

**Agriculture Committee March 5, 2019**

**HALLORAN:** Good afternoon. Welcome to the Agriculture Committee. I'm Steve Halloran. I am from Hastings, Nebraska, and represent the 33rd Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the reserved chairs when you are ready to testify. These are the first two chairs on either side of the first of three rows here. Introducers will make initial statements followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing Senator. If you are planning to testify, please pick up a green sheet, sign-in sheet, that is on the table just outside the room. Please fill out the green sign-in sheet before you testify. Please print and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to a page or the committee clerk. This will help us make more accurate public record. If you do not wish to testify today but would like to record your name as being present at the hearing, there is a separate white sheet on the table outside that you can sign for that purpose. This will be a part of the official record of the hearing. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify, and they will distribute those to the committee. If you do not have enough copies, the pages will make sufficient copies for you. When you come up to testify, please speak clearly into the microphone. Tell us your name, and please spell your first and last name to ensure that we get an accurate record. First, I'd like to ask how many are testifying today on LB45. OK. I think we'll stick with five minutes. That's fine. We will be using the light system for all testifiers. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining, and the red light indicates your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. Committee members with us today will introduce themselves starting on my far left, Senator Moser.

**MOSER:** I'm Mike Moser from District 22. That's Platte County, Stanton County, and a little bit of Colfax County.

**LATHROP:** I'm Steve Lathrop, state senator from Legislative District 12 which is in Douglas County and includes Ralston and parts of southwest Omaha.

**HALLORAN:** Thank you, Senators. On my far right.

**B. HANSEN:** Senator Ben Hansen, District 16, Washington, Burt, and Cuming Counties.

**CHAMBERS:** Ernie Chambers, District 11, Omaha.

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

**HALLORAN:** To my right is the committee clerk, Rod Krogh, and to my left is the committee research analyst, Rick Leonard. To the more important people of this process, they're often under-- overlooked and-- but they're very important to the process, are our pages. We have Kasi Jumps. She's a sophomore at UNL with a major in history and political science. And Katie Andersen, she is a senior at UNL with a double major in English and political science. With that, we will proceed with our first hearing. Welcome, Senator Chambers.

**CHAMBERS:** Thank you. And I do have some handouts. But there are not 12 of each, but I'm not sure how many, either 9 or 10. Mr. Chairman, members of the committee, I'm Ernie Chambers, E-r-n-i-e C-h-a-m-b-e-r-s. I represent the 11th Legislative District in Omaha. And the purpose of this bill is to repeal the Black-Tailed Prairie Dog Management Act. I'd given you all some information previous to this hearing, it was a copy of the actual legislation itself and some comments of mine, so that you would have before you what it is that will be repealed. Whenever an act, an entire act, is to be repealed, all that is put into the bill is a listing of the sections that will be wiped out. But the legislation that's on the books will not be printed because everything would be lined through. What I'm giving you today represents some work that I did to make it clear how bad this act is. One of the worst things about it is that there is a conflict, a contradiction in fact, on the most critical issue. Many things are done on and to private property, and there are places in this act which says that the landowner should be notified. But as you'll see, on this sheet and I had made a mention of it on the other one, this comment, failure to publish

general notice or to serve notice individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Black-Tailed Prairie Dog Management Act. What it's saying is that even if you don't get the notice that throughout the act they say you must have, you still are held responsible for everything that is in this bill. So when they decide they're going to come on your land, and that's probably on page four of this handout they talk about damaging crops and other things, but you would not have any action you can take against them for having come on your property and done this. Now I want to speak very briefly because there are others who might go into detail about some of the things that I think should be in the record and if they're not, I will cover that in my closing. Prairie dogs are not invasive species. The worst thing that happened is that Senator Loudon, I don't know who told him to bring the bill, patterned it after the invasive weed act. Animals are not weeds. You cannot deal with animals as you deal with weeds, and that's what they did in this bill. I took the time to clip out the sections in this bill and the sentences that give all of the various things that can be done against a landowner who may not ever been notified. It would include things such as \$100-a-day fine for every day you're out of compliance up to \$1,500. You can-- that will become a lien on your property. It will be added to your taxes, and it will bear interest in the same way that delinquent taxes will bear interest. Then there can be a tax foreclosure sale on your property, and you may not ever have been notified. But that's not the end of it. They can go further than that. They can then bring an action in the name of the county for a debt owed to the county. And it goes on and on. But since each one of those items is listed in this document that I gave you, I will not go through them all. But I wanted something in the record. All of these actions that I've touched on would be considered civil. There is nothing criminal involved. But a point is reached for the county board will direct the county attorney to proceed against the landowner and that is a criminal prosecution. It's an infraction that would be mentioned, but that is a crime. This would involve the county attorney, the court, and a judge, all of which costs money. The infraction requires the delivery of a citation which can only be done by an officer of the law authorized to make arrests. That involves the police department which is money. When you have these various offices and officials doing these activities, it costs the county money. I don't see any way in the world that people who read the law itself could agree that it should stand. It was put in place after I had left the Legislature. It passed last year. The Legislature passed it and the governor vetoed it after we were

out of session saying it had nothing to do with private property rights. But throughout it really does. I want to make one other comment and then I will wrap up my opening, just so that I will have said something about how you can manage prairie dogs without killing them. What is it that brings all of this into operation? An unverified complaint by a disgruntled neighbor. The board does not have to undertake any investigation. There doesn't have to be a factual finding that the prairie dogs actually came from the one complained against or that they were not already on the property of the one doing the complaining. Any time now that there is a dispute between neighbors, it can reach a point where one will go to court and say that the neighbor is using his or property in a way that infringes on the rights of the aggrieved individual. Then the courts handle it and they're accustomed to handling these things. If a person does not follow the court's order, that person can be found in contempt. And the court has means of carrying that out. One of the easiest ways to keep these prairie dogs at home is if the landowners notified just build a heavy row of hedges and they won't come near it. They keep the grass chewed very short so that they can watch out for predators. You can also put a perch. One man called me. He put up an eagle perch, and the prairie dogs stay, I don't remember if he said, 50 or 100 yards away from it. But they do not want to be easy prey for the predators. And since I'm going to have an opportunity to close and I'm hurrying right along, I will answer any questions that you might want to put to me right now.

**HALLORAN:** Any questions? Senator Moser.

**MOSER:** What was the vote on the passage of the bill last session?

**CHAMBERS:** I don't remember.

**MOSER:** Was it close?

**CHAMBERS:** But it had to be at least 25.

**MOSER:** Yeah.

**CHAMBERS:** Yeah.

**MOSER:** Okay. Thank you.

**CHAMBERS:** OK.

**HALLORAN:** Any additional question for Senator Chambers? Senator Blood.

**BLOOD:** Thank you, Chairman Halloran, and I apologize for my tardiness today.

**HALLORAN:** Let's introduce-- Senator Blood joined us and Senator Slama.

**SLAMA:** Also apologies for my tardiness.

**HALLORAN:** You're fine. OK. Senator Blood.

**BLOOD:** Senator Chambers, so I'm hearing two different issues. What would you say the number one issue for this bill is? Is it that the language is wonky and it needs to be corrected or the protection of the prairie dogs?

**CHAMBERS:** Say it again. It's hard for me to hear. They were doing a jackhammer or something when you spoke.

**BLOOD:** Maybe that was just me. So I'm hearing two different issues, and I'm-- I-- I-- I want the clarification as to the most important thing about this bill. So I'm hearing you say the bill as it exists, the language is wonky and really truly doesn't make sense, and you want to clarify that. And then I hear you say, leave the prairie dogs alone.

**CHAMBERS:** Right, both.

**BLOOD:** All right. So you-- they're-- they're both priorities for this bill.

**CHAMBERS:** Right.

**BLOOD:** Thank you, sir.

**HALLORAN:** Thank you, Senator Blood. Any additional questions? Seeing none, thank you Senator Chambers. Time for proponents of LB45. Good afternoon and welcome.

**LUKE PETERSON:** Good afternoon.

**HALLORAN:** Please state your name, please, and spell it.

**LUKE PETERSON:** Absolutely. My name is Luke Peterson, L-u-k-e P-e-t-e-r-s-o-n. This is my first time in front of the Agriculture Committee so I'm really excited. I am a resident of LD 46, and I do represent, I believe the title they refer to me now is freshman director. But I represent subdistrict 7 for the Lower Platte South Natural Resource District. My testimony is my own. I'm not representing any of my colleagues on the NRD. I'm here as a proponent for LB45 because I agree with Senator Chambers. I've read the leg-- I read the legislation and the state statute. It was sloppy, poorly written. And he is absolutely correct. It was under the auspice of the Weed Authority Act. I'm not too sure what was called. But I originally come from South Central Nebraska. And my father is a landowner. He's a retired farmer. And I remember growing up that my grandfather had an issue with the neighbor about prairie dogs. Very, very heated discussion when you come from rural Nebraska. And my grandfather actually had to bear the cost of the cyanide bomb that eventually Phelps County had demanded, I think, if I recall correctly. We couldn't-- this was pasture land. You couldn't have anything survive. It couldn't-- we couldn't let the cows go out. When you gas bomb a prairie dog village, it literally does wipe out a lot of income. So fast forward to now. Now that I'm elected for the NRD, I've been proposing to my father because the prairie dogs are back, what can we do about it? Senator Chambers is absolutely correct. They do not like predators so I'm talking to my dad about possibly putting up eagle nests, I don't know, outhouses, anything that's a natural deterrent for prairie dogs. The other problem I have with the state statute is that the county under the state statute has some leeway of cost sharing aspects for the elimination of prairie dogs. It's not a really imaginative. It's pretty much set in stone that they're just going to use the ultimate means necessary and no alternative means that have the same effect. So that's also pretty important to distinguish. With that, I'll close my comments and welcome any questions.

**HALLORAN:** Thank you, Mr. Peterson. Any questions from committee? Yes, Senator Hansen.

**B. HANSEN:** Thank you, Chairman-- Chairman. Thank you for coming. I'm a-- I'm a little uninformed on prairie dog behavior. Like how--so you're saying like put a-- because I'm all in favor of natural means to take care of a problem if we can. We're saying prairie dogs crossing from one property to another. How wide of a "spanse"? Are we talking about like a mile? Are we talking about like 20 feet that they usually kind of go together or is it?

**LUKE PETERSON:** Well, it depends on where the grass is greener on the other side, I suppose. Prairie dogs have a mind of their own. They're going to go where they're going to survive. You know, when you live out in western Nebraska, there's vast tracts of land that is uninhabited by man so they have a lot of country to go to. And when you have large landowners that do not agree or see eye to eye on what's a problem, that's when issues arise with how to deal with best land management practices.

**B. HANSEN:** Thank you.

**HALLORAN:** Thank you, Senator Hansen. Any further questions from the committee? Seeing none, I thank you for your testimony

**LUKE PETERSON:** Thank you

**HALLORAN:** Next proponent, please, LB45. Good afternoon and welcome.

**ROBERT BERNT:** Thank you. My name is Robert Bernt and I'm an organic farmer and rancher. My name is R-o-b-e-r-t B-e-r-n-t, and I live in central Nebraska about three hours northwest of here. I live on a ranch that my family has owned for six generations. And every since we've been there, we've had a prairie dog town on our property. Yeah, there's issues at times with that, but what we did with our control method to keep them off our neighbors. And our-- and our land sits with an L-shape with our neighbor in the corner. So we border him on two sides. And I don't want my property to invade on him. So what we did is we instigated and developed a perch. They're the first ones that I've ever heard of. And it's-- it's 100 percent effective. There is no way the dog will go beyond that point. It actually did push the dog back from the fence line onto my property about 200 yards. And I observed this because we had a hills-- hill range that birds were sittin' on and taking care of the dog. So we just used the simple method, two-by-four with a one-by-six on top, very effective. It does not affect any other wildlife, all right? The poison that was used prior to that was a milo and a barley that we obtained from the-- from the government. And this was done by my father. I seen-- I seen dead snipes. I seen dead prairie chickens. I seen dead burrowing owls because the dog would kick it out of the hole, and they would eat it and die. The natural habitat that comes to this ground that the dogs are on is really important to us. We actually use it as a way to generate income because we have prairie chicken and grouse that come to this area. And they boom in the spring of the year. They actually come there year round, but they boom during the spring.

So the Governor's agritourism team was outstate Nebraska at Ord last week with their convention encouraging this. One of the farms was destroyed because of this existing law. This gentleman drew tourism from other countries that come and watch these birds prance. This landowner destroyed them because he was afraid they was going to be intruded upon by his neighbors in advance of ever being notified. But it removed that as a tourism activity for that part of the state. We use ours in the same fashion. We have a-- a place where people can come, can watch the burrowing owl, the snipe, the booming grouse, and in the spring of the year the baby prairie dog. And they are-- there's something really to see and watch when you can visually see all of that. The destruction from the poison makes me sad. But the most important thing to me is-- is being a certified organic farmer. If you walk on my property and put poison down that hole, I am not certified for three years, all right? And I have no control over that. I have cheese that I process in my processing facility at Leon's market, and out on West O at Schmick's Market. I have pork that I supply to the Hub Cafe in town. I have cheese and meat that I supply to Open Harvest. If you poison my property, I have to remove that from those store shelves as organic. This is an-- this is an intrusion of personal property rights. That's all there is to it. I've been here for three years on this bill. Last year, I thought we're great. I heard the Governor announce that it was an invasion of personal property rights. That's exactly what I said, on me, not on my neighbor. I protected my neighbor. My neighbor has the ability, especially where I draw income from the dog, to be compensated. The method's already there. It's in place. You can use it. If he feels my dogs are invading his property right, he can now file a channel that he needs to do to protect his property. But as a good citizen, I'm not going to let that happen. With this perch, we were 100 percent effective. The dogs haven't been in his-- on his property for six years, not one. The poison lasts a very short period of time. Within two years, the dog town is repopulated. And I know it for a reason-- I know it for a fact. That's the end of my testimony if there's any questions.

**HALLORAN:** OK. Thank you, Mr. Bernt. First, Senator Moser and then Senator Lathrop.

**MOSER:** How does the perch work? Is that just a place for predators to land--

**ROBERT BERNT:** Correct.

**MOSER:** --and-- and have strategic angle on the prairie dogs?

**ROBERT BERNT:** It is. What I know--

**MOSER:** How do they figure out to sit there?

**ROBERT BERNT:** Oh, it's-- it's just natural. A bird has a tendency to want to set as high as they can. So the higher you can make it-- you can put a perch at 5 feet and you can put one at 20 feet, and they're going to sit on the 20 feet. What I observed was I got a rain--

**MOSER:** You don't put any food or anything on there or anything?

**ROBERT BERNT:** Absolutely not. It's just a natural-- that's the way the good Lord installed a [INAUDIBLE] system.

**MOSER:** And there are no trees in your part of the world.

**ROBERT BERNT:** There is not. Dogs will never establish themselves anywhere near a tree. It won't happen. They're in the open, and it's level as it can be. My range of hills runs approximately a quarter of a mile north of my dog town. And I'm saying it's 40 feet in the air as the hill goes, and that one day I noticed 7 eagles sittin' on that ridge. It was amazing to me. I'm like, what is going on here? As I watched them, they were waiting for the dogs if they did come out and they would swoop down and get them. So that's when we-- we installed the perch system. And it-- it's very, very, very inexpensive. It costs nothing. It affects no other source of the wildlife. It affects none of the other source of the income that we have from the property. It maintains my organic standard, and it's-- it's-- it's the win-win.

**MOSER:** Why do you think the other neighbors want to control prairie dogs?

**ROBERT BERNT:** Well, this gentleman has farm ground, and they will go into that corner and gnaw off that corn. That is an-- that is an issue. You know, not everybody likes what everybody else likes. There's issues out there. There are certain things that people don't care for. If I was bold and belligerent and arrogant and says, tough, I don't care. You know, I want my dogs. I don't care what they do to you. OK. But I'm not that way. And I really don't know too many landowners that are. Most of us are very concerned. We don't want what we have to cause problems or harm on other people. So we do what we can to work

with them. But yeah, they do go on there. Alfalfa's an issue. They'll-- they'll mow it off. But a dog town, you know, does not expand. Like I'm saying this dog town of ours might cover 10 acres and it's been there if I can relate it, we've been there 140 years. The dog puts out a new generation every year so they've got 140 generations of dogs in this town that I'm sure are all related. But they've never expanded. You know, everybody says, oh, they're going to take over your 600-acre field. No, they've never went beyond that. Whether it's the natural habitat that-- that-- that perches and controls them, I don't know. You know, but there are-- there's people out there in our part of the state that actually rent out hunts for them. I don't.

**MOSER:** Is there a season on them?

**ROBERT BERNT:** No, there is not.

**MOSER:** Are they just considered a varmint or a?

**ROBERT BERNT:** They are considered on the same category as that. These individuals are just doing it for extra income. You know, we-- we had a big issue right now with land taxes. Property taxes are outrageous. I generate income for my dog town to help with that. That gentleman allows hunts does the same. The gentleman at Calamus Outfitters, extremely large amount of money from his birdwatching on the prairie dog town. That helps him with his property taxes.

**MOSER:** Are prairie dogs edible?

**ROBERT BERNT:** No, I wouldn't advise it, but I'm not kidding you, I--

**MOSER:** So they're just hunting them just for the sport of killing something?

**ROBERT BERNT:** Correct. That is what some people have done, and they do do. And they actually get a pretty good ticket for this, I've heard as high as \$500 a day for an individual to set his rifle up and do this just for the enjoyment and the target.

**MOSER:** OK. Thank you.

**ROBERT BERNT:** Thank you.

**MOSER:** I appreciate the education.

**HALLORAN:** Any further questions for Mr. Bernt? A quick question and you probably said in your testimony and I just didn't catch it. But your neighbor with adjoining property, are the perches-- are the perches that you set up satisfying him in regard to keeping the prairie dogs off of his property?

**ROBERT BERNT:** A hundred percent.

**HALLORAN:** OK.

**ROBERT BERNT:** His-- the prairie dog will-- will, like Mr. Chambers said, they'll take the grass down to nothing. All right. They'll just take that area, and that don't bother me. That's my property. If I choose to let that happen, that's my decision. But that's why the grouse come into that. That's why the burrowing owl comes into that. They like that open-- open area and flat scape. Now his side of the fence the grass is that tall, OK? It wasn't prior to the perch, you know, ten years ago. They were working on there, and the dog town was-- was-- was expanded out onto his pivot corner. His work was, and he was not liking it. But we-- we worked together when we did this. It was-- it was just what we did. And it just pushed them right back onto my property. His grass is-- is now up there 18 inches taller. Plus, there's not any signs of them there at all. So he's happy.

**HALLORAN:** OK.

**ROBERT BERNT:** And I'm happy.

**HALLORAN:** All right. Thank you, Mr. Bernt. The next proponent. Thank you, sir,--

**ROBERT BERNT:** Thanks.

**HALLORAN:** --for your testimony. Good afternoon. Welcome.

**JOCELYN NICKERSON:** Thank you. Chairman Halloran, my name is Jocelyn Nickerson, J-o-c-e-l-y-n N-i-c-k-e-r-s-o-n. I am Nebraska state director for the Humane Society of the United States here in support of LB45. You have my testimony in front of you. I will try to not read this verbatim, but we are here to help and in support of Senator Chambers in repealing the law that allows counties to poison prairie dogs and order land-- odor-- order landowners to do this through the county system. LB45 does support property-- profit-- private property rights, prairie dogs and the dozens of other species associated with

these animals. A win-win for all. They're considered a keystone species because their family colonies create islands of habitat that benefit approximately 150 other species. They provide food and shelter for many animals including hawks, burrowing owls, foxes, eagles as you've heard, badgers, and the critically endangered black-footed ferret. Humans pose the greatest threat to prairie dogs, frequently poisoning or shooting the animals, even plowing or bulldozing entire colonies for development. Black-tailed prairie dogs once numbered in the hundreds of millions, maybe even over a billion, and were possibly the most abundant animal in North America. However, due to eradication and other human-animal conflicts, their numbers have decreased by over 95 percent. The continued healthy survival of our wildlife for future generations is in your hands. Moving forward together with commonsense solutions for wildlife will keep Nebraska's prairie dogs and our landowners out of dramatic, dangerous, and costly conflicts that are detrimental to our local ecosystems. That's all I have.

**HALLORAN:** OK. Thank you, Ms. Nickerson. Any questions from the committee? Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. And thank you for your testimony. So is this a national movement to protect prairie dogs, not just in Nebraska? Did I hear you correctly that you're concerned about prairie dogs everywhere?

**JOCELYN NICKERSON:** Well, certainly yes, the Humane Society of the United States is concerned with prairie dogs everywhere. But this is a unique bill so we're focusing on-- and the animal welfare side of them.

**BLOOD:** And so your focus is to protect the prairie-- prairie dog and also the habitat that they help support.

**JOCELYN NICKERSON:** Right. Right.

**BLOOD:** Such as owls, I know, eat prairie dogs.

**JOCELYN NICKERSON:** Right. Right.

**BLOOD:** I didn't know badgers. I thought I saw badgers on there. I don't think I've ever seen a badger eat a prairie dog.

**JOCELYN NICKERSON:** Right.

**BLOOD:** That's interesting.

**JOCELYN NICKERSON:** Black-footed ferret, they're-- they're protected, so they are one of the-- the predators.

**BLOOD:** And so if the prairie dog were to be poisoned, then ultimately they would also be poisoning that part of their ecosystem.

**JOCELYN NICKERSON:** Right.

**BLOOD:** All right. Thank you.

**HALLORAN:** Thank you, Senator Blood. Senator Brandt.

**BRANDT:** Thank you, Chairman Halloran. Thank you for testifying, Ms. Nickerson. If I read this right, your objection is to the poisoning of the prairie dog.

**JOCELYN NICKERSON:** Right.

**BRANDT:** The previous testifier who said the neighbors helped pay the property taxes by shooting the prairie dogs, you don't have a problem with that?

**JOCELYN NICKERSON:** Well, we do not have a stance on hunting prairie dogs at this time.

**BRANDT:** OK. Thank you.

**HALLORAN:** Thank you, Senator Brandt. Any further questions? Thank you so much for your testimony. Next proponent, please. Good afternoon and welcome.

**MATT GREGORY:** Good afternoon, Chair Halloran, members of the Ag Committee. For the record, my name is Matt Gregory, M-a-t-t G-r-e-g-o-r-y. I'm here today representing Nebraska Farmers Union and appear before you today in support of Senator Chambers' bill, LB45. Our president John Hansen spent several years on the Prairie Dog Task Force Committee with agriculture and wildlife groups studying this issue. Among those who are involved in agriculture, including many of our members, are a whole mix of people from those who hate prairie dogs to those who-- who love them and even some in the middle who are undecided or just tolerate them. And so you've heard from some people, probably hear from others, about prairie dogs and the net-- the negative effects of the Prairie Dog Management Act has had on them since the bill was passed. So Farmers Union feels that-- that the act is unnecessarily heavy-handed. It puts a real strain on counties

as well as relationships between neighbors. The problem with prairie dogs going over a hill and across a fence is not a new one, but we believe that there are true-- truly management options relative to being able to manage this keystone species short of what amounts to invasion of private-- private property rights that ends up, in most cases, eradication. So this is a landowner property rights issue and Farmers Union errs on the side of local control and landowners deciding what they want to do with their land whether that's with prairie dogs or wind turbines. We don't like the idea of a landowner encroaching upon a neighbor who wants to keep prairie dogs just as we don't like a landowner encroaching upon a neighbor that wants to manage them. So the prairie dog is one of our natural heritage species, and we believe that there is a place for them for those who like them and tolerate them. But a fear relating to the current act is if numbers of prairie dogs drop drastically across the state, maybe that there would be an intervention from Fish and Wildlife Service to declare it an endangered species. And then it goes, you know, to a federal government issue and them telling us how to manage our wildlife. So we want to return prairie dogs to local control and private landowner issue. And on a personal note, I want to thank Senator Chambers for being such a tireless advocate for wildlife, especially prairie dogs and mountain lions, as well as all his works over the years. So we ask the members of the committee to, please vote for this bill and advance it. Thank you.

**HALLORAN:** OK. Thank you, Mr. Gregory. Questions from the committee? Got a quick question just a-- just a what-if scenario. We have two neighbors. One neighbor has a prairie dog colony and has communicated and visited with his neighbor in regard to that. And between the two of them, say possibly they have-- they have attempted to do some constraining of the prairie dogs so it didn't trespass into the neighbor but were unsuccessful. Then what?

**MATT GREGORY:** Yeah, I don't know, there could be a lot of scenarios there so.

**HALLORAN:** Well, but that's a pretty clear scenario. What do they do-- under that circumstance, what do they do? They're mutually unable to control and keep them on the one person's property. Is there-- is there a solution to that?

**MATT GREGORY:** I'm not aware, Senator.

**HALLORAN:** OK. Thank you. Next proponent. Good afternoon and welcome.

**BRUCE KENNEDY:** Mr. Chairman, members of the Agricultural Committee, my name is Bruce Kennedy, B-r-u-c-e K-e-n-n-e-d-y. I'm here this afternoon representing the Nebraska Wildlife Federation. We are very much in favor of LB45 because it removes a very bad law that has been on the books too long. When this law was first proposed, it was opposed by most all of the conservation organizations in Nebraska, and we feel strongly that it does not belong on the books. I'd like to take my time with the committee this afternoon to bring to your attention an article in the Midland Voices mag-- this is the Omaha World Herald Midland Voices. And the person writing this article is a fellow by the name of Joel Sartore. Joel is a national figure. He travels all over the country taking pictures for National Geographic, and he is one of our most outstanding Nebraska conservationists. And he takes the time to write this article and tell-- tell the people of Nebraska that the-- the reason why we need LB144-- LB145-- or 45 and that we don't need the Prairie Dog Management Act. So rather than me going on and on. Like I said, I would take this time to bring to your attention the article which you have it in front of you now and I would just let Joel Sartori at this point do the talking.

**HALLORAN:** All right. Thank you--

**BRUCE KENNEDY:** Any-- any questions?

**HALLORAN:** -- Mr. Kennedy. Any questions from the committee? Seeing none, I thank you for your testimony. Next proponent. Good afternoon. Welcome.

**MARJORIE KENNEDY:** Thank you. My name is Marjorie Kennedy, M-a-r-j-o-r-i-e K-e-n-n-e-d-y, and I am representing the Wachiska Audubon Society which is located in Lincoln, Nebraska. Wachiska Audubon is a local affiliate of the National Audubon Society. It was formed in 1973, and its main purposes are to educate people about the natural world and also the importance of wildlife and wildlife conservation and habitat therefore. I think this is the third time I've been testifying on this bill. I'm sure it is. I keep thinking sometime it will pass and I do hope so. I certainly personally and so does the Board of Wachiska consider this to be definitely a property rights bill and also a wildlife bill, a combination, as Senator Chambers has said, in about equal measures. Prairie dog towns provide a very valuable critical habitat for a lot of endangered species. People have

mentioned this before. The burrowing owl is one. They actually go down into the prairie dog towns and get the little prairie dogs. And black-footed ferret as well which are very, very rare in this state, without prairie dog towns they just wouldn't exist. Take away the habitat, nope, they won't go someplace else. It just won't be there. So I would hope this would pass out of committee and urge you to do so. Are there questions?

**HALLORAN:** Thank you, Ms. Kennedy. Any questions from the committee? Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. Thank you for your testimony. You have been supporting this bill throughout the years. So I'd be curious to ask your opinion on what do you think the biggest misconception is for the people who consistently vote against this bill?

**MARJORIE KENNEDY:** Well, it probably is twofold. Just like the reason I'm for it. They probably think that, you know, it's against the property rights of the people that don't want the prairie dogs. And furthermore, they think that prairie dogs are pests, vermin without redeeming qualities, might as well be rats or something. Even rats have a place in the world as much as I do not like them because, of course, they're food for other animals. But I think it's actually twofold.

**BLOOD:** So you think there's a misunderstanding there, is what you're saying or are you saying?

**MARJORIE KENNEDY:** Yes. Yes I do.

**BLOOD:** All right. Thank you.

**HALLORAN:** Thank you, Senator Blood. Any further questions from the committee? Seeing none, I thank you for your testimony. Next proponent, please.

**JAREL VINDUSKA:** Members of the Agricultural Committee, my name is Jarel Vinduska, that's J-a-r-e-l V-i-n-d-u-s-k-a. I'm from Sarpy County, Gretna area. My family has a farm there, and in fact, it-- it's adjoining Schramm State Park. So our family's pretty familiar with the challenges of coexisting with wildlife and making a profit farming although wildlife, as had been stated earlier, they're quite a less of a challenge than the property tax in Nebraska. But you guys can deal with that at a different time. But anyway, I want to thank Senator Chambers for being persistent on this bill. I've also testified a couple of

times before. I was actually quite shocked that this statute even saw the light of day because there's so many failures in it. First off, the purpose of state's law should be that it shouldn't conflict with other state laws. And this-- this bill, I mean this Black-Tailed Prairie-- Prairie Dog Management Act, definitely conflicts with that. Number one that I see, is that wildlife is not owned by any individual in the state. It's the property of everyone in the state and everyone in the country. We are-- it's a public resource. And by singling out the black-tailed prairie dog and say that any one landowner has to control it, basically we're saying that the landowner owns those prairie dogs because now he has the liability to control them. We've never done that with any other native species. And I think-- I think it was Senator Blood, I couldn't see quite clearly, but I think you asked what the misperception is, and what it is is, they're looking at prairie dogs like the Noxious Weed Act that this was tailored after. But there's a big difference that people are-- are not recognizing. Noxious weeds are noxious weeds because they're an alien species from a different country or different part of the world. And as such, they have no natural predators here so they get out of control real easy. And seeing as how we're an agricultural state, it's really important that we control things like phragmites and purple loosestrife and musk thistles and a host of other ones, leafy spurge, that can be really detrimental to our agriculture-- agriculture. But that isn't the case with a native species. We shouldn't-- I mean, it's kind of an embarrassment for our state. You know, especially when we realize, you know, you hear it in the news every day, wildlife all over the world are being just decimated. And our environment is just going downhill fast before us, and we can't be sitting here as a state and saying that if one neighbor says to another one, this prairie dog come over to my property and now you've got to control it. Well, how far back does he have to control it? You know, does he control it 100 feet from the boundary because that's the nature of wildlife, to migrate. Do you control it a half a mile? There's no, you know, criteria really because somebody can always say it, so we're in a world of hurt in that regard. So obviously, you know, like the previous testifier says, we should seek a better way to get along with our neighbors and not have the state be able to put the hammer down on us and-- and come on our property and broadcast poison. I mean, I talked to the federal wildlife people, you know? If they come on there, you know, it isn't-- if it-- and the big acreages that are out west, they get on a four wheeler and put a broadcast spreader and they just go back and forth, back and forth, spreading poison grain all over the place. That isn't no way to treat the environment. But the other

way that this is in conflict with statutes that we already have we have in Nebraska 37-801 called the Nebraska Nongame and Endangered Species Conservation Act. And in that act, we admit as a state that we're concerned with protecting endangered species. Well, all states around us, Kansas, Nebraska, well I got to make it quick now but, have black-footed ferrets and plus a host of other species like burrowing owls, and terns, and I mean not terns-- terns, and plovers, and other species that use prairie dog towns. So if we've got it in the books that we-- that a landowner has to kill prairie dogs on his property, now we're going against this act that says we're supposed to be preserving endangered species. And so anyway, I better-- I'm at the end of the line here. But I could talk a long time on this, but I think you get the point. So any questions?

**HALLORAN:** Thank you, Mr. Vinduska. Any questions from the committee? Yes, Senator Moser.

**MOSER:** Are prairie dogs found in the whole state, pretty much?

**JAREL VINDUSKA:** No, no, the farthest east one was over by Crete. But the Doane College had it as a research thing, but they saw dollar signs in that piece of land. And they sold it, and now it's going to be a corn and soybean field. But that was the farthest east they rate-- ranged, over about by Crete.

**MOSER:** So they need sandy soil and that sort of thing [INAUDIBLE]?

**JAREL VINDUSKA:** Not necessarily sandy, they need soil that'll support a burrow. They need wide open spaces like the previous testifier-- they don't-- they don't want any predators sitting in trees. They need soil that'll support a burrow, and they need--

**MOSER:** They need to be able to dig a tunnel that doesn't collapse, you mean?

**JAREL VINDUSKA:** Yes and they need-- they need short grass. They don't want-- they don't want tall grass. They want to keep it mowed so that they can see coyotes and bobcats and badgers and other things sneaking up on them.

**MOSER:** Okay. Thank you.

**HALLORAN:** Thank you, Senator Moser. Further questions from the committee? Seeing none, thank you for your testimony.

**JAREL VINDUSKA:** Thanks.

**HALLORAN:** Next proponent, please. Good afternoon and welcome.

**MICHAEL O'HARA:** Excuse me. Members of the Agriculture Committee, thank you. Thank you, Senator Chambers, for introducing this. I'm Michael O'Hara, M-i-c-h-a-e-l O-'-H-a-r-a. I'm a registered lobbyist representing the Sierra Club, Nebraska Chapter. I'm both a lawyer and an economist. Sierra Club supports LB45 because we believe the existing act needlessly endangers wildlife of many species, including the internationally recognized as endangered black-footed ferret that feeds upon the to-be-poisoned black-tailed prairie dog. Do note that all research on poisoning wild animals indicates that poison spreads throughout the food chain and accumulates up the food chain. This means humans ultimately are exposed to the poisons. Also the Sierra Club supports LB45 because we believe the existing statute is an egregious use of the state's eminent domain power. The existing statute's use of police power goes to its outer constitutional limits of that power. The existing statute uses power typically reserved for quarantine of contagious human diseases. Due process is central to the protection of all rights especially so for property rights. The existing statute has the most minimal due process that is constitutionally feasible in any context. Everyone has confronted a problem where they overreact, and I think this bill gives you an idea how irritated people who have prairie dogs don't-- and don't want them get because they've overreacted both in how they use the law and what solution they apply to it. And so the Sierra Club urges you to send LB45 to General File. If you have any questions, be glad to answer them.

**HALLORAN:** Thank you, Mr. O'Hara. Any questions from the committee? I have a quick question and it gets back to a question I asked a previous testifier. So what's the alternative where-- we're looking at, in-- in Senator Chambers' opinion, it's an egregious bill-- piece of statutes that we have now, and the other extreme that we're going to is not having any legislation at all and leave it up to the neighbors, right? One has a colony starting to trespass onto a neighbor. They both maybe work together, maybe not. But maybe say they work together, still can't control it. Where-- where do we go from there?

**MICHAEL O'HARA:** Well, the first thing would be to increase the amount of due process before you have the state intrude on another person's property. And having increased that due

process, you would then motivate both parties to negotiate more. One of the things, I'm a retired business professor from UNO, and one of the topics taught was negotiation and getting people to perceive the need to negotiate. This is-- the existing statute reflects a total frustration on one side. And they won and so they have a huge hammer, and they immediately trigger just slamming it down on the opponent. That doesn't really get any negotiation between equal parties. In terms of how to address the prairie dogs when they are a problem, you've heard multiple solutions. Last time I was before this committee was on the definition of honey. I was a beekeeper, and central to that is integrated pest management. We've tried poisoning lots. It doesn't work. So things like putting a perch on, if you have the authority to say, deal with it, implement a attempted solution, mowing the grass higher and putting a perch on and bringing in other types of pests relative to what the prairie dog perceives, would be a way to deal with it. But it can be a problem and you can address it.

**HALLORAN:** I understand the methodologies of addressing it or alternative methods, but I'm just saying we're going from, theoretically or conceptually, a bad law to no law, right?

**MICHAEL O'HARA:** Correct.

**HALLORAN:** Where-- where-- where we-- we have a bad law with-- with an overload of process to one where there's no process at all.

**MICHAEL O'HARA:** If you have-- it's a tight legal question. Can you harbor a wild animal? And if you do harbor the wild animal, you take steps to deliberately have it be there. You then are responsible for when it leaves your property and causes harm. And you could initiate a civil lawsuit at that. My first paper on honeybees was invited "trespassee".

**HALLORAN:** So we're talking litigation?

**MICHAEL O'HARA:** That would be one of the other options.

**HALLORAN:** OK. All right. Any further questions? Yes, Senator Moser.

**MOSER:** Do you see a lot of counties using this to control prairie dogs?

**MICHAEL O'HARA:** The county would want to resist because one of the aspects you're doing in a negotiation is I'm trying to get you to pay for my attorney. So if I have these rights to command this county to act, then the county must act. And then my-- the person who doesn't want the prairie dogs gets the taxpayers of the county to pay for it. And the threat of that--

**MOSER:** But do you see that happening much?

**MICHAEL O'HARA:** It has happened in several locations. Yes. And when-- the question is how-- how bad is it that you've designed-- when the government designs a process that allows the government to harm citizens' rights? I tend to be biased towards it. That's bad.

**MOSER:** So your-- your objection is not so much going to protect prairie dogs but it's just going to protect landowners' rights if the county can't force them to manage them.

**MICHAEL O'HARA:** Yeah, we have-- the Sierra Club has two concerns. One is the use of poison and that is using a bazooka instead of a fly swatter. And the way the eminent domain power's designed, it's using a bazooka instead of a fly swatter.

**MOSER:** But then a neighbor could still poison prairie dogs if he didn't want them.

**MICHAEL O'HARA:** You may. And one of the issues one brought up is if you're trying to be an organic farmer and having somebody else come in and apply poison to your land, removes your ability to then be a certified organic farmer.

**MOSER:** But your neighbor could still poison prairie dogs with poison.

**MICHAEL O'HARA:** And but his farm would not be certified organic.

**MOSER:** Yeah.

**MICHAEL O'HARA:** But this is the neighbor coming in and destroying an economic asset. The organic nature of the first-- certified organic nature because of their neighbors preferred method of management.

**MOSER:** Yeah, I'm just trying to get a sense of this. Prairie dogs are new to me.

**MICHAEL O'HARA:** Yeah.

**HALLORAN:** Any further questions? Seeing none, thank you for your testimony.

**MICHAEL O'HARA:** Thank you very much.

**HALLORAN:** Next proponent, please. Good afternoon.

**KELLEE KUCERA-MORENO:** Hi, my name's Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a-hyphen-M-o-r-e-n-o. This is my first time in front of this committee. I did not know anything about legislature, senators, the Capitol, until last year. And last year, I fell in love with my senators. I was in the balcony looking down and I saw a lot of middle-aged white men in suits. And then I started seeing there were people of color. There were women. It's like OK. And I don't know if you're Democrat or Republican. We're supposed to all be independent. Most people are not independent; they're Democrat or Republican. I still don't know. But what I do know in my little ADHD brain is things here have been black and white, period. And I'm upset this year. I'm upset because Senator Chambers has researched this. This isn't the time to sit down and go, what is a-- what is a prairie dog? Let's talk about the prairie dog. This is the time to make a decision. He's already done the research. You know, Senator Blood is trying to say is this we want to save the prairie dog or do we want new legislation? We shouldn't even have legislation because we the people have already decided that we're going to keep them. If you hear what-- what the wonderful people behind me are saying who have also researched it, I don't have to research. Last year, one of our wonderful senators summarized it in about-- I don't know which Senator it was. I was up there watching you guys. And she's-- she summarized it for me in a very brief period of time, and I saw they're valuable. They have a place. And people shouldn't decide what I'm going to do, you know, eminent domain-- domain. I'm poor. I don't want somebody coming and telling me what I have to do on my land. I have no money. There is no money. I come here to look at the Judiciary Committee, and I love you, Senators. Last year, I thought what we were doing last year, we were just going to do, that we were going to come up with a bill that we were going to quit putting people in solitary confinement. We're putting people in small cells. Three hundred people right now are in small cells. There's like a thousand and some people-- and I hate to bore you with this because I know this is probably boring. But people's rights are being violated right now as we sit here. And we're looking at another right being violated.

What I see is this is black and white. And I see this as a fight between Ernie Chambers and the Governor. For some reason, the Governor gets to decide, as does the President, how things go. Ernie Chambers has constituents that are locked up and can't vote. And they have family members that are behind them. He has a lot more constituents than probably the Governor does. But he does-- we don't get credit for that. We can't come here and testify. They're locked up. The main thing is that we take care of our living things. We take care of people, plants, and animals. Our people are not being taken care of. We have animals. Let's keep them here, and let someone else decide. And that's all I have to say.

**HALLORAN:** OK.

**KELLEE KUCERA-MORENO:** So thank you, Senators. I do appreciate what you guys do. This isn't the time. This is the time to just believe and trust what people are saying. And if you want on your own time to go research about this topic, I would suggest you go do that later. Thank you.

**HALLORAN:** Thank you. Any questions from the committee? Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. And thank you for your passionate testimony. And I'm glad that you're getting involved in the process. We need thousands more like you that actually come in and participate, be they pro or con. So I'm going to ask you, again I'm doing this for clarification because I like it on the record, so what you're saying to us is that it isn't necessarily the legislation as much as, it shouldn't exist as far as-- it doesn't need to be tweaked, it just needs not to exist. And the prairie dogs are the priority.

**KELLEE KUCERA-MORENO:** I think Senator Chambers can address this because I don't know. In my brain, really what went on last year, I think we were saying proponents for the prairie dogs and that we were just leaving this alone. I did not know this was an issue, and I think it happened that the Governor decided it was. I don't know. Something happened from what happened when you guys were discussing this issue to that. And I don't know if it was legislation which--

**BLOOD:** It was vetoed is what happened to it, so that  
[INAUDIBLE].

**KELLEE KUCERA-MORENO:** But I don't remember last year if it was we want to have legislation on this or we don't. I thought we were just deciding do we want them just to be, you know, eminent domain. So Senator Chambers can answer that.

**BLOOD:** OK. Fair enough.

**KELLEE KUCERA-MORENO:** Thank you.

**BLOOD:** Thank you.

**HALLORAN:** Next proponent, please. Seeing none, are there any opponents to LB45. Seeing none, are there any in the neutral? None in the neutrals? Seeing that, Senator Chambers, you're back on deck. We have some letters: in support, Nicole Fox, Platte Institute; opposition, Larry Dix, NACO, Scott Brettman, American Society of Farm and Ranch Managers, Scott Smathers in opposition, Nebraska Sportsmen Foundation, Jack Anderson, Sheridan County Commissioner, Mike Drinnin and Steve Nelson, Nebraska Cattlemen and Nebraska Farm Bureau. These are all in your binders, committee members. Senator Chambers, you're back--

**CHAMBERS:** Should I close?

**HALLORAN:** --you're back on deck, yes.

**CHAMBERS:** And the jackhammer starts, but I'll talk-- talk a little louder. I appreciate those who came and the committee members here. And Senator Blood, I wasn't trying to be facetious but I am concerned about all animals and by all animals I don't just mean the four-footed kind you see. I have rescued-- I shouldn't tell you this because they try to poison them, I've rescued roaches in this building. They-- they don't do very well on the floors that are very slippery, and I saw one on his back. And he was about maybe two inches. And the lady who works with me was with me. Naturally, she didn't react in the way that I did, but to try to make the point, I said, now we're both going to go to our respective homes. Maybe this one has a home. And maybe there are young ones who wonder where this one is. But even if that's not the case, nothing will be gained by killing this creature. So if he's going to die, it won't be under my foot. So I turned him over and let him go on his way. I don't kill spiders. One time there was a little mouse in our office, and Cindy screamed when she saw him. And I said, Cindy, you scared him. And she thought that that was the wrong reaction. But we react to things based on the way we are. So my philosophy can be summed up in a couplet that I think Blake wrote, the

poet, a robin red breast in a cage puts all heaven in a rage. I don't like to see humans abused. I don't like to see animals abused. There was a time when the prairie dogs, as somebody touched on, were the most abundant mammals in North America. Now they've been all but eradicated and even in Nebraska. And I'm going to put some things into the record now because I'm the one who said it was a bad bill. I summed it up in this way, I've taken time and expended effort to put this information down. This is a bunglesome law which exemplifies government overreach and overkill without any judicial involvement until a spurious criminal charge is filed against property-- the owners by the county attorney. I'm going to emphasize again, one of the critical requirements of the law is due process, at the federal level and the state level. Notice is a word that always crops up. Our laws give the public notice or awareness of what they are required to do, what they can choose to do or not do, and what they will be punished for if they do. But the law has to be clear so that the person knows. In this law, they talk about giving notice, but I'm going to read it again because I'm going to touch on a few things here. But I'm not going to comment extensively on each one. I'm just going to show you some of the things in it. There is a general notice where they publish it in the newspaper. Then there's a personal notice where they give it to you and then they can leave it at your last-known address if they don't know where to find you. But this is the actual statute, failure to publish general notice or to serve notice individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Black-Tailed Prairie Dog Management Act. That means you're held to know all of this if they don't even tell you. And the law says that they must notify. But the same law says really you don't have to. So here's some of what goes on. The notice that the county board sends out tells you that somebody made a complaint against you or it came to them by information that dogs from your property is encroaching on your neighbor's property and they want it to stop. The board does not conduct an investigation. It does not make an independent determination, and sometimes, it does not even have somebody who filed a complaint. But it's not a verified complaint. If I don't like Senator Moser, then I can accuse him of having prairie dogs that came on my property, and prairie dogs are on my property already because they don't recognize property lines. His farm and my farm, or his ranch whichever the case may be, are on this land, and there's a line between our property. And there are prairie dogs on one side of it. There are prairie dogs on the other side. He knows about this law and I don't. So he's got prairie dogs already, but he goes to the county and he says, Chambers'

prairie dogs are coming on my property. So I get the notice that I'd better do something about these animals in a certain amount of time. And if I don't, the county is going to come on or send somebody onto my property and do what they think is necessary. With that, I'm going to read you some of the things in this law, and I want you to pay attention to the fact that there is no judicial involvement. Conservatives talk about private property rights. They talk about overzealous government rules and regulations. The government is too big. And yet, here's what's being done here. And by the way, there's only one county that has ever done this. There are prairie dogs in more than that one county, but those county boards have not set up anything under this crazy legislation. And in that county they've never used it to the extent that they're able to. They have intimidated people, and caused them to poison prairie dogs on their own property for fear of this hammer being dropped. But anyway, I'm trying to eliminate a lot of this. If the landowner has not complied with this notice within a certain amount of time and the property-- he cannot, or she, cannot show that there has been the corrective action taken, the county will come on your property or send somebody. And the cost of any such management shall be at the expense of the landowner. In addition, the county board shall immediately cause notice to be filed of possible unpaid black-tailed prairie dog management assessments against the property upon which the management measures were used. And this is filed in the register of deeds office in the county where the property is located. If unpaid for two months, the county board shall certify, now to another one, to the county treasurer the amount of such expense and such expense shall become a lien on the property, you all know what a lien is, a lien on the property upon which the management measures were taken as a special assessment levied on the date of the management. And they could have poisoned your land. And I'm going to read the statute that shows how they're not liable for the damage they do. So the assessor has been contacted. The county treasurer makes a special assessment. And the treasurer shall add such expense to and it shall become and form a part of the taxes upon which-- this land and shall bear interest at the same rate as delinquent taxes. You all are talking about property taxes. Here's something that's not even a tax. This is something assessed as a punishment, but it becomes a part of the taxes of the individual. And it bears interest just like delinquent taxes. Then civil actions become criminal. If upon the expiration of a certain period the money has not been paid over, the county board shall notify the county attorney, this is the third official, who shall proceed against such landowner. Now you've made a civil action into a criminal action, and the

county attorney is involved because a neighbor was disgruntled with another. That's in the law. There's no other law like this on the books, none, not even close. Remember, I hope you-- I don't have any prairie dogs in my community. I don't live among the people who are being oppressed by this law. But it doesn't have to happen to me. I told you how I care about animals. I care about the law, also. And the law does not work for people of my complexion. But the only possible chance I'll have is to try to keep the law pure and use it as an arguing point by saying these are the promises you made to us. I served in your army. I pay taxes. I do everything I'm supposed to do, and the laws don't work for me except in a negative way. And yet I work harder than anybody else to try to make the law say what it says it should and be fair to everybody. I don't believe the people in this part of the state would care much for me at all. And if you check, you'll see that the heaviest votes for term limits were in the areas where I try to help people who have senators who won't try to help them. A person upon conviction shall be guilty of an infraction. And I put a sheet that explains what the infraction is and the punishments that can be assessed. And an infraction is a criminal offense. Anything not declared a felony or a misdemeanor is an infraction. It goes to trial just like any other action, but it's tried without a jury before a judge. So now you've got the county assessor, you've got the county treasurer, you've got the county attorney, and now you have the judge and the court because somebody complained about prairie dogs. And the county did not even have an investigation to establish the facts of the case. This section-- remember this, you've got the infraction now that you're guilty of and you will be assessed a fine of \$100 a day, even after this, for every day you're out of compliance up to a \$1,500. So that's on top of you, also. This section shall not be construed to limit the satisfaction of the obligation imposed by this section in whole or in part by tax foreclosure procedures. So now the property has gone into tax foreclosure, and you lose it. And that's not the end. The expense may be collected now by a lawsuit instituted for that purpose as a debt due to the county or by any other additional remedy. You will not find this much piling on anywhere in any law. And what's it based on? A complaint by somebody that's not verified, that prairie dogs are on the scene. They say that this is what would happen to the fines and the other money. If there has been a black-tailed prairie dog management fund, then the money will go into that. And if there is no such fund, then it will go into the county general fund. But they ignored the Nebraska Constitution. It violates the constitution, Article VII of the Nebraska Constitution, Section 5, fines, penalties, license money,

allocations, use of forfeited conveyances, "(1) Except as provided in sub-- in subsections (2) and (3) of this section." That's where certain things are confiscated because of drug involvement and they can be turned over to the agency that made the bust and used in drug enforcement after which time the vehicles are sold and then that money is disposed of as all other fines. And what happens to those fines? All such fines, penalties, and license money shall be apportioned exclusively to the use and support of the common schools in the respective subdivisions where the same may accrue. This money is not to go into a prairie dog fund. It's not to go into the general fund of the county. It's to go into a fund to be apportioned among the schools. The schools should get the money. This statute is unconstitutional in that regard. Who cares? Nobody. I care. Enough senators cared last time to pass it, and then the Governor vetoed it even though it's clearly unconstitutional in the things that it does. So I'm going to keep trying as long as I'm in the Legislature. And as long as the Governor's in his seat, he'll probably veto every bill that I get passed. But that's not new to me. I've always had to go against the wind, swim upstream, carry the heavy end of the log, always, always outmanned, always outgunned. But I'm not going to quit. And then I will quit in my close unless you have a question. I believe what I believe. I believe in what I'm doing. Without intending to boast, I handed out to all of you, and you probably don't read it, a letter from a publisher, Alfred A. Knopf, one of the biggest publishers, who was interested in a book that I was writing at the time. And they wanted me to write the book. I didn't solicit it. Some author told them about me. And they contacted me and said that they had been notified that maybe I had a book I'd like to write. And I didn't have a book, but I wrote some things and I sent it. And I thought that would be the end of it. And I got that letter where the publisher said he was caught every time he read a paragraph and he was interested. But there were other issues in my community that meant more to me than my personal welfare in terms of money. I was arrested several times, and every time the charges were dismissed. I was summoned before a federal grand jury and I refused to testify. And I pleaded the Fifth to give them as much heartburn as I could. At that point, they took me to the judge's courtroom. I was there. There were some men in the back, and since they had suits, they must have been FBI or Secret Service agents. So the judge asked me was I going to testify. I said, no, your honor, I'm not going to testify. He said, do you have a reason? I said, I gave it before the grand jury and I'll give it to you again. I respectfully refuse to answer any questions on the grounds that I might tend to incriminate myself. So pretty soon the few

people that come to listen, they left, then the judge. They have a door that looks just like the wall. He went out that door. And there was me and these guys standing back by the door in the suits. So they looked at each other. Then they left. And I thought of a verse in the Bible, there was nobody left but Jesus only. So since everybody else had left, I left too. And I did a lot of things for my community and for myself. I wasn't married then. But I would go up to the schools every time a child had been brutalized by a teacher. And by that I meant, they would come to the barber shop bloody or a shirt may have been torn off, and I'd go up to the school. And when I did get married and have children, I let them know, you're not going to put your hands on my children. And the teachers all say we won't do that. I said, and don't put your hands on anybody else's child in a room where my child is because it makes them nervous. So nobody else's children were mishandled. A teacher who was a substitute wrote the word, I don't use this language but I'll spell it, f-u-c-k, on a piece of paper and held it up to my little sister and asked did she know what that meant. And she came and told me. You know what I did? I went up to the school, and I grabbed him. I took him outside, and I threw him in a snowdrift. I didn't punch him. I didn't break a bone. But I let him know I was very displeased. That didn't happen in white schools. When adults had problems, when I was in my latter days as a high school senior at Tech High, I would get calls from people who had a problem with the police, with the housing authority, with a school. And I went. I always confronted people, always was confrontational, and never ran. And the things that happened to the people in my community, the ridicule that I went through when I was a small child in school, couldn't fight, didn't know how to fight, put something in me where I didn't want any child to ever feel like the way I felt. So I started protecting white kids who were ganged up on. It was an almost all-white school. And you wonder why I'm taking this time? Because I want some things on the record. It's not just animals that I'm concerned about. I'm concerned about the people that nobody cares about. And it brings me back to why I will bring a bill like this again and again and again, why I will try to help the people who need mental services. People can't find a place to live. And other people don't seem to care. But I do. I'm not a whiner. I will be kind and gentle if people allow me to. But if they want to fight, they need to know what it is that they're getting a hold of. I want this bill to be advanced to the floor or I wouldn't have brought it. I think enough reasons have been given for it to be advanced. That's for the sake of the record. And I will terminate my remarks unless you have some questions.

**HALLORAN:** Senator Moser.

**MOSER:** I get that look. Just a comment, you know, you think that people don't pay attention to what you say sometimes. But I enjoy listening to you. I learn a lot, sometimes, when you speak. Sometimes I have some knowledge of what you're talking about. And, you know, I don't always-- I don't come from the same background you do and so, you know, I don't understand your perspective on everything, but I respect your perspective and I do appreciate what you bring. Somebody needs to test things to see whether they're sensible so, you know, not everything is done by groupthink. And so you're that lightning rod, and I think, to try and provide that kind of perspective to consider what, you know, what we're doing.

**CHAMBERS:** I appreciate that, Senator Moser. And he acknow-- he told me one time I properly-- I correctly pronounce his name.

**MOSER:** Thank you.

**CHAMBERS:** Any other questions?

**HALLORAN:** Thank you, Senator Moser. Any other questions?

**CHAMBERS:** Oh, Mr. Chairman, I don't think it was emphasized enough. Now if I've got prairie dogs on my land and other people-- the adjacent landowners don't want them there, then I would deal-- I'd put the vegetation there and I would put up the roofs, the perches. And that would work. It's as simple as that. It's so simple that people run past it. And remember, there's only one county where this thing has been done, and they haven't used it to the extent that they could because they were notified that it might not be the wisest thing to do. Thank you.

**HALLORAN:** Thank you, Senator Chambers. That draws a conclusion for the hearing on LB45. We will adjourn for a few minutes. I'm asking the committee not to wander off too far. We need to clear the room for the next-- the proponents and opponents.

[BREAK]

**HALLORAN:** [RECORDER MALFUNCTION]for LB304. I'm not going to run through the whole introduction. Most all of you have been through the drill of being in these committees. I would just remind you that there are sign-in sheets, green sign-in sheets, if you wish to testify. And provide 12 copies for the committee members, and we can get you copies if you don't have enough.

With that, welcome, Senator Crawford, to your committee. Good afternoon.

**CRAWFORD:** Thank you. Good afternoon, Chairman Hall-- Halloran and members of the Agriculture Committee. For the record, my name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District in Bellevue, Offutt, and eastern Sarpy County. And I'm here today to introduce LB304 for your consideration. In recent years, the Legislature has been working hard to remove barriers to earning income through occupational licensing reform and other regulatory reforms. It's critical that the state continue to pursue innovative approaches that allow Nebraskans to earn an income. LB304 is an update to last year's LB764. It's a-- it is a-- it is a cottage foods bill that would allow Nebraskans to sell food already authorized for sale at farmers' markets, to customers from their homes, at certain events, or for order or delivery. Currently, the Nebraska Pure Food-- Foods Act allows individuals to sell foods that are not time/temperature controlled for safety at farmers' markets without a permit. This includes goods-- foods such as baked goods, uncut fruits and vegetables, jams, jellies, and fresh or dried herbs. LB304 would allow individuals to sell these same food items that they can already sell at farmers' markets from their homes so long as they are properly labeled and the producer follows the food safety and handling guidelines for sales at farmers' markets as required-- required by the county, you know, I included the amendment-- the amendment, or city. That's the amendment. It adds the word city to this where the food is-- is being sold. Labels must state the name and address of the producer and a warning that the food was prepared in a kitchen that is not subject to regulation and inspection by a regulatory authority and may contain allergens. At farmers' markets, the state leaves the risk assessment and decision of consumption in the hands of the consumer. According to the Nebraska Department Health and Human Services' Division of Epidemiology, their data shows no outbreaks of foodborne illness related to farmers' markets in the state. My staff spoke with food safety experts in each of our surrounding states and none of them reported any outbreaks of foodborne illness that have been linked to the sales of cottage foods or foods sold at farmers' markets. National data reflects the same, no incidents of foodborne illness that have been linked to the sales of cottage food in the states that allow them. Cottage foods are simply not risky foods. These are foods which are inherently safe. They're nonpotentially hazard foods. And there is no evidence to suggest that these foods pose health and safety risk to the public. This bill is simply allowing another avenue

through which local producers can sell their goods. Considering these circumstances, it only seems logical that consumers be allowed to buy these same foods, produced in the same conditions, in the-- in the same labels from their neighbor at any time of the year and not just in the warmer months when the farmers' markets occur. Currently 49 states, including Nebraska, allow for the cottage-- the sale of cottage products in some capacity. In Nebraska, it's at the farmers' market. Twenty eight of these states allow for the sales of cottage foods without any registration, permit, license, or food safety course requirement, and 33 don't have sales caps. Nebraska is one of only three states that only allow these shelf-stable foods to be sold at farmers' markets. LB304 follows best practice recommendations from a 2018 Harvard Food Law and Policy Clinic study, by expanding the law to make sure that all citizens can participate in the home cottage food industry without imposing a sales limit or overly burdensome regulations. The additional income provided by cottage food sales could help many individuals who are underemployed across our state make ends meet. In addition to providing the hardworking Nebraskans with additional income, allowing the sale of cottage food can produce other community benefits. The Harvard-- Harvard study cited earlier summarized these benefits in a 2013 report stating, "Home food production can serve as business incubator by reducing some of the start-up barriers for fledgling entrepreneurs and providing the indirect economic benefit of growing more local businesses. Communities benefit from cottage food production because it provides residents greater access to locally produced foods. Additionally, cottage foods encourage more people to grow food because the growers know they have an outlet to create value-added products from any excess fruits and vegetables they produce." A study from the Institute of Justice found that cottage food producers were over-- overwhelmingly rural, lower-income women. Median annual sales for cottage food producer was \$2,000 a year, enough to pay some bills but not enough to put our neighborhood bakery or grocery out of business. The current restriction on sales from the home effectively prohibits producers from taking custom orders for things like cakes, which could be a significant source of sales, especially in smaller communities. But this bill will not only impact the rural population. Urban gardeners and consumers living in urban food deserts also stand to benefit as well. This bill will enable producers to supplement incomes, promote entrepreneurship, and reduce barriers to growing local businesses in our state. And again, I provide an amendment for you, and the amendment adds that if there are city regulations for farmers' markets, that anybody selling cottage food would

follow those regulations as well. So the basic idea is that the same regulations that apply to food at the farmers' markets would apply to those selling cottage foods. To conclude, hundreds of Nebraskan families are already purchasing and safely consuming the locally produced products authorized for sale in LB304 farmers' markets. This legislation simply makes cottage foods available throughout the year and provides access to local foods in communities that do not have farmers' markets. LB304 is a commonsense bill that reduces barriers for Nebraskans to earn income. And with that, I'm happy to answer any questions that you have.

**HALLORAN:** Thank you, Senator Crawford. Any questions? Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. And thank you for presenting your bill today, Senator Crawford. And thank you for your ongoing support of the Bellevue Farmers Market as a sponsor. So one of the questions that I have and I'm hoping that you can build on it because you did touch on it a little bit, what's been your experience talking to the people in rural Nebraska in reference to this cottage bill? I know property taxes is a big issue, and it seems that so many of the-- the people that have farms and ranches, that spouses especially are looking for secondary incomes, but they don't necessarily want to have to leave the farm to make it. Can you share any stories with us or say it's with the impact--

**CRAWFORD:** Well, one of the women that approached me last year when we were preparing this bill--

**BLOOD:** Um-hum.

**CRAWFORD:** --was from a more rural area, and she was interested in having this opportunity. So that's one of the main rural contacts that we had in preparing the bill.

**BLOOD:** Can you build on that a little bit more? Besides an interest, why was she interested?

**CRAWFORD:** Sure. She actually was interested because she was-- had to take care of, I think it's her mother in her home. So she was unable to have a job outside of the home but wanted an opportunity to have some additional income to help to support her during those times when she was caring for her mother.

**BLOOD:** OK. Very good. And then, did I hear you correctly? If I heard you correctly, this is another pristine example much like the people that were home-brewing that became crack brewers later on. Is this a pristine example of a foundation for entrepreneurship?

**CRAWFORD:** I would expect so. Some people will decide that this is something they want to expand. And then they will get a license and become an official business.

**BLOOD:** OK. Thank you very much.

**CRAWFORD:** Thank you.

**HALLORAN:** Thank you, Senator Blood. Any further questions? Senator Moser.

**MOSER:** Are people who make wedding cakes already regulated?

**CRAWFORD:** Well--

**MOSER:** Or would this affect them at all?

**CRAWFORD:** --so if they're-- if you're making-- this bill is for temperature-safe foods. So if you were making a wedding cake that could be left out and be safe, then it would be a temperature-save food. If you're making something with a butter cream frosting or something that would not be safe left out, then it would not be covered under this bill.

**MOSER:** So wedding cake manufacture-- bakers are not now regulated other than all this?

**CRAWFORD:** Not if they're just preparing it from their home, unless they've gotten a license themselves.

**MOSER:** Yeah, well, we've hired some, but I just never paid any attention to whether--

**CRAWFORD:** Um-hum.

**MOSER:** --there was any regulation for them at all. We didn't die.

**HALLORAN:** Thanks for that, Senator Moser. That's good news. Any further questions? Any further questions? Thank you, Senator Crawford [INAUDIBLE].

**CRAWFORD:** Thank you.

**HALLORAN:** Proponents for LB304.

**ERICA SMITH:** Thank you.

**HALLORAN:** Welcome. Good afternoon.

**ERICA SMITH:** Thank you. Good afternoon. My name is Erica Smith. I'm an attorney at the Institute for Justice. We're a national nonprofit law firm headquartered in D.C., which is where I flew in from. And I'm currently the nation's leading expert on cottage food law. I didn't set out to be the leading expert on cottage food law. It just kind of happened. But I've been working with Senator Crawford, the Platte Institute, and 250 home bakers across the state who are eager to sell their delicious cookies and brownies to customers which they can't currently do. So I'm going to just talk about three issues: one, why Nebraska's current law is so bad and why it needs to change; and then I'm going to talk about the safety issues; and finally, the economic benefits of passing this law. So currently 49 states allow people to sell home-made foods, including Nebraska. The only state that doesn't is New Jersey. But the pro-- but New Jersey-- but Nebraska's law is the worst cottage food law. And that's because you can only sell from farmers' markets. Now farmers' markets only go from April to October, so that's extremely limiting. They're expensive. If you're a stay-at-home mom with kids at home, you can't drop everything and go to the farmers' markets. In almost every other state, you can sell out of your home, often you can sell on-line, and you can even sell to retailers. So all LB304 does is catch Nebraska up to the rest of the country. Now I'm sure there's going to be opponents to this law talking about safety like, oh my God, people making food in their-- in their home kitchens. But again, this is already done in 49 states including this one. And there has not been a single reported illness. I have personally gone through the CDC data and there's no reports of illness from any cottage foods being sold in the 49 states where they're legal, including in Nebraska. So all this concern about, oh my gosh, home kitchens, it's just completely speculative. And there's no evidence to it. Now if this law is passed, it's going to be a big economic benefit to the state. I've worked with a lot of other states in expanding the cottage food laws, and we've seen

hundreds of new small businesses crop up. Now these are people who a lot of times, they can't even work out of the home. They might be retired. They might be disabled. Maybe, they're a military wife who constantly has to be shifting where she's working, what she's doing. And having a small business like this is a huge-- makes a huge difference for that family. Now there-- sometimes people talk about, oh competition, it's not fair to the bakery on main street. We have studied this issue, and the average home baker is only making about \$2,000 in profit. Now that's a big difference to a small farmer who's trying to get things by, but it's not enough to put anyone out of business. If anything, when these businesses become successful, they then go on to open their own brick and mortar. So competition is not a concern, and I'm happy to answer any questions.

**HALLORAN:** Thank you, Ms. Smith. For the sake of the transcriber and the record, could you spell your first and last names?

**ERICA SMITH:** Sure. Erica is spelled with a c, E-r-i-c-a. And my last name is Smith.

**HALLORAN:** S-m-i-t-h. OK. Thank you. Yes, Senator Chambers.

**CHAMBERS:** Do you have a sense of humor?

**ERICA SMITH:** I hope so.

**CHAMBERS:** Based on what Senator Moser said, could it be you don't have any complaints because all of those who were complaining died?

**ERICA SMITH:** I would hope their family would say something.  
[LAUGHTER]

**CHAMBERS:** I couldn't resist.

**HALLORAN:** OK. Senator Blood. Thank you, Senator Chambers, for the humor. Sen-- Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. On a more serious note, I know I already said this again, but I just want to make sure that we have this in record. So if I heard you correctly, one of the main reasons that you support this bill is because it is a pristine example of how an entrepreneur can take their idea, start with their idea, grow their idea, and then potentially, come out into Main Street USA with their idea. Is that correct?

**ERICA SMITH:** Absolutely. In fact, we studied exactly who are starting these businesses, and it's predominantly low-income women in rural areas, exactly the kind of people who need to be making money. So this makes a big difference for a lot of families.

**BLOOD:** And so ultimately it sounds like we're removing hurdles to business.

**ERICA SMITH:** Yes.

**BLOOD:** All right. Thank you.

**HALLORAN:** Thank you, Senator Blood. Senator Hansen, you have a question?

**B. HANSEN:** Yes. Thank you, Chairman. Thank you for coming.

**ERICA SMITH:** Thank you.

**B. HANSEN:** Just a couple of quick questions. Can you, since this is the expert in the entire country, can you talk about maybe any conflicts there might be or there could be or there has been between state and city ordinances or laws that might kind of show up?

**ERICA SMITH:** Usually we suggest that there's a provision in the law just saying that this preempts local law. That's kind of implied. Anytime you have a state statute it can't be preempted. But we wouldn't want a county to come, you know, try to preempt it.

**B. HANSEN:** I would assume. I just didn't know if there's anything that showed up with other states, [INAUDIBLE] fought it [INAUDIBLE].

**ERICA SMITH:** No, usually if that happens we could just write them a letter and say you're preemp-- you're violating state law.

**B. HANSEN:** OK. That's easy. OK. That's it. Thank you.

**ERICA SMITH:** Thank you.

**HALLORAN:** Thank you, Senator Hansen. Any further questions from the committee? If not, thank you, Ms. Smith, for your testimony.

**ERICA SMITH:** Thank you very much.

**HALLORAN:** Next proponent, please. Good afternoon and welcome.

**ROBERT BERNT:** Thank you, committee. My name is Robert Bernt, R-o-b-e-r-t B-e-r-n-t, and I'm from Spalding, Nebraska. The one thing about ranchers in outstate Nebraska is when they plan a trip, they try to do everything they can to accomplish something. I know you've seen me here earlier on Senator Ernie's bill. But this bill here, it does-- it does affect us as a small family operation. Now, I say small in the terms of number of acres, but we have 12 children in our family, 11 grandchildren. And we are actually bringing these children back because of the benefits of similar issues like this. We-- we had a small dairy. I explained to you how we have our cheese in the town here and in the city and across the state. We built that cheese-processing plant to salvage our dairy. We are the only dairy left in the two counties which I operate in, all right? We did the same with a meat-processing plant because we wanted to market our product direct to our customers. It just wasn't feasible to do what we were doing, so we actually built a meat-processing plant. We went one step further and we built a certified kitchen, all right? That kitchen now serves as a-- beyond what I expected it to do, but we are catering meals. We have area farm families out there and wives. In our county, there's 1,000 people. There is no grocery store, all right, in Wheeler County. But we've got ladies there that make the best kolaches and cookies that you'll find anywhere. And as a-- as a caterer, which we do occasionally, we would like to be able to source those products from them to put on our-- our menu as our caterer, give them an outlet. The importance of what your session has here this year, it's-- it's continually property tax, property tax, property tax, property tax. And I fight it out there. It's hard to-- it's hard to come up with the funds to do what needs to be done. But it's really important to add value to what you have. You don't have to force another individual off his property to consume it, to get more land, to pay more land tax. You need to add value to what you have. And that's the best way possible to offset the increasing land tax values. So if we can take our milk and make cheese, we've not created a value. If we can take a vegetable, process it in a kitchen, we create value. Now we've got a way to offset a lot of those increase. And this is where this bill would really help with some of the farm families out there. If that housewife who has a unique bread or kolache or cookie, and we experience it all the time and I know that other people would love to be able to experience it, would then be able to help offset, carry some of the burden

from this. You know, and I-- and I carry some history. I was a 4-- 4-year term president with Nebraska Food Co-op, and we actually picked up food as far west as Sidney and delivered it to Omaha every month. Sometimes we did a twice-a-month run. So we had a system set up that they could purchase on-line and distribute and deliver it. So the system is there and it is in place. It's open today, in fact, so that any housewife in outstate Nebraska could get herself tied in with the co-op and they could distribute this food for them. So it'd be a big benefit for her in that way. So it isn't that she'd have to create the-- the consumer. It's there and it's in place. It's a good system. I'm also on the Nebraska Food Policy Board. I feel deeply about being able to reach into this area where we can furnish food and healthy food, nutrient-dense foods, to people. It's important to me. And I'm also a member of the Nebraska Food-- or Nebraska Dairy Policy as a processor site. So I've got some input from that part of it. But this bill is a definite plus for the people in outstate Nebraska. And I don't mean just them, but they're mainly it for me because I understand and I-- and I see that in our part of state. So I'm here to support it, if there's any questions.

**HALLORAN:** Thank you, Mr. Bernt. Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. Just a quick question. You said that you would support any housewife that would want to participate in this. I just want to clarify does that also mean househusbands as well?

**ROBERT BERNT:** It sure does.

**BLOOD:** All right.

**ROBERT BERNT:** I-- you know, it just come out that way, but it sure does.

**BLOOD:** No worries.

**ROBERT BERNT:** The particular ones that I know of out there that we could really benefit-- or there's another family that has eight children. And she does make this wonderful kolache that everybody would love. And if we could utilize those to-- to carry. And she does do farmers' markets just for the time in a little town of Ord, Nebraska, from May to October. This would really help them and it would be a product that I know our customers would love. And I know anybody else who would ever taste them would too.

**BLOOD:** Well, make sure that you leave the information for the kolaches with the Red Coat because I'm Czech, and I'm always looking for a good kolache so.

**SLAMA:** Wait, you're Czech, too?

**BLOOD:** Um-hum.

**HALLORAN:** Thank you, Senator Blood. Thank you. Any further questions? If not, thank you for your testimony.

**ROBERT BERNT:** Thank you.

**HALLORAN:** Next proponent, please. Good afternoon. Welcome.

**NICOLE FOX:** Good afternoon, Chairman Halloran. Nicole Fox, N-i-c-o-l-e F-o-x, director of government relations at the Platte Institute. Thank you for the opportunity to discuss cottage food law today. LB304 reduces barriers for potential entrepreneurs and allows them to achieve what we refer to in Nebraska as the good life which is a legislative priority of the Platte Institute. I'd like to thank Senator Crawford for introducing this bill. It addresses the limitations imposed on producers of nonperishable baked goods, jams, jellies prepared in their home kitchens, also known as cottage foods. Last summer, there was a woman that reached out to the Platte Institute. She couldn't be here today. She's from the western part of the state. But she definite-- she supported last year's cottage food bill, and she was curious as to the status and what was going to happen in the upcoming legislative session. She's a grandmother, and she helps to take care of her grandson because her daughter is a single mom. And her gran-- and her daughter cannot afford daycare. So she's retired, and to supplement that retirement income, she prepares sugar-free brownies and pies because she feels there's a need for those particular baked goods. And she sells them at the locals-- local farmers' market. And she'd like to be able to prepare these baked goods and sell them from the home year-round. For some individuals in our state, the ability for them to generate an income may be limited. And as you just heard, in rural Nebraska there are often limited flexible ways to earn a second income, particularly for women. Some individuals have an elderly parent as the woman that reached out to Senator Crawford or they have a family member with special needs, and they can't work outside the home. Some are stay-at-home parents, and they want the ability to earn extra income to help cover expenses for their children's activities such as scouting, dance lessons, gymnastics, those types of things. And just-- we do have some

people here that are going to be sharing their stories as well, in addition to the one you already heard. And finally, for some, their desire is to ultimately establish a brick-and-mortar business, but they currently don't have the collateral to qualify for a small business loan. Current law imposes a barrier to these individuals and Nebraska's Pure Food Act allows cottage foods to be sold only at farmers' markets, which limits the time that they can do this, which is typically May/June till about September/October. And LB304 we see as a simple-- simple solution. It amends Nebraska's current law so that individuals can sell directly from their homes year-round. And I do want you to know, I think Erica mentioned this in her testimony, we have significant interest in this bill. Several people have reached out to Platte and other organizations throughout the state, and there's a Facebook page with over 250 followers. So there are a lot of people that really want to see this bill move forward. In August of 2018, the Harvard Law School Food Law and Clinic-- Policy Clinic updated its 2013 report. The report includes an appendix and explains the cottage food laws in every state and shares citations and links to state materials. Over the past few years, more and more states have been expanding their cottage food laws. It's time to expand our law in Nebraska to keep us competitive and allow individuals greater income-earning potential. There have been no reports of foodborne illness, as Erica mentioned, due to consumption of cottage food products here in Nebraska, in Washington, D.C., or any of the other 48 states that have cottage food laws. The Food and Drug Administration Food Code categorizes items such as jams, jellies, granola, popcorn, and shelf-safe, stable baked goods as nontime/temperature-controlled foods. These foods are designated so because they cannot support viral or bacterial growth. Due to concerns raised during last year's hearing by opponents, this year's bill has an added provision to require the cottage foods producer to follow food safety regulations required by the county in which they are selling cottage foods. For example, if the county requires a food handler permit, the cottage food producer will have to obtain one. And now, just very briefly, I'd like to change hats, and put on the former Platte hat and put on my health care hat real quick. One of the-- the handouts I sent around is an article I wrote back in the days when I worked in nutrition. And for some of you that know me, I worked in health care for 17 years working with cancer patients, working with HIV patients, people that are severely immunocompromised. I worked at our-- in our bone marrow transplant unit where patients were on immunosuppression. They had very few white cells. And one of the things I had to deal with routinely with those patients was-- were food safety

issues. And so this is a copy of an article that I wrote when I was working at UNMC. And if you look at it, and I'm just going to direct your attention to pages 575 and 590 where I discover-- there's a couple of charts on food-- safe food handling and foodborne illness. And if you look, the foods that are listed there are foods, you know, that are seen as hazardous, and you will not see on there baked goods or jams or jellies. So with that, I see I've got the red light. And I'm happy to take any questions. I do hope that you advance LB304 out of committee.

**HALLORAN:** Thank you, Ms. Fox. Any questions from the committee? Must be very thorough. Thank you.

**NICOLE FOX:** All right. Thank you.

**HALLORAN:** Next proponent, please. Good afternoon.

**RON TODD-MEYER:** Good afternoon, Senator Halloran, members of the Ag Committee. My name is Ron Todd-Meyer, R-o-n T-o-d-d-hyphen-M-e-y-e-r, and I'm a member of the steering committee of the Nebraska Food Council. I'm here supporting LB304, and thank Senator Crawford for its introduction. I'm a retired commodity farmer. I farmed for 35 years. And I remember twice being told that way out there in outstate Nebraska, we're feeding the world. Nebraska farmers are feeding the world. Well, about a decade ago, a 2010 study by the Crossroads Resource Center out of Minneapolis examined how much money Nebraskans spend on food and what percent of those food dollars stay in our state. And the numbers are startling. Nebraskans annually spend \$4.4 billion on food, but only 10 percent of those dollars stay in the state. The 90 percent of the food that is imported into Nebraska travels on an average of 1,500 to 2,000 miles, depending on the study, before it gets to our dinner plate. For a state that prides itself on being the breadbasket of the world, it's unbelievable as well as risky that we overwhelmingly rely on outsiders for our food. Seventy years ago, we largely fed ourselves. We need to get back to supplying some of our local diet. LB304 would provide a small step in boosting local economies with Nebraska produce-- produced and processed food. Cottage industry products such as locally produced jams, jellies, breads, and baked goods are being sold successfully-- successfully at local farmers' market and should be allowed in other markets. Having watched the demise of rural communities over the past 70 years, I believe any steps we create for locally produced food would be a positive step to revitalizing rural economies. And I urge that LB304 be voted out of this

committee, debated on the floor, and enacted into law. Thank you.

**HALLORAN:** Thank you, Mr. Todd-Meyer. Are there any questions from the committee? Seeing none, thank you for your testimony. Next proponent, please. Good afternoon.

**MATT GREGORY:** Good afternoon, again, Chair Halloran, members of the Ag Committee. For the record, my name is Matt Gregory, M-a-t-t G-r-e-g-o-r-y. I'm here today representing Nebraska Farmers Union and in support of Senator Crawford's bill, LB304. Thank you, Senator Crawford, for introducing it. Cottage foods is an issue that Farmers Union has worked on for a long time. Our president and executive director, John Hansen, has done a lot of work with that. And-- and Nicole Fox's and Erica Smith's research has confirmed our experience, and it's that we have beginning farmers, specialty crop producers, family members of farmers of all stripes who are looking for ways to di-- diversify their operations and try to make some additional income. In particular, many of these are spouses who don't have the time or the inventory to do farmers' markets. They might not want to pay a fee to have a spot, to drive-- to spend the gas to drive to town and back. And so this bill would allow a mechanism to be able to buy the same products from the same vendors during the rest of the year when farmers' markets aren't going on as well as other event gatherings listed in the bill. You know, there's customers who may already have seen these products. They already like them. They could be repeat buyers. But we only have farmers' markets in the late spring, summer, and early fall, so we'd like to see an expansion of the marketing season. And as a longtime former resident of the Czech Republic, I am definitely in favor of any legislation that would lead to more kolache. We have a growing number of entrepreneurs who are trying to supplement their incomes with in-home business, and this bill is a way to reduce some of those regulatory barriers and red tape that stands in the way. You know, we're now looking at five years of below the cost of production commodity prices for corn and soybeans. Farmers are trying to do all kinds of things in order to make an extra couple thousand, maybe \$5,000, \$10,000 in income. So this is an avenue where they can diversify, and we believe that they should have that opportunity. This is a small business. It's individual enterprise, and it's supported in more-- in other states. And so Nebraska needs to do some catching up. I don't have any particular examples, but-- but as Senator Blood has-- has-- has mentioned, this is-- this is a jumping-off point for-- for small businesses. You know, and-- and a lot of that is-- is low-income, older, retired, rural

people. So I was going to mention Nebraska Food Co-op. I think that's-- that's been gone over. But we don't want to see a delivery system as-- as a limiting factor. So we would like to see it maybe even expanded so that-- that cottage foods would allow third parties to get involved and someone like Nebraska Food Co-op that has a distribution system. So now we'll wrap up here. Before my time with Farmers Union, our president, John Hansen was involved in helping with the creation of farmers' markets in Nebraska. And he used to hear that it would never work and that city folk wouldn't wake up early on Saturday mornings. And-- and now we know how wildly popular farmers' markets are. So all the fears, all the concerns, all the hesitation, were worked out and worked through. So we see this as the next step in the process. Thanks.

**HALLORAN:** OK. Thank you, Mr. Cook-- Mr. Gregory. I just about called you Mr. Kolache. Sounds like this may be an incubator--

**MATT GREGORY:** Hey, that'll work. I could go with that nickname.

**HALLORAN:** --sounds-- this may be an incubator for a future franchise, you know, Duncan Kolaches. It's got a ring to it.

**MATT GREGORY:** There we go.

**HALLORAN:** All right. Any questions from the committee? Seeing none, thank you. Next proponent. Good afternoon.

**CINDY HARPER:** Good afternoon, my name is Cindy Harper, C-i-n-d-y H-a-r-p-e-r. And I'm a home baker. And I'm here to tell you how I would be affected by the passage of this-- this bill. I became interested in sugar cookies actually a long, long time ago. I was always kind of drawn to the sugar cookies in the display case when I went to the grocery store. And about 10 or 15 years ago or so, I decided I really, really wanted to start to learn to do these things myself. I thought they were just so neat, pretty, and they taste good. We hope they taste good anyway. And so I started working on trying to learn how to do the process of making these cookies and then that kind of developed on to taking time off from work. I went to culinary school. I learned how to be a baker and how to run a professional food service business. I went through extensive safety and sanitation training and so, as a result, I do have a level-five food manager's permit and I am ServSafe certified. I will say that the people that I know that are in this business, none of us want to make anyone sick. We know what we need to do to keep it safe, and that's our goal. So for me, I do make sugar cookies

now. That's kind of my specialty. I do some other things as well, and the farmers' market is a great opportunity for me to advance what I'm doing. I've never done farmers' market before, so this year is my first year of trying. And I'm looking forward to doing my market research and see how that goes. But in the meantime, I've made them. I've given them to friends. I take them to work. Everybody loves them. They look great. A plate of sugar cookies on a tray, on a table, in a buffet, looks great. And what's great about what I do is that I can customize them. So I can customize flavors. I can customize designs. They can say things like, happy 50th or things like that. And so it's surprising to me, it continues to be this surprising to me how much people love them. And they're just little cookies; there's really nothing that big to them. I will say that as part of my education, I did have to work in a restaurant facility, and so I learned how to run that side of it as well. And between the four different places that I worked over the course of my time in that era, I was-- I was kind of disturbed at some of the things that I saw. I would work with people who either didn't have the education to know how to safely do what they were doing or they didn't care. And so it got to a point where I felt like I couldn't continue working in this particular environment. I really needed to go out on my own so that I could be sure that what I was doing was safe and that I was following what the health code was requiring of us for sanitation reasons. So those are a couple of the reasons why I've decided to go out on my own with this venture. Oh, I had a thought and I just completely lost it. I will say that at this stage in life, I'm not looking towards starting a brick-and-mortar store. That's really not my goal. I'm looking more forward to retirement and getting ready for retirement and having something that can be something that would help me with some extra income during those years and something to keep me busy during those years. And then-- just had another thought that I lost. Just a little nervous here. I've never done this before. So-- I wish I could get that thought back because it was a really good one. So you know, with that, I will say that-- here it is. What-- what I think is really valuable about this bill for me is that while the farmers' markets are great, they're limited in time. For me and what I do, the biggest part of my business is really at the holiday time or earlier in the year around Valentine's Day, Easter, graduations, those kinds of events. Without a farmers' market at that time of year, I'm limited in the capacity to fulfill orders. So having ability to maybe have an Etsy store on-line or something else really will expand my horizons, open up a lot for me where I could really expand my business in a way

that I would never be able to do if alls I could go do was the farmers' market. So with that, do you have any questions for me?

**HALLORAN:** Thank you, Ms. Harper. Any questions from the committee? Seeing none, keep up with the sugar cookies.

**CINDY HARPER:** Thank you.

**HALLORAN:** Next proponent. Good afternoon. Welcome.

**JORDAN RASMUSSEN:** Afternoon, Chairman Halloran, members of the committee. My name is Jordan Rasmussen, J-o-r-d-a-n R-a-s-m-u-s-s-e-n. I am a policy manager with the Center for Rural Affairs. While you're getting my prepared comments, I'll let you read those in your spare time. But I have a letter that was submitted by a constituent and really speaks to the real entrepreneurship that Senator Blood has been asking about. This is from Katie Jantzen. She owns a diversified-crop, specialty farm and direct - she direct markets her products through her CSA near Plymouth, Nebraska. This is Katie's letter. I am a cottage food producer in southeast Nebraska. I bake bread as part of my farming operation. However, because of existing Nebraska regulations, the growth of this aspect of my business is restricted by the limitation to only sell at farmers' markets. This restriction limits sales by time and by location for both the cottage food producers and for potential customers, either of whom may not be able to be at the farmers' market on that given time. Many cottage food producers live in rural areas without a local farmers' market. It is unnecessarily restrictive to require these producers to drive long distances in order to be able to sell their products. Likewise, because many rural farmers' markets operate, at most, weekly for two to three hours, it can be challenging for consumers who want local, homemade food to be able to arrive at a specific location during such a small time frame. In recent years, many other states have expanded their cottage food laws to promote small business development and local food access. Nebraska is the only state that restricts cottage food sales to farmers' markets. In the past, concerns have been raised about food safety of home baked products. Somehow, in the 48 other states that allow cottage foods, nobody has ever gotten sick from buying a cookie outside of a farmers' market. Given that excellent track record, it makes sense to remove this restricted regulation and allow cottage food producers to sell their products to other Nebraskans seeking out local homemade foods. As consumer interest in local food continues to grow, it would be wise for the state of Nebraska to catch up with other states that have eased cottage food

restrictions, thereby providing opportunities for largely rural, largely women-owned, home-based food businesses to contribute to the economy. That concludes Katie's letter. Again, on behalf of the Center, we-- we, too, stand behind this bill and are supportive of it just because of the rural opportunities that it does provide for folks like Katie and the many others that are out there that are wanting to get in this business. So with that, I will take any questions.

**HALLORAN:** Thank you, Ms. Rasmussen. Any question from the committee? Seeing none, thank you so much.

**JORDAN RASMUSSEN:** Thank you.

**HALLORAN:** Next proponent, please. Good afternoon and welcome.

**MICHELLE WARE:** Good afternoon, committee members. My name is Michelle Ware, M-i-c-h-e-l-l-e W-a-r-e. I've reached out to several of you before today. Now I'm glad for this opportunity to speak in person. Bear with me; just a little nervous. I am here in support, of course, of LB304. Tell you a little bit about how it impacts my life. Prior to moving to Nebraska, I attended culinary school. I worked in commercial bakeries. I really fell in love with all things cake. It's really a specialty. What we do is truly an art. It is more than just baking cupcakes. It's figuring out how to make something entirely edible and out of sugar, and is a huge passion of mine. Like some of the statistics that they have mentioned to you today, I am female. I live in a rural community. I am on the path of wanting to open my small business and produce customized cakes that includes wedding cakes, sculpted cakes. The way that the law currently stands, it is restricting me from being able to pursue, not only this career but this huge passion of mine, to be able to do. I work a full-time job. Being able to come home and produce something so special like this for someone, so customizable, is the best feeling in the world. Being able to go to farmers' markets is an opportunity for some, but it's very restricting for me, some of those reasons being the times that they're offered. In my rural community, they're offered in the summer on Thursdays at 4 p.m. I commute. Simply can't-- can't make that. I've looked into the farmers' markets in Lincoln, and there are restrictions on taking orders for later dates. Even if I were to meet a customer and deliver their order there next week, I can't say, yes, I can do your wedding cake. So it limits me from producing anything that's customizable to these consumers. Food safety is a huge priority. This is my name on this packaging. This is my service, my lifeblood, and I want

people to know it's in my home kitchen. I take this seriously because one bad review can take all of that away. So this is very important and dear to me. I hope that you will also support this bill, and I, you know, am open for any questions you might have.

**HALLORAN:** Okay. Thank you, Ms. Ware. You overcame your nervousness quite well.

**MICHELLE WARE:** Thank you.

**HALLORAN:** Are there any questions from the committee? Seeing none, I thank you for your testimony.

**MICHELLE WARE:** Thank you.

**HALLORAN:** Any other proponents? Any other proponents? Seeing none, are there any opponents to LB304? Good afternoon and welcome.

**ADI POUR:** Good afternoon, Senator Halloran, and good afternoon, committee members. My name is Adi Pour, A-d-i P-o-u-r, and I'm the director of the Douglas County Health Department. And I'm representing FRIENDS today. FRIENDS is an association of all the local health directors in the state of Nebraska. I come a little bit from a different perspective, and I think you have to understand what we in local public health do every day. So low risk food, you have heard that they can be sold at farmers' markets. Now, every day-- and farmers' markets are springing up in Nebraska. We have more farmers' markets than we ever had. However, we are in opposition to this bill. This bill would allow low risk food to be sold, not only at farmers' market but also from home, at fairs, and through the Internet. Douglas County registered environmental health sanitarian inspectors inspect farmers' markets, and therefore, there is an opportunity of interaction with the person selling homemade food. There is not a single event when a health inspector isn't telling somebody, you can't sell this, put it back. There is not a single farmers' market event where a health inspector that isn't seeing that there is food being sold that shouldn't be sold. That was an eyeopener to me because I am a little bit like you. I'm a proponent of enviro-- of entrepreneurs, a proponent of women. Preparing food at home in a kitchen that has not been inspected and a person that does not have received safe food handling training poses many risks. The risk is not so much the ingredients in the prepared food, but it is the environment of a home kitchen. Public health risks can be multiple, and I just

want to share with you a few thoughts. The mother that prepares cookies at home and at the same time has children in diapers. There are dogs and cats and all kinds of animals in the house. Someone is allergic to cat hair. The mother bakes cookies and uses the same knife that the child has been using to prepare a sandwich standing next to her. And raw meat in the refrigerator is above the stored cookie dough and juice is dripping on it. I could go on and on, but just like to close with a real-world scenario because you heard today, you heard no food outbreaks from cottage food. So we heard about a potential food outbreak at a famous restaurant. As a matter of fact, it's one of my favorite restaurants in Douglas County. So when I heard about it, I said to the food inspectors, OK, let's go and see what happened there. So it happened by an individual calling the Douglas County Health Department, that is how it usually start, and indicated that several family members were ill after attending an event. It was a birthday party at a restaurant. That time, epidemiology gets involved, and outbreak investigations are started by gathering more information, names, addresses, lists of who was at that event. And at the same time, our food section then is contacted and inspectors are going out to that restaurant immediately. They are going to see what the practices are. They're going to take out the last inspection report to see how was that restaurant rated. What have we seen last time? They're going to ask-- come to the restaurant and ask, how many employees have been ill at the restaurant? Have you heard of somebody else who got ill after they have eaten at the restaurant? How many of your employees are ill? To make a long story short, once we have that information, you then actually are going to go through an epidemiological investigation to see if you can compare the food that people ate who got sick with those that were not sick. In this case, and I have the number here, there were a total of 43 family members that attended this birthday party from age 3 to 85. Thirty-six completed the survey. Seventeen met the outbreak definition, meaning they had onset of diarrhea and/or vomiting after attending the birthday party. From the survey was calculated that the average incubation time, the time of onset, was between 47 hour-- 33 to 82 hours. The average duration of illness was 43 hours. At the end of the investigation, it was--

**HALLORAN:** Ms. Pour, your time is up, if you could wrap it up quickly.

**ADI POUR:** Yes. At the end of the investigation, it was determined it was none of the food that was from the restaurant. But the only thing that the people who got sick had in common

was the birthday cake and the cookies that the family brought in for their birthday celebration.

**HALLORAN:** OK. Thank you. Any questions from the committee?  
Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. And thank you, Doctor. I always appreciate when you give out our yearly reminder on flu shots, so I'm a fan. However, this time I have some questions because I feel we've crossed over into a gray area. So let's start with when the food inspector comes to the farmers' market. So we know that Paul from the-- the Department of Ag is going to come to say the farmers' market in Sarpy County, be it Papillion or Bellevue. And he is going to inspect the vendors.

**ADI POUR:** Um-hum.

**BLOOD:** However, when he inspects the vendors for people that do cottage foods, do you know what he is looking for?

**ADI POUR:** He's probably looking for to see if the ingredients are on the items and he is looking for the name tag that says that this food has been prepared in a kitchen that hasn't been inspected, I would assume.

**BLOOD:** Right. And that is the only thing he's looking at. He's not looking to see if it was made in a specific kitchen because that signage is already there, right? So I think that the fact that we're saying farmers' markets have inspectors but cottage foods won't, I just want to make sure that it's clear on the record that an inspector that comes to a farmers' market, and I run the Bellevue Farmers Market as a volunteer so I see a lot of Paul, is that they're just basically making sure that the guidelines are being followed. Would you say that that's correct?

**ADI POUR:** That is correct. What I hear, however, from our inspectors is that they always have, how they are describing it, an eye to eye with the person who is selling their cottage food. And they are saying you have canoles on here. You can't sell canoles because they have cream inside. So that's what is occurring and what is-- would not be occurring if you are selling it on the Internet. It's that one-to-one connection that they have. That's what our food inspectors are experiencing.

**BLOOD:** But isn't a lot of it already being sold on the Internet even if we don't pass this law?

**ADI POUR:** You know, I couldn't-- I couldn't tell you.

**BLOOD:** OK. And then you referred to the restaurant as an example. You're following the path of food poisoning. So to me, when you talk about a restaurant-- so in a restaurant, you have the people who are responsible for doing the dishes and hopefully, sterilizing the dishes but not necessarily. So it could be a path to food poisoning right there. You have the-- the cooks, the servers, the people who are supposed to clean the tables. You have the people-- the family that comes in with the sick kids that hack on the table that maybe doesn't get cleaned. I mean to me, the comparison isn't even as apples to oranges because the person who's cooking in their home kitchen is the only person who's touching that. And with all due respect because I do respect you very much, I think it's kind of insulting because we had this last year too, you know, where people assume that there are going to be-- they're going to be negligent when it comes to cleanliness, that they're going to be negligent when it comes to how they store their foods. And granted that can happen, but that happens in restaurants, too. And in Nebraska, don't we only inspect restaurants once a year unless there's a complaint.

**ADI POUR:** No, twice-- at least twice a year we inspect them in Douglas County. You know, Douglas County has their own authority--

**BLOOD:** Right.

**ADI POUR:** --to inspect restaurants which is a little bit different. So I don't know the state inspector that you are talking about. May have some-- may have some different rules. I think what I would like you to go home and think about it because I have been thinking about this the last few days. A kitchen in my home is so much different than a kitchen in a restaurant. And there are just differences. And, you know, I was-- I was standing making breakfast with my husband this morning, and I was telling him-- I mean, there is so-- there are so many things going on in a kitchen, in a closed kitchen, a small kitchen at home that are much different. And a, we do not require safe food handling training neither, so some of these-- some of these individuals-- the individuals that you heard today, they had been to culinary school. They talked about how interesting it was and how careful they are. You talked about-- it's just a different environment.

**BLOOD:** And I do appreciate that. And I don't need to go home to think about this, but thank you for the offer. I can sincerely say though, I have seen more professional kitchens much more disgusting than even the dirtiest person I know's kitchen. So I just-- I want to be really careful what we put on the record and I do respect your opinion. You are an expert when it comes to public health, and I-- I certainly am not saying otherwise. But I also believe that sometimes we need to put things in perspective. And in Nebraska, in rural Nebraska, property taxes especially, it is a burden. And people are looking for new ways to generate income. And because we do have winter, really cold winters, the farmers' markets aren't going on for six, seven, eight months out of the year. And this does provide a good opportunity for them. So I'm hoping that somehow we can find some middle ground on this because I do think that we want to be careful not to be insulting.

**ADI POUR:** Oh, absolutely.

**BLOOD:** And-- and I've eaten a lot of kolaches made in people's private kitchens over the last five decades and never gotten sick from a single one so.

**ADI POUR:** You know, I just want to say I'm the health director. My goal is to protect Nebraska.

**BLOOD:** Absolutely, I agree.

**ADI POUR:** You know, I'm not-- not there to do anything else. I want you all to be able to go out and eat safe, especially in Omaha. Omaha is a restaurant and food city. People love to go out. So the only thing I am interested in, protecting public health.

**BLOOD:** I think that's a fair statement. Thank you

**HALLORAN:** Senator Moser.

**MOSER:** Did you figure out what made all those people sick?

**ADI POUR:** Well, it was the cake. The cake was the only thing. The cake and cookies was the only thing that was different.

**MOSER:** Was it sour milk or bad eggs or whatever?

**ADI POUR:** Well, I don't know.

**MOSER:** You didn't figure that out?

**ADI POUR:** No.

**MOSER:** I mean, it had to have been in pretty good concentration to get-- 25 percent of the people who ate it got pretty sick.

**ADI POUR:** You know, nowadays we new-- we have new viruses, Norovirus. Any individual could have been sick with Norovirus. And it takes very little for viruses to spread and be on the food, so it doesn't surprise me at all.

**MOSER:** You didn't do any DNA testing or anything to see what the--

**ADI POUR:** Not in this case. You know, that is very--

**MOSER:** Right.

**ADI POUR:** --expensive and very-- a very, very extensive inspection.

**MOSER:** Everybody lived. You're not going to worry too much. Thank you.

**HALLORAN:** Thank you, Senator Blood, Senator Moser. Any further questions? Thank you so much for your testimony. Next opponent, please. Good afternoon. Welcome.

**KATHY SIEFKEN:** Good afternoon, Chairman Halloran and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today representing three groups so that we're going to cut down on testimony because we'd all be repeating the same thing. So I am re-- representing the Nebraska Grocery Industry Association, the Nebraska Restaurant Association, and the Nebraska Retail Federation here in opposition to LB304 which allows an uninspected kitchen-- food to be-- to be prepared in an uninspected kitchen and sold to the public. First of all, I'd like to tell you what our opposition is not about. It is not about profits and it is not about competition. What it is about is food safety. If this bill sounds familiar, it is because this is the fifth-- fifth time that I have testified against it in the last several years. And it has never made it out of committee, just for your information. I have served on the Nebraska Department of Ag's food advisory board for more than 20 years. This is a group of food safety regulators and specialists along with industry members that include grocery, restaurant,

smokehouse, vending, bakery, institutions, salvage, and every other aspect of the food industry that we have been able to identify. This group has worked very hard toward implementing scientifically based food safety laws in Nebraska. We do it to provide consumers a safe product they can trust has been properly handled. We do not support any type of legislation that would dilute food safety regulations in our state. As an industry, we actually lobbied for higher licensing fees back in 2008 because budget shortfalls indicated that the number of food inspectors would be decreased due to funding shortages. Inspectors serve as a food safety resource, and we believe so strongly in having safe food that we asked-- asked that our permit fees be increased enough to cover that shortfall. Food safety is one of our top priorities. I provided you with several handouts. There were three of them. The second one in there is the AFDO guidelines, and I'd like you to look at pages three and four. And they outline basic food safety procedures. This bill meets none of those recommendations. There's no food safety training. There's nothing regarding cross contamination. There is-- there is-- is nothing in this bill that promotes food safety. Not one county in Nebraska has food safety guidelines. They're all city-based. So even in the bill where it talks about county guidelines, there are none. Now I did hear Senator Crawford mention that there is going to be a man-- an amendment, but I have not seen that. We have several specific concerns. If a foodborne illness outbreak occurs, it can be horrific. Remember in 2011, when cantaloupe was-- from Colorado was not properly washed? Twenty-two people died. The farm went bankrupt and closed. And it was devastating for everyone that was involved in that issue. Signage required in this bill is a label on a package and signage at the location the food is sold. That simply isn't enough to make people aware of the potential contamination of the food they are purchasing. If a producer doesn't have the funds to rent an inspected kitchen or meet the standards to provide a sanitized prep area and appropriate temperature-controlled storage, that same producer probably doesn't have the funding to pay damages in the event of a foodborne illness outbreak. The consumer will pay for all damages caused by improper food preparation. Home kitchens are, according to studies, not clean, and you will find that in the handouts. Additional information in your hand-- handouts indicate established criteria-- established bacteria counts on normal, everyday, household items. I would like to leave you with a final thought. In a home with children and pets, and I love both of them, how could dog hair be kept out of the kitchen? How would a cat be kept off the kitchen counter the minute you turn your back? Kids come from-- home from school and

they toss their handbags on-- or their-- their book bags on their kit-- on the kitchen counter. And when mom comes in from shopping, it's normal for her to set her purse on the kitchen counter. There's a study that shows that one out of every four purses that was swabbed had E. coli on the bottom of the purse. Again, that's in your handouts. And finally moms with babies often sit their diapered children on kitchen counters causing contamination. This bill compromises food safety, and we respectfully request that the bill be indefinitely postponed. If you have any questions, I'd be happy to answer.

**HALLORAN:** Thank you, Ms. Siefken. Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. Are you-- are you familiar with the Omaha area?

**KATHY SIEFKEN:** I live in Lincoln. I know where Omaha is, but I don't-- I do not interact with their inspectors.

**BLOOD:** Are you aware of the new Cat Cafe in Omaha?

**KATHY SIEFKEN:** No. A Cat Cafe?

**BLOOD:** Um-hum. You don't eat the cats. The cats are just there--

**KATHY SIEFKEN:** Oh, good.

**BLOOD:** --just to clarify.

**KATHY SIEFKEN:** Thank you.

**LATHROP:** Glad you cleared that up.

**BLOOD:** Yeah. I-- I-- since we were talking about eating prairie dogs earlier, I thought I'd better--

**KATHY SIEFKEN:** Ooh.

**BLOOD:** --clarify that. But so and I'm not sure-- I didn't think about this when the doctor was here, that probably would have made a better question for her. But you know, again, that's something that was approved. I think it's just a coffeehouse, but I think they serve treats as well. And the point of the, I don't want to say cat house, Cat Cafe is that you're lonely. You like cats. You can go hang out with cats and have a cup of coffee and a muffin and go on your merry way. And you don't have

to feed the cats or change the cat box or-- but you get some love and some cuddles. And they're huge in Japan. So knowing what you just said, how do you think something like that can pop up in Omaha if it's something that's thought to be disgusting?

**KATHY SIEFKEN:** I have no idea, but I most certainly would not eat there.

**BLOOD:** And that's fair. There's a lot of places I won't eat because the kitchens are disgusting, and you can see that when you walk into a restaurant so. But I appreciate your testimony. I was just curious what your opinion was on that because that is something that is new and is in Omaha. And I bet they'll do really well. Everybody's got a niche, right? It's all about the grocery industry, niches.

**KATHY SIEFKEN:** It-- it-- and it is true.

**HALLORAN:** Thank you, Senator Blood. Any further question? Yes, Senator Hansen.

**B. HANSEN:** Thank you, Chairman. You see, when we get bills like this, we always have such conflicting testimony. On one hand, we have people who have been involved with this in many other states and have not heard of any type of foodborne illness being produced because of cottage foods. And you're coming here telling us that it's a danger to society, in a sense, not really. What's your views on-- on their testimony?

**KATHY SIEFKEN:** I believe that there are very few foodborne illness outbreaks reported in other states because when you have a small industry, in a small area, I think the batches that they fix are small and they are sold to their friends and their families. And no one's going to turn Grandma in or Aunt Betty. And so I believe that there are foodborne illness outbreaks. I believe that they are not reported.

**B. HANSEN:** And I do like your comment that, Senator Blood mentioned the Cat Cafe, that you-- you didn't like it or if you were worried about it, you just wouldn't eat there. And I hope the consumer has the same idea if they're concerned about cottage foods. Just don't eat it.

**KATHY SIEFKEN:** As long as they know. I'm not sure that the signage is enough for them to understand the unsanitary conditions in which that food can be prepared and-- and the-- the-- the E-- potential for E. coli contamination. E. coli kills

babies and older people. There's-- there's also norovirus and hepatitis A. These are not small things. These are-- are bacteria and illnesses that can-- can actually kill people.

**B. HANSEN:** I understand about E. coli. So you- you're representing the grocery stores. Do grocery stores bake goods in grocery stores?

**KATHY SIEFKEN:** Yes, they do.

**B. HANSEN:** Do you think they have E. coli on their countertops?

**KATHY SIEFKEN:** They are inspected--

**B. HANSEN:** Sure.

**KATHY SIEFKEN:** --at the drop of a hat. There is no advance notice. And they know that they need to follow certain rules and regulations, and they go through food safety training to understand what they can and cannot do. And I will put a shout out to the Nebraska Department of Ag and the inspectors that we do have in this state. They are very good at coming into our stores and making our delis and our meat departments and our bakeries safer places because they're on top of it.

**B. HANSEN:** Thank you.

**HALLORAN:** Thank you, Senator Henders-- Senator Hansen, excuse me. Senator Slama.

**SLAMA:** Hi, Kathy. Thank you for coming in today. I heard in your testimony you brought up hepatitis A as a possible outbreak from this cottage food industry. And I'm-- it's something that caught my attention because I've had the chance to travel abroad, and Hepatitis A is always a concern in some of the countries we visit. But just looking at the statistics, they're really-- I mean, it's not that prevalent in the United States. We've got two outbreaks in August 2016, one from frozen strawberries in a grocery store, another one in Hawaii linked to raw scallops. And a third one which, again, only three major outbreaks I can find on the CDC site, from May 2013. This was linked to pomegranate seeds from Turkey. Is Hepatitis A really that prevalent when it comes to cottage foods?

**KATHY SIEFKEN:** My concern is that it could become more prevalent because-- there's-- there's not a prevalent-- a huge prevalence right now because everything we do is inspected. And inspectors

are in there and-- and they sanitize and there's very little cross contamination. And every once in a while, someone will slip up, and there will be cross contamination. And you will have these kind of outbreaks. But for the most part, these are in-- I think the prevalence is so small because of the food safety regulations that are in effect right now. And the cottage food industry would not be held to that same standard.

**SLAMA:** Thank you.

**HALLORAN:** Thank you, Senator Slama. Any further questions? Thank you, Ms. Siefken. Is that right?

**KATHY SIEFKEN:** Thank you.

**HALLORAN:** Any further opposition to LB304? Seeing none, are anyone testifying in the neutral? Anyone testifying in the neutral? All right. Senator Crawford your back up, and while you're getting there, I've got some letters to read in the record. Support: Chad Nabity for himself; Michelle Ware, herself; Brenda Hoffman, self; Vincent Ware, self; Kate Jantzen, self; Caryl Guisinger, self. Opposition: Scott Holmes, Lincoln-Lancaster County Health Department. And these are in your binders, Senators. OK, Senator Crawford.

**CRAWFORD:** Thank you, committee, thank you for your attention and questions. And I want to thank everyone who came to testify today about the potential of cottage foods and the challenges that we want to make sure that we're addressing. I want to just address a couple of the questions. One is the question of how many regulations or permits or inspections to have for cottage foods. And again, our-- from the outset, we are looking at a scheme that is similar to the farmers' market scheme which is that you don't have the inspections of the kitchens to provide-- provide that food. In our research we found 28 other states allow for the sales of cottage foods without any registration, permit, license, or food safety course requirements. So it's a lot of states that are, where this food is being produced, where we haven't seen evidence of outbreaks. I think we would be hearing about it if that was the case, or it would show up on the CDC Web site if that was the case in those 28 states. So we have examples of other states where they have-- have been able to have cottage foods without that registration, permit, or course requirements. Lincoln, Nebraska is one of the only city-- cities that has a food safety permit handling course for people to take. Several other counties and cities don't require that for food handler's situations as well. So if that was something

that was easily and readily available, it would be something that we could take advantage of but it is not. I want to talk about mo-- so one of the main points that I wanted to make was again the prevalence of cottage foods in other states and what we've seen in terms of the safety in those states without some of those restrictions. Once you start requiring a permit, you're getting registration and somebody being required-- and getting a task on the part of the Department of Agriculture to create a registration system for the permits. And somebody has to do the inspections. And the inspections are probably thin already in terms of being able to meet the requirements already. And so this would add to their load. And again, the idea is similar food-- the same foods that you can sell at the farmers' market, allowing them to be sold from the home directly. And assume-- and again, on our experience with the farmers' markets already and our experience in other states, we have evidence that it can be done safely.

**HALLORAN:** OK. Thank you, Senator Crawford. Any final questions? Senator Moser.

**MOSER:** Are there any pending amendments that would limit the value of-- or the quantity of food that people could sell from their home? Is there any threshold beyond which they're considered commercial and not a home-based?

**CRAWFORD:** Some states have used thresholds and some do not. Is-- most cottage food producers are small producers. But if that's something the committee is-- feels strongly about, I'm open to that conversation.

**MOSER:** I was just curious.

**CRAWFORD:** Some states don't have it. It's basically the expectation if you are doing cottage foods, that you're not producing I think what we said the average was \$2,000 something.

**HALLORAN:** Thank you, Senator Moser. Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. Senator Crawford, did you recently attend a ribbon cutting in Bellevue, Nebraska for Ono Pinay Kitchen?

**CRAWFORD:** Yes, I did.

**BLOOD:** You did. And so do you remember how they originated? What were they selling? What Hawaiian and Polo-- and Filipino goods were they selling at the farmers' market?

**CRAWFORD:** They were selling buns and pretzels.

**BLOOD:** So baked goods.

**CRAWFORD:** Baked goods.

**BLOOD:** And now they've opened a storefront in Bellevue, in one of the most depressed areas, unfortunately, that we have in town and are very successful as a result of using that as a foundation. Would you say that's correct?

**CRAWFORD:** Yes.

**BLOOD:** OK. When you and your dog came to the farmers' market, did you also stop at the Clovis and Company bakery for the dogs?

**CRAWFORD:** Probably.

**BLOOD:** I'm going to say yes because I saw you do it. So would you be surprised to know that they actually are now also selling their stuff at pet shops as-- using the-- the farmers' market as a foundation for that?

**CRAWFORD:** For their pet treats, you mean.

**BLOOD:** Yes.

**CRAWFORD:** Yes. Yes.

**BLOOD:** They're still baked goods.

**CRAWFORD:** Yeah. OK.

**BLOOD:** People can eat them too. They're just not as tasty for us. So-- so you've seen real life examples of how people have benefited from a smaller window with cottage products. And so you want to take that enthusiasm and-- and help other Nebraskans who want to be able to sell this 12-- 12 months out of the year.

**CRAWFORD:** All right. It's the month of the year is the availability in terms of some rural areas where there aren't farmers' markets as well. As the-- one of the bakers testified,

some of the key times for baked goods would be in Christmas, Easter, Valentine's Day, times when there aren't farmers' markets available.

**BLOOD:** Graduations, special events. So I just-- I-- I just applaud you for carrying this bill again. You're-- you're trying to help a demographic that ultimately could be entrepreneurs in the future, and we have many examples of those that started selling cottage products that now have storefronts.

**CRAWFORD:** Thank you.

**HALLORAN:** Thank you, Senator Blood. Any further questions?

**CRAWFORD:** I want to respond to the limit.

**HALLORAN:** Sure.

**CRAWFORD:** One of the challenges of the limit is, how do you enforce it? So do you have a dollar limit or a-- or a amount-- amount? Usually it's a dollar limit but then, again, you need to register all your pro-- pro-- providers.

**MOSER:** You know, the only thing I'm thinking is that this was part of the discussion when we were having our training before in November, and-- in-service training. And you know, how do you keep somebody from cooking from their home and actually being a commercial baker? You know, and maybe they might do \$10,000 a month out of their home and not be inspected because they're in a home. So, you know, I don't necessarily have that opinion, but I was just curious if it was something that came up.

**CRAWFORD:** Thank you.

**HALLORAN:** For the sake of the record and the transcribers, that last comment was by Senator Moser just for the record so we can keep that straight. OK. Thank you, Senator Crawford. Very good. That concludes our hearing for LB304. If we could clear the room for the next hearing, LB732, that would be wonderful. We're going to take three or four minutes here to kind of stretch and move on. Thank you.

[BREAK]

**HALLORAN:** All right. Welcome back for the hearing for LB732. And I hope everybody knows the drill on if you're a testifier the blue sheet-- or the-- the-- the-- the blue sheets, green sheets--

- green sheets, to fill those in and hand them to the pages. All right. Senator Vargas, you're on cue. Welcome to the Agriculture Committee.

**VARGAS:** Where's-- where's this side? I'm just kidding. Chairman Halloran and members of the Agricultural Committee, my name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I'm proud to represent District 7 in the communities of downtown and south Omaha. I'm here today to introduce LB732, a bill that levels the playing field for food trucks in our state by standardizing and streamlining some of the permitting and inspection processes, encouraging entrepreneurship, and maintaining dining choices for consumers. Now, be the first to say Nebraska is home to some amazing food choices. When I moved here from New York City, I was pleased to find that we have a dining scene in downtown and south Omaha that is home to a diverse array of options marrying the vibrant multiple-- multicultural community of District 7. However, that diversity is not just present in the variety of foods but also in our dining experience. While our brick-and-mortar restaurants are some of the best, we are also home to some of the best food trucks in Nebraska. But in traveling across the state and talking with local food truck owners and operators, I realize that these small business owners encounter a number of barriers when operating and doing business placed there by a patchwork of regulations from different municipalities and state governments that can at times make it more difficult and sometimes make it more costly for owners and operators to navigate and comply. Now, LB732 was created in partnership with the Omaha Food Truck Association, a group of local food trucks dedicated to serving Omahans a wide variety of cuisines from all across the globe. I'm grateful for their cooperation in creating comments on this legislation that is trying to achieve maintaining a public safety and public health while bringing Nebraska up to speed with the rest of the nation. LB732 takes several important steps towards applying both free market principles and fairness to the food trucks of Nebraska. Now right now, food trucks face different regulations and costs of doing business depending on what city they're operating in. Given that a food truck is mobile by nature, it should be easy to-- it should be able to easily operate in multiple cities, so these differences greatly impact their ability to conduct business and main-- remain profitable. For example, a permit to operate in Lincoln or Bellevue can be hundreds of dollars more expensive than in Omaha. The cost to operate coupled with having to chase down the different permitting rules and costs easily become a hurdle for these small business owners. Additionally, food trucks are often saddled with additional inspections during

peak business hours, along with their accompanying fees, creating obstacles for owner-operators. Now under LB732, a food truck will pay a maximum \$75 permit fee to the Department of Agriculture and a \$40 health and safety inspection fee. Local governments seeking to charge an additional permit or inspection fee on food trucks would not be able to exceed the fee set by the Department of Agriculture, thereby streamlining the permitting process. This would be a far cry from the current permit structure where for instance, in Omaha, permit fees are \$100 with an additional \$100 if operated downtown. But in Bellevue, a permit costs \$300 and a performance or cash bond of \$500 must be furnished to the city clerk prior to the issuance of any license. LB732 also standardizes the permanent process by ensuring that local governments do not place additional qualification requirements on food trucks beyond what the state requires. This bill also promotes more consumer choice by granting food trucks the freedom to operate on public and private property just like any other small business. It also prohibits local governments from enacting additional regulations, such as time constraints or excessive operating distance requirements, that are different than those that would be placed on a traditional brick-and-mortar restaurant. Now it's important to me, and I'll echo this, it's important to me that cities maintain some autonomy and aren't completely constrained by regulations handed down by the state Legislature. There are several provisions in LB732 I think that would allow local governments to regulate food trucks to the extent that they would any other operating business, helping maintain local autonomy and protecting health and safety. The overwhelming majority of food trucks are small businesses. Employing only a small handful of employees, these are the folks who show up to county fairs, 4th of July parades, and other small-town events. These food trucks give back to their community and help facilitate the growth of a neighborhood or a town's culture. I've had the opportunity to see the emergence of food trucks in south downtown Omaha, but they're being held back in my district and across the state by statutes or regulations that were crafted before food trucks were even on the scene. And in many instances, this is the reason why we should relook at them. I want to make it clear that all LB732 seeks to do is level the playing field for food trucks and promote a more free-market principle and fairness, Nebraska's opportunity to prove that we are indeed a business-friendly state. We should catch up with states like Arizona and Rhode Island that passed legislation last year that identified and modified unnecessary regulations to provide consumers with more dining options. Now I'm thankful for the conversations that I've had with the counties and the

Department of Agriculture. Though not all here today, I know the Department of Agriculture has been remarkably helpful as we seek to develop a working relationship on this important issue. I know that this bill will face some pushback from local governments and municipality. I think all good bills face some level of pushback. We are introducing an amendment to address some concerns voiced by city and county governments. And this won't be the end of that. For instance, the city of Lincoln in their letter voiced opposition due to language that limited the city's ability to inspect during peak business hours. This amendment would remove that provision and a few others in favor of a more streamlined approach that is looking at better reciprocity and empowerment of the counties, cities, or city counties. It is my hope that this committee sees the big picture, and I do look forward to continuing conversations with county governments. The point of this legislation is to facilitate the growth of business and promote equity across the state. I don't want to lose sight of that. I'm excited for the opportunity to expand the vibrant dining scene in my district and across the state with both brick-and-mortar restaurants and mobile businesses like food trucks. I urge your advancing of LB732, and I look forward to answering any questions that you may have. But before I do that I do want to shed a little bit more of a light on this. You know, one of the reasons why I brought this other state in is because of my not only seeing across the country more instances of food trucks being a larger part of a vibrant scene, but also from conversations with them. I'm not blind to the fact that we also want to make sure that we're considering public safety. I've had conversations with entities, and they will come and testify. And what I want to assure you is the pathway forward here is not-- not ignoring public safety. I'm more than willing to look at amendments that are going to make it easier for counties or municipalities to find the right balance for ensuring that we're protecting public safety, public health, while also removing some of the barriers for small businesses like food trucks. So I want to commit to you that that's something I'm going to be working on and have already had-- started having conversations with some of the people that may be testifying in opposition or neutral testimony. And I want to thank you, for those of you that did go to have some food truck food in the parking lot over lunch. And I encourage you to if you have questions specific to some of the experiences, we're going to have some food truck owners that are going to come and testify to give you a little bit of the light of what are some of their perspectives or experiences have been. Thank you.

**HALLORAN:** Thank you, Senator Vargas. Any questions from the committee? Senator Moser.

**MOSER:** I just have a couple of questions to start with. Brick-and-mortar stores are required to have parking, so many stalls for every so many square feet of space in their restaurant. Does your bill address parking requirements for food trucks?

**VARGAS:** No, it doesn't.

**MOSER:** Does it require the city to allow them on public property or do they have to be on private property?

**VARGAS:** It allows them to be on public or private property. But again, these is a specific scenario that we'd be willing to work on if it's a barrier for parity with restaurants.

**HALLORAN:** Senator. Go ahead.

**MOSER:** Yeah, I think--

**HALLORAN:** You're fine.

**MOSER:** --I think like in Columbus we have a lot of food trucks.

**VARGAS:** Um-hum.

**MOSER:** And they're all on private property so they have to work on a relationship with a person who owns another business of some kind that they can get electricity there and have parking and those things. So I think, you know, to be fair to the brick-and-mortar stores, I think we need to make sure we're not giving an unfair advantage to the food truck. I mean, I had supper off the food truck Sunday so.

**VARGAS:** Thank you, Senator Moser.

**HALLORAN:** Thank you, Senator Moser. Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. I just want to clarify. You're not really taking away that part of local control when it comes to where a truck can and can't be, in the bill?

**VARGAS:** No, but there is-- there are some different components here where we're not necessarily taking away local control but

we don't want to make it more hindrance on food trucks than do, more specifically with fees.

**BLOOD:** Right.

**VARGAS:** So that's the piece that is particular piece.

**BLOOD:** So when it comes to like locations and where they're at, yeah, I just want to clarify that because I think that that can be confusing. But that doesn't really change where they go.

**VARGAS:** I will double check. But to my knowledge right now that's not the case.

**BLOOD:** Thank you, Senator.

**HALLORAN:** Thank you, Senator Blood. Any further question? All right. Thank you, Senator Vargas.

**VARGAS:** Thank you very much.

**HALLORAN:** We will now entertain proponents. First proponent, please. Good afternoon.

**KELLY KEEGAN:** Good afternoon. My name's Kelly Keegan, K-e-l-l-y K-e-e-g-a-n, from Omaha, and thank you for your time this afternoon. I was the founding president and now the current treasurer for the Omaha Food Truck Association. I am the owner of the Chicago Dawg House in Omaha. At one point I had a brick and mortar. We moved it down Midtown Crossing. Our lease was up. The rent was going to go to where it would be a \$9 hotdog. And I said no, we're going to cut it all back and we're trucks only now. I've had it for seven years and it-- we've got two trucks now. We operate in Omaha and around the state at various large events, large scale events. When I purchased the business in 2012, it had one food truck and a brick and mortar. And I learned immediately that food trucks really weren't in that-- seven years ago, they were just really getting started. And I kind of-- I traveled a lot in my previous business and said this-- this is going to go in Omaha. We can do it. And we parked downtown and immediately got a ticket because it's illegal to park. So it was very interesting. It was like whoa, we've got to figure something out. So the trucks-- we started four years ago. We started the Food Truck Association and worked with the city and the brick and mortars, the Restaurant Association, to come up with a good balance of-- a good way that we could integrate with the brick and mortars and not overstep their boundaries,

not pull up right in front of another restaurant. And to balance that out we pay the restaurant tax in Omaha. But it's-- it's been good that way. And my whole point is to kind of show the background behind the Food Truck Association and why we're here. We see-- Scott, the current president, and I talk to a lot of people who come in and want to do food trucks. And they'll sit down and say, OK. You got to get-- get your truck. It's got to get licensed with the health department. And if you going to go to Lincoln, you got to license with their health department. And if you want to go to Bellevue, and their-- their eyes spin. And they want-- they want to-- Geez, do I really want to get into this? So the-- the cost and the-- the recharging and the increasing prices that we're seeing are kind of holding back the growth of it. It keeps-- it's a hindrance for a lot of people to get into the business when they look at it, it's like, boy, I don't know if I want to get that involved. Because it really just gets passed down to the consumers. It has to if we're going to stay in business. The prices are growing. Where we see it increase, Omaha was \$100 per truck. Now it's \$495 per truck. If they're both going to be running at the same time so, that's almost \$1,000. And we get inspected over and over and over again at the large events. The one thing we did see in the-- in the original draft that we could have-- be inspected so many times. If there is a bad actor out there, I don't-- we didn't want to see this bill to be utilized for them to-- to-- as an end around to-- to more inspections. And we wrote that in there that we would have to, you know, if you have more than two critical violations, you can get inspected as many times as the health department wanted to see you. But I've got with me-- I've got some other owners that are going to go through some of their-- their trials and tribulations and why they're supporting LB732. And I'm open for any questions you may have.

**HALLORAN:** OK. Any questions from the committee? Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. And thank you for your testimony today. You know I'm a fan.

**KELLY KEEGAN:** Thank you.

**BLOOD:** I'm going to ask you this question because I'm pretty confident we're going to hear this from the opponents. So sorry to put you on the spot.

**KELLY KEEGAN:** Certainly.

**BLOOD:** So how many instances of an outbreak of a foodborne illness have been pinpointed to food trucks at festivals in Nebraska?

**KELLY KEEGAN:** I know of one that I was involved with, and it was last year. We were at an annual event for a larger company, and this was outside the city limits. But they brought in-- it was the same two trucks that would come every year and feed all the employees. The company paid at the end of the day. That's-- that's really the way we like to see things go. And they said well we've got an employee here whose husband does barbecue, and he's got his barbecue truck. So he's more of a hobbyist. And he was there that day, and my-- my employees said, are we going to trade with this barbecue guy? And I said, I'm not eating out of that truck because I could look and there's things I can see, but it's not my point to tell him how to run his business. We get a call the next day. We need a list of all your-- everything you serve, where you source your food. I said, what's going on? They said, we had 300 people call in sick today.

**BLOOD:** Oh my gosh.

**KELLY KEEGAN:** Yes. And I told them, Colonel Mustard, library, barbecue truck. I said, focus there, and that's exactly where it was.

**BLOOD:** So it really isn't any of your members. It's somebody who's kind of a rogue--

**KELLY KEEGAN:** No, no. We've had no trouble with our trucks.

**BLOOD:** --a rogue food truck, I guess.

**KELLY KEEGAN:** Right. You know, you're only as good as-- as your worst truck as a group, and we try and hold people to a higher standard that are within the group. But you know, you've always-- you're going to have somebody that's trying to, you know, cut a corner here or there. And Douglas County Health Department's very good at keeping on those guys. And-- and we work very well with the health department. We're-- this is definitely not something that we're trying to get around. If-- if food trucks get the-- the-- say the-- that roach-coach moniker, people will stop eating, you know. And like I said, we're only as good as our-- as our weakest link. So we, you know, we're-- we're-- we take it very seriously.

**BLOOD:** Thank you.

**KELLY KEEGAN:** Thank you.

**HALLORAN:** Thank you, Senator Blood. Any further question?  
Senator Moser.

**MOSER:** Some events require you to pay rent--

**KELLY KEEGAN:** Some of them.

**MOSER:** --beyond your registration or whatever, so if you'd go to  
a like a fairgrounds or something that--

**KELLY KEEGAN:** Absolutely.

**MOSER:** --Ag Society or whoever puts it on might charge you \$100  
for the weekend or something or \$100 a day if it's a real high-  
traffic thing or something.

**KELLY KEEGAN:** Certainly. Some more than that.

**MOSER:** Yeah. So this wouldn't affect their ability to charge for  
their events.

**KELLY KEEGAN:** No. No. As an individual owner you pick and choose  
where you're going to get involved based on-- because sometimes  
events, they want 20, 30 percent. We're looking at that \$9  
hotdog again. And you can't get any--but as you get in the  
business of [INAUDIBLE], I'm in my seventh season now, you know  
we pick and choose where we go, where we know where the profits  
are going to be.

**MOSER:** OK. Thank you.

**KELLY KEEGAN:** Um-hum.

**HALLORAN:** Thank you, Senator Moser. Any further questions from  
the committee? Seeing none, thank you, Mr. Keegan.

**KELLY KEEGAN:** Thank you.

**HALLORAN:** Next proponent, please. Good afternoon. Welcome.

**PETER LORINCE:** Hello. Yes, my name is Peter Lorince, and I  
represent Sweet Lime Thai Food Express. And we are a food truck  
that operates out of Omaha, Nebraska.

**HALLORAN:** Can-- can you spell your name for the record for us?

**PETER LORINCE:** My name?

**HALLORAN:** Can you spell your name for the record?

**PETER LORINCE:** Oh sorry, sure, my name Peter, and P-e-t-e-r,  
last name, Lorince, L-o-r-i-n-c-e.

**HALLORAN:** Thank you.

**PETER LORINCE:** Yes, you bet. And we've operated the truck for four years. I represent the truck now. We've recently sold a business, but I-- we still help them with it. And I still do all their bookings for them. It's-- it's a very challenging business to say the least. You're faced with a lot of obstacles in trying to move food around and serve people. And you're running into one obstacle after another. When we first got into the business, there was no Food Truck Association. We were part of it with Kelly, and when he joined-- when he asked us-- had us join, the-- the biggest issue is every city you go to has their hand out. You know, Bellevue is \$400. Omaha was \$100. Douglas County's 500-some-odd dollars. And La Vista's another \$175 or something like that. And Platte-- Papillion was another 300-- \$275. You-- you're hamstrung. I mean, basically, you're-- you-- you run into situations where you just can't afford to pay all of these fees. And for what? I mean, there's really no benefit to it. It just prevents the trucks from operating freely around the city itself in Greater Omaha. So LB732 would be beneficial for the food trucks. Regarding the health of the food trucks, if you serve food and make people sick, you've lost your customer base and that message is going to get out. So people would be quite foolish to-- to cut corners and just prepare bad food or poor quality food. It's-- it's a difficult business to do. But you know, you do have generators on the truck. They're running all the time, so you're able to maintain refrigeration and maintain proper temperatures. So that's-- that's kind of my take on it. Any questions?

**HALLORAN:** Any questions from the committee?

**PETER LORINCE:** OK. Thank you

**HALLORAN:** Seeing none, thank you. Next proponent, please.  
Welcome.

**TOM LeBLANC:** Good afternoon and happy Mardi Gras, my name's Tom LeBlanc, spelled L-e-capital B-l-a-n-c. My wife and I are the owners and operators of LeBlanc's BBQ and Cajun food trailer, and I'm here in support of LB732. We've been in the business, the food business, for about four years now. Prior to that, I was in private industry for 42 years. And sometimes I wonder what I'm doing in the food business. But it's-- it's a really hard business. And what we've seen in the last four years is our costs have gone up every year primarily in the permitting. And some of the trends, I've done a little research across the United States, and these are figures from the U.S. Chamber of Commerce as well as the Institute for Justice. A couple of examples and these are extremes. In New York City, it takes 15 years to get a food truck permit. In Boston, regulatory fees can add up to as much as \$38,000 a year. I have no idea how those folks do it. But-- and I said those are extremes, but as we see our costs going up every year in Nebraska, it-- it really cuts our margins and makes it more difficult for us to carry on our business. And what we're seeing-- because we're a unique mobile business, we do operate or can operate statewide. And because of that we're seeing a lot of municipalities that view us as a revenue stream. And that-- that a by census is an issue. And it's really, like I say, a drain on our profits and it really cuts into our margins. It's also counter to what I view as other licenses that are offered and regulated at the state level. And a few of these that I look at would be as examples, your basic driver's license, OK? I don't have to get that in every city or every municipality. I get that at the state level, and it's good across the state. Various trade licenses, my son's an electrician. He's licensed with the state, and he can pretty much work anywhere in the state where he could get a job. Concealed carry license, again, issued at the state level, I don't have to get it in every county in the state or every city in a state. And even state park permits, I don't have to buy a permit at every state park. I can buy one permit and use it across the state. So I am in support of statewide permitting and feel that would allow our food trucks to operate freely within our cities, of course, subject to reasonable health and safety regulations. In doing so, I think it's good for the local entrepreneurs, the local economy, and our local communities. Thank you for your time. If there's any questions.

**HALLORAN:** Thank you, Mr. LeBlanc. Any questions from the committee? Seeing none, thanks for your testimony.

**TOM LeBLANC:** Thank you.

**HALLORAN:** The next proponent, please. Good afternoon and welcome.

**SCOTT SHEEHAN:** Good afternoon. Thank you very much for having me today. My name is Scott Sheehan, S-c-o-t-t S-h-e-e-h-a-n. I am the current president of the Omaha Food Truck Association. I am the owner of Anthony Piccolo's Mobile Venue, a food truck that operates out of Omaha, Nebraska. I am formerly with Piccolo's Italian Steakhouse on South 20th Street where I worked for 30 years alongside my grandfather. After 85 years, he decided to close his business about 3 years ago partially due to the change in family dining. People are eating out. There's a little bit different, that's kind of what led me into the food truck business. I started my business in order to try to extend the life of my family's brand and my grandfather's legacy in Omaha and figured this was one of the best avenues to do so. It-- it-- it's-- it's been a lot of fun, and I come here as the president of the OFTA to speak to you. On your concern, Senator Moser, when you mentioned about being fair to restaurants, I was in a restaurant. You know, that's kind of where I got my start. And I can tell you, it is much easier operating a restaurant than it is to-- to battle weather and season, you know, because we're a seasonal business, too. We only get to operate seven, eight months out of the year, most trucks. So we kind of run into that issue. And starting here where we are, trying to figure out a way to operate legally, fairly, how to, you know, to-- to abide by the laws and get along with restaurants, get along with other businesses, find out where to park, and how to create a safe environment and a-- and a good work environment where people can be attracted, where they can come and find us and be able to park somewhere or be able to access food trucks a lot more readily. The OFTA is in-- in support of bill LB732 because we believe it's necessary to create this fair playing field. And that's why we're here because this is all new to all of us and we want to make sure we do it right. That's why we want to put things in place that prevent things from happening instead of needing to be solved in regards to issue. The bill begins to address the most important issues that are facing the mobile units. You know, it certainly needs to be looked at and discussed, but it's definitely something that organ-- our organization is trying to provide for our members. There are-- there are mom and pops in our organization. I'd say 80 percent of our organizations are mother and, you know, fathers, fathers and sons. We have veterans. We have immigrants that are joining our association. We have started to get a lot of applications from some of the corporate-- corporations that are-- you know, that have a cart or starting a truck or a coffee trailer.

Starbucks is one of our recent inquiries. But these are-- these are very-- this is a-- it's a very difficult process as it sits right now. Like Kelly had mentioned, you come in and my first question was, OK, who do I need to talk to to get my permit? And then OK, now, where do I park? We went through the process of working with the city of Omaha and, as Kelly mentioned, to establish an ordinance that governs us, that gives everybody rules to follow because there are some there-- at one point, there were trucks that were operating with impunity. They didn't have a permit. They weren't checked out by the health department. There was no one to govern that process. And now, with this in place, it helps. The Douglas County Health Department has done a great job of improving the standards of the trucks that are operating in Omaha, you know? Granted, in some cases, the-- the inspections might be-- do seem, you know, a little excessive. You know, I'll find myself at a fair and festival. For example, I was at Papillion Days getting ready to open up for their kickoff. And 15 minutes before the 700 people that were waiting in line to come in and we're open, the health inspector was at my truck. And, you know, 37 minutes later after the prepared open, and I'd formed a line of, you know, 30 or 40 people, I'm ready to open business. So I mean, I certainly think there's room for-- to be inspected. I have no issue or-- but just the appropriate times and the number of times, depending on how you're operating. and the-- the safety concerns that might arise from that. I want to thank Senator Vargas for, and his team, for the willingness to help us with this and take a look at ways to work together and come up with a fair and uniform standard of operating in Nebraska. It's-- we understand that this is a relatively new process in Nebraska. So I mean, so we-- we certainly want to be involved in the process. And we are here to help this process. To find-- we do find solace in the fact that a lot of major cities have adopted similar bills to what we-- what we've taken part in here today, and it-- it's-- it's been received well and passed with-- with lots of support. We-- we're here to help provide a solution. We do not want to become part of the problem. And so basically that-- I open myself up to any questions that you might have with us. And once again, thank you for giving me the time to talk.

**HALLORAN:** Any questions from the committee?

**SCOTT SHEEHAN:** Thank you.

**HALLORAN:** Thank you, sir. Next proponent, please.

**NICOLE FOX:** All right. Good afternoon, again, Chairman Halloran and members of the Agriculture Committee. Nicole Fox, N-i-c-o-l-e F-o-x, representing the Platte Institute. Thank you for the opportunity to discuss food trucks in Nebraska today, and I thank Senator Vargas for introducing this bill. We are in support of this bill. LB732 streamlines the permitting and inspection processes for food trucks as current regulations and fees vary greatly amongst the different municipalities across the state. Food truck operators would be required to register with the Department of Agriculture and then pay an initial fee of \$75 and an annual inspection fee of \$40. In March of 2018, the U.S. Chamber of Commerce Foundation released its food net-- Food Truck Nation study, reporting that food trucks have emerged as important vehicles for opportunity and growth. This study looked at 20 cities across the country, and two Midwestern cities, Chicago and St. Louis, were a part of the study. In those 20 cities, the trend of food trucks morphing into brick-and-mortar food establishments has increased rapidly. The study notes that the food truck industry generated over \$2.7 billion in 2017, and that's a 300 percent increase from 2014 prior-- three years prior. On average, starting and maintaining a food truck for one year required an entrepreneur to complete 45 separate government-mandated procedures over the course of 37 business days and spend over \$28,000 on permits, licenses, and ongoing legal compliance. These opportunity costs are significant. Per my discussion with Senator Vargas' office, I understand that the 50-foot proximity requirement in Section 6(4)(c) is un-- is un-- was a result of discussions with the Omaha Food Truck Association. But for the record, I would like to note that the Platte Institute does not feel that this requirement is "necessity"-- is necessary. We don't feel that a brick-and-mortar restaurant should be treated differently. Also, I note there's an amendment about some of the issues about inspection, and just of note, Arizona passed a food truck law in 2018 to streamline the operation of mobile food vendors and standardize regulatory practices across the state. In the Arizona bill, only an initial inspection was required, and-- and a food truck does not need to be inspected again for operation. The Platte Institute would only advocate for additional inspections of the food truck if it's cited for major violations, critical violations obviously, and to be inspected until those are corrected as defined by the local government where the food truck's operating, but also if there was a health or safety complaint generated by the public. And just one thing I would like to mention and kind of to piggy back on some of the comments Senator Hansen made on the previous bill, I think we need to keep in mind that the free market plays a big role in

our, you know, not just in our state but in the restaurant industry in general. You know, there are things like Yelp and word of mouth that let consumers know, you know, if there are things like safety issues. In fact, I just checked Yelp and I looked at Lincoln and Omaha food trucks. And, you know, if somebody is being served a food item that should be hot and it's cold, they're going to say that on Yelp. They're going to say those things, or if they're concerned about things like cleanliness, they're going to say those things. So I think we have to remember, again, the market should play a role in, you know, success of business. And as we're seeing nationally and here locally, I mean, there are food trucks that have become brick-and-mortar businesses or brick-and-mortar businesses that are wanting to expand their business and also offer food truck services. So again, food truck operators are entrepreneurs. And then like the rest the country, there's a growing number of them. We-- we're seeing in Nebraska that there is demand for this type of business model, and we agree that it's important to create a more standard and uniform means of allowing food trucks to operate. We think that's common sense. So we feel that LB732 is a step in the right direction for our food truck industry, and we ask that you help move this forward to eliminate barriers for these food truck operators by advancing LB732 to General File. And with that, I'm happy to answer any questions.

**HALLORAN:** Thank you, Ms. Fox. Any questions from the committee? Seeing none, thank you very much.

**NICOLE FOX:** Um-hum.

**HALLORAN:** Any further proponents for LB732? Any further proponents? Are there any opponents to LB732? Good afternoon. Welcome.

**JIM PARTINGTON:** Good afternoon, Senator Halloran and members of the committee. My name is Jim Partington, J-i-m P-a-r-t-i-n-g-t-o-n, and I appreciate the opportunity to represent the Nebraska Restaurant Association and testify in opposition to LB732. The Nebraska Grocery Industry Association and the Nebraska Retail Federation also oppose LB732 and support this testimony. This bill would pre-empt communities and counties from exercising local control over food safety and the regulation of food establishments. Nebraska communities vary in population, number, and size of food establishments as well as the ability to oversee and monitor these establishments. The potential for a foodborne disease event increases with larger populations, and the effects are potentially more wide-ranging and serious so

larger communities are expected to have more stringent requirements. The Nebraska Food Code, adapted from the FDA Food Code, provides the foundation from which local communities develop and enforce these more stringent regulations to ensure a high standard of food safety that minimizes opportunities for foodborne disease, and when outbreaks do occur, and this is equally important, allows regulatory agencies to localize the effects through early detection and location of the source. Mobile food units are valued because they are mobile and able to provide food service and unique menu choices and locations underserved by other food establishments. This mobility can also contribute to a more rapid spread of foodborne illness within a community. There is a definite place for mobile food units in the restaurant business, and we have members who operate them. And in the interest of full disclosure, I have a farm winery. And we routinely invite food trucks to come on to our winery, and it's a very welcome for our customers and a very nice event for us. So we appreciate the food trucks. The operators of these mobile food trucks are professional and trained in all aspects of food safety under existing policy and regulations. That these policies should remain in place and they should continue to be subject to the same food safety standards as it-- is in inspections at a brick-and-mortar restaurants. This concludes my testimony. I'd be pleased to answer any questions you may have on this.

**HALLORAN:** Thank you, Mr. Partington. Any questions from the committee?

**JIM PARTINGTON:** Thank you

**HALLORAN:** Seeing none, thank you so much. Next opponent. Good afternoon and welcome.

**JACK CHELOHA:** Good afternoon. Senator Halloran and members of the Agriculture Committee, my name is Jack Cheloha, that's J-a-c-k C-h-e-l-o-h-a. I'm a lobbyist for the city of Omaha and I want to testify in opposition to LB732 this afternoon. More specifically, I'd like to testify in opposition to Section 6 of the bill which-- let's see. Where does it begin? It begins on page seven of the act. And basically, this is the preemption of local governments and their ability to regulate certain matters on food trucks. Just to give you a little background, as some of the proponents of the bill have testified, the food truck industry in Omaha has been very vibrant. And so as it developed and operators wanted the chance to do their business within the city, we met with them. The city government came to an

understanding-- in fact, they advocated that the city do something relative to food trucks, as they testified. They wanted us to put some type of regulations in place so that there wouldn't be rogue operators. In Omaha-Douglas, we do things a little bit differently than they do in Lincoln-Lancaster. Omaha is responsible for the city limits and the regulation of the vehicles and the parking spots and the hours of operation, whereas the county, through the department of health, would regulate the food safety standards, etcetera. So as we worked with the industry, we came up with an ordinance to regulate them. Ours is a little bit different than what LB732 would call for in the sense that we charge a different amount. Currently, to operate in Omaha, it's a \$100 annual fee. And there is a difference. If-- if a food truck operates within the downtown area, there's an extra fee or a doubling of that. It becomes \$200. Essentially, it's my understanding, this would be the high-traffic areas of downtown where there's a lot of employment and then the old market scene, etcetera. And parking becomes a little tighter there, etcetera. And so there was a need for a greater yearly fee. And additionally, I think part of it, but I'm not sure, may go to the neighborhood improvement district of downtown, but I'd have to double check. But that's what somebody told me. I'm going to try to hurry along to only get the five minutes. So basically, our planning director sent me a note. He says, we're concerned about an important requirement and our ordinance that would eliminate the motor food trucks to operate-- they'd have to operate more than 50 feet away from a brick-and-mortar restaurant. And that, if you will, is kind of a compromise we struck in Omaha where the brick-and-mortar restaurants didn't want a mobile one parking right outside their door and taking customers away, if you will. So we had the 50-foot thing. What else? I talked about fees a little bit. One other thing, too, is in our local ordinance, too, we account also for festivals and various special events, if you will. Omaha hosts a number of events in the downtown area. Again, in fact, one of the biggies is the College World Series, and of course, we have to abide by certain standards dictated to the city from the NCAA, etcetera. And so we have like a special provision for any food truck that would want to operate within that, they have to, you know, get permission through the directors of-- of those special events, if you will. I asked the pages to make copy of our city ordinance. I wanted the committee to have it. I apologize for not having copies made, but I just found out about 10:30 that I was the one to testify on the bill today so I was scrambling to get prepared. So I'm going to hand out Omaha's city ordinance. And also, I brought a copy, too, that I found on the Web site from our city parking department,

if you will, which is kind of a nice handy tool for mobile operators to let them know what the rules are, at least in Omaha. And one last thing I might share with you. Since I testify a lot in Urban Affairs and we deal with building codes, fire codes, other codes, a lot of times that committee has found it expedient, if you will, to operate or set it within statute some basic standards relative to those things. However, they do reserve the rights for municipalities to adopt stricter standards. And the reason why is, there may be certain or various local nuances that we need to, you know, implement relative to our local builders in those cases, or in this case, the mobile food vendors. And for those reasons I'm here this afternoon opposing LB732. Try to answer any questions.

**HALLORAN:** All right. Thank you, Mr. Cheloha. Any questions?  
Senator Blood.

**BLOOD:** Thank you, Chairman Halloran. Thank you, Jack. I just have a few quick questions.

**JACK CHELOHA:** Yes.

**BLOOD:** Hopefully, I'll have quick answers as well. Knowing that you're currently opposing certain sections of this legislation, is the city of Omaha willing to work with Senator Vargas' office to see if we can find some kind of compromise?

**JACK CHELOHA:** Absolutely. We would work with him. Or-- or once again, if we could adopt some-- some basic standards that will be statewide but allow us some exceptions for special cases that we would have to show to him that necessitate, then we'd still like to have the right to do some things locally. But yes.

**BLOOD:** OK. Thank you. And then on-- the second question is, how much revenue, via the restaurant tax, do food trucks contribute to the Omaha community?

**JACK CHELOHA:** Boy. I don't know that number. I'll have to check and I'll get back with you.

**BLOOD:** OK. Thank you.

**HALLORAN:** Thank you, Senator Blood. Senator Moser.

**MOSER:** Are there extra rental fees beyond the registration of the food truck to park it on a public street or?

**JACK CHELOHA:** No. Our-- our number within that \$100 annual fee would cover that unless-- in fact, we make exceptions, Senator, for them at the metered parking spots. And most of the-- the length of them in the downtown area are two hours, but in our ordinance we allow up to four hours for the truck to park there. But-- but, yeah, and so I think that within that it's waived. We don't ask them to even pay the parking for that.

**MOSER:** Okay. Thank you.

**HALLORAN:** Yes, Senator Hansen.

**B. HANSEN:** Thank you, Chairman. If I remember right, did you say like the-- the mobile unit has to be a certain distance apart from a brick and mortar?

**JACK CHELOHA:** Right. Yes, Senator, we have a 50-foot requirement. They have to be greater than 50 feet away from the front door of a brick-and-mortar restaurant.

**B. HANSEN:** Do brick-and-mortar buildings have to be any certain distance apart from each other?

**JACK CHELOHA:** Let me think. I think we have various, you know, building and fire code but, you know, some of them, you know, you've seen downtown areas. They're attached.

**B. HANSEN:** OK. So one restaurant can be right next to another one.

**JACK CHELOHA:** It could be. Sure. Yeah.

**B. HANSEN:** OK. Thank you.

**HALLORAN:** Any further questions? I guess I had, you know, in looking at this bill, your discussion was the one thing that kind of jumped out at me, is that we're trying to create a state statute that supersedes local control over several issues. On page 8, number 4, line 29 following through to the next page, line-- through line 5, excuse me, it's very specific. I mean, there's-- ruling out what local government can do, city, county, or local government shall not, and then it goes through those various things. One, the very first one, restricted duration of operation of such mobile food units on private property.

**JACK CHELOHA:** I don't think we'd have a problem with that one.

**HALLORAN:** Even residential?

**JACK CHELOHA:** Then, you're right. Good-- good call there. That makes a difference to us. Yes.

**HALLORAN:** Because residential is residential.

**JACK CHELOHA:** Right.

**HALLORAN:** Typically, it's not commercial

**JACK CHELOHA:** Right. Right, exactly. I think we do limit them to commercial areas. If I could continue, of course, the next one, again, you know, we, when it comes to public property, we, the city of Omaha, own a significant portion of public property. Of course we would want to have a say as to where they can locate and have hours of operation so obviously point (b) there, we wouldn't go for it.

**HALLORAN:** OK. And Senator Hansen mentioned the one 50 feet from the perimeter. Yeah. I'll just re-echo Senator Blood's request that Senator Vargas work-- works with the city on this language a little bit so it's at least compatible and we don't preclude the city from being able to do some things it feels it needs to do.

**JACK CHELOHA:** Absolutely. I'd appreciate that. Thank you.

**HALLORAN:** Any further questions? Thank you so much.

**JACK CHELOHA:** Thank you.

**HALLORAN:** Are there any additional opponents to LB732? A neutral? OK, we're ready for neutral. Welcome back.

**ADI POUR:** Good afternoon, again, Chairman Halloran and the members of the Agriculture Committee. And my testimony now is neutral because I have had the opportunity to meet with Senator Vargas. We have been able to talk about what the concerns are from a public health perspectives. And the concerns were really, or are still, two-fold. One is that the bill would limit food truck inspections to two inspections. We have three categories in food trucks, depending on the food that they prepare. They are high risk, medium risk, or low risk. And the high-risk food trucks, like the restaurants, receive two inspections a year. However, the food trucks can go to temporary events, to the College World Series, to Taste of Omaha. And when they are there

and food vendors are there that we inspect, we also are going to inspect the food trucks. Very quickly, but it is-- I understand absolutely what you are heard-- what you are hearing today. It is that it can be an inconvenience to the food truck operators. But it, like restaurants, you know, it's when you have those food trucks working, that's when you need to observe what they are doing. Has to do with, do you have running water? Do you have hand sanitizer there? What are the temperatures? Are you keeping food cold, keeping food hot? Those are really the major-- the major issues. And then also, we are against capping the cost. And this-- because of the preemption clause, we are, at this time, charging \$505 for a food truck that is providing meat products and drinks. So those are high risk establishments. And in that permit, however, the food truck can go to as many temporary events as they want to go in Douglas County. There is not an additional fee that they have to pay, no temporary fees. Also, I want to share with you, in Douglas County, Omaha, and in Lincoln and Grand Island, those are the only three jurisdiction where the State Department of Ag is not conducting the food inspections. And when Douglas County took over on this, the county commissioners were very clear and said, yes, we give you the authority. However, the fee that you are charging the businesses have to cover the program. We cannot have county dollars, property taxes, or state dollars go into the program. So we do an assessment every two years to really try to make sure that the fees that we are charging are covering the program costs and only the program costs. It's not-- the last thing you have heard before. I was going to give you the example that you heard from the food truck owner from the food outbreak that occurred not in Douglas County. But it was between three food truck owners, actually, in front of a business. And you can imagine how bad the business must have felt when they determined that pork that was served at one of the food trucks was not temperature protected. And that's where the illness occurred. Any questions?

**HALLORAN:** For the sake of the transcriber, they can't have a visual of who testified, and we know that you testified before and got your name-- could you give your name and spell it again for me, please?

**ADI POUR:** Sure. My name is Adi, A-d-i, last name is Pour, P-o-u-r.

**HALLORAN:** Thank you, Ms. Pour. Any questions from the committee? Seeing none, thank you so much. Any further neutral testimony? Seeing none, I would invite Senator Vargas-- Senator Vargas back

to close. Before you start, Senator Vargas, let me read these into the records. Opposition: Scott Holmes, Lincoln-Lancaster County Health Department; Lynn Rex, League of Nebraska Municipalities; David Black, United Cities of Sarpy County. Senator Vargas.

**VARGAS:** Thank you very much, Chairman Halloran, members of the Agriculture Committee. I want to thank everybody that testified. I do want to give a little bit of clarity on where I want to move forward here. I know Senator Blood, which I appreciate her being a co-sponsor and she knows my general way of working on things, is finding ways for compromise and making sure that people have a seat at the table and figuring out some way, pathway forward. I find the same way with this piece of legislation. And I had a great conversation with Dr. Pour and Douglas County Health Department and intend to try to find somewhat of a pathway forward that is meeting some of the needs. And this is a bit of a balancing act because I think you're hearing different-- different things that are rising to the level. I think we heard that fees are getting to a point where they are more onerous, becoming a barrier for business, not all fees but the patchwork of fees. I don't think people are saying that they don't want to do inspections. I think all of the food truck owners came and said that they understand the reason and the rationale and have appreciated the inspectors coming and want to make sure that their food's safe. So there's a-- that's a balance that I want to make sure we find. I think we also-- I think we also heard is that they're-- they want it to be the process for-- when they are inspected, to be a little easier, less difficult. I think we also heard that as something that's happening when there's festivals. We want to try to make that process a little easier if it's possible. We also want to try to enact some practices at-- at-- in the country that we've seen in different states. And I think that's one of the reasons why we-- we started to go down this route of looking at inspections and trying to tier it in some way. So I'm looking forward to finding a way to tier this in a little way that-- that mirrors-- so the city of Albuquerque, for example, they didn't want to let bad actors that are food trucks to then disrupt some of the momentum happening for all the good actors. So there is a minimum number of inspections that are required for different food trucks in-- in Albuquerque. And then if you're in good standing and you're deemed good standing, then you get fewer inspections. If you are not in good standing, you would get more inspections. This way we're not making more onerous. I think there's also a little bit of a concern expressed which I-- I'll-- I will want to address in the future. And we have an amendment that we're working on is

if counties, let's say like Douglas County, are the ones doing the inspections, I want to make sure they're empowered to then set that standard. But I do think there's a level of reciprocity that we want to have even at the state level. I don't want to lower the standard, but if the state level has to have a higher-- a high standard but that is not making more difficult hoops for food trucks to-- to, you know, go through, that is something that we want to try to strike that balance. There are major components in this that I-- that I appreciate and support in terms of the legislation that we want to keep moving forward on. I do want to figure out a way, Chairman Halloran, on specifically identifying what the city of Omaha's concerns are. Some of the language that we have in here is taken from the city ordinance so you will see that. We're not done looking at that piece. But one thing is really clear here. It's not working to the best intent that it's good. And if businesses are stating that it is becoming more difficult-- you know, this was created, I think we saw city ordinances with the city of Omaha as an example, was created because of a growing business. But we haven't really looked at what a good ordinance would look like or a good sort of legislation would look like at the state level, that's making sure that we're getting ahead of some of the unintended consequences of legislation. We don't want to get to a place where we hamper a business from existing in our state. And we don't monitor it and assume, well, they'll just make it work because that's how businesses do. For those of those-- those of you on here that own small businesses, I think this is real to you, and I think we heard that from business owners themselves. So I want to keep us grounded in that. This is not black or white, like either we remove regulations or not, but that there's got to be a way that we can rein in fees. There's got to be a way that we can make sure we cut fees to then cover inspections. There's also got to be a way we can have inspections but inspections don't become too onerous, too many at burdensome times. But then we also put more of an expectation even on food truck owners to say that this is the high quality and standard of inspections that we're going to meet. And so I'm looking forward to working with people on a couple of the different amendments that I talked about and just encourage us again, to consider the economic impact here. Five billion dollar industry over the next five years is expected from food trucks. Six hundred million over this next year. This is something that we can get ahead of. And I'm again, very, very fortunate that we have partners both that testified in opposition and neutral. Nobody said they don't want them to be successful. And that is a good thing for this piece of legislation. And with that, I will do a follow-up e-mail to

everybody. I did do this with a lot of other things. And I'll reference some of the reports and stats. A lot of what we looked at, as with policy recommendations, came out of some reports, the Platte Institute reference. But we also came out of a report from the National League of Cities on ways to move forward to then be a more food truck friendly state-- state. So with that, I welcome any questions.

**HALLORAN:** OK. I think Senator Blood has a question.

**BLOOD:** A brief one.

**HALLORAN:** OK.

**BLOOD:** Senator Vargas, will you also reach out to the United Cities of Sarpy on their issues with your bill?

**VARGAS:** Yeah. So when I said I'll reach out to the people that came in opposition.

**BLOOD:** They weren't visibly here this final closing. Yeah.

**VARGAS:** No, no, no, letters in opposition, yes.

**BLOOD:** And do you know how much the food truck family donates-- sorry, Senator, I can't get my brain and my mouth to connect now. Do you know how much they pay in restaurant tax?  
[INAUDIBLE]

**VARGAS:** I don't, but I can find that out. That's a great-- it's a great question.

**BLOOD:** Thank you.

**HALLORAN:** Thank you, Senator Blood. Any further questions from the committee? Seeing none, Senator Vargas, thank you so much for presenting this bill.

**VARGAS:** Thank you very much.

**HALLORAN:** And thank you all for testifying. I would-- I would ask you to clear the room so we could have an executive session.