need to add any acres because the amount of water that we're supposedly having to provide Kansas from here on to whenever, that 19,500 acres is enough land to supply the water needed.

**DON BLANKENAU:** Correct.

**GRAGERT:** Thank you.

**BOSTELMAN:** So if the project would no longer exist, what effect would that have on the irrigators in the Republican drainage?

**DON BLANKENAU:** Well, then the management options become pretty draconian, because Nebraska loses that flexibility then to stay in compliance in unanticipated dry years, I think then the state of Nebraska, perhaps NRDs are looking at condemning water rights on individuals lands in order to get enough permanently retired in order to stay in compliance. I think the beauty of this system is it allows everybody to function pretty much normally. N-CORPE doesn't operate every year. In a year like last year, it certainly never needed to turn on. It might not this year, but when it needs to be turned on, its-- it's a ready, available solution to a very vexing problem, which again places the state at risk, because when Kansas sues, they don't sue those farmers, they sue the state of Nebraska.

**BOSTELMAN:** OK, thank you. Any other questions? Seeing none, thank you, Mr. Blankenau.

**DON BLANKENAU:** Thank you very much.

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**BOSTELMAN:** Next opponent to LB589. She's finished wiping down the table and chairs. Good afternoon.

**JASPER FANNING:** Good afternoon. Thank you, Chairman Bostelman, and members of the committee. My name is Dr. Jasper Fanning. I'm the general manager of the Upper Republican Natural Resources District, the district that is involved in both of the Nebraska augmentation projects for the Republican River basin that were discussed today. Attorney Blankenau covered the legal aspects quite clearly. I think, I'm not going to repeat everything that he said. My letter covers much of the very same material. I guess my role here is to correct an injustice of misinformation. To my knowledge, none of the districts have ever voted on selling the land and so to represent that certain districts that are involved in the N-CORPE augmentation project are in favor of doing so would be inaccurate. And also, we're not currently in the market for additional land. To the extent that we were involved in more recent land transactions, it was because we had sold more land than what we had acquired in terms of trying in trying to consolidate acres so that they were around the well field. We had sold more than we had-- had received in that consolidation and as a result had an excess of funds that the bonding requirements were such that within a period of time we either had to purchase replacement assets, which we needed to do to comply with the Twin Platte NRD's rules and regulations in how they set the allocation on N-CORPE. And so we-- we purchased a couple of additional parcels more recently to finish that transaction. And the remainder of the funds then had to be used to-- to refund outstanding bonds once that deadline was reached pursuant to the original bond indenture. And so that-- that was what was going on there but N-CORPE is not at this time actively seeking to grow the footprint of the project, the Republican basin. And due to the cooperation of Kansas, which within the last year, they've said that they would like to, in fact, consider undoing the agreement that we have with them. Brings us to a point where I don't know how much longer we'll be able to-- to get the credit that we get for our augmentation projects with Kansas's consent as it is now. That's somewhat dicey. And obviously, any change in legislation or any change in the law that hasn't been tested in court creates a new legal risk that someone could challenge the operation of our project under. As it stands today, all of Nebraska's laws that relate to the augmentation projects have been tested in court and were rock solid. So any change

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in law that would affect those-- those projects would-- would cause us some-- some additional risk of litigation in the future. One other thing that I'll point out for the committee quickly.

**BOSTELMAN:** Excuse me. Could you spell your name, please?

**JASPER FANNING:** Oh, I'm sorry. I should know that. Jasper, J-a-s-p-e-r, Fanning, F-a-n-n-i-n-g. Senator Groene has laid out a framework under which, if you don't have to own the land and you can just own the water and pump that, it'll be a lot cheaper to operate the project as well as to-- to just develop it to begin with. Well, there's an example of that. It's the original augmentation project in the Republican basin, and it's almost our neighbor to our Rock Creek project. Just across the line into Kansas, they pump water into the Republican River just a few hundred yards upstream of the state line, and they purchased their water rights for that in 2008. Prior-- and from 2008 until the time that we purchased the irrigated ground that we-- that we bought, irrigated land values went up more than two times. And on a cost per acre foot basis, the Colorado project cost 127 percent more than the Rock Creek project, and it cost about 50 percent more than the N-CORPE project on a per acre foot basis. They paid \$50 million for just the water rights and not the land. And generally, I would agree with Senator Groene that farmers do an excellent job of caring for land, but if you want to see a real train wreck when it comes to land management and taking irrigated land out of production, go look at-- go look at the area that they retired the water rights on. Large corporate farm ownership structure, trying to take advantage of government programs, not planting it back to grass, which it was before it was irrigated and see what that looks like, because I'm pretty proud of what we've done at N-CORPE and Rock Creek in reestablishing the rangeland that was there before the irrigated farmland, something that they haven't been so successful in over there in Colorado where it's in private ownership. With that, I'll take any questions. Thank you.

**BOSTELMAN:** Thank you, Dr. Fanning. Are there any questions? Senator Gragert.

**GRAGERT:** Thank you, Chairman Bostelman. Thank you for your testimony. A couple of questions on the management of your 19,500, and I appreciate that you're proud of, I guess, the grass seeding and that

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kind of thing. What-- what other management practices and what goes on out-- how were you gonna to return the dollars on that?

**JASPER FANNING:** Well, the-- the grass, you know, I mean, in the first few years, it takes a few years to get native grasses established, especially in those sandy soils with very low organic matter and and slope and everything else. But as the-- as the grasses have become established, we have a range manager that recently left and went to work for Game and Parks. He pretty-- he kind of had things pretty well wrapped up. We're going to have about 75 percent of the operate-- of the land area leased out for grazing this coming grazing season. They just opened some bids the other day. We got what I would consider above market rate prices as much as \$2.23 per cow-calf pair for grazing, which is well above the market rate. And part of that is because of how productive those improved grasses are once they get established and the gains that they put on cattle. But we're getting that, you know, we have a couple areas that we just reseeded last year that, you know, didn't-- didn't establish well. And so they went in and hayed those to remove the cover and seeded those last spring. It appears that we got some some seedling growth out of that. So some of those more marginal, more difficult to establish areas are going to be coming into production, more so. But the land rental income offsets the management piece of it. And we're in a position now where, you know, the board's going to consider whether or not we even need to replace that position because a lot of that work is done. And as we move forward, you know, we might have one fewer staff person than what we've historically had in that respect, because a lot of the-- on the boots on the ground work in terms of reestablishing that native vegetation is-- is complete or underway and nature will take care of it from here.

**GRAGERT:** I'm just wondering, you know, the NRDs, the 23 NRDs throughout the state that were formed are basically there to provide, you know, soil erosion. I mean, your-- your primary purpose is soil erosion, water quality and quantity. As a government entity, do you really see-- do you see yourself at all getting out of your lane as far as now you're going into management of nineteen thousand five hundred acres of land where you're competing against private industry?

**JASPER FANNING:** I-- I don't see it that way because, you know, we're-- what we own the land and to control it for-- for our well field and to

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have unrestricted access to it. And I have to worry about easements and people putting fences and gates where we have to, you know, maybe change our operation in order to run. We lease it out. So it's still going to that same, you know, private use that it would be if it were in private hands. People-- people bid on the-- bid on the grazing leases. It's an open and fair process. And all we're doing is collecting-- collecting the rent from that. But as far as what would be going on day to day, we're paying in lieu of taxes, the same as what taxes would be paid if it was in private ownership. They're still grazing cattle on it just like they would if it was in private ownership. It's just the-- without having a lot of restrictive easements and covenants placed on it in order to sell it, you know, we can just control-- control that operationally through-- through our board.

**GRAGERT:** Do people that lease that 19,500 acres, are they getting into a bidding-- do they come in and bid on the--

**JASPER FANNING:** Well, it--

**GRAGERT:** The cow-calf parity.

**JASPER FANNING:** It's-- it's a-- it's a sealed bid process. So they-- they submit sealed-- sealed bids for the ability to graze and it's broken up into different-- different parcels that they bid on. But the other-- the other day, they had-- had a number of bids for those parcels and got what I think are above market rate prices. So it's working out well in that respect.

**GRAGERT:** Thank you.

**BOSTELMAN:** Senator Hughes.

**HUGHES:** OK, thank you, Dr. Fanning for coming today. So I guess you-- you've made it pretty clear that any land selling or buying is just more of a consolidation. So Senator Groene's accusation that you're buying more land is probably inaccurate.

**JASPER FANNING:** That's inaccurate, yes.

**HUGHES:** OK, very good. So talk to me about the in lieu of taxes a little bit. Senator Groene indicated that, you know, you weren't--

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N-CORPE was not paying property tax, but they are in fact paying property taxes or in lieu of.

**JASPER FANNING:** N-CORPE has paid property taxes or in lieu of property taxes ever since they were-- they were authorized. N-CORPE entered into essentially a settlement agreement to avoid litigation. Once that legislation was then brought forward, we-- we paid those in lieu of taxes, which are-- they're calculated based off of the value that's assigned to other similar parcels. So rangeland in our case, so it's taxed at the same rate that rangeland is taxed throughout Lincoln County.

**HUGHES:** So what-- to the best of your recollection, what do you-- what's the annual management fee that you attribute to N-CORPE?

**JASPER FANNING:** In terms-- in terms of the actual management of-- of the budget, and I don't have the budget figures right in front of me. We have one employee who dealt with primarily land management activities, and then we had a few part-time people that would occasionally help mow when the tumbleweeds, you know, were-- when the grass was first being established there for a couple of years. And we've cut back-- way back on the part-time help as it's become more established and our existing employees could handle that. So it would be fair-- fair to say that, you know, with the fence building that we-- that we do and that one employee who's no longer with us, you know, we were probably running somewhere between 250 and \$350,000 a year on land management type activities that wouldn't be capital investments. And then as we move forward, I think that'll-- that'll come down considerably because, again, I don't think we need that employee necessarily for those-- for those purposes.

**HUGHES:** So Senator Groene's assertion that you're-- you're wasting half a million dollars a year managing the property probably not accurate.

**JASPER FANNING:** Probably not accurate, because by having the property, we're also receiving, you know, hundreds of thousands of dollars of rental income, our share of hay sales when they've hayed it. The renewable energy lease is a couple of hundred thousand dollars a year. All those things more than offset the expenses and we'll do, you know, more and more so moving forward, as the property's productivity levels

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continue to increase. To put it in perspective, the Colorado project, which is half the size of the N-CORPE project, roughly, has a budget without any land management expenses of-- and operational costs of just about the same as N-CORPE. So it's-- it's half the size of the project. They have no land management responsibilities and their-- their budget is about \$100,000 from N-CORPE's budget.

**HUGHES:** OK, my last question. So how is N-CORPE paid for? Who's paying the bill?

**JASPER FANNING:** So-- so N-CORPE is primarily paid for by the occupation taxpayers or the irrigators of the Twin Platte Natural Resources District, as well as the Upper, Middle and Lower Republican NRD. All the irrigators that pay into the occupation tax pay for that. N-CORPE again though does receive revenue from grass leases, hay sales related to those leases, and now the renewable energy lease that we were able to obtain, and all of those revenues go to paying the expenses of N-CORPE for our district.

**HUGHES:** So if-- if we adopt this legislation and, you know, it causes to be challenged in court and in court it's deemed no longer viable, and so those irrigators are shut down, then who pays the bill?

**JASPER FANNING:** If-- if those irrigators ultimately get shut down, which Mr. Blankenau referenced, the draconian, the Department of Natural Resources did the modeling and gave us options for compliance prior to us building these augmentation projects. The fair and equitable reduction in irrigation is 60 percent reduction. So for every irrigator who has 10 center pivots, if we had to regulate for compliance, he would now have four center pivots that he could operate. Saying that the state would also be out of compliance probably for many, many years until streamflow had a chance to recover, because we will no longer be pumping water directly into the stream, which would mean that it takes time for the groundwater to flow there and the state would also be on the hook for noncompliance in that period of time.

**HUGHES:** OK, thank you for coming in today.

**JASPER FANNING:** Thank you.



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**BOSTELMAN:** Senator Gragert.

**GRAGERT:** I just picked up on one more thing. Renewable energy. What lease-- or what lease do you have there?

**JASPER FANNING:** We-- we have a company that came to us and, well, we've had several that have come to us since we acquired the property, but they're-- they're currently leasing the property. Essentially, they have it under contract to study whether or not-- they aren't building anything as of now. But they-- they have a lease, have it tied up so that they can study whether or not a wind and/or solar project would be viable in that area.

**GRAGERT:** So I-- I would imagine that's going to increase the value of that land if that so becomes that they want to put wind and/or solar energy out there.

**JASPER FANNING:** It would-- it would-- if-- if the value is tied to the revenue that it generates, yes, the value would increase significantly.

**GRAGERT:** Thank you.

**BOSTELMAN:** Senator Moser.

**MOSER:** Are you able to water that grass to get it established, or do you have to let nature do that?

**JASPER FANNING:** We-- well, we-- we've now retired the-- the irrigation and no longer have the irrigation equipment there. We would have had that ability. But in-- in-- you know, basically consulting with NRCS specialists that-- that specialize in native grassland establishment, and the advice that we got was to not irrigate it because the species that would compete with the native species for water when you're irrigating and trying to get it up, are a little bit more aggressive and able to capture the water--

**MOSER:** And they take it over and and kill the grass--

**JASPER FANNING:** We-- we-- we would-- we would grow proportionally more weeds than we would native grasses with the irrigation. And so letting nature-- nature take it was the recommended course.

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**MOSER:** Will the per acre assessment ever go down as you pay off your bonds?

**JASPER FANNING:** Yes. And in fact, it has. We've-- we've had the opportunity--

**MOSER:** It's like 10 bucks an acre or--

**JASPER FANNING:** We-- we were-- like our district was at 10. We're now at 9. Some of the other districts have backed theirs off as well. And the only reason ours was at 10 was because we had to pay for the Rock Creek project on our own and our share of the N-CORPE project. But over the last couple of years here, we've had the opportunity to-- to refund and refinance the bond issues that we initially did and gotten lower interest rates and-- and took some-- some funds and paid down the-- the bonds that were, you know, like the 25-year bonds and tightened-- tightened up the term as well as got a lower interest rate and saved, you know, saved several million dollars of taxpayer money by doing that.

**MOSER:** And-- and what was your comment about Kansas? Did you say that they want to renegotiate the pact?

**JASPER FANNING:** Well, Kansas has-- has for about the last year since-- since-- since they haven't have had a new administration in Kansas and they've had some change in leadership within the Department of Agriculture and-- and now they're-- they're state engineer. They have indicated that they would-- they would maybe want to renegotiate the deal that we're operating under now, the agreement that we're operating under now and they have some issues. And I know-- I know the-- the Nebraska team and, you know, the director of the Department of Natural Resources and his team have worked very hard here very recently with those folks in Kansas that they-- that they work with on this issue and primarily trying to explain to them Nebraska water law and how it works and how our agreement with them relies upon that.

**MOSER:** How long is the pact locked in--

**JASPER FANNING:** Well, it's--

**MOSER:** --now?

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**JASPER FANNING:** The-- the-- the agreement that we're operating under with Kansas that gives us 100 percent credit for augmentation water is just-- that-- that's an ongoing agreement. It has essentially a 2-year notice requirement, if any-- if any state or party wants to get out of that agreement, they have to provide notice essentially 2 years in advance of the termination.

**MOSER:** So if Kansas wanted to get out of it, they could give you 2-year notice?

**JASPER FANNING:** Kansas could give their notice. And two years later, the agreement would-- would no longer be effective in how we administer the compact accounting and Nebraska would no longer get 100 percent credit for the augmentation water in Kansas' opinion of that accounting. And so that would put Nebraska to where we would have some decisions to make with how we proceeded in-- and arguably Kansas would be-- would be sticking with their same old argument that we would have to pump twice as much water to get the same amount of credit.

**MOSER:** So it's-- it's unilateral, though, they can-- they can opt out of it, you can opt out of it?

**JASPER FANNING:** That is correct. All three of the states have the ability to opt out of the agreement.

**MOSER:** No penalty?

**JASPER FANNING:** The only penalty would be-- I mean, there's consequences. It's--

**MOSER:** That's-- that's--

**JASPER FANNING:** The agreement has benefits for all parties. And, you know, hopefully the states will be able to continue to work together and keep it in place because Nebraska has the-- Nebraska gets really the ability to count augmentation water on a one for one basis. We get 100 percent credit for what we put in the stream. Kansas gets the ability under this agreement to actually be able to store the water through the Bureau of Reclamation projects and store the water so that they can use it any time in adding location where it's beneficial to them downstream. Prior to having this agreement, water was sent across the state line through administrative order by the department at a

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time when Kansas water users couldn't use it. So--so the agreement is very important, in my opinion, to-- to Kansas water users, because they can actually use the water. It's made available when they can make use of it. Nebraska's benefit--

**MOSER:** So they can store it and use it when they need it and not use it when they don't have to.

**JASPER FANNING:** Correct.

**MOSER:** OK.

**JASPER FANNING:** And the agreement gives them great flexibility in how they can tell us how much they actually need. And we only have to provide, you know, more along the lines of what they need as opposed to what they're entitled to under the compact. And in my opinion, it's worked very well for our water users, certainly as taxpayers and water managers worked very well for-- for Nebraska. And it's also worked very well for those in Kansas because they've been able to make better use of the water.

**MOSER:** If the ground was sold over top of the N-CORPE property, would that affect the negotiation of the contract with the other states?

**JASPER FANNING:** Only to the extent if-- if the litigation risk came to bear and somehow someone challenged our ability to use that volume of water without owning the land and challenged whatever new statute authorized that, there would be some risk there.

**MOSER:** OK, thank you.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you. Just a couple of questions on-- and you've probably already explained it and I'm sorry, but clarify for me. In this compact we've got to provide Kansas so many-- oh, I don't know how you measure-- cubic feet per second, cubic feet-- or what-- what-- what is it?

**JASPER FANNING:** It's not a delivery compact. It's a-- it's basically an apportionment con-- they kept. This is really crazy and I apologize for such a long answer, but it's-- it's a calculation. So they

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essentially calculate how much water would have been available in the basin had no one used any. And the compact apportions that between the three states. And so then they-- they-- they take that volume and then they actually count the uses of that occur in Kansas or excuse me, in Colorado and Nebraska, because Kansas is the downstream state they don't really worry about them with the exception of northwest Kansas. So they-- they basically, you know, whatever the-- whatever the annual water supply is, Nebraska gets roughly 49 percent of that. And so it's very-- it's much more complex than that, but then-- but then Nebraska is responsible for keeping its uses to less than 49 percent of that allocation.

**GRAGERT:** But how do you-- how do they figure in the drought years versus the wet years, like last year we could give Kansas all the water they want.

**JASPER FANNING:** Well, you know, in all of our infinite wisdom, when we settled the case, the original Supreme Court case with Kansas, Kansas had maybe done a little bit more homework than-- than what we had because normally it operates under a 5-year average. And when it's really dry, meaning when water is most scarce, we shift to a 2-year average that we have to comply under. And it also-- also shifts the compliance point a little ways upstream for Kansas diversion point. And so, generally speaking, while we could be out of compliance in normal conditions, it's relatively unlikely, although it's possible. But the greater concern is in drier times that are-- where it's a water short year. And the water short year determination is made by the volume of water that's available for irrigation out of Harlan County Reservoir as of-- I think it's June 30 or July 1.

**GRAGERT:** So they're-- so in other words, they're getting advantage of our aquifer, our Ogallala aquifer or is Kansas not-- they're not standing on the Ogallala aquifer.

**JASPER FANNING:** Well, Kansas has-- has some-- they have Ogallala aquifer in Kansas, just not nearly as much of it is as Nebraska does.

**GRAGERT:** So basically, we're storm water for them and in drought years that we got to turn these pumps on and pump them water.

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**JASPER FANNING:** Well, in essence, they're-- they're benefiting from us utilizing the Ogallala aquifer to provide them water. But really, as as Mr. Blankenau said, all we're really doing is replacing water that under the accounting maybe we weren't entitled to take out to begin with. So-- so well, yes, we're putting Ogallala water in there for their benefit. It's really just replacing the water under the compact that was arguably theirs.

**GRAGERT:** But wouldn't this all started with surface water. I mean, it's the water coming down that river going into-- going into Kansas.

**JASPER FANNING:** Absolutely. It's a surface water compact. It's-- it's a surface water dominated runoff basin. And so over time, the conservation practices that have all been put in place, in addition to the irrigation development that occurred and the impacts on base flow have all contributed to less stream flow, gets apportioned under the under the compact. And that-- all of that development is what has resulted in Nebraska's challenges to comply.

**GRAGERT:** How many of the irrigators in your four NRDs have irrigation water management plans or do any of them?

**JASPER FANNING:** Almost-- well, and if you're-- if you're talking about, like NRCS irrigation plans, given your-- given your background, a considerable number have those. I would argue that-- that in our district, all of the farmers would-- almost all of the farmers would comply with an irrigation management plan. The tools that-- the tools that are made available and the funding for-- for different resources that are made available for those plans, we have a number of people that take advantage of them. We provide additional cost share to-- to-- to reach even more than what the NRCS has funding in our district can do. And almost all of our farmers utilize, you know, not only irrigation management, but soil moisture monitoring and all-- you know, it's amazing how much of the technology that's out there is adopted in our district by our-- by our irrigators. And part of that's just out of necessity, our allocation of 13 inches. You know, it's pretty tough to raise a fully irrigated acre of corn with 16 inches of irrigation water in our allocation is 13 inches, so.

**GRAGERT:** So it sounds like to me the irrigation, the producers with irrigation water aren't really causing the problem. Why are they

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having to pay \$10 an acre to subsidize the problem? Is that a state problem?

**JASPER FANNING:** Well, we raise that argument when all of this was-- was being settled, so to speak. And weren't very-- we weren't very effective in saying that the state should just take care of this. The state was willing to take care of it with by giving up our access to irrigation. That was the cheapest thing for the state. And so while-- while many of these other factors do contribute to the reduction in stream flow and helped create that accounting issue for Nebraska, the only thing that's really considered in the compact, in the compact accounting is the use of irrigation water and the original Supreme Court case when it was decided to settle that it was because the special master's first recommendation was groundwater shall be included to the extent that the use of that groundwater impact stream flow. And that was the nail, the first nail in Nebraska's coffin in that case. And at that point, all of the states agreed that settling was probably a good idea at that point.

**GRAGERT:** Thanks a lot. Appreciate all your knowledge of it.

**JASPER FANNING:** Thank you.

**BOSTELMAN:** Other questions? So tell me about the renewable contractor you have. What land does that set on?

**JASPER FANNING:** It's on-- it's on the-- it's-- it's-- it's on most of the in form land, not all of it. Some of the more recent purchases, I don't believe are included in that where we consolidated. Basically that main well field is-- is the primary area.

**BOSTELMAN:** So does public have access to that?

**JASPER FANNING:** The public has access in terms of--

**BOSTELMAN:** That area.

**JASPER FANNING:** That area-- the public has access to some of that area, yes.

**BOSTELMAN:** So who carries the liability on that?

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**JASPER FANNING:** The contract deals with the liability and we basically have-- if they should do any construction out there.

**BOSTELMAN:** So--

**JASPER FANNING:** They have to sign off on access.

**BOSTELMAN:** So here is what the question is. If you have the public walking out there, if we have wind turbines out there on there, or you have solar panels out there and something goes wrong and they break, you let the people on, and you're going to have the liability to cover for the injuries to those individuals.

**JASPER FANNING:** Well, the contract that we have does contemplate the liability issues and cover-- and cover those.

**BOSTELMAN:** My understanding on those contracts, it's your responsibility, not theirs. Also, I guess the other other question I have with that is, is that's a-- you've just signed 100-year contract and the reason I say that, you've got-- they've got a four or five year option. They're studying it. At the end of that four or five years, they have the opportunity to-- to renew it or actually build or not. You don't have an opportunity to-- to-- to-- to deny them that. Then they have 25 years they have to have that construction, have that site built. The end of that 25-years they're the only ones have an option to walk away from that contract that goes on for four-- four times. So you just signed a 105 con-- 104- or 105-year contract. A comment to that is, you've got Joe Gentleman coal fire station out there. You're competing against people in that residence by putting up that-- that power generation system. I don't think that's a good idea. What NRD should be doing is competing against our public power companies.

**JASPER FANNING:** And we're-- we're not competing with them. We're not producing power. But I had-- I myself had conversations with that about that with the CEO of Nebraska Public Power District, and he did not share those same concerns.

**BOSTELMAN:** I share those concerns. Those are-- those are my concerns.

**JASPER FANNING:** OK.



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**BOSTELMAN:** I can tell you a lot of other people, because you're going to-- the more., the few, depends on how many megawatts that is. If that takes away from that coal fired plant, you're going to shut it down. That's a problem. I don't think you as an NRD should be doing that, especially in that area. That's just my comments to that. I don't-- you know, you've just wanted-- you put public in danger. This is a public site. The public has access to and too, you're competing now with-- with a coal plant that's just a few miles-- three miles away. And there's a lot of employees there that rely upon that and the communities rely upon that. That shuts down, that's going to have a significant impact in that local area. I think that was a poor decision. Any other questions? Thank you, Dr. Fanning, for coming in today and for your testimony.

**JASPER FANNING:** Thank you.

**BOSTELMAN:** Next opponent to LB589. Anyone else like to testify in opposition to LB589? Anyone in the neutral capacity on testifying on LB589, please come forward. Good afternoon.

**TOM RILEY:** Good afternoon. Good to see you all again so soon. So thank you, Senators. My name is Tom Riley, T-o-m R-i-l-e-y. I'm the director of the Department of Natural Resources and I'm here today appearing in the neutral position on LB589. As I understand it, the intended purpose of adopting LB589 is to allow for the sale of lands owned by Natural Resources district or districts that were originally acquired specifically to develop a water supply augmentation project, but with the ability to retain the right to protect the beneficial use of all the water for such projects. The Governor has expressed support for private ownership when compatible with the public purpose and has encouraged all interest to work together to find a solution respecting those important principles. LB589 adds criterion, modifying the common law relationship of groundwater rights to its overlying land source into the requirements for an integrated management plan pursuant to the Groundwater Management and Protection Act, namely Nebraska revised statute 46-7153E. The bill will provide an additional exception to our common law usual relationship of groundwater to the overlying land. Usually any rights for beneficial use of the state's groundwater is dependent upon ownership of the overlying land. As with any modification to the water loss structure in Nebraska, the potential impact of change is not always readily apparent to us. In the case of

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changes with the Groundwater Management and Protection Act, that is particularly so in consideration of our compact obligations and our relationships. Therefore, the department will continue to evaluate LB589 to determine possible unintended consequences. Thank you for consideration of my testimony here today.

**BOSTELMAN:** Thank you, Director Riley. Are there any questions? Seeing none, thank you for your testimony.

**TOM RILEY:** Thank you.

**BOSTELMAN:** Anyone else like to testify in the neutral capacity? Seeing none, Senator Groene, you're welcome to close. We do have one letter, written testimony in opposition from Bruce Rieker of the Nebraska Farm Bureau. And we do have two position letters, one, a proponent from the Lincoln County Assessor and one opponent from the Lower Platte Natural Resources.

**GROENE:** Thank you, Senator Bostelman. Well, you-- as I said, you see what we're up against, what those board members are being told out there. You spend a lot of time talking about the augmentation project in the Kansas-- and the compact. Nobody that I'm associated with has said anything about shutting down the augmentation project. And that's what you asked him about, was the augmentation project. What we are doing is clarifying that they can sell the land. I did not say you don't have to own land or lease land. According to the Sorensen case, you could own a quarter acre, a half acre and have the well site. Yes, we have never broken that dogma of common law that in order to use the groundwater you must have-- owned the land or leased the land or rent the land, and have the agreement with the owner that you can use the water. That's what the Tribasin NRD has done with their leasing a well site and not owning any land. They have an augmentation project. I did not and those who have been on the committee know that I'm not alone on this. We have a large group of farmers created an organization called the Landowners for Common Purpose. I asked them, I told them there was no need to come down. I think Senator Bostelman and Hughes, once you understand that I represent a large group of people in my community that want-- the majority who want to be able to sell that land. As to correct the record again, Senator Fanning, Mr. Fanning lied to you. You heard it. When-- when, Senator-- when I said that two NRDs-- members of two NRDs, if they had the opportunity, they have

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been vetted through an election that they would vote to sell the land. I did not say that an NRD voted to sell the land. You heard me, did you not? That was a false. When we had the last two NRD elections, that question was asked those people running, if you had the opportunity and clarity, would you vote to sell the land, try to get the land sold? The ones that got elected said yes. That is what I said. I'm trying to give them that opportunity. Senator Hughes, apparently you didn't hear me when Senator Bostelman asked me about do they pay taxes? I said, yes, they do. They do not pay property taxes. They pay it in lieu of payment because NRDs government entities cannot pay property taxes. So your statute, which I cosigned, said they could pay and in lieu of tax and I said they did pay that. But I did say was robbing Peter to pay Paul because the people are paying 10 bucks an acre and then they're paying the tax. As to Senator-- as to Mr. Blankenau, I took it as a compliment because he said I was ignorant about the law and about court cases. But the Supreme Court justices said exactly what I said in the statutes, Senator Moser. It was not convoluted. What the Supreme Court said was-- find it here, bear with me. I got that thick packet here. Bear with me, because it's important to the-- our statute says, the public augmentation project that is not attempting to guarantee that a certain quantity of water is used for a beneficial use or reaches a certain point downstream for particular use, but rather the purpose of the augmentation project is simply to add water to a natural stream in order to offset water depletion. All right. Mr. Blankenau said that was convoluted, didn't make any sense, had nothing to-- common sense to what existing law is. Here's what the Supreme Court said. Incourt is not attempting to guarantee that a certain quantity of water is used for beneficial use or reaches a certain point downstream for a particular use, rather, the purpose of incourt project is simply to add water to the Republican River basin in order to offset water depletion. That's what my statute says. Mr. Blankenau says because I said it, I'm ignorant. I don't understand law, that's convoluted. The Supreme Court says it. I guess they don't know what they're doing either. So, and then the second part of that law, he said, you have to-- oh, by the way, I looked up the municipal water law. I'd read it in the past. It says nothing in there about-- that they don't have to own land. Absolute. He told you that the municipal water law says, no, you don't have to own land. Doesn't say that. Says they can put wells in place for domestic use. Supreme Court case has said, which the Sorensen case said, no, you don't have to own

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the land, but it was not in the statute. The Supreme Court did not rule on a statute that said you don't have to own land. They said, no, it's a public purpose and therefore you don't have to own the land-- a corresponding amount of land. Big difference. So where is it? Want to read this whole thing to you and it's in your packet because I guess a lawyer can tell you something, but I'm going to read you the facts, not this whole thing-- a page. By enacting a municipal-- municipal and rural Domestic Groundwater Transfer Permit Act, as a part of the Nebraska policy, the Legislature altered certain aspects of common law governing use of groundwater. Permitted under the act are exonerated from the common law prohibition [SIC] against transferring and transportation of groundwater. Consequently, public water supply or use of groundwater is not restrictively localized to the site of the water of extraction, where NRD's restriction to retention of and use of 800-- if the NRDs are restricted to retention and use on 864,000 gallons of its track, the maximum daily yield extractable from the aquifer, according to NRD's test results, each of the proposed one half acres well sites would be transformed into [INAUDIBLE]. Case law follows all public, all public uses. In permitting transfer of groundwater from the site of its extraction, the act has removed use on overlying land as an index for the reasonable and beneficial required by common law. That Supreme Court said that, not Mike Groene. I took that and that's the second part of my statute. I put it case law in the statute. Would not open any Pandora's boxes, we're closing one. We are closing one. Whether overlying land remains, let's go on-- supplies. Oh, NRD is-- this is also the Sorensen case. NRD as a permittee under the act is entitled to use groundwater in a manner not otherwise accorded a landowner under common law. So Mr. Blankenau came up here and said, you got to own the land under common law. No, not if you are a public use. And outside the purview and protection of the municipal and rural Domestic Groundwater Transfer Permit Act as a result of the act, NRD has become a peculiar type of landowner granted very special status and statutory rights, contravening common law. I'm not a lawyer, but I understand the English language. I guess I'm also truthful because I don't twist what the-- what the language says. You heard a lot about the compact. Don't confuse what he was saying about the compact. There's the compact, which you're not ever going to break that. Nebraska has to have 49 percent-- gets 49 percent of the water. I think Colorado, 11 or 12 and then the rest is Kansas. What he was talking about is the present agreement of accepting the augmentation

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water 100 percent. Kansas is not happy about it. I travel Kansas a lot. The farmers in western Kansas are not happy. Would you bring my water? Are not happy that the aquifer that they used in western Kansas, is being pumped in a creek to go down to eastern Kansas, which doesn't sit on the aquifer. And they are-- and they are telling the state of Kansas they don't like this augmentation project, which I'm not trying to close the augmentation project, but the pressure is not coming from the state of Nebraska or changing the statute, it is coming etern-- internally. It is coming internally because those Kansas farmers around Covey are having their wells shut off 100 miles south, 70 miles south, 60 miles south. And they look up north and see that same aquifer is being pumped in a creek. They're not happy about it. I have a lot of large customers in Kansas that are not happy about it. I'm not arguing either way. The augmentation project is fine with us. We're not trying to destroy the augmentation project. We are trying to take common law, case law and turn it into statutes for clarification. Senator Gragert, he is not known for truth. The reason the groundwater is involved is because the Republican River Basin is not a river fed by snowmelt like the Platte. It is a spring fed river., Starts 50, 70 miles or 100 miles into Kansas, into the Colorado, around Aspen, Colorado. I used to live in Holyoke. Little bitty stream, ran through Holyoke, it was dry. The reason the irrigation water and the courts have said it, is because we've lowered the level. Hydrologist explained it to me this way, how it works, the system. Take a five gallon bucket and you punch holes around the top three inches and you fill it. As the aquifer fills those holes, feed the rivers. We have overused groundwater through irrigation that it dropped it below those holes, the springs are not running into the river and it was overuse of groundwater. That is the science. That is the truth. It's a spring fed river. That is why irrigation has played a big part in this and why the irrigation is the one that-- that has taken a hit and the why that groundwater users and NRDs are so deeply involved in this process. I made my living off of big irrigated farmer. Never got to sell Senator Hughes anything, but maybe that ain't-- we're not done, we're not old enough yet. And I protect those guys and I fight for those guys. But I also believe in the truth. And the truth is we've abused and overused our groundwater natural resources. So let's get back to what we're doing here. We're not doing anything about augmentation. Augmentation is, we're going to protect it. The statute protects it. Puts it in the statute what the case law

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says. Invites law-- invites the lawsuits. No, it will deter lawsuits. Because now the next estimate comes along and says, I'm going to sue. They're over using more water than what the amount of acres they-- they have. No, sir, read the statute, and he hires a lawyer, he says, sir, you're not going to be able to sue on the common law because the Legislature has created a statute that overrules the common law. And your argument that they're using more than what the land they own because they don't have to own the land. It's an augmentation project. It is not common law. Has absolutely nothing to do with how many acres you own. There's one variable in the Supreme Court that says, less or right has to be compensated. That makes no difference how many acres you own. If they use too much water that the domestic wells dry up in that area, they're going to get sued. If the neighbor's irrigation well dries up, they're going to get sued or they're going to have to mitigate the situation. Has nothing to do with how many acres you own. I have no idea why they want to own the land. Power, pride, greed. I don't understand why they can't work with us and work with-- but what you heard today, selling land, the courts have separated that for public purpose from the public use of the water. It's pretty clear and I gave you some very interesting reading. I think you will understand what the court said in their findings. You don't even have to read the whole thing, just go back to the back part and read the findings. And you will understand that Senator Moser, the language in my bill, Supreme Court thought it was very good language because they wrote it. They wrote it. I just transcribed it into a statute. Any questions?

**BOSTELMAN:** Thanks, Senator Groene. Senator Moser.

**MOSER:** So this underlined part of the bill you took from the Supreme Court case and--

**GROENE:** Estermann.

**MOSER:** Did you have an attorney advise you--

**GROENE:** Yes.

**MOSER:** --on the legalities?

**GROENE:** I won't say who it was, but he's a prominent-- prominent attorney, water attorney.

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**MOSEK:** OK. So I was trying to read it and make sense of it. And I'm wondering, the subject of the sentence is a public augmented-- augmentation project. That's the subject of the sentence. OK, what's the verb of the sentence? Is it--

**GROENE:** Guaranteeing of an action.

**MOSEK:** It says, augmentation project that is not attempting to guarantee that a certain quantity of water is used for beneficial uses--

**GROENE:** Use is a verb.

**MOSEK:** Well, just hang on, this is all in a clause after-- this is a modifying clause that follows the subject of the sentence, I think. I'm trying to diagram this in my head.

**GROENE:** Think.

**MOSEK:** A public augmentation project that is not attempting to guarantee that a certain quantity of water is used for beneficial use or reaches a certain point downstream for a particular use, but rather the purpose of-- see you've got another sent-- another subject to the sentence here, you never--

**GROENE:** That's what the Supreme Court language says.

**MOSEK:** But rather the purpose of the augmentation project is simply to add water to a natural stream to offset water depletion shall be without regard. So this is the verb here-- shall be without regard to the beneficial use on the overlying land?

**GROENE:** Yes, or dependent on. Could I explain why that is written that way?

**MOSEK:** You know, what's-- what's without regard? Where did that come from?

**GROENE:** The Supreme Court case. It's in the Supreme Court case. That's how they--

**MOSEK:** No, explain it to me. It's your bill.

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**GROENE:** All right, regard. Let me tell you. What happened with the Estermann case was he-- they got sued that it was a transfer. All right. And he needed a permit. It had nothing to do with the common law because it was a statute. So therefore, the transfer, they could transfer water if they wanted to. All right. Because the common law was out the window. What Estermann sued about is in order to have a transfer, you have to have a permit from Nebraska Department of Natural Resources. They didn't have a permit. So the court said, all right, how do we get around that they're not transferring water. How do we get around not transferring? How did Mr. Blankenau get around not transferring the-- water? They are not guaranteeing any water reaches a certain point. All they are doing is take the-- the-- the natural ecosystem. What I talked about springs before and pumped water into the river, and it stays in its same ecosystem they we're not guaranteeing the water. So I took the definition of an augmentation project. The court defined what an augmentation project is in that sentence.

**MOSER:** Yeah. Let me ask you a question. Say because the public augmentation project, that's the subject. OK, the verb is shall be without regard to the beneficial use on the overlying land or dependent on the amount of land owned, rented or leased by the natural resources districts involved in operating the augmentation project. So why I don't think that makes sense to me is it, you're saying it shall be without regard and what does that do without regard to beneficial use?

**GROENE:** It takes away the common law. It says to the common man, you do not have to worry about how many acres of ground you own that you're using the water for beneficial use over the overlying land.

**MOSER:** Well, then I think you should have said something about shall be allowed without regard to the beneficial use of the overlying land or depending on the amount of land, because this is another qualifier here and there's no-- there's no--

**GROENE:** You can do it without regard to that.

**MOSER:** OK, well--



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**GROENE:** I mean, you can do what-- a certain action without regard to another action. That was what we tried to do.

**MOSER:** You don't say what the action is. You say it shall be without regard.

**GROENE:** Yes.

**MOSER:** Yeah, I don't-- I don't see how that makes sense, but.

**GROENE:** Because if you took the word out, without, you would say it shall be with regard to the beneficial use of the overlying land and then you put-- you-- then you took-- you overturned the Supreme Court and you put back in there that you have to take into account.

**MOSER:** You should say, shall be allowed without regard to the beneficial use of the overlying land.

**GROENE:** If you want to bring an amendment, Senator Moser, I don't care. We just want it done.

**MOSER:** It's not my bill.

**GROENE:** Yeah. I mean, but if you want to help me with an amendment, fine. But I-- but lawyers have looked at and they said that is the legalese that I should have used. And-- but we're just doing what I said. We're taking case law and turning it into statute. But it is what the Supreme Court wrote in their findings. And as I said, we're not-- we are protecting the augmentation project, not harming it.

**BOSTELMAN:** Senator Gragert.

**GRAGERT:** Thank you. Real quick, you know, you referred to Sorensen and Lower NRD and when I asked the lawyer, it wasn't only public use-- public purpose, it was now domestic use is why these two don't compare.

**GROENE:** The courts have over-- said it over and over again, even in the Estermann case. Once it is the public purpose, then-- and then that was in-- in the case of you can't-- common law says you can't transfer land or water off the land. The once it is in public purpose, the common law, period. Common law does not pertain to the statute and

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that was domestic use. This is augmentation. When the Legislature created the power of an NRD to-- to use an augmentation for an IMP, they created a public purpose, is what the court said. And therefore the common law is out the window. And as Senator Bostelman said, then everything goes to heck. We got wind-- we've got government signing windmill contracts, which people in Lincoln County do not want in their county, because we have not-- not closed this Pandora box. To people, and I'll tell you what, it's not just the farmers, it's all-- every one of them workers who work at the power plant making 70 to \$100,000 a year. They considered it a complete insult to us that these two NRDs from all Nebraska came into our county, we are an energy 35th to 40th largest coal burning plant in the United States and they without our consent, are going to stick windmills into our county and they don't care. They have a mining operation in our county and they don't care about us. You have an opportunity to correct a wrong-- a wrong for the little guy. That's what we do here. And I'm going to ask for five votes so I can put this on the floor and we can devote it and Senator Bostelman and Brewer can have a podium to talk about windmills and we can get a good conversation going. I'm not today, but I will ask you to read to take into account what Mr. Blankenau said and then read those cases I gave. You will understand them and you will find out Mr. Blankenau twisted some words around, and that is what he is telling the NRDs out there. We have four NRDs involved in this-- in this com-- in this interlocal agreement. Three of them are represented by Mr. Blankenau. How does that work? How does he give accurate information to competing interests of the Twin Platte who has to worry about the Platte River and his friend-- his friends on the Lower and Upper Republican. That is what we're up against. We have an opportunity to correct it and I'll work with you on language if you-- since you know verbs, you did better in diagramming sentences than I did, apparently.

**BOSTELMAN:** All right. I think that concludes the hearing on LB589. Thank you, Senator Groene. Thank you for coming today. Have a good night.