

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

BOSTELMAN: All right. Good afternoon, everyone, and welcome to the Natural Resource Committee. My name is Senator Bruce Bostelman. I'm from Brainard representing the 23rd Legislative District, and I serve as Chair of this committee. The committee will take up the bills in the order posted. This public hearing today is your opportunity to be a part of the legislative process, to express your, your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the back table-- on the table at the back of the room. Be sure to print clearly and fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are-- there are also yellow sign-in sheets back on the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone, tell us your name, and spell your first and last name to ensure we get an accurate account-- accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer, introducer if they wish to give one. We'll be using a 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have 1 minute remaining. And the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also committee members may come and go during the hearing. This is-- this has nothing to do with importance of the bills being heard. It is just part of the process. The senators may have bills to introduce in other committees. A final-- a few items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least 10 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees states that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at Nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. I will now have the committee members with us today introduce themselves, starting on my far left.

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Natural Resources Committee February 21, 2024

FREDRICKSON: Good afternoon. I'm John Fredrickson. I represent District 20, which is in central-west Omaha.

SLAMA: Julie Slama, District 1: Otoe, Nemaha, Pawnee, Johnson and Richardson Counties.

BOSTELMAN: And on my right.

BRANDT: Tom Brandt, District 32: Fillmore, Thayer, Jefferson. Saline, and southwestern Lancaster Counties.

JACOBSON: I'm Senator Mike Jacobson. I represent District 42, which is Lincoln, Logan, McPherson, Hooker, Thomas, and most of Perkins County.

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

MOSER: Mike Moser, District 22. It's Platte County and most of Stanton County.

BOSTELMAN: Senator Moser also serves as Vice Chair of this committee. Also assisting the committee today, to my left is our legal counsel, Cyndi Lamm. And to my far right is our committee clerk, Laurie Vollertsen. Our page for the committee today is Ruby Kinzie. Thank you for being here. With that, we will take up our first gubernatorial appointment. It will be Mr. John Rundel. If you could please step forward. This is an appointment, reappointment to Nebraska Oil and Gas Conservation Commission. Welcome, Mr. Rundel.

JOHN RUNDEL: Good afternoon, Senators, Senator Bostelman.

BOSTELMAN: State and spell your name and.

JOHN RUNDEL: My name is John Arley Rundel, J-o-h-n A-r-l-e-y R-u-n-d-e-l. I live in Trenton, Nebraska. I have been serving on the Nebraska Oil and Gas Conservation Commission since 2015. I filled in a partial term, filled in a 4-year term. And this is a reappointment for another 4-year term. I'm currently serving as the chairman of the Nebraska Oil and Gas Conservation Commission. I think I've been chairman 3 to 4 years now. I'm not sure on that. I think 4. And so the commission has been very active this last couple of years. I don't know if you are aware of it, the Department of the Interior, through the federal funding, has granted the states with oil production a \$25 million grant to deal with orphan wells, wells that the operators of went out of business, went bankrupt, and we've been aggressively taking care of those wells in the state, and we're doing a very good job at that. And so I'm very pleased. I think we're probably the first

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Natural Resources Committee February 21, 2024

in the nation for the amount of success we've had for getting our wells plugged properly. And so I'm very proud of that.

BOSTELMAN: OK. Thank you for willing to serve again. Questions from committee members? So could you tell us a little bit more about the, I guess, what other projects that you have that you work on that you address as part of the commission?

JOHN RUNDEL: The Nebraska Oil and Gas Conservation Commission is the state regulatory agency responsible for oil and gas production in the state of Nebraska. And so we regulate drilling permits, production, salt water production, disposal, transportation of the crude oil, making sure that everything's in order for that, that the landowners are receiving their royalty income. And basically everything that deals with the oil and gas industry we have regulations in place to protect the interests of the landowners and the environment.

BOSTELMAN: And how many commissioners are there?

JOHN RUNDEL: There are 3 commissioners.

BOSTELMAN: And then you meet how often?

JOHN RUNDEL: We've been currently meeting every month for the last 2 years. We've been extremely busy.

BOSTELMAN: Is that a good thing?

JOHN RUNDEL: I think it is a very good thing.

BOSTELMAN: So does that mean growth or does that mean shutting down facilities, cleaning up facilities or what does that mean?

JOHN RUNDEL: Well, we're, we're not seeing as much exploratory new wells as we've seen in the past. A lot of that's related to the price of oil. But we've added new staff for some of these remedial operations of cleaning up these legacy wells and getting them plugged. And so we-- we're, we're just extremely happy with our growth.

BOSTELMAN: OK. Any other? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here and your willingness to continue to serve, especially when you're seeing what it is. So in terms of the-- you're saying the bulk of the work right now is remediation?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

JOHN RUNDEL: Yes.

J. CAVANAUGH: Is that a result of that we're, you know, have less people who can afford to do their own remediation or [INAUDIBLE]

JOHN RUNDEL: Well, we, we have always set aside-- we have a surety bond for operators to take care of their operations. A lot of times that bond has not been sufficient to totally take care of it. And so we have plugging funds available. We take a percentage of the funds that are available to the commission and use that. But those are limited. That plugging fund usually had \$200,000 to \$300,000. Right now our average is around \$40,000 to plug a well. And so we were somewhat limited on how many wells we could plug a year. And just last year, we plugged over 265 wells with the federal funds. And so we're, we're cleaning up a lot of legacy stuff that we wouldn't have been able to do expeditiously as we're, we're doing now.

J. CAVANAUGH: What-- what was-- what's the source of the plugging funds besides the federal funds?

JOHN RUNDEL: We have a mill levy on all of the oil and gas that's produced. It's currently at 12 mills that comes to the commission. That funds our operations.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Is this your dis-- did you distribute this information?

JOHN RUNDEL: Yes.

JACOBSON: I'm just curious. On the water barrels, is-- I presume that's salt water?

JOHN RUNDEL: Yes.

JACOBSON: So--

JOHN RUNDEL: Brackish water to salt water.

JACOBSON: Right. Are you-- so are you disposing of that water in the wells or where, where are you going with the water?

JOHN RUNDEL: Well, it depends on where it's at.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

JACOBSON: All right.

JOHN RUNDEL: OK. Some of the stuff in western Kimball County is almost fresh water. So it can be exposed over in an evaporative pit. In southwest Nebraska, the brine content is quite a bit higher. And so that needs to be put back into a, a zone that will take that below the shelf, safe drinking water.

JACOBSON: So are you disposing of that into abandoned wells that-- to get it deep enough or where are you going with that water?

JOHN RUNDEL: Well, like the majority in Hitchcock County is used for enhanced oil recovery. So that's repressuring a zone that has had the oil taken out of it. As you take that oil out, the pressure of the zone decreases. When you reinject the brine water back into that, that pressure drives the zone back up. It produces more oil. And so that's been a very effective method of increasing your production and also taking care of the oil, the water--

JACOBSON: Sure.

JOHN RUNDEL: --to do that. There are some that are just solely disposal wells that are going into a zone that will hold that water safely.

JACOBSON: But for the most part, you're disposing of that salt water in Nebraska from-- that's coming from the Nebraska wells. Is that [INAUDIBLE]

JOHN RUNDEL: These are all Nebraska wells.

JACOBSON: Gotcha. And the-- when you're talking about quantities of water, is this water that you're-- that's being produced from those wells to be--

JOHN RUNDEL: That is correct.

JACOBSON: OK. So and then we don't know how much of that gets disposed of. But basically you're, you're going to need-- the fresh water you can put it into a pond and evaporate I presume.

JOHN RUNDEL: That's correct.

JACOBSON: But yeah, I'm just familiar with the amount of salt water that comes out of wells particularly down in Texas. And that's a lot of salt water to dispose of.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

JOHN RUNDEL: It is.

JACOBSON: And they-- that's a-- that's a real issue itself .

JOHN RUNDEL: If you look at most of our wells up in the Panhandle, there are around a 3 to 5% oil cut, meaning--

JACOBSON: Yeah.

JOHN RUNDEL: --it's 96% water is what you're pumping.

JACOBSON: Right, right.

JOHN RUNDEL: So you got a lot of fluid to take care of.

JACOBSON: And it's a little warm, too, when it comes out.

JOHN RUNDEL: It can be.

JACOBSON: Yeah. Thank you.

BOSTELMAN: Senator Moser.

MOSER: So it's not necessarily a byproduct created by the drilling of the well, but it's actually salty water that's already in the ground that you pump out as a conse-- or as a coincidence of getting oil.

JOHN RUNDEL: Yes. The salt water and the oil coexist in the same reservoir. And so when you're pumping oil out, the water comes with it.

MOSER: They're kind of naturally found together.

JOHN RUNDEL: They're, they're hooked together. Yes.

MOSER: And you got to do something.

JOHN RUNDEL: That's correct.

MOSER: Can't drink it.

JOHN RUNDEL: It'd be a little salty, depending on the area, you know. Like down in Richardson County, the water is almost fresh.

MOSER: Thank you.

BOSTELMAN: Senator Slama.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

SLAMA: I would just like to add for the record that Richardson County with the almost fresh water is in my district.

MOSER: I'm sure you're the reason.

JOHN RUNDEL: Yeah. And we've actually had some interesting drilling down in Richardson County that we're looking very favorably. There's just recently been a horizontal well drilled near Falls City. And we're very excited for the results of that.

BOSTELMAN: Yeah. Senator Jacobson.

JACOBSON: Well, I just have to note for the record that although Lincoln County is not doing really well on the production of oil, but we have beaten Deuel County, so just-- for whatever that's worth.

BOSTELMAN: Seeing no other questions, thank you, Mr. Rundel, for being here today.

JOHN RUNDEL: Thank you, Senators.

BOSTELMAN: Appreciate your willingness to serve.

JOHN RUNDEL: Appreciate it. Thank you.

BOSTELMAN: Yes, sir. Anyone who like to speak as a proponent in support of the gubernatorial appointment of John Rundel to the Nebraska Oil and Gas Conservation Commission. Good afternoon.

CHRIS PETERSON: Chairman Bostelman, members of the committee, my name is Chris Peterson, C-h-r-i-s P-e-t-e-r-s-o-n, appearing today as a registered lobbyist and on behalf of the Nebraska Petroleum Producers Association. I just wanted to briefly express support for Commissioner Rundel's reappointment to the commission. It is very important to have members of the commission who have some experience, background, expertise, knowledge of the issues that the commission deals with so that they can deal with the issues that come before the commission, which operates very effectively from their offices in, in Sidney. I would encourage members of the committee, if you have not had the opportunity to visit the Oil and Gas Commission offices in Sidney and sit down with Director Belieu and learn more about what the-- what the industry is doing and, and the good work that the commission does to regulate the industry in Nebraska. They've actually received high marks from independent reviews in the past for their work regulating the industry. And a credit to that is, at least in part, if not in large part, to the-- to the good commissioners that have been willing

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

to serve. So again, just want to briefly express support for the reappointment for Mr. Rundel.

BOSTELMAN: Thank you for your testimony. Any questions from committee members? Seeing none, thank you.

CHRIS PETERSON: Great. Thank you.

BOSTELMAN: Anyone else like to testify in support of the gubernatorial, gubernatorial appointment of John Rundel? Seeing none, anyone like to testify in opposition? Seeing none, anyone like to testify in neutral capacity? Seeing none, that will close our hearing on the gubernatorial appointment of Mr. John Rundel to the Nebraska Oil and Gas Conservation Commission. Our next hearing will be the appointment-- gubernatorial appointment of Roger Helgoth to Nebraska Environmental Trust Board. Mr. Helgoth. Good afternoon. Welcome.

ROGER HELGOTH: Good afternoon, Senators. My name is Roger Helgoth, spelling R-o-g-e-r H-e-l-g-o-t-h. My address is 2517 South 126th Street in Omaha, Nebraska. So one of the Senator Bostelman letters said that I should say a little bit about myself. I'll try to do that in a short period. I grew up on a farm near Garrison, Nebraska. Senator Bostelman may be the only one that knows where Garrison is, but in Butler County and in the David City area on a farm. So now my, my background living on the farm is my dad and mom had 2 children, me and my sister, Carol May [PHONETIC] who came to support me or pick up the vegetables or whatever. But we lived there on a farm. And as a young, young boy, my, my interest started right away of doing some conservation work. At the age of about 8 years old during the drought of the 1950s, '55, '56 period, I-- my dad put me on a little tractor, a tumblebug, and I started building my own dam because I saw the cattle out in the pasture so hot and I thought, my God, just catch some water for them, you know? So, you know, that started me on that trace of trying to do something environmentally to help things at that age. And so after going to school in David City, Aquinas for high school and then I graduated as a civil engineer from Nebraska in 1970, and I got a master's degree in environmental engineering from the University of Nebraska in 1973. And all of those things kind of got me poised educationally to what some of the conservation issues are. Of course, that was right in the period of Earth Day and all the high attention to the polluted waterways and things like that we have in the-- in the U.S. And so it was an awareness that I got both publicly from public policy and as well as education. So I started working with the Nebraska Game and Parks Commission part time in 1969 and worked there through my master's degree. And, and that was really a turning

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

point for me, seeing Nebraska all over through the state parks. As an engineer, my job was to go out and do small engineering projects for the Game Commission on, you know, water wells and sometimes privies and sometimes electrical services for camping pads and, and working with the fisheries group on, you know, doing something for them. So it was really a wonderful experience. I saw Nebraska like you can't see Nebraska in a, you know, 1964 Chevy Impala or whatever we had to go out there. So all of that led me to my career as an environmental engineer. I've had the opportunity in my career over the years to get involved in Nebraska Environmental Trust projects, working with sponsors and trying to put together a grant application. I particularly like working with the smaller communities when they call you up and say, well, we got a problem. But the second thing they say is, but we don't have any money. I'm thinking, oh, that's really good. But anyway, I really felt that that's where a lot of the projects were needed by people conceived and needed by people that just didn't really have-- didn't have the resources to take on that. So I did several projects with the Nebraska Environmental Trust that were successful. And so that's kind of-- kind of my background, I guess. So I'm here to, to answer any further questions that you have.

BOSTELMAN: Thank you, sir. Questions? Senator Fredrickson.

FREDRICKSON: Thank you, Senator Bostelman. Thank you, Mr. Helgoth, for your willingness to serve in this capacity. I have to give you a special shout-out as a constituent of LD 20. You know, I think it's always admirable when folks like yourself are willing to serve in this capacity. I mean, clearly, given your experience, I think you would have valuable insight and perspective to bring to this board. So thank you for being here.

ROGER HELGOTH: OK. There's one other engineer appointed to the board on the NET board from-- I'm from district 3, and so I've already met with him. And, you know, we're, we're going to look at things a little more from an engineering perspective so. Any other questions?

BOSTELMAN: Do you sit on a specific-- is there an engineer's spot on the Environmental Trust or is it--

ROGER HELGOTH: It's just to sit-- I'm an interested citizen who's been interested in the NET for a long time so.

BOSTELMAN: Sure. Senator Cavanaugh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

J. CAVANAUGH: Thank you, Chairman. Thanks, Mr. Helgoth, Helgoth, right?

ROGER HELGOTH: Yes, Helgoth.

J. CAVANAUGH: Thanks for your willingness to serve. Got quite an impressive resume. Do you know, like, ballpark, how many projects you helped work on submissions for the Environmental Trust Board?

ROGER HELGOTH: Over the years, I think I can count about 7 different Environmental Trust projects. Some of the most notable ones were, like the David City Park Lake, which was my hometown. We-- it was-- it was completely sedimented in and we went through a process of getting-- Ericson, Ericson Lake in Ericson, Nebraska, I was called in to help them do something, and they ended up dredging a good part of the lake. And, and then Auble Lake in Ord was another one. And, and, you know, got some, like, at Chappell, Nebraska. I think it was a lake restoration. So those were all that I was either a project manager or more likely, a principal was when I was working, formed a company with Jacobson Helgoth Consultants with a partner. So-- and there was, there was a Spring Lake Park in Omaha and that was hooked into the combined sewer overflow projects in such a way it was one of the community-- compune-- community betterment issues that was part of dealing with an overflow of, of stormwater into the Missouri River. And so they were able to do something with that park lake. And that was one of the first parks in the city of Omaha, right off of 10th Street. So it was-- people really benefited from that. And that's what I love to see. I love to see a old lake that's been degraded to the point that it's worthless and be able to get in there with the resources that you have to turn it back into a viable recreation.

J. CAVANAUGH: A good use-- a good use of that money. Right?

ROGER HELGOTH: Yeah. Good use.

J. CAVANAUGH: I guess my question would be, though, were you part of any projects that didn't get a grant or didn't receive a grant?

ROGER HELGOTH: We, we, we helped the sponsor of the project write, write the application with them. And as, as a sponsor, we, we helped them submit the grant, make sure that they, you know, dotted the i's and crossed the t's, made sure that the grant application was technically sound because, you know, if it's not technically sound, then they got a problem long-term with being able to make that project perform to its expectations. So-- but we worked hand in hand with the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

sponsors as an independent consultant of sorts. And so that was our role.

J. CAVANAUGH: Well, I guess I'm just trying to get at whether, you know, so the Environmental Trust gets more applications than they have money to give.

ROGER HELGOTH: Yeah.

J. CAVANAUGH: And they more or less determine which projects are eligible and then kind of a line that cuts off--

ROGER HELGOTH: Right.

J. CAVANAUGH: --once they run out of money. I'm just wondering if you were ever part of one of the projects that fell below the line.

ROGER HELGOTH: Oh, yeah.

J. CAVANAUGH: And I-- so OK, so that's what I'm trying to find out is how that might inform your decision-making process, being on the other side of it.

ROGER HELGOTH: Actually, it helps you. And I tell people that don't, don't be distraught. Don't be upset that you lose in the grading because what they'll do, the Environmental Trust historically, and I know with Karl Emdorf [SIC] and the trust now, if you-- if you go down in flames, they're always willing to sit down and explain to you where, where you fell down. And so getting feedback is a part of being successful. I think in most of those grant issues, I think I was working with the sponsor to the third try and improving that grant application every time. So I don't think that-- I think that's a normal process to make it better, you know. And, and you have to educate the, the sponsor that you're not going to win this first shot. You know, you're going to-- you're going to get in the door and maybe you'll do OK, but likely you might not.

J. CAVANAUGH: Thank you.

BOSTELMAN: Other questions? Seeing none, thank you for coming in, for willingness to continue to serve. Good to see you. Anyone else like-- would anyone like to testify in support of Mr. Roger Helgoth's appointment to the Nebraska Environmental Trust Board? Please step forward.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

JEANNE McCLURE: I'll hopefully be really brief for you. I'm Jeanne McClure, J-e-a-n-n-e, McClure, M-c-C-l-u-r-e. I'm the registered lobbyist for ACEC Nebraska and their executive director. That is the American Council of Engineering Companies. And I'm just here to testify on behalf of Roger Helgoth. He is a longtime member, definitely predates my tenure with the Engineering Council. He was president in, I believe, '95, '96. And we would just, you know, take any questions about Roger. But he has been a longtime member and also a mentor to so many folks in the engineering industry. So I'll just leave it at that.

BOSTELMAN: Questions from committee? Seeing none, thank you for your testimony. Others wishes to testify in support of the gubernatorial appointment? Seeing none, anyone like to testify in opposition? Seeing none, would anyone like to testify in the neutral capacity? Seeing none, that will close our hearing on the gubernatorial appointment of Roger Helgoth to Nebraska. Environmental, Environmental Trust Board. Thank you very much. Next, we will have LB1335. Senator Moser. As we look, getting ready for the next hearing coming up, how many people plan to testify in this bill, this specific bill? Just so you have a--OK. Thank you. We just call ahead for the next senator coming, kind of give them an idea of where their timing-wise well. So thank you. Welcome, Senator Moser.

MOSER: Thank you, Senator Bostelman, Chairman, and members of the committee. My name is Mike Moser. It's M-i-k-e M-o-s-e-r. I represent District 22, which consists of Platte County and most of Stanton County. I'm here today to introduce LB1335, my priority bill. This bill amends the Nebraska Nongame and Endangered Species Conservation Act by providing an exemption for existing transportation infrastructure, including right-of-way, which are narrow strips of publicly owned land alongside, well, and under the road. LB1335 clarifies that the primary purpose of transportation infrastructure is the movement of people and goods. The bill states that highways and their associated right of way are man-made structures, which are not meant to serve as critical habitat. This bill was brought to me by the Department of Transportation, and they've also brought the issue to the attention of Governor Pillen, who has given it his support. Given that the NESCA, as the acronym for this law, is a state law, we as a Legislature are able to amend it and balance an appropriate relationship between environmental stewardship and delivering the important transportation projects that our state needs. This is done in LB1335. The NDOT brought this bill because currently, NESCA is more restrictive than the federal Endangered Species Act, the ESA, and NESCA has fewer tools for balancing transportation interests and

conversat-- conservation interests than ESA, the federal regulation. The increased restrictions and limited tools create excessive costs for maintaining and improving our state's transportation infrastructure. These requirements could cost, could cause excessive costs for the state to continually acquire a new property for mitigation and can cause delays to many transportation projects going forward. Under this bill, the Department of Transportation is still required to consult with the nat-- Nebraska Game and Parks through the NESCA for new areas that they disrupt for the first time, but would be exempt from subsequent repeated actions in the same area, which is what's currently required. I-- just as an example, an 80-foot right-of-way, wide, to build a road, could include the highway in the middle and the ditches, and whatever on each side, times a mile is about 10 acres. So if you have to offset that by a 2 to 1 ratio, you would need 20 acres of offset to balance the environmental impact of building that road. And that's pretty significant, because if you go 8 miles, you're going to have a quarter section of ground in a, in a conservation easement, in perpetuity. There's no end to it. And then if you come back currently and grade on the sides of the road or do some work on the sides of the road, then you could be required to do some mitigation again, so the mitigation can compound every time you work on it. So, they're trying to get a, a definition that says that these rights-of-way are a man-made thing. It's not a-- it's not a "Walden Pond" that we can't disturb. I appreciate your time. I urge you to vote, vote in support of LB1335. I'd be happy to answer questions you have. In addition, following me is the Department of Transportation Deputy Director of Engineering, Khalil Jaber, who will be able to handle more technical questions. He works this issue every day and he knows it inside and out. So questions, I'd be glad to respond to.

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

JACOBSON: Thank you. Senator Bostelman. Senator Moser, thank you for bringing the bill. I've, I've read through this bill and fairly familiar with what you tried to get done here. And, and I think it's a commonsense bill. I-- I'm assuming, that what you've articulated is not only is it costly to mitigate, but, but it-- we also have the issues of time delays, as well, when we start going through these processes of really working on highways and infrastructure that's already in place today. I mean, it was not also one of the components we're dealing with [INAUDIBLE]?

MOSER: Yes, the time delays are, are really critical. And if you-- I mean, they negotiated with Game and Parks, and then they come to an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

agreement and they move forward. But then if Game and Parks comes up with comments afterwards, then that kind of creates another friction for them to respond to those comments. And, you know, it can be kind of a impediment to getting anything done. The burrowing [SIC] beetle is very prevalent in the central upper third of Nebraska. I suppose that would be Brewer's, Cherry County and some of those counties. And they have projects up there right now that they'd like to do, but they need to do offsets, and some of the local governments don't want to have perpetual easements in their district because they go off the tax rolls. They, they might grow, you know, native grasses or whatever where they don't want. And, and so, this just gives them a little bit more traction in getting something done without so much paperwork.

JACOBSON: Well, thank you. And I'll look forward to the-- your proponent testifiers, because I think they'll continue to add--

MOSER: Oh, yeah.

JACOBSON: --a little bit more light on that. And, and that's-- I, I think that's an important thing.

MOSER: Yeah. If you're going to get very far into the weeds, that's a [INAUDIBLE].

JACOBSON: That's as far as I'm getting. I'm-- just took one step into the weeds. I'm going to stop you.

MOSER: All right.

BOSTELMAN: I'm sure you'll stay for closing.

MOSER: Yes. You guys were really easy on me. Thank you.

BOSTELMAN: There you go.

MOSER: It'll get, It'll get more interesting as we go.

BOSTELMAN: Proponents for LB1335, please step forward. If you're going to testify today, as we go through the, the supporters, opposition, neutral, just move to the front so we can kind of move through, because we do have a-- this hearing and another hearing to do today. I think we'll have several testifiers on it, so we would appreciate that consideration. So, good afternoon. Welcome.

KHALIL JABER: Good afternoon, Chairman Bostelman and members of the Natural Resource Committee. My name is Khalil Jaber, K-h-a-l-i-l

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

J-a-b-e-r, and I am the deputy director for engineering of the Nebraska Department of Transportation. I am here today testifying in support of LB1335. NDOT worked closely with Senator Moser to introduce this bill and appreciate his leadership and the opportunity to partner with those members with overlapping committee assignments on Transportation and Telecommunications and Natural Resources for a bill that will address the ability to deliver needed transportation projects efficiently and responsibly. There may be varied use of the intent of this legislation, but after a thoughtful and thorough analysis of the situation, the Department of Transportation feels we need to expressly address the nongame of-- the Nongame and Endangered Species Conservation Act, NESCA to manage project delivery more effectively. One of NDOT's standing 8 strategic goal is environmental stewardship. More recently, the Legislature became familiar with our environmental commitment when we assumed the role of the federal government for environmental decision making through an assumption of the National Environmental Policy Act. Through NEPA assignment, we have been able to demonstrate the sophistication of our environmental staff, capacity to act responsibly, and the ability to streamline project delivery. This level of sophistication is part of how we got to where we are today. Understanding in our current state. It is not the federal Endangered Species Act, but rather the stricter NESCA language that is impacting project delivery. Fortunately, the Legislature has the ability to weigh the concerns and determine how that balance ultimately falls. The NDOT feels that LB1335 balances our commitment to the environment, specifically Nebraska threatened and endangered species, and our commitments to the safety of the traveling public. The bill permits NDOT to better realize our fiscal responsibility to the taxpayer. Its limited exemption for transportation infrastructure from NESCA is a commonsense approach that would apply to man-made transportation infrastructure, including existing state highway, county roads and city street right-of-way that has already been dedicated to the vital public needs for the efficient and continuous transportation of people and goods. LB1335 allows existing transportation infrastructure and roadway corridors to be used according to their primary purpose. Right-of-way, or the land that runs alongside these corridors, must be frequently disturbed to maintain the utility of the infrastructure and its safety for the traveling pub-- public. Even after responsible effort by NGPC, NDOT, and our federal partners, NESCA has become more restrictive than the ESA, and hampers the ability of NDOT to maintain the primary purpose of its property, property which NDOT often acquire from a private citizen under the assertion that it was necessary for the transportation of people and goods throughout the state. This bill

will only exempt transportation infrastructure and public roadway corridor for subsequent action occurring on the dedicated area. If I may have 1 more minute, Senator. The existing statutory provision will continue to apply to project which acquire new land for expanded right-of-way. Without this exemption, NDOT may be required to mitigate the placement of acres of impacts to the same area repeatedly whenever future maintenance, repair, or reconstruction activities occur. This mitigation strategy is excessively costly, restricts landowner rights to use property, and remove private lands from local tax roll. Without these changes, NDOT anticipates a significant number-- a significant number of project which will be delayed and costs associated with mitigation will drive project cost up for the state and local government. LB1335 is a balanced and commonsense approach to a complex problem. We appreciate the committee's consideration of our approach to setting an appropriate balance of environmental and fiscal responsibility. For your reference, we have also provided an extensive document as an exhibit for the record, which provide more detailed information for you to review. Thank you for your time, and I would be happy to answer any questions you may have.

BOSTELMAN: Questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. And thanks for being here, Mr. Jaber. So I'm just reading, looking at bill-- the bill on page 3, line 29. I'm just curious about-- that's the-- basically, 26-30 is the exemption. It says these are the ones it still applies to. But then there's a part on the bottom that says, you know, so it's new projects, and then "any subsequent action that increases the area of existing transportation infrastructure." Does that mean that if you widen a road, you would have to then put into conservation easement the number of acres of the widened part, or the entire project plus the widened part?

KHALIL JABER: Thank you, Senator. Actually, you're accurate. There's-- we would be mitigating for the new land that we disturb. You know, if the bill passes here, or hopefully when the bill passes, that, that area that we own currently would be exempted. So if we widen a, a highway to a 4-lane or adding shoulders or whatever the case may be, it requires narrow strip of right-of-way, then we would be going through the process to mitigate that added right-of-way only.

J. CAVANAUGH: OK. And-- but that's not the current-- that-- that's all new language. So that's not-- it's not fair to compare it to how the bill works currently or the statute works currently.

KHALIL JABER: That is correct. Right now, anytime you get outside the, the, the pavement and the slopes, you know, our ditches, back slopes, all that area now, any disturbance that we make is subject to the NESCA law. And if we reach the threshold, which is established by our partners in Game and Parks, 3.8 acres. Once we exceed that number, then we are required-- that's basically because they considered our right-of-ways a suitable habitat for any species. Therefore, we would have to do something. And in the case of the American burying beetle, which is-- that was really the tipping points that we have that Senator Moser articulated a little bit, in the middle of the state, that requirements from their perspective, you know, based on the current law, you know, they had-- we had to mitigate at a ratio of 2 to 1 for that. And the, and the mitigation is not above the 3.8. It's the entire disturbance. Once we reach that threshold-- so if we disturb 10 acres like the Senator says, I'm-- have to-- we have to mitigate 20 acres for that disturbance. And that's very, you know, at, at this point, it's hard to even to come by. I mean, we, in good faith, we tried. We worked with a private developer, thinking that we can secure that for the American burying beetle. Unfortunately, that did not pan out. And therefore, we, we just didn't have any path forward at this point.

J. CAVANAUGH: So using the example of the beetle-- I guess I'm just trying to wrap my mind around it. So say that you guys build a road. You build the, the right-- the right-of-way, the, the what, what do you-- what do you call it? I'm trying to think of the word-- the ditch on the side and everything, and they potentially then come and move into that land. Right?

KHALIL JABER: That's correct.

J. CAVANAUGH: And so, if they have not taken up residence in that land, do you have to do mitigation or is it just if they're in the-- if it's in the footprint?

KHALIL JABER: Well, that's the hard part, Senator, because take the American burying beetle. It's a, it's a species that spend the entire life, most of its life underneath the soil, hidden. It's hard for us to even do any surveys for that particular species, this unlikable eagle [SIC]. And our experienced staff, they had to do-- you know, we conduct all these surveys upfront in our project delivery to identify these location, whether it's swift fox, whether it's a plant like an orchid or something like that. In the American burying beetle's case, it's hard to do that. So prior to this, and I should have mentioned that earlier, this species got downlisted. That means it's thriving.

It's, it's doing better. It's recovering. The prior procedure that we had, that we had an agreement through a, a, you know, our negotiation with Game and Park and Fish and Wildlife and Federal Highway, they were all partner of that agreement. It's almost call it catch and release. We, you know, we see that, we remove it. We believe-- and we, we had several requirements to mow our right-of-way, and that was adequate. But once that species got downlisted, obviously, given the timing and some of the key elements of our agreement with them, we had to renew it. So the existing strategy that we had, it was no longer acceptable to proceed with that. And, and then the requirements of mitigation became the, the approach that Game and Park is using, given the law and then given the requirements that they, they operate under. And so that's where the issue came in. But traditionally our right-of-way, you heard Senator Moser, he-- some of it, 80 foot, some of it, 100. On our interstate, we have 300. You know, you have the really, the roadway prism itself, which is the, the driving lanes plus if there's any shoulders and sometimes side slopes. We are required to make sure that our drivers are safe, so we create what we call a lateral clear. This is remove obstacle from our side so if anybody lose control of their vehicles, they don't run into anything. And that require constant maintenance. We sometimes have flooding areas, where we have to clean our ditches to make sure the water-- and we are responsible for that, that by statute. So therefore, we need to carry the water from point A to point B. That requires us to do routine maintenance. We remove, sometimes cedars from the back slopes because of, of-- to, to make sure that that is free of obstacles in some cases. And so, we have-- give a right-of-way per-- you know, some permits to utilities that occupy. So, as we continue our activity, which is mandated by, by the Legislature for us to, to perform, we are constantly going through that corridor. And anytime we have a, a requirement like that, that takes us or force us to go and repeat those mitigation measures every time, it's, it's almost impossible to survive. And it's unsustainable.

J. CAVANAUGH: It-- I get that part. I guess I'm just trying to wrap my mind around the-- there are certain-- I mean you're-- use an example of, kind of-- that's an extreme example, where you can't identify the creature itself, and then you're responsible to buy them 3 times the amount of land that you're disturbing. Are-- is there maybe a middle ground here, where we're saying current infrastructure is recognizing it's different, but there's still maybe instances where you're required to mitigate in a less restrictive than what is current, I guess-- is there--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

KHALIL JABER: Well-- and, and we do that, Senators. And I mentioned our NEPA assignment. I mean, the, the environmental, basically, stewardship that we go through, we have a lot of documented process that we go and evaluate, not only just a threatened endangered species, but other resources, you know, wetlands and other-- another one of those, Section 106, [INAUDIBLE]. All those different resources are part of what we do. We analyze. In some cases, we are required to go do certain mitigation. But it's the federal requirements here that requires us to whether we mitigate or, you know, you just document that and you allow that incidental take. Our survey, sometimes we go, we try to do certain things to prevent any act-- any, any adverse sort of impacts on any of these species. That's something we do upfront. It's just hard when it comes, for example, the American burying beetle. That's a hard thing to do. When it's visible, we know. We have relocated certain, you know, things that are-- we know that is-- were protected. You know, you, you go through a, a construction site and you see us out putting silt fence around certain areas. You know, those are resources that we try to prevent anybody from doing any further damage to them. And so I think it's part of our process doing that. Mitigation is a little bit challenging for us because it's a little different animal.

J. CAVANAUGH: Thank you.

BOSTELMAN: So my question is, is, are you saying it's impossible to do now? But this act has been there since 1975. So if you haven't had a problem before now, so then all of a sudden, we have a problem. Why, why is it-- why is it so-- we can't build anything now, and this act has been there since 1975. What's, what's changed?

KHALIL JABER: Senator, I appreciate the question. It is-- what changes is species come on the list and they go. I mean, right now, we have 32 en-- you know, threatened endangered species on, on the list that we're dealing with. Sixteen of those are both federal and state. The other 16 are only on the state side. So if you-- you know-- and we are hearing about additional species that will be on the list. It is the law itself, the way it's structure, it is restrictive to where both our partners in Game and Park and us are not able to figure out how to deal with it. It's-- it doesn't give us the ability for incidental take like the federal. So before the-- you know, I mentioned the American burying beetle. Before it was-- when it was on the list, before it was downlisted, we had a mechanism. We were doing our projects. There was no problems. The minute it shifted, and now we are required to mitigate for it, it is-- that's where it become a problem for us. Because it, it-- you know, we tried, in good faith, Senator.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

We worked with a private developer. We were willing to invest costs of doing business to buy credits so we can get that moving. But unfortunately, they were unable to secure easements or places like the-- in, in the range of the American burying beetle. So we are stuck, given the current conditions of the NESCA law.

BOSTELMAN: So you're stuck because local control, the local county, said no?

KHALIL JABER: Obviously it's, it's not our-- you know, that was the methodology that we did, Senator, because we wanted to buy credits. We owned a, a, a site. Just to give you a perspective of what we dealt with: By Bassett, we have 100 acre. Four projects last-- that we delayed, and a couple of them was in, in Senator Jacobson's district. Those projects, when we completed the formal consultation, we took 60 acres of that 100 acre just for that American burying beetle. That's a lot of acreage. And that's only 4 projects, roughly 40 miles, Senators. Four projects. So if I average a-- about 115 projects annually, our program is \$700 million to \$800 million. So if you can do-- you know, with all the different-- that some of our species covers the entire state. So when it is minor mitigation, you see us saying, no problem. We want to be a good steward of the environment. We have proven that in our NEPA assignment. But when it become a little bit challenging for us, we have nowhere to come but to you. That's really where we at.

BOSTELMAN: So I think you kind of answered my next question I had before. You've already answered. But the road has been built. It's been there for a long time. And now, suddenly we're coming back in to, to repair it, rebuild it, do whatever. Now, all of a sudden we have a problem with the-- and is that because of maybe-- we'll take-- the burying beetle wasn't there before. Now it's there. I mean, if, if you could build the road in the first place, how-- and you remediated then, why is it an issue now when you come back in?

KHALIL JABER: Those species weren't there, Senators. You said it. I mean, when those species are listed, we are hearing about monarch butterfly that might be listed next year. Now we have to deal with that. So if I didn't-- if I have a segment-- and those are-- depends on their range. Is it the entire state? The American burying beetles are 1/3 of the state, right in the middle. When I have a project, say, in northeast, in your district, I don't have to deal with the American burying beetle. So I go through the process. But I may be there and I have to deal with some other species that become extinct.

BOSTELMAN: But if you pass this bill, you won't. So every, every public entity, every public political subdivision, that's public power, that's county, that's roads, that's cities. It's NRDs. Anybody out there that's public no longer has to-- no long-- no longer, as you have a bill written as I read it, have to, have to go by NESAs [sic]. That seems way broad when we're talking about a specific area in the state, a specific thing, because we keep talking about this burying beetle. But now you want to open it up, all roads, all bike trails, all hiking trails, all walking trails, and any other political, political subdivision and any other city, anybody else that, that's in the public, can now-- if this bill passes as it's written, they're exempt.

KHALIL JABER: Currently, senators, all these entities that you describe, if they don't use state funds or federal funds, they don't do that. They don't go to Game and Park. They're not subject to that.

BOSTELMAN: So why are they written in the bill?

KHALIL JABER: So we do have-- I'll give you an example. One of our funding that we received through the IIJA, \$55 million worth of transportation alternative program. You mentioned trails, so I wanted to connect that. We have so many projects, program. Some of those trails are basically, they come and they want to just repair the surface of that. If it's chipped, sealed, they want to put concrete or do something different. Now, because their process-- this projects is going through us, they're no longer exempt. They can't go on their own and do that. Because they're seeking the funds, that comes through us. That's really the intent of us by bringing the political subdivision into that. Because this only applies when there are state funds, federal funds in the mix. Local funds, when they do the roads, they are not subject to that.

BOSTELMAN: OK. But as we have the bill written right now, they're all exempt, no matter whether they're doing it or not--

KHALIL JABER: They would--

BOSTELMAN: --they're all exempt.

KHALIL JABER: They would be, because we wanted to prevent any further actions with, you know, they-- a lot of our locals are applying for federal grants, Senators. And they are trying to bring some to their, to their local, so we felt like by putting that information there and given that exempt, they can, they can actually improve their

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

corridors, improve their roads by at least, you know, have a relief from doing that, that process.

BOSTELMAN: OK. And I, I just got one more question, it's just-- is an inter-- interesting comment, because I've had a bill on this. And we've been agree to disagree on this issue, but we did get the issue resolved a little bit last year. And you said the state owns the right-of-way. We had our counties have to maintain that right-of-way. Our counties, on the approaches, have to maintain that. That approach, that apron comes up, we have to remove the snow. We have to replace it. The only time we don't have to is if there's a storm, a flood comes in and washes it out, then we'll-- and we, we went-- we got that passed a couple of years ago. But if the state owns it, then the state should be taking the snow off it and the state should be repairing it and replacing it. And that's-- and you don't have to answer that. I mean, I think that's-- because you don't now, and that's on to the counties. Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. I guess I just want to be-- clarify here, that-- but as I understand this issue, really what we're asking for as it relates to the infrastructure that's being covered here, that's already owned by the state or that entity that's being covered, is they have to followup-- they have to-- they have to qualify under the federal guidelines. There's no exemption there. It's just that the state of Nebraska has a more stringent requirements, and that's ending up costing us a fair amount of money and time. I guess I'm assuming that-- I look at Highway 97 running from North Platte to-- up to Mullen, putting shoulders on a highway that never had shoulders on it before. So I'm assuming that maybe one of the projects that was impacted, because you had to widen the shoulder to be able to put the asphalt on, making that road safer. I'm just concerned that without this bill passing, I'm just looking at the costs that are being involved by the state. And I'm concerned that, as I look at highways like Highway 97, that probably doesn't get the traffic that some do, that at what point do those-- does that highway not get maintained at all because the cost gets too prohibitive? And so, that's why I'm pretty supportive of this bill, because it's infrastructure that's in place today. It's a small part of where we're at. And so, it seems to me if we have to make modifications to the bill to be able to get at least the roads exempt, we need to do something, because I am concerned that the costs are going to get out of control. And consequently, maintenance is not going to get done down the road, and that's a big deal to me. So.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

KHALIL JABER: And I would agree with you, Senators. And both Highway 97 and we were trying to do the North Platte south to Lake Maloney [SIC]. That's a good example that we had to go through the formal consultation, delayed it the whole year, 15% inflation that was going to cost, you know, basically, what the-- what, what that is as a result. And you're absolutely right. All these project we have in the 5-year, all-- nearly 55 projects that will be subject to the NESCA law and the requirement of mitigation for the American burying beetle since now it's been downlisted. So I totally agree with you.

JACOBSON: Thank you.

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

KHALIL JABER: Thank you.

BOSTELMAN: Other supporters to LB1335, please step forward. Good afternoon. Welcome.

KATIE WILSON: Hello. Hello, everybody. Good afternoon, members of the Natural Resources Committee. My name is Katie Wilson. K-a-t-i-e W-i-l-s-o-n. I'm the executive director of the Associated General Contractors of America, Nebraska Chapter, and I'm testifying today in support of LB1-- LB1335. AGC is a trade association of highway contractors who perform highway, bridge, and municipal utility infrastructure work across the state. We believe strongly in being good stewards of the environment. Our association has a standing committee that works solely on this issue, and we support reasonable and achievable environmental laws and application of environmental regulations. To that end, LB1335 strikes the right balance between the growing infrastructure needs of the state and preserving and protecting one of the things that makes our state great: our natural landscapes and its wildlife. This bill strikes the right balance by requiring that when we are building new transportation infrastructure or increasing the area of transportation infrastructure, the project will still be subject to the current process of review and mitigation for state-listed threatened and endangered species. However, after that new road is built or the roadway is expanded, the law will not require further mitigation efforts in future years when resurfacing or other maintenance work is performed on that roadway. This change should help the project delivery process which is a main concern of our members. So agency remains a committed partner with the Department of Transportation, the Governor's Office and all of you to build our infrastructure and grow the state of Nebraska without unneeded delays.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

We thank Senator Moser for introducing this important bill, and I'm happy to answer any questions you might have.

BOSTELMAN: Questions from committee members? Do you have a copy of the bill with you, by chance?

KATIE WILSON: I do.

BOSTELMAN: Page 3, line 12, the interdependent or interrelated contractor use site, could you tell me what that is?

KATIE WILSON: I will try. And--

BOSTELMAN: I mean, is there a definition--

KATIE WILSON: --I was hoping that I had a member that could be here today, but he is in South Dakota getting ready for the season. And we can talk offline, too, about all of this. So this would be like the contractor site use. There is a number of them. But this is all, you know, that-- when we bid a project, the department goes through all the environmental review. They develop their "green" papers-- we always talk about them. We bid the job according to what those state. We follow them. We sign the contract. Once we do that job, the contractor has to go out and get plant sites, borrow sites, debris sites, stockpile sites, all those things which are typically not within the right-of-way. They fall under the contractor's responsibility. However, they do fall under the project, outside of the limits, but so-- there's a-- that's a whole nother process. And, you know, NDEE gets involved, I mean, everything. So, it's, it's a bigger discussion. That's something that we will always be responsible for. They have to get permits for those plant sites. Many times, my members rent that land from farmers and just continue it on a monthly basis. And, but every time we have a new project, we have to have a new plant site permit approved. Goes through the whole process with all the state agencies and everything. So it is a whole different deal than what the DOT really goes through with all of their mitigation. It's a separate deal. And when, you know, if we-- when we do have those plant sites and we move off, the agreements are with, really with the landowner, more than-- so it's, it's deeper than I'm really can-- I can go into today. I know about this much about it.

BOSTELMAN: That's--

KATIE WILSON: You don't want me to go deep, so.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

BOSTELMAN: --that's fine. Yeah. My understanding is it's outside of the right-of-way. And in the bill itself, it then exempts from any reclamation after, after the fact. And [INAUDIBLE] if that's a permanent or temporary type thing. So, kind of where those are located, maybe we can talk afterwards.

KATIE WILSON: Yeah. And those have to do with the big capital jobs and the, you know, the preservation jobs and everything. So that, yeah, I can't really talk specific on--

BOSTELMAN: OK.

KATIE WILSON: --how that would work, so.

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

KATIE WILSON: Thank you.

BOSTELMAN: Next supporter of LB1335. Good afternoon.

LASH CHAFFIN: Good afternoon. What a wonderful afternoon it is. I'll give this committee credit for, for the afternoon. So, good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n, staff member at the League of Nebraska Municipalities. And I'd off-- like to offer the League's support for LB1335. The-- my, my notes are entirely repetitive of what prior speakers have, have talked about, but I do want to emphasize a couple things. The, the, the public is very frustrated, in that road projects, particularly high-profile major projects, take so long. I mean, literally, they can take years from, from their inception to their completion. And in addition to this, this state law and, and the, the federal law that somewhat mirrors it, there are numerous environmental laws that, that state, the cities, the counties need to comply with. And, and anything that we can do to make our laws more consistent with the federal laws will, will shave some time off that, that process. And I, I think that's something that's important to, to the people who build the roads. It's something that's important to the public. But-- so I think-- don't forget, on all of these road construction issues, time, time is very, very important and it's, it's something that people notice. That said, I will certainly answer any questions.

BOSTELMAN: Questions from committee members? Seeing none-- oh, Senator Cavanaugh.

J. CAVANAUGH: Thank you. Chairman. Thanks for being here, Mr. Chaffin. So the League-- I guess I'm trying to figure, figure out-- so the cities have to-- under this burying, burying beetle situation, have cities interacted with this, where they've had to buy three times the land that they're disturbing or repairing?

LASH CHAFFIN: Oh, boy. OK. There's a, there's a long answer to that. And I'll, I'll-- someday, we can discuss, but there's a short answer, too. As--

J. CAVANAUGH: You pick.

LASH CHAFFIN: --I'll, I'll pick the short answer. Yeah. The, the complexity of when the various laws kick in is a science of and in itself, because there's so many funding silos, and each silo has different requirements. I'm not sure if, if the cities themselves, and I would have to defer to the Department of Transportation, have run into the burrowing [SIC] beetle issue, but there are cities that have had to do environmental mitigation that, that sometimes involves purchase of property. Now, it may not have been from this law. There are other laws that kick in that require, that require purchases of, of property. So I don't always know. I-- I'm not sure I, I can say every project might have been a little di-- it might have been the Corps of Engineers who required you to, to do mitigation. So this is not the sole source of, of mitigation requirements. But I don't know if the burrowing [SIC] beetle has come into play for cities. It might have for counties and obviously, the state. And then, then sometimes, if you're the public, you don't know how a project is being funded. You know, savvy, savvy cities and counties are good at making sure they fund the project through local sources, as opposed to the state and vice versa. I mean, there's a, there's a whole science to figuring out how to fund the project itself.

J. CAVANAUGH: But you're here in favor of a bill that you're saying would lift some restrictions off of municipalities.

LASH CHAFFIN: Potentially, yes.

J. CAVANAUGH: Potentially.

LASH CHAFFIN: Yes.

J. CAVANAUGH: So you're not-- there's not like a specific example you're thinking of. You're not thinking, OK, this bill will make our lives easier in "X" way. You're just saying we want our lives to be easier.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

LASH CHAFFIN: Yes. That, that-- that's a very accurate, accurate assessment. Yes.

J. CAVANAUGH: Gotcha. Not a very compelling one though.

LASH CHAFFIN: Well, you came up with it.

J. CAVANAUGH: I know. All right. OK. Thanks.

LASH CHAFFIN: Thank you.

BOSTELMAN: Seeing no other questions, thank you. Next supporter of LB1335. Good afternoon.

ELAINE MENZEL: Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. For the record, my name is Elaine Menzel. That's E-l-a-i-n-e M-e-n-z-e-l. I'm here today on behalf of the Nebraska Association of County Officials in support of LB1335. For those of you who were in Revenue the other day, I'm going to essentially say Mr. Chaffin has testified a good deal of what I would have said on behalf of counties. And so for that reason, I don't want to take up your time repeating those comments, but just suggest that I would be willing to attempt to answer any questions if you have them.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you. Chairman. OK. Ms. Menzel, thanks for being here. Do you have-- are there any specific examples where counties have run into this, that this would make your lives easier?

ELAINE MENZEL: I haven't specifically under this act. I am aware of at the federal level, that, for instance, I put together the county board handbook and they had asked for that legislation or that act to be specifically referenced in there, because there were counties dealing with situations related to that, that were delaying some of their process-- projects, as well as the cost associated, which would piggyback with some of the provisions within the act that Senator Moser has brought to your attention. And with that, if you don't mind, I would like to express appreciation to Senator Moser for introducing this legislation as well as prioritizing it. I failed to do that.

J. CAVANAUGH: That's all right. You can use my time to thank Senator Moser.

ELAINE MENZEL: I appreciate it.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

J. CAVANAUGH: I'll always like to thank Senator Moser, even when I disagree with him. So I-- OK, just to clar-- put a point on it, so you're saying counties have run into this, this particular problem?

ELAINE MENZEL: With respect to, particularly under the federal act, I'm aware of. So, I don't know whether the Nebraska act came into play specifically, as Mr. Chaffin indicated, they can piggyback or you know, overlap to some degree, perhaps.

J. CAVANAUGH: OK. So-- and--

ELAINE MENZEL: And, and this was some time ago when I looked into that act specifically. So with respect to specifics, I've not talked to anybody recently.

J. CAVANAUGH: OK. OK. So, too, I guess, then, to put a point on it, we are not sure if we do pass this bill whether it will affect the counties at all.

ELAINE MENZEL: Well, and with that said, I'll also mention that, we would have liked to have a surveyor here, but she was unable to be here, for perhaps the specific ramifications associated with this. But I can verify that when our legislative committee discussed this, that she indicated it would be helpful. And if I, if I-- well, I believe I'm-- well, no, I know I'm correct because I helped them do so. Comments were submitted on behalf of another county board chair, indicating that it would be helpful. That individual is from Brown County, so. So.

J. CAVANAUGH: All right. Thank, thank you.

BOSTELMAN: As it's written, I-- just kind of a followup on it's-- may be redundant to a question that Senator Cavanaugh already asked. I would say that as the bill is written now, would apply to county highways and county gravel roads, any county road that would be that this would tend-- this would apply to. Would you agree?

ELAINE MENZEL: I, I believe that's correct. Yes.

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

ELAINE MENZEL: Thank you so much for your time.

BOSTELMAN: Other supporters, please step forward. Good afternoon.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

THOMAS SHAFER: Good afternoon, Councilman [SIC] Bostelman, members of the Natural Resources Committee. I am Thomas Shafer, T-h-o-m-a-s S-h-a-f-e-r, assistant director of transportation for the city of Lincoln. I'm here to testify in support of LB1335. It's undeniable that our state highways, county roads, and city streets are the lifelines of our transportation infrastructure. The safety and efficiency of the transportation network are paramount to the quality of life, livability, and economic prosperity of our state. The provisions outlined in this bill offer a promising pathway for the Nebraska Department of Transportation, counties and municipalities to execute their-- execute their programs and projects in a more streamlined, time-- timely, and cost effective manner. By potentially expediting processes, reducing costs, this Legislature holds the potential to significantly benefit our state's infrastructure development. Crucially, this bill strikes a delicate balance between advancing the primary purpose of our transportation systems right-of-way and preserving the vital conservation interests. Limiting exemptions to the current existing widths ensure we cater both to the needs of the traveling public and boost the economy. Therefore, we ask for your support of LB1335. Thank you, again, for the opportunity to provide testimony. I'd be happy to respond to any questions.

BOSTELMAN: What species does Lincoln deal with that are-- endangered of the 16-state that we have?

THOMAS SHAFER: I believe like we said, the-- Khalil said there was new ones coming on all the time. We do deal with a bat rec-- most recently, which has affected how we get to move forward with removing trees that have grown up in our right-of-way.

BOSTELMAN: So does the city of Lincoln support the conservation of state-licensed species that use the right-of-way?

THOMAS SHAFER: We, we do support that. We do have an active use of or practice of working with that. We would just like to have the ability to have more tools in our tool box to deal with the projects.

BOSTELMAN: And I believe-- yeah, and I believe this is, this is just with existing roadways or right-of-way-- or existing, not new ones. So if you were going to build a new road, you would still have to go through [INAUDIBLE].

THOMAS SHAFER: Oh yes. If we build a new road, yes. We would.

BOSTELMAN: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

THOMAS SHAFER: Absolutely.

BOSTELMAN: All right. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thanks for being here, Mr. Shafer. OK, so you're saying that if we do pass this, that it will affect Lincoln?

THOMAS SHAFER: Yes. It will affect us not only when we do come across the species like this that we have to deal with, but right now, every project, even though the city of Lincoln probably doesn't have impacts, we have to fill out paperwork. We have to do surveys to prove that this, that or the other thing is not in our area, and we have to have the Game and Parks take time out of their day to look at our paperwork and approve it and send it back. So, it is my belief that we will be allowing people to work on those more critical needs than something that is less impactful or not even there.

J. CAVANAUGH: So I'm just-- that kind of blows my mind that you guys have to do all this paperwork for every right. Is this, like when you redo the streets down here, is that a project we're talking about?

THOMAS SHAFER: Absolutely.

J. CAVANAUGH: So you have to fill out, with Game and Parks, about the environmental impact for endangered species if you're going to resurface, whatever, 16th and K Street?

THOMAS SHAFER: Yes, we do.

J. CAVANAUGH: And you do a survey of that to make sure there's no--

THOMAS SHAFER: Potentially. Not always, but maybe not for here. But, if you think about places further out on the edge of, of town, like a Yankee Hill Road and 84th Street, something that's on the edge of development, then yes.

J. CAVANAUGH: Places that you made more reasonably think might have some kind of wildlife.

THOMAS SHAFER: More reasonably find out.

J. CAVANAUGH: And then you talked about the bats and the trees and the right-of-way. Like, what do you do about that? I mean--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

THOMAS SHAFER: You have to do it outside of times when they're nesting, when they're raising their young. So you have to pick different times. And so I joked with someone the other day, I think we're getting down to 1 day that we can cut trees down.

J. CAVANAUGH: OK. So it limits when you cut them down, not that you can cut them down.

THOMAS SHAFER: Right.

J. CAVANAUGH: OK. What's the day?

THOMAS SHAFER: Like, I think it's December 23. I think it's about December 23 now, between the migratory birds and the bats.

J. CAVANAUGH: I'm, I'm no fan of bats. I understand they serve a function, but not a fan.

JACOBSON: So is that a national holiday for bats, or what's--

THOMAS SHAFER: I don't know if it's a national holiday or not. I'm a fan of bats only because they eat lots and lots of mosquitoes.

J. CAVANAUGH: Yeah, they, they serve a purpose. I just had a few in my house, so I'm not a fan of that. Thank you.

BOSTELMAN: Seeing no other questions, thank you for testimony.

THOMAS SHAFER: Thank you.

BOSTELMAN: Other supporters of LB1335? Anyone else like to testify in support? Seeing none, anyone like to testify in opposition to LB1335? Good afternoon.

KRISTAL STONER: Good afternoon, Senator Bostelman. My name is Kristal Stoner. I'm the executive director for Audubon Great Plains. My name is spelled K-r-i-s-t-a-l S-t-o-n-e-r, and I'm here on behalf of the 12,000 members of Audubon Great Plains that are in the state of Nebraska, and we are opposed to LB1335. So this is a regional office of the National Audubon Society. It's a conservation organization focused on birds, their conservation, and we work to bring awareness to the public about the environmental impacts, how those changes impact birds, natural resources, our economy and communities. So for LB1335, the proposed changes to the Nebraska Endangered-- Nongame Endangered Species Conservation Act, known as NESCA, there are moments in there where they are vague and shortsighted. I understand that it's

trying to figure out a way to streamline and consolidate some of the rules between the federal Endangered Species Act and the state one, but there's moments in time, some of which, which have come up already, that are causing for-- that are a cause for concern. I think the other thing to keep in mind is this was put in place a very long time ago, back in the '70s, and the idea was that these species that we know are declining are of intrinsic value. And so as we always-- it's always a very difficult thing to debate, in terms of what is more valuable, our roads and the cost of that versus these species, should they no longer exist. But NESCA is not new. The Nebraska Game and Parks Commission has been working with DOT for decades on a variety of processes that has worked well, point made, up until this moment in time. When I looked into it, when we look between the differences between the federal and the state to find out how many projects have, in fact, been impacted because there was the state-listed species impacts, there's 2 that was brought to my attention in the last 30 years. So the one was the Columbus bypass, back in 2000. And that's when there were small, white lady sick-- slipper orchids that were in the road right-of-way, so measures were taken to move those out of the way. The second one was the Heartland Expressway in 2014, and there were swift fox known to be using those roads right-of-ways. So there was 2 incidences where that was the case, from the information that I have. The things that I want to bring up is the extreme-- extremely broad definition of exempted party has, has already come up. I also wanted to bring up the interrelated and interdependent contractor site use, as in Section 9(b). It's vague, it would cause confusion, and I think it would increase red tape because it would essentially slice a project into different components. Also, in Section 5 (2)(a) as written, what it does is it makes it optional for a project proponent to restore that habitat back when instead, it should be a requirement. If, as a part of this construction, as a part of the road right-of-way, they destroy habitat that is needed for threatened and endangered species, they should be required to put it back. The way it's raised right now makes it, makes it sound like it was be their option to consult with the Nebraska Game and Parks in terms of technical assistance. I'm struck by, as we considered a debate between the differences between federal and state, the issue of an incidental take is something that I think could be considered. That is something that is involved in the federal version of the Endangered Species Act, but it's not an option that is available in the state law. So while I understand this is trying to really streamline those road projects that are already in existence, I don't know that the way that this is written is going about it in the right way and it achieves the goal

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

that we're trying to achieve. I see I'm out of time, so thank you for consideration of my testimony.

BOSTELMAN: Thank you for your testimony. Questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here, Ms. Stoner. And the Heartland Expressway is-- where is that? Is that in Lincoln or Omaha? I don't know.

KRISTAL STONER: It isn't-- it is not here. I don't know that I could tell you exactly where it is from.

J. CAVANAUGH: These guys seem to know.

KRISTAL STONER: Yeah, they seem to know. Actually, they do.

J. CAVANAUGH: OK. So I appreciate the, the kind of specific pointing out here, but, you know, hearing from everybody that testified before, about essentially we have a regulation that may potent-- prevent us from building some critical infrastructure. And so, the-- we've already kind of made this bargain, where we're saying some amount of infrastructure and infringing on the natural environment is necessary just for our existence.

KRISTAL STONER: Right.

J. CAVANAUGH: And we're-- we've created the Environmental Protection Act and others, including this, to try to balance those 2 competitions. It, it-- to me, what I'm hearing is the balance is a little out of whack, and it's become almost too cumbersome to the point of not manageable. So I guess my question is, is there a space in which we can give the Department of Transportation and apparently, the city of Lincoln some more options for how to deal with bats and other things [INAUDIBLE].

KRISTAL STONER: And-- excellent--

J. CAVANAUGH: To just loose-- loosen this up without going quite to the extreme that this bill might do.

KRISTAL STONER: Right. And that's, and that's why I bring up the concept of incidental take. So as they brought up American burying beetle and trying to mitigate that, that is still a federally-listed species. So although downgraded from endangered to threatened, it changes the rules that are trying to figure that out. Federally, they

have that option of an incidental take permit. So they go through, they do a habitat protection plan. There's additional processes in place by the federal law where they can move forward with a project, and that's not something that's available within NESCA as currently written. So we could talk about specific instances, different species, but that is a tool that's been in place for a long time under ESA. It's not in NESCA. So I bring that up because there are other things that we could look at besides specifically the way this is written. As this is written, I think it's trying to say once you build a road, there's road right-of-way, we should be able to maintain and continue to main-- maintain those in perpetuity. Valid point. The counter point is you do have species in some future that is going to move into that road right of-- right-of-way, potentially. So that would be the counterargument to that. There's other ways that you can talk about and address that.

J. CAVANAUGH: And so, the incidental take, you're saying that, that is something if we wanted to pursue that, that is a different change in statute we would need to make to the state statute.

KRISTAL STONER: I would say that, yes, that's a whole different thing to be looking into. That's not mentioned at all in this legislation.

J. CAVANAUGH: And if that were something that we were interested in or pursuing, would that be-- would you have similar objections or is that something you would be OK with?

KRISTAL STONER: That is something I would be OK with.

J. CAVANAUGH: OK. All right. Thank you.

KRISTAL STONER: OK. And I would say in addition to, there were some specific language that we've discussed at several different testimony that I brought up that are of a concern.

J. CAVANAUGH: In your-- you had-- wait. I'm sorry. You had other specific things you wanted to talk-- that were in your--

KRISTAL STONER: That were in my testimony.

J. CAVANAUGH: --in your testimony, aside from incidental take.

KRISTAL STONER: Exactly.

J. CAVANAUGH: Well, just, I guess, to circle back to that, I think Senator Bostelman did hit on the exemption party and the-- I can't

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

remember what it was called, the contractor site part. Did you have anything--

KRISTAL STONER: The contractor site part.

J. CAVANAUGH: --you wanted to add to the contractor site part?

KRISTAL STONER: No. I think, I think we've talked about it. All I would add is that, you know, even by the testimony we've heard, that that can grow, it can change, the way it's written. It doesn't put any bounds on it. So it could become a much more significant problem than one would reasonably assume at this moment in time. So I think if something like that, to me, isn't flagged, we would want to put some bounds around what that exactly means or define it more succinctly, as opposed to the way it is right now.

J. CAVANAUGH: OK. Thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. I think, Ms. Stoner, I, I guess my question to you would be, you stated in your testimony that, that in fact, in the past 30 years, while thousands of transportation projects have moved forward, only 2 were determined to have potential negative impacts.

KRISTAL STONER: Um-hum.

JACOBSON: Thousands of projects, that have taken all of the time and the energy to fill out all the paperwork, delay all the projects, for 2.

KRISTAL STONER: Yes. I would--

JACOBSON: Does that seem balanced to you?

KRISTAL STONER: It-- when I said 2, it's also specifically for those that are not also federally listed, so it would be a different response if we were talking about those that were also federally listed. The point that I was looking at making here was just that when we, when we separate out the state act from the federal act, most of the time they're working in concert because once it's federally listed, it's also state listed. And so, there's often cooperation between the Game and Parks, the U.S. Fish and Wildlife Service, in terms of any mitigation that is done for sites along the way. So most

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

of the time, it's in concert. So this is only looking specifically for those that are state-listed.

JACOBSON: And that's what we're talking about in this bill.

KRISTAL STONER: And that's what we're talking about there. Right.

JACOBSON: In this bill, we're talking about state projects and the, and the requirements of NESCA and 2 projects.

KRISTAL STONER: Um-hum. Right.

JACOBSON: 2.

KRISTAL STONER: 2.

JACOBSON: Thank you.

KRISTAL STONER: Um-hum.

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

KRISTAL STONER: Thank you.

BOSTELMAN: Next opponent to LB1335. Good afternoon. Welcome.

JOHN COUGHER: Hi. Mr. Chairperson, members of the committee, my name is John Cougher, J-o-h-n C-o-u-g-h-e-r, and I'm with the Nature Conservancy in Nebraska. And I am offering testimony opposing LB1335 as it is written, similar to the previous testifier. LB1335 proposes to change the, the Nebraska Nongame and Endangered Species Conservation Act, NESCA, to establish exemption for review of existing transportation infrastructure by the Nebraska Game and Park Commission. This change would effectively remove the commission's responsibility for ensuring protection of state-listed species on existing transportation infrastructure. The commission provides necessary environmental expertise to ensure state projects do not have adverse impacts on threatened and endangered species, and advises on necessary mitigation that may occur at any stage of a project's lifecycle, not just at inception. Section 4 of the bill states that each public road, street, and highway, including any associated right-of-way, is a man-made structure and is not critical habitat for purposes of NESCA. The commission and the Nebraska Department of Transportation have a long history of advancing transportation projects, while providing conservation value through the establishment of pollinator, migratory bird, and other animal habitat in such

right-of-ways. Indeed, some of the last remaining habitat for several state-listed species is found in these right-of-ways. With this bill, upwards of 120,000 acres and NDOT-controlled right-of-ways could experience near-term degradation, negating habitat mitigation already completed under the guidance of the commission. Further, it's in the economic interests in the state-- of the State of Nebraska to continue to support actions that prevent threatened species from moving to an endangered listing, which can be much more costly to mitigate. It would also introduce confusion into a well-established and long-serving collaboration between the commission and NDOT. This decade is commonly described as the, the critical decade to act for wildlife and climate, and we, as an organization, are concerned about actions that could hasten the demise of T&E species, as we could by exempting such large tract-- large tracts of public land from habitat considerations. Therefore, we respectfully ask the committee to oppose LB1335 as it is currently written.

BOSTELMAN: Thank you for your testimony. I guess what some of the-- found interesting, what you were talking about is the paragraph in here, where you have a long-standing history of advancing projects while providing conservation value through the establishment of pollinators, migratory birds and other animal habitat in such right-of-ways. This committee, actually, a few years ago, said in statute, in-- for our counties and our roadways, when you can, actually mow those, because it provides critical habitat for nesting birds. So it's once in the spring and once in the fall. Do you remember that?

JOHN COUGHER: I wasn't living here at the time, Senator. No, sir.

BOSTELMAN: You weren't here then. Oh. OK. Well, we did that for the purpose, specific purpose of our right-of-ways do provide, as you, as you were testifying here, some critical habitat that we don't have anywhere else. So--

JOHN COUGHER: Correct. Correct.

BOSTELMAN: --I appreciate that.

JOHN COUGHER: Correct. Thank you. Yeah. The, the main concern, I, I, I completely understand the concerns of, of, of Department of Transportation. And as a road user myself, I understand that. But similar to what the previous testifier said, I just don't think the language in this bill touches on the problem at hand. Instead, I see the, the, the, the reclassification of right-of-ways as man-made as

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

potentially causing more habitat issues, and, and not currently, addressing the issue that was trying to be addressed through NDOT.

BOSTELMAN: So eliminating that language, changing that language would have a different process to which they move through this, similar to maybe what the federal side does. Would that help to alleviate some of your concerns?

JOHN COUGHER: Boy, I am-- I don't have rulemaking as part of my job. You know, I have different implementation, so-- and it's a question for those involved in rulemaking. But, I think that-- I would say that that would probably satisfy me and the organization.

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

JOHN COUGHER: All right. Thank you, Senators.

BOSTELMAN: Next opponent to LB1335. Anyone else like to testify in opposition? Against?

KIMBERLY STUHR: I'm, I'm against.

BOSTELMAN: Yeah. Just-- one of you just have a seat in the front row there, and the other one come on up and testify.

CINDY VEYS: There was no room in the front though, so I had to--

BOSTELMAN: I understand. You're good. Good afternoon and welcome.

CINDY VEYS: Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. My name is Cindy Veys, C-i-n-d-y V-e-y-s, and I am testifying in opposition to the proposed changes to LB1335, as a citizen of Nebraska. Prior to my retirement, I was the manager of NDOT's Environmental Section for 11 years, and a member of the environmental staff for an additional 8 years. NDOT has, for decades, practiced consideration of environmental concerns, starting with project conception through the design process, construction, and maintenance. Project environmental compatibility was even included as part of NDOT's mission statement. NDOT and the Game and Parks Commission have also cooperated as state agencies for decades to avoid and minimize negative impacts to threatened and endangered species. This has been done while NDOT has provided safe and well-maintained transportation infrastructure for the traveling public of Nebraska. I do not understand why these changes are proposed and are suddenly a priority. You bet-- you brought that up. How can exempting NDOT from

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

the Nongame and Endangered Species Conservation Act be in the public interest of Nebraska? NDOT has the ability to include consideration of Nebraska's state and federally-listed threatened and endangered species in their planning activities, so they are not harmed while they accomplish their projects and activities. Everyone in this room has witnessed how road construction can tear up the ground. Imagine grading that would run it through a habitat for a threatened or endangered species of plant or animal, destroying it. Exempting NDOT and any other state agency that wishes to claim a transportation infrastructure nexus from consulting under NESCA is a mistake that could have negative repercussions to our treasured natural resources. Even the Game and Parks Commission could very easily say their work is what's best for the environment, and they are not exempted from review under NESCA. I believe that no state agency should be exempted from this law. In fact, they should strive to ensure that actions they approve, fund, or carry out are done in a way that considers impacts to the natural environment and public trust resources. I believe that there's a better solution to the problems with NESCA, as some of the people have brought up. As it is currently codified, NESCA currently is not perfectly suited to assist in and expedite environmental reviews and mitigations for harmful impacts. Change to the law is needed to accom-- accommodate the needs of both NDOT and Game and Parks. Here's the problem as I see it. NESCA, in its present form, is at odds with the federal Endangered Species Act in one very important aspect. The federal act allows for incidental take and NESCA does not. We don't have the time here to educate everyone on the complexities of this issue, but I want to make you aware that it is the primary problem that puts our state at odds with the federal law. It causes confusion and project delays where incidental take of a listed species of plant or animal might occur. If NESCA were to finally address this inconsistency with federal law, much of the consternation of NDOT and its contractor partners could be allayed. I have a handout that I've provided you, that would include-- excuse me. I have provided a handout I would like included in the record, which provides suggested edits to NESCA, that would improve it by aligning more closely with the federal Endangered Species Act. Our state act is currently more conservative in the federal act-- than the federal act, by not allowing incidental take. Thank you for allowing me this opportunity to address the committee. Please consider not moving this bill to the floor until it is given further consideration to better align with the public interest of Nebraska's citizens.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Senator Cavanaugh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

J. CAVANAUGH: Thank you, Chairman. Thank you, Ms. Veys. And how long did you say you worked for NDOT?

CINDY VEYS: Well, 11 years as the environmental manager, 8 years as a member of the environmental staff, so that's 18 years. And then I-- the remainder of my 40-year career was working with municipalities, counties, airports, etcetera, on environmental projects.

J. CAVANAUGH: So you had to deal with this particular section of statute--

CINDY VEYS: Oh, yes.

J. CAVANAUGH: --quite a bit?

CINDY VEYS: Yes, sir.

J. CAVANAUGH: And you were able to build the roads under that-- those sort of changes?

CINDY VEYS: Yes, sir. Yes. But you know, and it has been brought up that the-- it, it can cause project delays, which can cause, you know, increased costs. But the way the law is written right now, with the lack of incidental take on the state side, it's going to-- it causes delays to occur more and more. If that was included, for example, if we were going through an area where the American burying beetle is at, if we're, if we're going to go through that habitat, right now, under the state law, a contractor or NDOT would not be able to take those beetles, meaning dig them up, you know? However, in the end, they could be fined, under NESCA, by the Game and Parks Commission for doing so. But it would expedite the process and the contracting process, and, and ease the life of the contractors, if, when they're digging it up, they know they're in the habitat. They've already done some mitigation. According to the federal government, they require some of that mitigation. It's not just the state. But as they're digging it up, if they dig up 7 beetles, they may have-- they would have a take permit. And what that means is a take permit, and that's defined in the handout that I just gave you and it's very well defined, it, it has to do with take of a species which is incidental. In other words, not the intention of the project. And so, those-- that would allow that to happen and the project to move forward. This is missing in NESCA right now. It is not proposed in the, in the new language. And it, it would expedite things and it would make life easier for NDOT.

J. CAVANAUGH: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

BOSTELMAN: Yeah. My understanding this comes up about, about-- from Cherry County. We're talking specifically about the burying beetle. It's a-- Lincoln has--

CINDY VEYS: Yeah. Lincoln County. It's more Lincoln County.

BOSTELMAN: --it's a specific issue that, that brought this out.

CINDY VEYS: Yeah. And the-- and it's both federally and state-listed.

BOSTELMAN: So in, in your experience, did you ever run into anything like this before, where you had a, I mean--

CINDY VEYS: Oh.

BOSTELMAN: --in your years, I mean, what did--

CINDY VEYS: Many times.

BOSTELMAN: --and you did what to overcome? Just work through it?

CINDY VEYS: Well, ahead of time, we would identify, oh, this is going to be in the area. Is our project going to affect that? If it may affect that prod-- that species, then we would work with Game and Parks, and if it's federally listed, Fish and Wildlife. We would work with them to say, OK, what can we do to minimize the harm here? And if it's of-- there's only a small area of the state that's considered critical habitat for the whooping crane. The rest of this habitat we're talking about, I kept hearing people call it critical habitat. It's really not critical habitat. It's, it's habitat of the endangered or threatened species, but it's not at the high level of what is called critical habitat, where the species is in jeopardy of no longer surviving. So keep that in mind. I'm sorry. I don't think-- know if I answered your question.

BOSTELMAN: No you're fine. You're fine. No, it's informative. Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. I, I guess I just want to reiterate again and con-- confirm that if you-- we're talking about projects where roads already exist in this case.

CINDY VEYS: OK.

JACOBSON: And we're talking about maintaining those or potentially widening them. And I'm just thinking about those projects that would

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

have been started in 2019 and got held up in just the millions of dollars and cost escalation that's occurred now, to finish those projects, and what that cost the taxpayers of Nebraska on roadways that the state already owns. We're just trying to maintain the roads that are already there. I mean, I'm just trying to figure out cost/benefit analysis here and how that makes sense. If we're building brand new roads, everything's on the table.

CINDY VEYS: Um-hum.

JACOBSON: We're just trying to maintain existing right-of-way. I, I mean, I'm just trying to balance that in terms of what you've seen over your years with the department and how, how many dollars that's cost the taxpayers in Nebraska.

CINDY VEYS: Sometimes I've, I've always felt like that's overstated. I can say that now that I'm just a citizen. I, I felt like it was overstated. And, and they really never showed how, how the additional consultation directly related to the rising cost of the project. And so, I, I can't really answer that.

JACOBSON: Well, I guess I would just ask you this. I'm guessing if I ask the contractors, come up here and tell me what it costs to build a mile of highway today versus what it cost in 2019, we wouldn't want to know the answer to that question.

CINDY VEYS: No.

JACOBSON: That's what I'm referring to.

CINDY VEYS: Yeah. No, the price of materials has gone way up.

JACOBSON: That's my point. So time is money, is my point.

CINDY VEYS: Yes, it is. That-- I agree with that, sir. What I am proposing here with this incidental take is something that would allow project to move-- to be expedited. So, I don't think that removing NDOT from the environmental reviews is prudent in the public interest.

JACOBSON: Thank you.

BOSTELMAN: Seeing no other questions, thank you for testimony.

CINDY VEYS: Welcome.

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Natural Resources Committee February 21, 2024

BOSTELMAN: Next opponent. Anyone else like to testify? Good afternoon. Welcome.

KIMBERLY STUHR: Hello. My name is Kimberly Stuhr, K-i-m-b-e-r-l-y S-t-u-h-r. I'm here today on behalf of the Nebraska Wildlife Federation and opposed to LB13-- LB1335. The Endangered Species Act celebrated 50 years of success in 2023. This is thanks to the coordinated efforts of federal, state, local and tribal governments, along with conservation organizations and private citizens. The act has been credited with saving 99% of the species it protects from extinction. We, or more specifically, U.S. poly-- policymakers in the state are the chief stewards for wildlife within our borders, and the Nebraska Nongame and Endangered Species Conservation Act is our state's governing document. The legislative intent of this law is to conserve species of wildlife and wild plants for human enjoyment, scientific purposes, and to ensure their per-- perpetuation as viable components of their ecosystems. Five factors are considered when determining if a species needs protection under the federal Endangered Species Act. And I assume it's the same for the state act. One of them is decline of the species, habitat or range. Another is overutilization or exploitation of the species. A, a third is inadequacy of existing regulatory mechanisms or other natural man-made factors affecting its continued existence. There is no allowance for economic impact or politics in the way the law is written. If data shows that the species is in trouble, it needs to be listed. This is based on the best available science and without reference to possible economic or other such impacts. Exemptions for state agencies could set a dangerous precedent for other entities seeking, seeking to bypass conservation regulations. State agencies should be held to the same standards as other entities, entities to ensure these interests are upheld. Disregards to the scientific foundation it is based on could undermine these protections leading to further declines in vulnerable species. Aside from the beauty and environmental benefits of protecting the habitat of listed species, at-risk species often, often play key roles in maintaining ecosystem balance. The loss of a species can disrupt important ecosystem functions, producing adverse effects that may not be apparent for decades. Each plant or animal is an integral thread in the web of life that helps pollinate our food crops, prevent erosion, purify water, store carbon, protect us from storm surges, and provide countless other ecosystem service that greatly benefit people. Please consider the negative impacts of this bill as written. Exempting agencies, specifically to save red tape and taxpayer money, disregards the science in place, successes thus far, and could cause the state more, more expense in terms of recovery

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

efforts or possible litigation. Additionally, the bill conflicts with one of the very reasons the Endangered Species Act was created, which is the failure of other regulations or measures to protect a species. Perhaps most importantly, it sets a dangerous precedent for other exemptions in, exemptions in the future. Thank you.

BOSTELMAN: Thank you for your testimony. Questions from committee members? Seeing none, thank you for your testimony. We'll let Senator Hughes introduce herself, since she's--

HUGHES: I snuck in.

BOSTELMAN: --been sitting with us for a little while.

HUGHES: Jana Hughes, District 24, Seward, York, Polk, and a little bit of Butler County, is what I represent.

BOSTELMAN: Thank you very much.

HUGHES: Thank you.

BOSTELMAN: Con-- continue with opponents to LB1335. Please step forward. Good afternoon. Welcome.

KAI ADAMS: Good afternoon. My name is Kai Adams, K-a-i A-d-a-m-s. I'm here on behalf of myself. I did not originally intend on speaking today. I don't-- I can't say I know much about this. What I do know is the environment is important. It is our future. If we destroy our environment on behalf of erasing red tape and paperwork, that is not good. I'm a nurse-- nursing assistant in 3 states going on 6, and a medication aide in 1, going on 3. So I had my fair share of unnecessary extra paperwork. And in the end, it saves lives. Saving 1 life is important. My parents taught me to know that our environment is important. Life is sacred. And as humans, we have the ability to protect the environment. It is our honor, privilege, and duty to protect our environment because if we do not protect it, our children will have nothing. We cannot destroy this environment just to make things easier. And as a taxpayer, I am more than happy to pay more in taxes. I would love to pay more in taxes if it means that our world is better for everyone. Personally, I'm impacted by wildlife in my neighborhood. I can't go on walks with my dog at night. There's a coyote and there's foxes. I get home from work at midnight, so from midnight to 4 a.m. is my only leisure time. That is the only time I can walk my dog. I have to put her in the car and drive somewhere to walk my dog. And I am more than happy to do that because it is good for our environment. I don't want to throw that fox or coyote out. It

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Natural Resources Committee February 21, 2024

was their home before it was mine. It will be their home after it is mine. Thank you.

BOSTELMAN: Thank you for your testimony. Questions from committee members? Seeing none, thank you very much. Next opponent to LB1335. Anyone else like to speak against the bill? Anyone like to speak in the neutral capacity? Good afternoon. Welcome.

AL DAVIS: Afternoon, Senator Bostelman, members of the Natural Resources Committee. My name is Al Davis, A-l D-a-v-i-s, and I'm testifying here today as the registered lobbyist on behalf of the Nebraska chapter of the Sierra Club, in the neutral capacity on LB1335. It is our understanding that LB1335 does not intend to circumvent the federal Endangered Species Act or the Nebraska equivalent, as it relates to road construction, repair overlays and the like, or the renovation of trails, streets, county roads and other means of transportation, but that the bill seeks to exempt governing body from a requirement that a project be reevaluated and mitigated whenever restoration or reconstruction is anticipated. It is also my understanding that making any material change in the road, such as widening it, would require a full assessment under the federal and Nebraska Endangered Species Act, and those assurances are contingent on our testimony in the neutral capacity. The Nebraska chapter of the Sierra Club recognizes that duplication of services via acquiring additional permits for a project which has already been in existence is costly and time consuming, but we also fear that projects may be classified as a preexisting project and therefore exempt when a material change is actually being proposed in order to expedite a project. Therefore, we would suggest that more specific language be inserted into the bill to clearly delineate what is permitted and what is excluded so that the average individual could easily assess whether a project was following guidelines. For example, filling of wetlands near a roadway is a material change and should go through the proper rigorous protocols before a permit is issued. This bill remains silent on res-- on renovation of private roads. Are private roads, blue-sign subdivision roads for an example, subject to this bill? If not, what protections are available for habitat degradation when private roads seek expansion in metropolitan areas? With its priority status, the bill is destined to be debated on the floor of the Legislature, and we would encourage this committee to have a spirited discussion with other members, at that time, to lay down a record of what is permitted under LB1335 and what is excluded. I thought Ms. Stoner sug-- had a number of really great suggestions. And I, I-- as I sat and listened to the testimony, I thought maybe I'm, maybe I'm making a mistake in testifying neutral. But I do understand why we're going this

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

direction. One solution that I might throw out there, if there's an impasse that we can't move forward. Two is that we maybe have an interim study next summer, to try to do a little more digging into the facts of this and see if we can all get on the same page. So thank you.

BOSTELMAN: Thank you for your testimony. Questions from committee? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. And thank you, Mr. Davis, for your testimony today. And, and I appreciate your approach to this. I guess, specifically, you've talked about maybe making changes. Do you have any specific changes that are concerning you, in terms of how the bill is written, or what you would specifically suggest be added to this bill to change it?

AL DAVIS: I think the language is a little bit confusing and a, and a rewrite would be helpful with the bill. And I made a reference to that. You know, I, I-- when I read through it, I was confused about it. And I, I called Senator Moser's LA to, to visit with him and find out, you know, what was really the goal of the bill. So that's why I'm suggesting that there be a lot of discussion that goes on here, in your committee, and also on the floor of the Legislature, so that we know what this is intended to do.

JACOBSON: And, and I appreciate that. I guess my concern is, is that, obviously, it's easy to like, kick the can down the road, but I think we want to get something done. And so we're having the hearing today to hear from people specifically what their concerns are. And, and that's what I'm interested in from testifiers, is if you have a concern, what is it? What do we need to fix it? I think we've clearly identified that there's a problem here, and it's costing lots of money to deal with it, and that the statutes are more restrictive here in Nebraska than it is federally. So the real question is, what do we need to do to make this bill palatable? So if you have any suggestions, I'd be interested in hearing what they might be after the hearing.

AL DAVIS: Let, let me, let me think about it and I'll get back to you on that, Senator.

JACOBSON: Perfect. Thank you.

AL DAVIS: Thank you.

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

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

AL DAVIS: Thank you.

BOSTELMAN: Other testifiers in the neutral capacity? Good afternoon. Welcome, Director.

TIMOTHY MCCOY: Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. My name is Timothy McCoy, and I'm the director of the Nebraska Game and Parks Commission at our headquarters office on 2020-- 2200 North 33rd Street, Lincoln. I'm here today for the Nebraska Game and Parks Commission testifying neutral on this bill. I would just share with you, as I said before, our agency and ND-- DOT and other transportation entities have worked together as partners with NESCA to move, move-- continue to move projects forward for the last 40 years, including agreements that we've worked on with NDOT, to make sure we provide efficiency and try to decrease workload. Just to be clear, and, and this is probably not for the committee, some for the audience. The changes in LB1335 will only apply, really, to the state-listed species, which is 16 of the 32 species that are listed in Nebraska. You know, the, the other, the other 16 are federally listed. So they're-- you know, the compliance with that will still have to happen from NDOT. And as an agency that is tasked with NNECSA, we, you know, we, we looked through the bill. We, we did-- we do have some potential comments on language on the bill. You know, the, the discussion, the questions on independent and interrelated contractor use sites have been brought up frequently. I would agree that maybe a way to define that would be really helpful, in a bill going forward. We'd also request, maybe, some consideration for some requirement that exempted parties try to minimize and avoid impacts to these species, to the extent, to the extent practicable. You know, not, not a requirement, but just to go through that process. And also, that they would, you know, hopefully be able to do restoration that would benefit those species in the long run. And, and the other, the other part of that-- we would like to see, as an agency, perhaps, at least a mandatory requirement to consult with us on those projects so that we can help identify those opportunities to avoid and minimize impacts at the beginning, and to-- the opportunity to do restoration, knowing that the exempt party will still be the final decider on what they do. There were several-- several folks have mentioned an alternative approach that could be to make our act more likely mirror the federal act, make it less restrictive, allow those permits. The other thing that I think if we do something like that, that we should really think about is to make it clear in the lang-- in the act when we do that, that for those dual-listed species, that, that the agency would coordinate with those federal, federal entities, but abide by-- we would be required to abide by the federal opinion, opinion and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

incidental state-- take statement. So that would prevent and, you know, with those changes, it would prevent that concern that there's some doubling up or some additional mitigation that our agency would be required to have. We want it, that consistency, if you go that route, would be really important.

BOSTELMAN: Thank you for your testimony. Questions. So why are we here, from your perspective?

TIMOTHY McCOY: Well, I think-- I, I, I think, from my perspective, we're here because there was a, there was a, a, a long amount of work that was being done, looking into biological opinion, really trying to address the, the American burying beetle issue in the Sandhill, which is a both state and federal listed species. And I, and I think-- I actually think that Khalil here, laid it out. There, there was a plan, and they were looking towards using a mitigation bank. That mitigation bank fell through. So that creates a big challenge. And the other thing that I will share is we talked about this originally with NDOT. There are some things about this, especially for state-listed species, that are attractive to me, as a person, because we want to-- we've worked great with NDOT. They've done a lot of great activities in their right-of-way to try to benefit these species. And if we can find a way that we can encourage good behavior and not create a future, a future penalty for providing that conservation benefit to those species, I think it's something we should talk about and think about in the long term, sort of that, you know, kind of proactive conservation, but working together and looking forward.

BOSTELMAN: And so if you go in, say they go in and resurface a road, because that's what we're talking about, I believe part of it is resurfacing a road, and/or they widen the shoulder work-- do, do some shoulder work or whatever, and they disturb the right-of-way. Right now, they have no obligation. I think as the, as the bill is written, no obligation to go back in and restore that. Is that--.

TIMOTHY McCOY: I--

BOSTELMAN: --am I reading that right or not?

TIMOTHY McCOY: --I believe that that's the way it is. And what we were proposing was, was maybe not, not making it a statutory requirement, but also just to identify that they will take the, take the efforts to make that restoration when it's practicable.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

BOSTELMAN: So the, the act itself or the Nongame Endangered Species Act, does it specifically spell out all the things that must be done, or do you have regs in addition to this?

TIMOTHY McCOY: We have regs in addition to it, but we're very limited because the act is very limiting on the types of activities that, you know, essentially, to say that an activity is not going to have an impact the way the act is written, we have to be able to identify that it's having a long-term beneficial impact to the species. We don't have the incidental take provisions that the federal act has. And that-- that's going to continue to create problems, I, I think, in the future, although this would sort of separate out potentially those issues where we wouldn't be consulting on those federally-related projects.

BOSTELMAN: So it sounds like perhaps there could be an amendment to this bill to work out some of the issues that's been brought up today. And do you think that's po-- do you-- from your perspective, do you think that's possible?

TIMOTHY McCOY: I, I think it is. And we'd be glad to work with the committee, with NDOT, anybody else, to try and figure out a clear path forward that everybody-- that really works. That's, that's what we have to have, because I think there is, there is a need to do something right now.

BOSTELMAN: Because as we heard before on this, that it's impossible to do their work now. That's what was testified earlier. Do you agree with that?

TIMOTHY McCOY: I think it's more challenging. And it's, and it's doing-- it's causing delays and it's driving up costs. Very clear from the conversations that we've had with NDOT.

BOSTELMAN: Did we change, in statute, a couple of years ago, where NDEE was going to pick up some of the things on the environmental side. How does this impact that? Do you know? If at all?

TIMOTHY McCOY: Well, NDEE, any other state agency under the act that, that is approving a project that has a potential impact, we, we consult with that state agency on their action. We don't directly consult-- actually, political subdivisions in that consultation are excluded. So, so it sort-- this is a bit of a change from that.

BOSTELMAN: OK. Senator Jacobson.

JACOBSON: I, I just have 1 question, I guess, for you, since you're here. I'm trying to wrap my head around the burying beetle. And obviously, that's in the heart of my district, and for anybody that's spent any time in the Sandhills. Why is it the burying beetles just love the roads, but they can't use any of the other vast thousands of acres in the Sandhills to live? I mean, what's so attractive about the roads?

TIMOTHY McCOY: Well, I think part of the-- part of the attractiveness of roads is that American burying beetles, when they come out of the ground, their sole purpose typically is to, to mate. And when they mate, they find a dead-- some small dead animal. And then they bury it, and they lay their, they lay their eggs in it. And so, it's part of their life cycle. So there are other arenas and other areas out in the Sandhills where I'm sure there are burying beetles. And we are the core of-- we probably have the biggest intact range of, of burying-- American burying beetle habitat in the whole country. Oklahoma used to have a larger population and their population is really going down, so they were, you know, pretty much, I would use my words, "written off" by the Fish and Wildlife Service a couple of years ago. So that's creating probably some more pressure on the Sandhills of Nebraska, but it's a really great landscape. So, you know, I think they can thrive there.

JACOBSON: I-- I'm just thinking we're in the middle of calving season. I'm guessing there are a lot of ranches that are donating a few calves, not on purpose, to the burying beetles out in those ranches. And they can stay there for free. Nobody's going to disturb it.

TIMOTHY McCOY: Yeah. Well, yeah. Yeah. They-- I don't think they would handle a calf very well. Smaller.

JACOBSON: Well, they got to think bigger.

TIMOTHY McCOY: Yeah. We don't want burying beetles that big.

BOSTELMAN: Senator Hughes.

HUGHES: So I think I have a solution. So what I'm hearing is it's roadkill on the roads. We need to bring back Brewer's bounty bill. And that will eliminate the roadkill, because it does count for roadkill. And that will eliminate the roadkill, therefore, less burying beetles. Done. Boom. Mic drop.

BOSTELMAN: OK. I do, I do, I do have-- I have 1 followup-- 1 final question, I think.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

TIMOTHY McCOY: Yeah.

BOSTELMAN: So on the, the 16 state-- endangered--

TIMOTHY McCOY: State--

BOSTELMAN: --threatened wildlife--

TIMOTHY McCOY: --listed species.

BOSTELMAN: --and there's 16 federal. Is there any-- will those 16 state become a federal? Is there a process for that? Do we see that at some point happening? Or is there--

TIMOTHY McCOY: Typic-- typically--

BOSTELMAN: --clear demarcation line?

TIMOTHY McCOY: --there is a, there is a demarcation because typically, the federal goes through their whole nationwide analysis regarding the status of the species and what the risks are. The, the federal-- the, the, the U.S. Fish and Wildlife Service also gets regularly litigated against, by entities requesting the listing of a, a species that they have a certain period, period of time to work through that. States normally provide a lot of information to that, to try and affect that decision. We would like to utilize-- I-- my view is we're better off if we can handle our state species and make sure they're secure and increase their populations to avoid that, because federal listings are-- they create a lot of burden.

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

TIMOTHY McCOY: Thank you.

BOSTELMAN: Any other neutral testifiers? Last call for neutral testifiers. Seeing none, Senator Moser, you're welcome to close. We-- as, as you're coming up-- sorry. I'll interrupt you real fast. As you're, as you're coming up, we do have 7 proponent, 6 opponent comments online. Senator Moser.

MOSER: Thank you so much, members of the committee and Senator Bostelman. Appreciate your giving us your time for a, a discussion that's been long and detailed. I appreciate the consideration. Our office will continue to work with parties who came to testify the bill-- for the bill or against the bill, including the Department of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

Transportation and Game and Parks, in order to try to strike an appropriate balance between maintaining environmental stewardship and the ability to deliver important transportation projects across our state. Having said that, I don't believe that the state laws should be more restrictive than federal laws. We understand the environmental concerns that some people hold. And remember that the NDOT has assumed the role of the federal government on many aspects of environmental decision-making, and has dedicated professional staff to handle environmental mon-- monitoring. This conversation has shown that there are still some things we may need to address, but I'm committed to improving this bill. We will still work on these concerns after the hearing, and if there's additional language necessary, we will bring that to the committee. I would ask that the committee support LB1335 and advance the bill to General File. A couple comments about some of the testimony. One of the testifiers said that there's important habitat in the right-of-- rights-of-way. That's kind of an illustration of the problem there. We've already set aside 20, 40, 60, 80 acres as offset for taking of the road. But now, they're coming back and saying, well, this road is now, since man created it, habitat that we need to offset again. So then we'd have to come back, and the only way to remediate that is to buy more property and put it into a perpetual easement. And, you know, that compounds the problem. The federal regulations are always our backstop. We can't be looser with the law than what the federal requires. But the Nebraska regulations are stricter and create more drag on the system. You know, when you have a 2, or in some cases, 3 to 1 offset, if you take 10 acres for a road, you have to have 20 or 30 acres in remediation. You know, that-- I think that's excessive. So I'd be glad to answer any questions. If you have any questions or objections, I'd love to have you bring them up.

BOSTELMAN: Seeing no other comments, that will close our hearing. Thank you very much.

MOSER: All right. Thank you. Thank you.

BOSTELMAN: That will end our hearing on LB1335. We're going to take about a 5-minute break, folks. We're going to take a break right now. We'll come back in about-- quarter till. Thank you.

[BREAK]

JACOBSON: Senator Hansen.

BOSTELMAN: We're good to go whenever you are.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

JACOBSON: Getting-- you're getting the word.

BOSTELMAN: Back on? All right. So we'll get started now with our next bill. Our next bill is LB1247. Senator Ben Hansen, welcome to Natural Resources.

HANSEN: Thank you. I don't think I've ever been in front of Natural Resources before. I don't think I have.

HUGHES: It's the best committee.

HANSEN: Yeah. And I bring you a great bill which I'm sure you've had no opposition--

HUGHES: None.

HANSEN: --emails from so. All right. Good afternoon, Chairman Bostelman and members of Natural Resources Committee. I'm senator Ben Hansen, that's B-e-n H-a-n-s-e-n, and I represent Legislative District 16. Nebraska is ranked the 18th highest state for one of the oldest recreational pastimes known to man. With almost a tenth of Nebraskans holding a hunting license, over 185,000 people hunt each year. If you're involved in any conversation with hunters across the state, you will quickly find out that hunting land is limited. And as big farmers buy out the little guys, hunting options are rapidly declining. Lands available to hunters are scarce, yet the hunting community continues to grow. Hunter education instructors certify up to 8,000 students each year. These kids are continuing family legacies and traditions, expanding the awareness of conservation, a dedication for outdoor recreation and respect for the sport. These families are part of Nebraska's heritage; and in considering the challenges they face in gaining access to land, I introduced LB1247. The Nebraska Board of Education Lands and Funds has around 1.25 million acres of land. This land is owned by the trust for the exclusive support of its beneficiaries. The board directs its income, more than \$40 million a year, towards Nebraska's K-12 public schools. The land has a variety of uses, as it is leased out to individuals who use it for things like ag, energy and recreation. Since its beginning, the land owned by the Board of Educational Lands and Funds is under the board's control and management. The contracts made with lessees are written and regulated heavily with agreements as to how the land is to be used. The land does not become the renters' land. It still belongs to the state. The decisions are made by the board and the money goes to the public school system, a state-run system. Decisions are made with the public schools' best interest in mind. The Legislature has added duties to

the board's list of responsibilities from time to time, and I simply would like to add one more. With LB1247, the Board of Educational Lands and Funds will make a new regulation for contracts with lessees that requires any land with a public road access point that isn't being used for wind energy, solar energy or recreation purposes to be made available for hunting, not fishing or trapping. Only walk-in access hunting, keeping vehicles off the property. The land would be shown on the Nebraska Game and Parks website, and hunters would be required to obtain an access stamp before hunting. These stamps would cost somewhere between \$25 and \$100. If a hunter has a written agreement with a tenant, they would be exempt from the need to purchase an access stamp. Just like some renters must allow for solar or wind energy on the land they rent, new, new contracts-- let me repeat that-- new contracts after October of 2024 will require these tenants to allow for hunting on their leased land. The revenue from the access stamp would pay from the Nebraska Game and Parks Commission to run the program and also bring funds in for public schools. The Board of Educational Land and Funds would continue to promulgate and adopt the rules and regulations, keeping in mind public safety and land uses. Hunting laws and liability agreements that are already in place for livestock, personal property and hunting around buildings on the land would also apply to the lands mentioned in LB1247. You have most likely received emails from current lessees. LB1247 would not affect them. The competition for land is fierce and if they don't desire to renew their contract, they wouldn't have to. I believe someone else will. Remember, we aren't talking about the renter's personal land. We are talking about public land that must be used in a way that benefits our students through the funds made. The land will be rented and the money will be given to schools. Only now around 1 million acres would be made available for respected citizens and generations to come. When I say respected, I do believe that the hunting community includes some of the most considerate and thankful individuals from Nebraska lands and the outdoors. I've met with both the Nebraska Game and Parks Commission and the Board of Educational Land and Funds. They have provided valuable insight that has helped me shape the content of LB1247. While I don't see a path forward this year, I do think that this concept is valid and it is one that needs more discussion. I have heard from hunters, outfitters, landowners, families, farmers, and many more who agree that Nebraska needs to further explore the options of public lands being used for recreational purposes and more specifically, hunting, as I'm sure many of you heard throughout the years of being in the Legislature, the lack of access for hunting. Before I close, I wanted to mention, I think there might be somebody after me to also talk about this is the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

Platte River Access Program. I'm going to repeat what I mentioned in my opening is that I do not see a path forward this year, so I'm not expecting or anticipating the committee to exec on it this year. This is opening the conversation about how we get more access to hunting land in Nebraska, and I think this is a great way of doing it. The Platte River Access program has a good way that might alleviate some of the concerns of some emails you saw. They actually have online land, I believe along the Platte River, that hunters can access that you sign up online and you reserve your day and your spot so that people know who's going to be on there and what times so we're not seeing multiple people on somebody's land. And then the people who actually lease the land have some idea when people are going to be out there and how many. So I thought that was kind of interesting aspect and maybe something we can incorporate into this bill. One of the things that we did do-- so this isn't completely out of the norm, there are actually 20 other states who do something similar to this. They use their public school lands for recreational use, hunting, fishing, trapping. Colorado actually has 100,000 acres and actually they're making it a goal now pretty soon to make it a million acres. We did mirror some of this or a lot of what we're doing about the rules and regulations of this program after what the Game and Parks already does with their public access land. They actually have an atlas that shows all the public land that they have available. And there's actually rules and regulations about how you can access that land, what you can do on it. You can't drive your cars on it. Right now, we already have laws on the books that say you can't hunt within 200 yards of cattle. You know, when it comes to liability issues, if a hunter injures themselves on somebody's land that they-- that they lease, it's on the hunter. It's not the person who owns the land. So a lot of that already is in law if it's not in this bill already. And so I just want to kind of give a little calmness to some of the emails that maybe you heard that a lot of that is already addressed in this bill. I just didn't want to respond to 1,000 emails so I thought I would just say it right now. And that's something we can also address next year, so hopefully that will alleviate some of the concerns as well. So I'll be open, open for any questions and I will stay to close as well. Thank you.

BOSTELMAN: Thank you. And questions from committee members? Senator Fredrickson.

FREDRICKSON: Thank you, Chair Bostelman. Thank you, Senator Hansen, for being here, for bringing this bill. I appreciate your shout-out to the emails. I think you win the record for most emails to the Natural Resources Committee this year so.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

HANSEN: Well, if it's-- it's some committee every year that I break a record for, so that's good.

FREDRICKSON: So fair. So one of the things you mentioned in your opening, which I was kind of curious to learn a little bit more about, you mentioned, that there is a process for like a stamp process for permissions to-- can you elaborate a little bit more on that? Because what I heard was that, that a certain-- an individual who might be utilizing these lands for hunting would first require some type of agreement with the-- is that-- did I understand that correctly?

HANSEN: Well, yeah. So you get your hunting license, right, currently. This would be in addition to that. So if you say I already have land I want to hunt on, I don't need to access any of this kind-- any of these other lands, so I'm not going to pay the extra fee. But if you actually want to go onto some of these lands, you pay an extra fee that the Game and Parks will set. I have in the bill the range that they can do. I believe it was \$25 to \$50--

FREDRICKSON: OK.

HANSEN: --for in-state and then out of state is a little bit higher, up near \$125 I believe.

FREDRICKSON: \$50 to \$100, yeah.

HANSEN: Yeah. And so they set-- they'll set the rates for that. And so then you just get-- looks like a stamp on your hunting license. That, that gives you permission then to go on this land. And then a lot of the information will be on like a GIS map plotted out which ones you can. If it doesn't have road access, it won't be on the map I think so.

FREDRICKSON: So-- and so that stamp would be not for a specific land, but that would be all of these lands--

HANSEN: All lands, yep.

FREDRICKSON: --that you'd have to to get that for access to all of those.

HANSEN: Yep.

FREDRICKSON: Understood. All right. Thank you.

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Natural Resources Committee February 21, 2024

HANSEN: I think this would be a great way to get people from eastern Nebraska out to western Nebraska. I mean, you're talking about tourism. You're talking about sales tax, talking about lodging. I think it's a good way to get people out there and actually explore and see what our, our state is like outside the East Coast of Nebraska.

FREDRICKSON: East Coast.

HANSEN: Yeah.

BOSTELMAN: Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you, Senator Hansen, for bringing this. My experience as a farmer is yes, it does become the lessee's land. When they sign the lease, you have certain inherent rights. And I can't imagine that the state's lease is any different than if I lease from my neighbor or the banker or somebody like that. And my understanding also is on these leases that if I lease BELF land, I can sell the hunting rights off of that to an interested party. And that actually happens quite a bit in my neighborhood in southeast Nebraska. Do you see anything wrong with just, just the, the, the people that are willing to lease this land out, letting them just, just do it that way? Because I can tell you what the fear is, is if I've got livestock, the last thing I want is not knowing who's out there and what-- you know, are they driving a truck through there? You know, what are they hunting? You know, are they going to stampede cattle through a fence? And, and I think that's where a lot of the concerns were at and they're valid concerns.

HANSEN: Yes, they are valid concerns. And I'm not going to deny those. I think maybe one of the reasons that we can address this is through that Platte River Valley program so then you actually know when someone's going to be out there and who it's going to be possibly or how many. I do put a lot more faith maybe in our hunters than I heard in our emails. I, I do believe in their faith and good conscience and responsibility as good hunters to know not to go near cattle when you're hunting. Like I hunted my entire life and anybody I've hunted with has known that. You see cattle on land, don't go near there. Don't hunt on that land at all, even if you have permission to, right? And so I still have a lot of faith in our hunters that they're going to respect the laws of Nebraska and also laws of this bill. You can't be driving a car on there. You can't be trashing the property, can't be shooting--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

BRANDT: But I do feel there needs to be a component to this that if somebody wants to hunt they have to check in with the lessee so that that individual can tell them, you know, they may not have seen the cattle out there, or there may be some other obstruction out there-- there may be an old well-- so at least that individual knows you're the guy that's out there hunting. And if something were to happen, then he could follow up.

HANSEN: Yep. And that might be again where that Platte River program comes in. And we can-- I don't know if there's a way I can discuss with Game and Parks if there's a way to specify on land when they have, like on a GIS map if there's one that you're going to apply for and want to hunt on if the potential for cattle would be on there and might also be maybe part of the map.

BRANDT: Yeah. And it just kind of seems to me, at least in my neighborhood, a lot of the hunters are pheasant hunters. They're going to want to hunt cropland that may or may not have cattle on it. There could be a very high percentage here where people would be more than willing to let people hunt. So--

HANSEN: Yeah.

BRANDT: --good luck.

HANSEN: Thanks.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Thank you, Senator Hansen, for being here. And I'm going to kind of echo some of Senator Brandt's concerns. I, you know, I've grown up on a farm. We've had hunters all through the years. I would agree with you. Most hunters are respectful. Unfortunately, some of them are not. And some of them are going to do things you wouldn't want done. One of the challenges that I see, besides the cattle, it gets back again to the crops. You know, if you're out in a cornfield, it's pheasant hunting or probably more importantly, deer season and you're out harvesting corn and all of a sudden somebody's out there with a rifle shooting a deer. I mean, it is a problem. I mean, that there's crop damage. There's potential risks of you being working in the field, particularly when you're dealing with deer hunting. When it comes to pheasant hunting, you know, the issue there is crop damage. And that's where concerns come in as well. It would seem to me that, that to do-- I appreciate the concerns of trying to make more land available. I always kind of like

the carrot approach rather than the stick approach, because clearly the, the, the school leases are going to go down in rate, it seems to me that if this-- if this is going to be just automatically allowed. It would seem to me that if we could allow or perhaps offer some kind of encouragement, or even if it was required under the lease that they would have to lease this out or allow access, but it would be controlled access where there is permission from a landowner, and they know who's going to be there, when they're going to be there, because you've got everything from gates being left open, cattle getting out, to crop damage, to risk of the operator in the field and, and those are real concerns. And, and I'm, I'm an avid hunter. I want everyone to have access to available land. But I would hope that we could rework this bill to where it's more of a carrot rather than a stick, where it's aut--instead of automatic permission for everyone, that there be a way that they could be encouraged that they would lease it out. Maybe there's a slight break in the rent if you agree to so many days a year that you would allow that hunting. It just feels better. I think you'd probably get better support.

HANSEN: Probably. And, you know, I'm thinking-- I'm trying to think of the landowners as well as training the hunters in Nebraska, right?

JACOBSON: Right.

HANSEN: And so it's trying to bridge that gap a little bit. Right? And so the rub is kind of also, you know, like some of the concerns that you mentioned. The permission comes when they sign the lease, when they sign a new lease. If you're not giving permission, you're not going to lease the land. I have a feeling, according, especially the way the market is playing right now, that there's going to be somebody right behind you to lease that land. And I don't-- and I think it's hard to tell the amount of revenue we're going to get from the increased stamps for this versus maybe some potential loss from loss of revenue from a lease. Hard to tell right now. It could be a wash. It could be the same. But sometimes, you know, these are some things I'm going to try to play out over the interim and bring this bill again.

JACOBSON: And I would suggest that when you get out into the Sandhills and you start looking at some of that land there, you've got ranches that are contiguous to this.

HANSEN: Electric [INAUDIBLE]

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

JACOBSON: And that tenant's been there for decades. OK. So to take the attitude that, well, somebody else will rent it, that's, that's a little problematic. [INAUDIBLE]

HANSEN: 20 other states have done it. And so I, I, I feel--

JACOBSON: No, I understand that, but--

HANSEN: --and, and they're all around us actually. And so I feel--

JACOBSON: --but they don't have Sandhills of Nebraska. The Sandhills of Nebraska is pretty unique.

HANSEN: True.

JACOBSON: And that's what I'm referring to is the Sandhills is a problem, simply because of where some of those school land leases are at. And you've got ranchers that own the land contiguous to that. That's where we start running into, I think, to some of the problems out there. So just something to think about.

HANSEN: Those are some of the things I need to address and kind of work on--

JACOBSON: Yeah, thank you.

HANSEN: --as we, you know, as we can kind of find some way to get hunters to get more access to land in some fashion.

JACOBSON: Thank you.

BOSTELMAN: Senator Moser.

MOSER: So how long are the leases between the schools and the lessors of the property? Is it a year-to-year lease or multiyear?

HANSEN: There'll be somebody behind me to better answer that question.

MOSER: OK.

HANSEN: I, I don't know if they're varied or if it's 4 years or if it's 8 years. I'm a little unsure.

MOSER: OK.

HANSEN: Yeah.

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Natural Resources Committee February 21, 2024

MOSER: Thank you.

BOSTELMAN: Senator Hughes.

HUGHES: Thank you, Chair Bostelman. Thanks for coming, Senator Hansen. Sorry, I'm giggling by my question, but you'll see when I ask it. So my biggest concern with all of this, I mean, in addition to if you've got-- you're leasing out with cattle and that which you're clearly going to work on addressing. I look at it from the revenue that the schools get from this property that is leased out, and I think that needs to be maxed to the cat as much as we can, because a lot of schools is on property tax, which we all know that. So my question is if the lease goes down, because now we're allowing hunters on and you're not going to get as much per acre, I just want to make sure that this doesn't force our schools to have to go to the pink postcard meeting because of--

HANSEN: Oh.

HUGHES: --the less revenue.

HANSEN: That's a good question.

HUGHES: And I know in the state I believe it's around \$150 a student is about what this brings. I would like to see that doubled or tripled if we could, but I don't want it-- to see it go down.

HANSEN: Yeah. That I can't answer for you, right, currently. That's something I hope to get back to you on.

HUGHES: OK. Thank you.

HANSEN: That's my political answer.

HUGHES: That's a good one.

JACOBSON: That's a great one.

HANSEN: Yeah.

BOSTELMAN: Seeing no other questions, we wait-- will you be back for closing?

HANSEN: Yes, sir.

BOSTELMAN: All right. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

HANSEN: Thank you.

BOSTELMAN: Anyone like to testify in support of LB1247? Supporters for the bill. Anyone testify in opposition to LB1247? Don't all jump at once. Come on.

MOSER: Take 2 or 3 of them at once.

BOSTELMAN: Welcome back.

AL DAVIS: Thank you, Senator Bostelman, members of the Natural Resources Committee. You all know who I am, Al Davis, A-l D-a-v-i-s. I'm here today as the registered lobbyist for the Independent Cattlemen of Nebraska in opposition to LB1247 and also representing Nebraska Farmers Union today. LB1247 attempts to broaden the availability of hunting ground by stripping tenants of our state school land of their rights to control access to property under their control through a contractual relationship with the state of Nebraska via the Board of Educational Lands and Funds. Landowners who lease property are entitled to the right of quiet enjoyment, much as residential tenants have rights which prevent a landlord from interfering in a rental unit, as long as the terms of the contract are being met by both parties. The bill strips the right away from landowners who have the misfortune of leasing a piece of school land, which abuts a public road. Renting school land is not an inexpensive endeavor. As most of you know, I own a ranch in Hyannis, Nebraska, in southwest Cherry County. I do not lease school land, but I have several neighbors who do, and we computed the cost of that rangeland and the amount of revenue paid to the state for the lease. My neighbor pays nearly \$20 per acre annually for his lease. It is a typical rangeland, which can run roughly 60 pairs to a 640 acres for 5 months and assuming moisture is typical. That computes to roughly \$213 for a season of grazing per pair. Remember, the tenant is also responsible for upkeep on the fences and wells located on the property, which is an additional expense. In almost every case, the cost of upkeep and rent means the school land barely make-- breaks even in an average year. In addition, when the lease expires, there are often significant premiums paid for the lease as other individuals bid up the price. With this bill, we now are giving hunters the right to enter property under lease pursuant as they see fit. Only trouble can emerge from a bill like this. Some years ago, I leased Game and Parks land along a county road for summer grazing. One morning as we were checking our cows, we noticed one of our cows in distress. When we got closer to her, we could see that she had been shot and one of her eyes had been blown out, along with much of the bone surrounding the eye socket. We

did take her to the vet and tried to save her, but the injury was too great to heal and we had to put her down. I've never rented pasture from Game and Parks since, although what happened wasn't their fault. When the public is allowed unfettered entrance, stupid people doing stupid things cannot be ignored. The bill opens up potential liability to the landowners, threatens the safety of their livestock via gates left open, an overeager shooter killing a cow or the landowner, or trespassing with a vehicle. Sometimes that happens often on private-- on private land. Buck fever often produces irrational behavior. LB1247 is a terrible bill which imposes unreasonable demands on individuals who are enriching the state through the lease of that school land. This body should consider what a boycott would do to state coffers if individuals stopped bidding on school land. A bill like LB1247 could produce a backlash, which the state could not resolve easily. We strongly recommend that this bill be immediately killed and send a signal to Nebraska's landowners and lessees that the committee respects the rights of tenants to quiet enjoyment of their property. Thank you.

BOSTELMAN: Thank you for your testimony. Questions? Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Thank you, Mr. Davis, for being here. And I can't think of anybody better to answer this question, but. All right, let's take your neighbor, your ranch, where the school leased land is located. How would they get there off the highway?

AL DAVIS: Some, some is on the highway. A lot of it is off, miles off the road and there isn't public access to it. So that would be, according to this bill, would be excluded. It would be only the property that abuts the public road. So that creates a difference between quality of grazing.

JACOBSON: But what's considered a public road and for out in the Sandhills?

AL DAVIS: Well, that's a good question, Senator.

JACOBSON: I mean, I guess my thought is, is that--

AL DAVIS: Many, many trails would be considered a public road, yes. They would.

JACOBSON: We need to take-- people need to take a tour of the Sandhills. We'll show them some of the public roads sometime. But I guess my point would be that school lease of your neighbors, I'm

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Natural Resources Committee February 21, 2024

assuming your ranch and your neighbor's ranch surround that school lease for the most part.

AL DAVIS: Yes. I mean, I have several different ways where I abut. I bought my school land 25 years ago.

JACOBSON: Yeah.

AL DAVIS: But my neighbors didn't. So we have several places where we abut school land.

JACOBSON: And so although is that fenced separately or where you leased it for years, are you maintaining fences?

AL DAVIS: So a lot of state school land, not all of it but a lot of it doesn't have a fence around it. It's part of some bigger tract. You know, me and my family were leasing-- before we bought it, we had been leasing that school land for a hundred years. So it was just part of the ranch.

JACOBSON: Right. And, and I would say if you look at most of the people you know and the people you represent, how many of them in the Sandhills have leased that-- those school leases for decades?

AL DAVIS: 80%, 90%, somewhere in that neighborhood.

JACOBSON: And it's because it lays right there with their--

AL DAVIS: It's right--

JACOBSON: --with their deeded land.

AL DAVIS: It's right. You know, part of ours was, was half a mile away from the house. And so it was an integral part of the ranch.

JACOBSON: Right. Right.

AL DAVIS: And that's the way it is on almost every ranch.

JACOBSON: Right.

AL DAVIS: I've got-- I've got another piece that's 160 acres right in the middle of, of pasture. So that would have to be re-fenced, lot of access issues.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

JACOBSON: And unless you go up to South Dakota, it's kind of hard to find a state in the Midwest here that has terrain like the Sandhills and an environment like the Nebraska Sandhills.

AL DAVIS: That's, that's true. And, you know, Senator Hansen made some good points. But as I pointed this story out about the cow specifically for a reason. That, that when you have access by people who aren't familiar with the area, there are a lot of liability questions that can arise. And a lot of-- I think a lot of temper would show up, and you don't know what the ramifications of that might be.

JACOBSON: Right. Thank you.

AL DAVIS: So you're going on dangerous ground if you move this bill.

BOSTELMAN: Senator Moser.

MOSER: So some years back, I was on a delivery way out in the boonies somewhere, and they were trying to describe, you know, where they lived. And I finally found them, but only because some other neighbor redirected me to go the right way. But I had to open and close numerous gates to get there. It wasn't just, you know, drive down Road 7 to Road H and turn left. I mean, it was drive to this gate, you open and close that one and you go. So it's, it's not easy to find your way. Did you know the answer to that question that I asked Senator Hansen? Are those school leases bid upon every year or, or can you rent them for multiple years?

AL DAVIS: So I think someone will probably follow to, to clarify that. But they used to be 10 years. They're many times 10 years. I think it somewhat depends on the amount of interest in the property. But no, they're probably not going to be 1 year because the tenant has to pay for the improvements so.

MOSER: If they have irrigation or a well or something.

AL DAVIS: If you got a-- if you got a well on that and if you put that well up, you know, you could-- that's your property. I mean, the well isn't but the tower and the--

MOSER: Tank and the--

AL DAVIS: Yes.

MOSER: OK. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

AL DAVIS: I would-- I would say this, toom Senator, you know, some of these roads that we talked about, the trails that aren't really roads. And, you know, we had the UPS guy bringing a package to our house one time because the road showed that it went on. So in the, you know, 6:00 in the afternoon or in the evening UPS called wondering where he was. And we're like, we don't know. Well, we found out where he was. He was 3 miles west of our house stuck in the Sandhills. So, you know, these are things that could happen.

MOSER: Did you charge him to pull him out?

AL DAVIS: We called the tow truck.

MOSER: Oh.

AL DAVIS: We didn't pull him out. Thank you

BOSTELMAN: Seeing no other questions, thank you for your testimony. Next opponent, please.

BRENDA MASEK: Hello. Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. My name is Brenda Masek, B-r-e-n-d-a M-a-s-e-k, and I am a rancher from Purdum, Nebraska. I am here today to testify on behalf of the Nebraska Cattlemen, the Nebraska Ag Leaders Working Group, and of course, myself, who is a lessee of 2 school sections. And I am here in opposition of LB1247. This bill would specific-- specifically impair the rights of the lessees of the Board of Education Lands. The constitution protects us from government taking of property rights without just compensation. And that is exactly what this bill would do. Our members use this land for agriculture purposes, which is this state's greatest economic engine as most-- as all of you know. Whether these leases are used for grazing or for crops, there are critical times in production that would lead to a dramatic loss of production if this coincides with, with hunting seasons. And the, the trespassing of private lands is one of the greatest concerns of lessees, which are members of all these organizations that I'm representing today. Both of my leases have acres in the interior of the section that were transferred into private ownership back in the 19 or, excuse me, the 1800s. One of the leases I have, the deeded acres and the school land are not separated by a fence due to the, the correct property management of the grassland. The fact that this bill singles out road access, school leases creates more issue. Yes. That would reduce the trespassing of some-- in some instances. But many of-- many of the homes and the shops and the driveways, working facilities, etcetera are right there,

you know, in it. You know, they either drive through it or it's really close and, and gunfire towards such facilities and public roads is not copacetic for a successful working day. The Nebraska Board of Education Lands is not like other public lands in the fact that we lessees own the improvements on the land. This includes all the fences, the wells, the tanks, the solar panels, buildings, windbreaks, etcetera. These are all personal property that the lessee owns and is on our property tax statements. Some hunters are very respectful, but unfortunately there are some that, that leave damage to infrastructure. Allowing persons to enter property without the need to require permission is careless and would be terribly a tremendous violation to the rights of these property owners and lessees. Another very important concern is wildfire. I am a firefighter on the Purdum Rural Fire Department, and we are in the same mutual aid district with Halsey National Forest. And it is rare when we get a call to assist a fire on the forest during deer season in November, it is rare if we don't get one. And almost all of these fires have been started by hunters being in restricted areas or vehicles being left along the road in dry foliage. Such fires are catastrophically damaging not only public ground that, that spreads very rapidly to private as well. The members of the Nebraska Cattlemen, the Ag Leaders Working Group, and myself as a lessee of school land urge you to vote no on LB1247. And I would be happy to answer any questions.

BOSTELMAN: Thank you for your testimony. Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Ms. Masek, glad to have you here. You're almost my constituent. Feels like you are. But given the example of the leases that you have that's in the middle of your deeded acres--

BRENDA MASEK: Yes, there's-- there are 3 40s--

JACOBSON: Right.

BRENDA MASEK: --that were deeded. And I actually called my representative on my-- in my district today, and I thought-- well, actually, he's the retired one. He's kind of the historian [INAUDIBLE]. And he's-- I thought these were-- that my grandfather had done this back in the '60s, and he says, no, these were-- these were deeded back in the 1800s and have been just purchased as the-- as the, the ranches have, have changed hands.

JACOBSON: Well, well, I'm just curious that for a lot of ranchers who have school lease land in the-- in the middle of their ranches, if you

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

chose not to re-up the lease, is, is one of your neighbors going to come and lease it out from underneath you? Or if this were in place? Or would it be possible that there's no revenue at all going to the school like to the Board of Educational Lands?

BRENDA MASEK: Well, I guess my family's been fortunate for-- since '57. Nobody has voted-- nobody has bid against us on this because of the proximity to it.

JACOBSON: And with that said, I guess my-- what I'm getting at is my assumption is collectively the ranchers in the Sandhills would probably start looking at this and saying, I don't know that we're going to play. I mean, I-- is that conceivable?

BRENDA MASEK: Yes, yes, yes. And one of your questions and comments earlier with, with Mr. Davis was we talked about how the interior ones have been sold. The road access ones, the school board of education won't sell.

JACOBSON: Right.

BRENDA MASEK: Believe me, I've tried to-- have tried to buy this one. Part of it is on the other side of the river. There is no river. There's no bridge there anymore. And-- but it would be-- it would be very catastrophic if we had people coming in there.

JACOBSON: And that's another issue for another day, which I won't get into today, but I'm asking the same question. Is it time? Is it time to convert all the remaining land to cash and invest it in the-- in the cash fund as opposed to continuing to manage these school leases? I think this is, in my own opinion, if it were me, I'd be selling it, converting it to cash, investing it. I believe part of the money's invested now from the lands that have already been sold and the other parts being generated from these leases. Given what the values of these lands have become, I have to believe that the investment returns on the up fund are better than what they're getting today. It re-- eliminates some bureaucracy, and this problem could go away too.

BRENDA MASEK: Reduce the size of government.

JACOBSON: Imagine that. Thank you.

BOSTELMAN: Other questions?

BRENDA MASEK: I could answer Senator Moser's question he asked.

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Natural Resources Committee February 21, 2024

MOSER: Sure.

BRENDA MASEK: They're anywhere from 5 to 10, depending on which district you're in.

MOSER: Do you have to bid on them?

BRENDA MASEK: Yes. Yes.

MOSER: Sealed bid or live auction?

BRENDA MASEK: It's, it's live. It's, it's, I mean, you have to show up with a, a cashier's check for the starting price. And then it has gotten, I would say, little western sometimes the ones-- not, not, not for mine. But I've been present when it got-- when it got kind of ugly on the bids when somebody was wanting something from somebody else.

MOSER: Yeah. I could just see where that could cause some problems. I mean, you don't want people to come hunt on the ground that you're renting from the school because it's in the middle of your ranch. But if somebody else bought it and owned it, then who knows what they could do there? That could be a problem too.

BRENDA MASEK: Yes.

MOSER: Well, thank you. I appreciate the answer.

BOSTELMAN: OK. Thank you for your testimony. Next opponent. Good afternoon and welcome.

MERLYN NIELSEN: Good afternoon, Chairman Bostelman, committee members. My name is Merlyn Nielsen, M-e-r-l-y-n N-i-e-l-s-e-n. My residence is a farm near Seward, but my family also has a ranch with school lands section lease in-- near Dunning. As presently written and if enacted, this bill would not affect my family because our lease does not have a public road access for hunters to walk in. Perhaps I should correct that. I don't know, Senator Jacobson. But if this was enacted, I would be very afraid that a future act of legislation could then make all school lands open for public walk-in hunting. Thus, I oppose this bill, both for those who currently have leases with public road access, as well as those who, like me, who could be affected in the future. Cattle protection and security, we've talked about fences and gates, protection of improvements. We have 2 solar wells that we put in and they'd be excellent target practice, those solar panels. And then I think about a hunter who walks in but shoots a deer about a mile from the access point, and I can easily see an unwanted vehicle

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

wanting to come in. Yes, in the heat of claiming your prize, sometimes you do things you shouldn't do that are against the law, like driving in when you weren't supposed to be with your access. Hunter statute right now, those who hold leases can grant permission to folks wishing to hunt. Now, yes, you have to grant that access. And they-- and leaseholders could even give hunters permission to bring a vehicle onto the property as needed. But under this permission, the leaseholder knows who is on the property as compared to an open access under LB1247, where the identity, identity of a hunter is not known in the event of damages. Thus, I believe we should stay with our current procedures and I urge you to not advance LB1247. Thank you to Senator Bostelman and Natural Resources Committee for letting me up here today and share my opposing position on LB1247.

BOSTELMAN: Thank you for your testimony. Questions from committee members? Senator Hughes

HUGHES: Thank you, Chair Bostelman. I really don't have a question, but thanks for coming in, District 24, Merlyn Nielsen.

MERLYN NIELSEN: You're welcome.

BOSTELMAN: Roadkill question?

HUGHES: No roadkill questions. Sorry.

MERLYN NIELSEN: If I might clarify further on the rental of leases, our current lease is 8 years. The Board of Educational Lands sets the lease price every year on that land. The, the bidding process is at the start of a new lease for the right to rent.

MOSER: For whatever rent low rent is.

MERLYN NIELSEN: Yeah, it's for the right to rent. It's not to set the price of what the rent is.

MOSER: But you factor that into your rent when you do it.

MERLYN NIELSEN: Oh sure, sure. And yes, you can be surprised with some of the bidding processes can go if you have some--

MOSER: Neighbors that want--

MERLYN NIELSEN: --neighbors that don't like each other I suppose.

MOSER: Or somebody that's mad at you about something.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

MERLYN NIELSEN: Thank you.

BOSTELMAN: Thank you for your testimony. Next opponent. Anyone else like to testify in opposition?

KELLY SUDBECK: Good afternoon, Senator-- Chairman Bostelman, members of the Natural Resources Committee. My name is Kelly Sudbeck, K-e-l-l-y S-u-d-b-e-c-k. I am the CEO and executive secretary of the Nebraska Board of Educational Lands and Funds. And I am appearing on behalf of the agency in opposition to LB1247. First, I do want to thank Senator Hansen for the discussion with me prior to introducing this bill. And as a result, there are some exceptions contained in the bill that came out of those conversations. So I do appreciate those conversations. I also appreciate his candidness today regarding the future prospects of the bill. I-- you all understand the effects this bill would have on the ground on our leases. So I would like to mention just a few things about the Board of Ed Lands and Funds, because we are unlike any other agency in the state of Nebraska. We were created by the constitution to accept from the federal government a grant of 2.9 million acres of land in trust for the support of the common schools. Now, there's a tendency of people to see our lands as state-owned public land that can be used for any purpose. But unfortunately, that's not the case. And I believe the Supreme Court summed it up about as well as anyone when they wrote, and I quote, The title of the lands is not vested in the state with all of the ordinary instances of other titles, but the title thereto was vested in the state upon an expressed trust for the support of the common schools with no right or power of the state to use, dispose of, or alienate the lands, except as allowed by the enabling act and the constitution. The state, as trustee of the lands and of the income therefrom, is required to administer the trust estate under the rules of law applicable to the trustees acting in a fiduciary capacity. The authority does confer upon the Board of Educational Lands and Funds, as it is usually called, the Legislature is powerless to take away. And finally, all lands, money or other property bequeathed or in any manner conveyed to the state for educational purposes shall be used and expended in accord with the terms of the grant, and cannot be diverted to the General Fund or other uses. So no matter how benevolent or well-meaning an alternate use of our property is, like for public hunting, our properties-- property simply cannot be used to benefit others at the cost of the support to the public schools and our beneficiaries, which are the schoolchildren of the state. Appreciate your time, and I will take any questions you may have.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

BOSTELMAN: Questions for the testifier? Where do the funds go now? My understanding when this was originally set up, each county would-- the funds would stay within that county. Does that still happen or am I mistaken?

KELLY SUDBECK: It does not. And I don't know that that was ever the case. The counties were more involved in helping us lease our properties 100 years ago or the county commissioners were in charge of that. But as far as I know, our funds always went into a general fund to support the state schools. So right now, any rent from our properties and royalties, oil and gas royalties, oh, I'm sorry, oil and gas rent, goes into what's called a temporary fund that the Department of Education has and is then distributed among the school districts of the state of Nebraska by automatic transfer into their account.

BOSTELMAN: But the funds from that lease do not go to that school where that land is.

KELLY SUDBECK: That's correct.

BOSTELMAN: It goes into a central fund and then it gets distributed to probably mostly Lincoln and Omaha?

KELLY SUDBECK: Yeah. Since it's distributed on a per capita basis, the number of children that live in the district, in the school district, it's about \$156 per child. And so any district that has a higher number of children in it will get a higher amount of money.

BOSTELMAN: OK. Thank you. Seeing no other questions, thank you very much.

KELLY SUDBECK: Senator Moser, I could answer your question about the leases.

MOSER: Yes.

KELLY SUDBECK: Statute allows us to lease property anywhere from 5 to 12 years. And so a lot of our grass leases are 8 to 10 years, depends upon the area of the state. And kind of like Senator Jacobson was talking about, if the grass section is surrounded by the same owner, that may be a 12-year lease or a 10-year lease. And so that is typically how we lease our property. The lessors will show up at public auction at the end of their lease and bid the property back in. There is such thing as called a bonus bid if someone else bids against that person. We call it a bonus bid that's paid once. Our lessors will

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

include that in the cost of their lease, of course. That is a one-time payment at the time of the auction.

MOSER: All right. Thank you.

BOSTELMAN: Thank you for your testimony.

KELLY SUDBECK: Thank you.

BOSTELMAN: Good afternoon. Welcome.

SPIKE JORDAN: Good afternoon, Senator Bostelman, Senators. My name is Spike Jordan, S-p-i-k-e J-o-r-d-a-n. My family has ranched in northern Sioux County for 6 generations. I drove 7 hours one way to testify today in opposition to LB1247. My family leases 2 parcels from BELF, and we've had that lease since long before I was born. Many of my neighbors also have school sections that we lease as well. They're all busy up there calving and taking care of livestock so they sent me down here instead. It's, it's my perception that LB1247 unfairly targets leaseholders and property taxpayers in western and central Nebraska. 31 counties in eastern Nebraska contain fewer than 10 parcels of BELF land per county, averaging about 668 acres per those 31 counties. 8 of those 31 counties have zero BELF land at all. In contrast, BELF district 4, the 36 counties in the Panhandle and most of north-central Nebraska averages 65 parcels per county. And the average acreage is 28.5 thousand acres. Lessees in western and central Nebraska pay to lease the bulk of BELF's land. We generate the bulk of the BELF's lease revenue, yet we get the least school aid from BELF in return. BELF does pay property taxes to our counties, but those funds aren't just going to schools. Those taxes pay for roads, emergency services, and other amenities that public access hunters will likely use and not pay for. The bulk of the aid is disbursed to school districts on this end of the state, leaving property taxpayers in counties like mine to make up the balance in order to educate our children. LB1247 takes an already unfair arrangement and adds insult to injury. I'd urge the senators to kill this bill in committee. And I have more to share with you, so I'd be happy to answer any questions.

BOSTELMAN: Thank you for your testimony. Thank you for coming in today.

SPIKE JORDAN: Thank you.

BOSTELMAN: Really appreciate that. Senator Fredrickson.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

FREDRICKSON: Thank you, Chair Bostelman. I just want to say thank you, Mr. Jordan, for coming in and for your 7-hour drive one way. That did not go unnoticed.

SPIKE JORDAN: I had another committee here for Government Committee.

FREDRICKSON: I was going to say, I hope you at least get to stay the evening.

SPIKE JORDAN: I have to maximize everything that I do whenever I come down here.

FREDRICKSON: Absolutely. Well, we'll certainly appreciate your engagement in the process and for taking the time to come in and share your thoughts. You mentioned you have more to share. I just want to give you an opportunity if you have briefly some additional remarks or.

SPIKE JORDAN: You bet. And it's, it's just in terms of the other 2 I alluded to, the other BELF districts. So BELF district 1 is the 26 counties stretching the southern half of the state from Missouri to Colorado. District has an average of about 18 parcels per county, roughly 6,000 acres. But that's skewed because there's more BELF land the further west you go. Accounting for the eastern 13 counties in that district, there's an average of 2 parcels per county and 436 acres. I put together a big spreadsheet and handed BELF numbers in just so that I can kind of look at it. District 2, which is the makeup of Douglas and those kind of 4 adjacent counties, there's an average of 339 acres across 4.6 parcels. And I imagine that the farmers that are paying those leases still want to be able to recoup some post-harvest use, like subleasing out a hunting to an outfitter or some other group. For, for my family, we use our school section to put bulls through all winter. We do that because we have hay yards right across the way. It's kind of inclement weather. And the other consideration that I would have is that in Sioux County, the fence lines don't always follow the section lines. So we have a pasture that is half private land. And then about halfway through there, they're never put in a cross-fence because it's real hard to build a, a 200-foot steep, butte cliff. And so it would just be a little bit challenging for us to, to rearrange some of our operations in order to accommodate this. You know, and I certainly understand that probably some of the arguments made by the sportsmen that came in here that we need to teach our young kids respect for sportsmanship and hunting. And there's certain ways that we can do that. Open up school sections to public access isn't one of them.

BOSTELMAN: OK.

FREDRICKSON: Thank you.

SPIKE JORDAN: Thank you.

BOSTELMAN: Senator Moser.

MOSER: So just out of curiosity, did you get a foot and a half of snow like we did in eastern Nebraska here a couple of weeks ago?

SPIKE JORDAN: No, but I worked-- I worked part time for the village of Harrison last winter, and we were under I think about 4 or 5 feet from mid-November until May 1. So we've gotten a lot of-- a lot of snow this past year. It was kind of nice to see it spread a little-- spread around the state a little bit.

MOSER: Thanks a lot.

SPIKE JORDAN: You bet. Always happy to share.

MOSER: Yeah. Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here, Mr. Jordan.

SPIKE JORDAN: You bet.

J. CAVANAUGH: And I appreciate the drive. And you and I had a chance to chat outside before we came in. And I just wanted to circle back on the comment you said about the, the fence lines don't always follow the section lines. What you're saying there is if we required you to allow people to hunt on the school lands, the BELF lands, you'd have to put in more-- basically have to take on a cost to put in fences or risk them coming on your private land as well, without permission.

SPIKE JORDAN: Correct. And I've had-- one of the pastures I keep a couple of step-- saddle horses and some broodmares in. And years and years and years ago, whenever my grandfather was still alive, he had a hunter that was on some Forest Service land in northern Sioux County, which is a completely different arrangement than BELF, but trespassed onto our land and then shot that horse thinking that it was an elk. And so I-- I'm sure that you've heard multiple concerns from livestock owners as well about the possibility of those things happening. So

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

it's just the issues where fence lines don't always fence out private property from, from the school sections.

J. CAVANAUGH: Thank you.

SPIKE JORDAN: You bet. Thank you.

BOSTELMAN: No other questions. Thank you very much for--

SPIKE JORDAN: Thank you, Senator.

BOSTELMAN: --coming in today.

JACOBSON: Are you driving back tonight?

SPIKE JORDAN: No. I'm going to be here tomorrow. There's a bill in Revenue Committee for homestead exemptions for veterans so I'm going to stay.

JACOBSON: You know, you could have worked that and said you just came down for this hearing. We'd all felt a little more guilty for you. Thank you for your honesty and integrity.

BOSTELMAN: Good afternoon and welcome.

JIM JANDA: Thank you. My name is Jim Janda, J-i-m J-a-n-d-a. Thank you, Chairman Bostelman and the committee for letting me speak. I am a field rep for the State of Nebraska Board of Educational Lands and Funds. I've been in that job for a little over 20 years, and in my tenure know with the school lands, this is the third time an idea like this has been floated. And I agree, it's a well-meaning idea to increase hunting opportunities. I'm a hunter myself, a very avid hunter, but the reason why it's never gained traction is the second, third, and fourth order effects just don't work very well. As Kelly Sudbeck had stated, our organization has the constitutional charge of represent-- of taking care of the school trust with a fiduciary duty. That means we're going to act in the best interest of the school children in the state of Nebraska. And so public hunting, unfettered public hunting and operating/managing land under a fiduciary duty don't always go hand in hand. We lease our properties with a leasehold interest with a full bundle of sticks. We always talk of property rights being a bundle of sticks. Well, that right of trespass, that right of hunting is one of those sticks. If we would just give that to the public, that would essentially be the same as if the state of Nebraska would condemn the hunting rights from the state school trust. But instead of valuing what that's worth and being compensated for it,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

it's just essentially being given. So a fraction of our value will be given to the hunting public with no regard to the damage that would do to the school trust value. I've talked to a lot of tenants in the last 3 weeks. All of them are very passionately opposed to opening it up to public hunting. And the reoccurring theme I get is I will not pay what I pay for this lease if it's open to public hunting. So, you know, that's, that's something to look at. There's not a lot of perfect examples of head-to-head comparisons of open lands that are publicly hunted and lands that are situated like private lands that aren't publicly hunted. But I'll tell you, in Thomas County, Halsey National Forest is there. The federal government allows public hunting on Halsey National Forest and charges for the grazing use. They charge \$1.35 per cow/calf pair per month. The school land in Thomas County in 2022 was charged \$57 per cow/calf pair per month. So \$1.90 a day is what we got for school land, right, versus \$1.35 what the Forest Service got for their grazing rights on land that was open for public use. I see we're running kind of short on time. Again, the lessees own all the wells, fences, all those types of things. So that gives some pretty big issues. If those are damaged, who's going to pay to replace those? I'm an avid hunter. If I were to dove hunt in September, that's a typical grazing time for the normal grazing season, that is also a time where if you were going to hunt on this land, you could feasibly scare cattle through fences, cause damage to the cattle, lose cattle to escape into cornfields. I don't know if you've ever gotten cattle out of a cornfield in September, but it's not a fun thing. It causes a great amount of property loss, crop damage, that type of thing.

BOSTELMAN: OK. Thank you for your testimony. Senator Hughes.

HUGHES: Thank you, Chairman. Thank you, Mr. Janda, for coming in. OK.

JIM JANDA: You bet.

HUGHES: I'm just curious what you do. You're one of 9 field reps

JIM JANDA: Yep.

HUGHES: I'm assuming it's a full-time position.

JIM JANDA: It is.

HUGHES: Can you just lay out in a day?

JIM JANDA: Every day is different.

HUGHES: Yeah, I guess just give a list of things.

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Natural Resources Committee February 21, 2024

JIM JANDA: We do-- we make-- we oversee the management. In my area, it's about 90,000 acres. I've got about 300 lessees. Give you an idea, Broken Bow, Custer County is part of my area. I have 48,000 acres that I lease out in Custer County. That includes grazing land, irrigated crop land, wind energy, all that stuff. I look at working with my tenants to do things to take care of the land, capital expenditure projects in areas that we could expand irrigation to.

HUGHES: Like you approve because from what I'm understanding, the lessee does the equipment.

JIM JANDA: Yep. I work with the lessee with putting together a proposal to put in front of our board for them to approve or deny.

HUGHES: So they do get approved.

JIM JANDA: Yeah. Yep. They get approval to do any of that stuff. One of our biggest charges is to make sure that this land is rented like similarly placed private land. So a big part of our year, we go out and we meet with private landowners, lessees, bankers, farm managers, and we collect rent samples of how land in Nebraska is rented. Now we take those samples back and we analyze them by land use, by productivity of each acre, by the contract and that type of thing. And then that's how we come in June and--

HUGHES: For that base rate.

JIM JANDA: --set the rent for the next year. Our rents are adjustable throughout the term of the lease. So we look every year to see where we fit in the market.

HUGHES: So when you're renting, I'm hearing the average is anywhere from 5 to 12 years--

JIM JANDA: Um-hum.

HUGHES: --for-- to lease.

JIM JANDA: Yeah.

HUGHES: It's probably you start out, you know, 10 years, you could have a huge jump.

JIM JANDA: There could be a very huge jump [INAUDIBLE].

HUGHES: I mean, the last 10 years ground has gone through the roof so.

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Natural Resources Committee February 21, 2024

JIM JANDA: Yeah, yep. And that's why we look at it every year because otherwise--

HUGHES: You look at it every year for just whichever ones are coming up that year.

JIM JANDA: No, we look at our entire portfolio every year and we set the lease up or the rents to be applied.

HUGHES: So the rents change every year.

JIM JANDA: --on every [INAUDIBLE]

HUGHES: You're not locked in for 10 years at the low rate.

JIM JANDA: No. You just have the right to hold the lease--

HUGHES: Thank you.

JIM JANDA: --for 8 or 10 years. We change rates.

HUGHES: But every year you're going to be paying more.

JIM JANDA: Yep. If the market goes up--

HUGHES: OK.

JIM JANDA: --they would pay more.

HUGHES: That's good because I'm like--

JIM JANDA: Yeah. No, we're not--

HUGHES: --dang, that, that's awesome.

JIM JANDA: --we don't get behind like that.

HUGHES: OK.

JIM JANDA: Yeah.

HUGHES: That's good. OK. Thank you

JIM JANDA: Other questions? Thank you.

BOSTELMAN: Thank you. Other opposition, please. Good afternoon.
Welcome.

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Natural Resources Committee February 21, 2024

JOHN HANSEN: Mr. Chairman, members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union and also our lobbyist. I want to say thanks to Al Davis for filling in, in the off chance that I didn't make it from Revenue in time in order to come in and tell you just how much I hate this bill. This is like a prescription for unnecessary, gratuitous conflict and use of conflict, because the-- it's-- the whole idea of not letting the folks who control the land have the absolute say over whether or not people can hunt there or not is just problematic in terms of a goodwill between the hunting community and landowners. So in my former stint as on the Lower Elkhorn NRD board, starting in 1974, we set up the lands for wildlife program, which was then a way to try to maximize public access and reward landowners, but giving them the absolute control upfront whether they wanted to get an additional payment or not. But there was an additional payment made if they wanted to do that, but they still had the ultimate control whether they participated or not. And they still had some oversight when they did approve folks coming in and hunting on their property, they still did need to get permission. They needed to do certain things. So that prescription, in terms of how to set that up, and that was a very successful program, we did get a lot of additional acres that were public access. And the landowners did get the additional benefit, and it did work. And to me, that program was so successful it was picked up eventually by Game and Parks. And so, so if you go back to the basics of what is a good public policy relative to trying to increase the amount of available land for hunting, to my-- from my perspective, you have to give the folks, in this case, the folks who are, are the leaseholders for that public school lands the, the absolute right to decide whether they participate or not and whether or not they approve hunters or not. Not all hunters are created equal. I have a whole shed full of former Hansen Charolais signs that were shot up during pheasant season to prove that, and the amount of damage in our community from, folks coming in who have spent a lot of time driving all the way out from Omaha or Lincoln or wherever they came from, they were bound and determined to shoot something, darn it. And so they shot up all my signs. They shot up my no hunting signs. They shot up my telephone poles. They shot whatever. Every hunting season it was-- it was-- there was a certain amount of damage that occurred. Well, when that happens, then, and including livestock and loss of livestock, that, that doesn't help the working relationship between landowners and hunters. And so I would encourage you not to support this bill. I think it is the wrong approach to increase the amount of hunting

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

access for our hunting friends. Thank you very much and I'd be glad to answer any questions.

BOSTELMAN: One of the comments could be I think it's unfair that you put the blame on hunters. I think we have a lot of kids, a lot of other people who go out and do that type of damage. And when you just condemn hunters for doing all that damage, I think that's wrong. So thank you for your testimony.

JOHN HANSEN: I would just say that the damage showed up during hunting season. And not all hunters are created equal. I did say that.

BOSTELMAN: Thank you for your testimony.

JOHN HANSEN: You bet.

BOSTELMAN: Anyone else testify in opposition? Seeing none, anyone like to testify in neutral capacity? Good afternoon.

ALICIA HARDIN: Good afternoon, Chairman Bostelman and members of the Natural Resource Committee. My name is Alicia Hardin, A-l-i-c-i-a H-a-r-d-i-n. I'm here to testify on behalf of the Nebraska Game and Parks Commission in the neutral capacity. The commission understands that one of the most important factors in recruiting, retaining, and reactivating our hunters is providing a place for them to hunt. This is also a high priority for our agency and our strategic plan. Currently, our Open Fields and Waters Program has opened 389,000 acres of private lands to hunting, trapping and fishing this past year. This program has been very successful and working with landowners, with voluntary enrollment and meeting the expectations of our hunters in the field. There are over 800 landowners enrolled in the program, and we've had very little turnover in that time. Usually the turnover is due to land ownership changes and changes in habitat. We have consulted with BELF on several occasions, and they've been reasonable in allowing their lessees to sign up into our Open Fields and Waters Program. Currently, we have 6,400 acres of BELF lands in the program and we encourage more of those types of contracts. We've also worked with BELF on improving 7,200 acres of habitat on their lands, and we are interested in finding more ways to continue to work with them on access and habitat. One of the main concerns we have with this bill is not every publicly accessible acre will be appropriate to have open for hunting access due to cover types and other potentially conflicting issues that you've heard a little bit about today. Although we are happy to support the idea of more public access hunting, we are sensitive to the needs of private landowners and to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

BELF to maximize revenue to the schools. And I'd be happy to answer questions.

BOSTELMAN: Thank you for your testimony. Any questions? Anyone else to testify in the neutral capacity? Good afternoon.

JOHN HEASTON: Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. I'm one of the terrible hunters you've been hearing about all day. I am John Heaston, J-o-h-n H-e-a-s-t-o-n, with the Nebraska Sportsmen's Foundation. And I'm here to testify in a neutral capacity for LB1247. Before I get into the meat of my testimony, I do want to thank Senator Hansen for introducing this bill. I've been managing and working on public private lands interfaces for almost 30 years in this state. And I can tell you, trespass versus access, the only 2 debates that I've seen more vigorous is, tastes great versus less filling and '71 Huskers versus '95 Huskers. It, it-- it's, it's a question we still haven't got an answer for. As indicated by earlier testimony, there is a great, great and growing number of new hunters, people who want to come to Nebraska to hunt, fish and trap. And the need for more public access is, is growing, not shrinking. And so given that, having worked with both BELF and Nebraska Game and Parks Commission over the years, I know they're 2 of the-- they're 2, 2 great agencies that have a very difficult interface with the public, and they both do their job very well. And sometimes their goals are not in, in concert, as you've heard from earlier testimony. And I can tell you that putting either of those agencies in the crosshairs of angry landowners is the last thing that we want to do as outdoorsmen. We, we have historically had better relationships with the farm and ranch community. It needs to improve on all sides. Hunters need to police their own. We need to stop having the shooting of signs, those types of things. But it also is coming from, I think, frustration of not having anywhere to go. And so, I think that this is a good way to start a conversation. In speaking with Kelly, Kelly and I go way back to Cozad Days. We were on the same, we were on the chamber of commerce together there, actually. And in talking with him on the phone, you know, there are ways that BELF lands can benefit hunting and fishing without being open access. If we can prove that habitat through farm bill programs, those types of things, that generates huntable areas adjacent, we don't want to-- we don't want to have hunters going out and causing fire problems and all those other things. So I think this is a good way to start the conversation. I think we need to think about measurable, manageable, achievable goals for getting more public access and making sure that it's being done responsibly, and also making sure that it doesn't become an unfunded mandate for agencies like BELF or Game and Parks to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

try to administer. With that, I will take any questions if you have them.

BOSTELMAN: Any questions from the committee members? Thank you for representing all those unsavory hunters out there that are shooting up all [INAUDIBLE].

JOHN HEASTON: Well, I'm also an unsavory land manager. I manage my mom's farm, and I'm still mad about the guys from Seward--

HUGHES: Hey.

JOHN HEASTON: --who came and unloaded SUVs on my property. Came through three closed gates to do it back in '97.

BOSTELMAN: Thank you for your testimony.

HUGHES: I don't know anything you're talking about.

JOHN HEASTON: Thank you for having me.

BOSTELMAN: Any other neutral testifiers? Seeing none, Senator Hansen, you are more than welcome to close on the bill that you said you didn't want to leave our committee on. We have 2 pro letters and 70 opponents.

HUGHES: How many?

BOSTELMAN: 70.

HUGHES: 70.

HANSEN: All right, so I misspoke on my opening when I-- when I addressed-- we-- there are 20 states that do have where school lands exist, but actually 13 of them allow the recreational, the hunting and fishing on them. So I said 20, but I meant 13. Colorado, North Dakota, South Dakota, Wyoming, Montana, Wisconsin, Minnesota, Utah, those are some of the ones that allow similar aspects of what I'm trying to accomplish here on their land. So you mentioned before that this is a bill that we have heard multiple times before, no it's not. Before what has been introduced was we're just going to open it up and anybody can hunt. It's free. There you go. We're putting a lot of guardrails in place for this program. We're trying to respect the, the, the lessee, not the landowner, the lessee and the hunter. So we're trying to kind of merge those 2 together to see how we can have a good public-private partnership similar to what South Dakota does

when it comes to hunting and fishing. They do a very good job of public-private partnerships. And I kind of want just a couple-- a couple of things that Mr. Sudbeck said about when it comes to fiduciary capacity or the fiduciary duty. They do have a fiduciary duty to make sure the land is used the best that it can, you know, to make sure that schools are being reimbursed properly based on the laws that we put in place. It is in our constitution that BELF is under the direction of the Legislature. So we-- the laws we put in place, then they have a fiduciary responsibility to get the most money out of it that they can based on what we say. There, there have been so many rules and regulations, dozens already put on BELF lands by the Legislature: weed control, access, all kinds of stuff. This is just one more. And I, I did kind of-- I did appreciate I think-- I think it was maybe Mr. Sudbeck or somebody else after him that talked about how a lot of the money that BELF does get from this does kind of end up going to more of the areas of Nebraska that doesn't have a lot of BELF lands like eastern Nebraska, when a lot of these are out in western Nebraska. And so I'm hoping maybe with a bill such as this, we will see people from eastern Nebraska maybe start to go and enjoy parts of western Nebraska that, that they didn't do before, like I said, so then they get some more of the financial benefit as well of these BELF lands and, and more of a capacity by the hotels that they're staying in, by the restaurants that they go to, maybe even move out there. And so I think there's kind of a give and take a little bit there about how we can kind of make that work. The money that-- I got to reiterate this, because I think maybe Jim from BELF mentioned this, that the stamp fee does go to BELF after Game and Parks has used it to administer the program. The rest of it does go back to BELF. And the one thing that I think maybe we can work on here that I think might address a lot of concerns is-- and I'm glad, glad that Jim brought this up, too, is that he says they are very specific with the types of lands that they are in control of, whether it's grazing, whether it's crop, whether it's cattle. And so I think in conjunction with the Game and Parks we can specify that in the-- in the mapping portion of this. And if anybody's ever seen their public access atlas, I mean, they have very like tiny little areas of Nebraska or a county what that is public access. We can also use a similar aspect of that in saying, look, this is-- this is used for cattle, so it is not going to be on the map. I'm not against that. We can specify to a very fine degree on which kind of land we are going to allow them on. So if there's cattle on there, they won't be included on the map. And they, you know, so when you go to the Game and Parks and find out which land you can kind of hunt on, those will not be included. I'm not against that. And like I mentioned before, a lot of what we're trying to do was kind of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 21, 2024

mirrored after the Open Fields and Waters program, which you've heard already that is a-- it seems like a very successful program that already currently has BELF lands that they are using this for. And so far I have not heard of any problems of hunters doing any of the stuff that I've heard today or in the emails. So I have-- I have faith in the hunters that they're going to continue that good stewardship of the people's land. But also, we need to look out for the people who are leasing land as well. So I try to do both with this bill. So I'll do my best to answer any other questions. Thank you.

BOSTELMAN: Questions? Seeing none, that will close our hearing on LB1247. Thank you all for coming today--

HANSEN: Thank you.

BOSTELMAN: --to your Natural Resources Committee.