

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 12, 2020

HUGHES: Welcome to the Natural Resources Committee. I'm Senator Dan Hughes. I'm from Venango, Nebraska. I represent the 44th Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members may come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Introducers will make initial statements followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print it. Please print and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the page or the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today, but would like to have your name recorded as being present at the hearing, there is a separate white sheet on the tables that you can sign in for that purpose. This will become part of the official hearing record. If you have handouts, please make sure you 12 copies and give them to the page when you come up to testify. They will be distributed to the committee. 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. We will be using the light system for all testifiers today. How many people are wishing to testify today? Can I see a show of hands? OK, very good. We-- 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 and please wrap up as quickly as possible. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed in a public hearing. The committee members with us today will introduce themselves starting on my far left.

MOSER: Hi, I'm Mike Moser. I represent District 22, that's Platte County, Stanton County and a little bit of Colfax County.

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HALLORAN: Good afternoon, Steve Halloran, District 33, which is Adams County, southern and western Hall County.

QUICK: Dan Quick, District 35, Grand Island.

GEIST: Suzanne Geist, District 25, which is the east side of Lincoln and Lancaster County.

HUGHES: Then on my far right.

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

ALBRECHT: Hi. Joni Albrecht, District 17, northeast Nebraska: Wayne, Thurston and Dakota Counties.

BOSTELMAN: Bruce Bostelman, District 23, Saunders, Butler and majority of Colfax County.

HUGHES: Senator Bostelman is Vice Chairman of the Committee. To my left is committee counsel, Andrew Vinton, and on my far right we have a substitute clerk today, Rod Krogh. We appreciate him filling in for us. The page for today is Kaitlin McKenna. She is a senior at the UNL-- at UNL majoring in political science and history. I do have to apologize for the coolness of the room. Both of these hearings rooms today, the heat has gone out. So we're hoping the body temperature will help a little bit. But if you start to see your breath, probably wrap it up, because we're getting really cold.

GEIST: It's only going to get colder.

HUGHES: OK, with that, first on our agenda is the reappointment of Dan Kreitman to the Nebraska Game and Parks Commission. If you'd like to come up, Mr. Kreitman, and give us just a little bit of background about yourself and what you're doing on the Nebraska Game and Parks Commission. Welcome.

DAN KREITMAN: Thank you. Good afternoon. And I appreciate the Chairman, Senator Hughes, and all the other senators for having me here today and having the opportunity. I know you have a busy schedule. My name is Dan Kreitman, K-r-e-i-t-m-a-n, 1689 County Road E, Wahoo, Nebraska, 68066. I-- a little bit about my background. I was in the dental laboratory business for 49 years. I won't tell you how I started off, it's immaterial. But I had labs in Houston, Texas, Lincoln, Nebraska, and I took up farming and ranching. I grew up on a

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farm and a ranch and I started purchasing farms and ranches back in the '80s, '90s, and to this day. So we farm and ranch in seven different counties and I'm actively involved in-- in the ranching and farming operations on several of these. I've been a commissioner for the last four years and I really appreciated the position. It's been challenging. We have a lot of challenges across Nebraska. We're working on-- we're focusing and working on those challenges. I've been involved in a lot of projects that I'd like to see follow through. So I'm asking for a reappointment at this time.

HUGHES: Thank you, Mr. Kreitman. Are there questions from the committee? We visited in my office previous to this, and you said you had been out to Lake McConaughy--

DAN KREITMAN: Yes, sir.

HUGHES: --at the meeting yesterday. Can you give us kind of an update of what-- where we're at with the transition?

DAN KREITMAN: OK. So-- so I'm going to go back. I don't have the date in front of me. A month or so ago, we met with the-- we met with the board-- with the board of local people out there, business people, concerned citizens. We, at that point we tabled some of the challenges that we faced in the meeting. We said why don't we just put this to rest. Then we had another meeting at our last commission meeting here-- here in Lincoln. Lot of-- several of those people came. We set up another meeting for yesterday after-- yesterday morning with the local at Lake McConaughy Advisory Board. I'm not sure how many attended. I'm going to say about 14. We had the state patrol, the local sheriff, the city police. We had our-- our head of our law enforcement with the commission there. We had several locals that had businesses in the-- community council also. They had a lot of questions, but this meeting-- this meeting was a lot different than the first meeting. I think the temperature when you walked into the room was-- was good yesterday. And I think we had good conversation. And the community itself is really buying into some of the things that we're trying to change out there. I think at one time, I'll just say for myself, I think we were moving a little too fast. We had a 20-year plan. We decided to slow down and get the community engaged, and I feel they're-- they're-- they're extremely engaged today. And we're listening to them and we're taking slower steps, and we're going to move forward with some of their suggestions. But with them buying in, they have-- they have a little more skin in the game today, and I

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think it's important that we did that. And I feel good with the results that came out yesterday.

HUGHES: So you're slowing down on-- on the proposed plan, you said--

DAN KREITMAN: Yes.

HUGHES: --so can you kind of see what--

DAN KREITMAN: Well, at one time we-- our plan-- I won't go in real, real deep details, but overall our plan had involved reservation only for campsites, beach campsites. We will still have the reservation only for-- for the hookup campers sites like we always have had. But we're not going to put reservations on the beach sites this year. Probably they will-- they will probably go into effect in a smaller play next year. But we are-- we are cabling off some areas, access points to where we control some of the access. What we really want to obtain is better numbers, real factual numbers. How many people are we-- or can we account for? And that's been a-- that's been a tough process for us in the last few years.

HUGHES: So the places that you're putting in cabling off, are those the beach areas or where are those areas?

DAN KREITMAN: Well, some of them are beach areas, some of them are camping areas. And we will have camping areas, we'll have beach areas, but they won't be by reservation on the beach this year.

HUGHES: So the-- the commission, the plan that you originally adopted that caused such turmoil in there is kind of off the table or--

DAN KREITMAN: It's-- it's not off the table, but we're taking a pause.

HUGHES: OK. So what you're doing now is still the first step of that original plan?

DAN KREITMAN: The first step would have been to implement beach-- beach reservations. So we've taken that off for this year. Next year, we're going to look at-- we're going to look at the crowd size this year. The water will always dictate the problem. When we have less beaches, more problems. When we have more beach, there's another problem too. So, we know for this year and next year, we're going to be high water out there. We will-- we will have some problems, and we've-- we've always had problems, but we're-- we're engaging local

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law enforcement a little more. They're gonna supply more. We're going to have more out there, a presence. And I think we're going to see a large result.

HUGHES: OK. Senator Gragert.

GRAGERT: Thank you, Chairman Hughes. Just a couple things I've been reading about. You've been having these meetings at McConaughy or the local areas. Is your plan to cut down the number of people that are going to be able to visit McConaughy on a-- on a fourth of July weekend or holiday weekends or is this throughout the entire year or you got a handle on just how many people that once it starts taking reservations that-- I seen as concern of the-- the local businesses, if you will, how they depend on all those people coming to that area. So is that all taken into consideration?

DAN KREITMAN: Well, Senator Gragert, I think if you would have been at that meeting yesterday, that question would have been answered, so I'll answer it. I-- I believe that they have bought into this. They realized that they have a problem. We have a problem. They own part of that lake. I mean, this our community. So they want to address that problem. There isn't one person that was there yesterday that said we do not have a problem. They all realize the problem we have and the problem is numbers. So somehow those numbers are going to have to be reduced because of the amount of space and that's what-- that's our plan moving forward. For this summer, we're going to-- to see how it plays out.

GRAGERT: All right. Thank you.

HUGHES: Have you or other commissioners been to McConaughy of any of the big three weekends--

DAN KREITMAN: I have.

HUGHES: --lately?

DAN KREITMAN: I-- I've been going there since I was five years old. So I've been there hundreds and hundreds of times.

HUGHES: But the last five, 10 years on the weekends--

DAN KREITMAN: Yes. Yes, I have. Yes, I have.

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HUGHES: --so you've seen the crowds?

DAN KREITMAN: Yes.

HUGHES: OK. Bruce-- oh, Senator Bostelman, excuse me.

BOSTELMAN: Thank you, Chairman Hughes. Thanks for being here today, Mr. Kreitman. Could you tell us a little bit more about during the year, what type of involvement you have as far as, as a commissioner and-- and things you do throughout the year that-- that not just your meetings, but other things that you-- you consider as part of your-- I wanna call responsibility or things that you enjoy doing as a commissioner?

DAN KREITMAN: Well, first of all, I think possibly myself and one other commissioners would consider ourselves fully retired. I still am involved in farming and ranching operations, but I have the time and energy today to attend meetings like Lake McConaughy, drove out the night before, came back last night. I've attended several big game meetings, Gering, Nebraska down to the-- drawing a blank-- down to Bennet, I believe, and end up in David City. So when these meetings come up, I'm available. I'm a guy that can be out there, not on a moment's notice, but I have the ability to be there. So I attend a lot of functions, and I don't know if that answered your question.

BOSTELMAN: I think it does. I think we've had conversations before where you say you'll go out and take your vehicle and maybe drive the Cowboy Trail or those type of things just to see what-- what things look like. See if there's people out there using the facilities and that, those are the conversations that I like.

DAN KREITMAN: Well, one thing that helps me is having land in almost every-- not out in the southwest corner, but having land throughout the middle of Nebraska and northeast Nebraska, central Nebraska and northwestern Nebraska and in engaging with the communities in all those areas. And I have been for many years. So involved in the local communities, I can name several communities, but this-- this is what I do.

BOSTELMAN: OK. Thank you, Mr. Kreitman.

DAN KREITMAN: Thank you.

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HUGHES: So any other questions? In your opening you said you owned land in seven counties.

DAN KREITMAN: Yes, sir.

HUGHES: Is that correct? And you just said you own land-- so looking at your statement that you fill out to apply for this it says you only have land in Dawes County and was one section of ground, is that a-- is that an oversight?

DAN KREITMAN: You know, we-- we put that down because it's personally what we own. Everything else is an LLCs and corporations, so I didn't list corporations and LLCs in that statement.

HUGHES: Are they-- are they listed in here?

DAN KREITMAN: No, they're not. It wasn't my understanding that they should be listed.

HUGHES: OK, very good. Just clarifying.

DAN KREITMAN: OK.

HUGHES: Any other questions? Seeing none, thank you for your service to the state of Nebraska.

DAN KREITMAN: Thank you. Thank you.

HUGHES: Is there anyone wishing to testify in as a proponent of Mr. Kreitman's reappointment to the Game and Parks Commission? Welcome.

STEVE WILSON: Thank you. Good afternoon, Chairman Hughes, members of the Natural Resources Committee, my name is Steve Wilson, S-t-e-v-e W-i-l-s-o-n. I'm a constituent of the district of the Game Commission that is represented by Dan Kreitman. I'm here today to testify in support of Dan's appointment to the Game Commission. I've known Dan a little over 15 years. We first met near Ceresco, Nebraska, by Jack Sinn Wildlife Area. My sons and I had just finished hunting when Dan pulled up and asked how we did. Mentioned we'd not seen any birds that morning, but still had a fun hunt. Dan asked the boys would like to come and shoot some pheasants and, of course, they overwhelmingly said yes, they would. We followed Dan out to his local area farm and he let the boys work the fields and have a fun hunt. And that was the first limit of pheasants both of my boys shot. I point that out because

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that's the kind of guy that Commissioner Kreitman is. In the past 15 years, I've had the opportunity to witness Dan's passion for Nebraska outdoors and the issues we face related to hunting and fishing. Dan's love for Nebraska and outdoors places is contagious. He's the first one to step up as a volunteer to get more kids in the outdoors or to help financially with new programs in hunting and fishing in the state of Nebraska. As a landowner in both eastern and western Nebraska, Dan is the most qualified candidate to represent his constituents on wildlife issues in the state of Nebraska and I'd ask that you reappoint Commissioner Kreitman to the Game Commission. That's all I have.

HUGHES: Thank you, Mr. Wilson. Are there questions? Seeing none, we appreciate you testifying today.

STEVE WILSON: Thank you.

HUGHES: Are there additional proponents? Welcome.

ROBERT VIRGL: I'm here to rep-- to say a few things about Dan. I've known him--first of all, my name is Robert Virgl, V like-- V-i-r-g-l. I'm from Wahoo, Nebraska. Pretty much a lifelong resident of Wahoo. I'm in Bruce-- Senator Bostelman's territory. I've probably know Dan plus-40 years, I'm guessing. I've known him when I was young. He's about 10 years older than I was, but the man has done more for hunting and youth abilities in this state than anybody that I know. I've known Dan, like I said, I go to Burwell quite often during the rodeo out there and he's been a big proponent and a donator to the rodeo to keep it going at Burwell, Nebraska. And every time we're out there and we go out there about six days, five days, he spends two, three days going over to Calamus, making sure everything's right, looking at things. Since he's been the last three years plus, it's been in his wishes to make sure every facility that the state of Nebraska got. He's not a chairman or he's not, should I say, a representative for Saunders County, Lancaster. He's a representative for the state of Nebraska. We have a ranch. I have quite a bit of property out in Garden County, so I know-- I know Lake McConaughy pretty well. But when he first got he said, hey, Bob, we've got to get out there and you've got to show me places, I don't know where at Lake McConaughy. We took the back road, the south road all the way around. We went to every-- visited every place on that lake. We spent a whole day visiting, talking to people. And then when hunting issues come up, my neighbors out there, we've got about nine hunting blinds out in Garden

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County and we use em all. And we have neighbors out there that have a lot of interests and I always go to the bar, Happy Hour and they say that damn Game and Parks, and I said, well, you know what, let's call Dan. And by gosh, Dan calls these people back. Two of my neighbors out there said, I called him a couple of years ago, he called me back, he said he was in Roatan, Honduras. My God, he made a point to call me back. And he goes out there and he does one hell of a job. He's got a heart the size of my stomach. And I'm telling you, when people need-- when youth organizations need help, he's there to help them. Pheasants Forever. I started the Ducks Unlimited in Wahoo, Nebraska back in '08 and I think since '08 we probably raised 5, \$600,000 for-- for Ducks Unlimited. But I called Dan, I said, we're thinking about going to Lake Wahoo, we need some youth hunting. We gotta get youth back into it. So I'm a big pusher of youth hunting. And I know Dan is too. And-- and I said, what do you need help with? I said, we need to put blinds out here for the youth. Dan's bought all of our blinds out there. He's bought-- the deer blinds. I mean, he makes sure-- I know Pheasants Forever, he's made major thousands of dollars of donations. He's done this by his own. I mean, he is very, very giving to the youth effort. He-- he's got Nebraska on his mind, he really does. And he's been a mentor for me and he's an idol in my eyes. So I-- I wish strongly that you put him back in as representative.

HUGHES: Thank you, Mr. Virgl.

ROBERT VIRGL: Yes, Virgl. Yeah.

HUGHES: OK. Any questions from the committee? Seeing none, thank you for coming in and testifying today.

ROBERT VIRGL: You bet.

HUGHES: Any additional proponents of Mr. Kreitman's reappointment to the Game and Parks Commission? Are there any opponents? Seeing none, is there anyone wishing to testify in the neutral capacity? Seeing none, that will close our hearing on the reappointment of Dan Kreitman to the Nebraska Game and Parks Commission. And we will move on to the next item on the agenda, LB1173. Senator Erdman is introducing another bill in committee, so we have the next best thing. Welcome to the Natural Resources Committee.

JOEL HUNT: Good afternoon. My name is Joel Hunt, J-o-e-l H-u-n-t. I'm here today to present to you LB1173. LB1173 allows landowners and

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lessees to apply for limited transferable permits to hunt antelope, deer or elk whenever it is evident that the animals are doing damage to the landowners property. What does LB1173 do? First, those who can apply for the permit are landowners or lessees who own 320 acres of agricultural or horticultural land or more. There must be evidence of property damage or loss of crops in order to get the permit. The property damage or loss of crops must have been caused by antelope, deer or elk. The landowner or lessee must apply for the permit. You must actually apply for the permit. You'll see why that's important in a few minutes. The Game and Parks Commission then has 15 days to respond after the application has been submitted. If Game and Parks fails to respond within 15 days, the landowner or lessee may kill the animals and file a report with the Game and Parks Commission within three days. If Game and Parks issues the landowner or lessee permits, the permits are to be used only to hunt antelope, deer or elk on the landowners property. They can't go hunt on somebody else's property. The permits are transferable to anyone otherwise eligible to hunt in Nebraska. Landowners and lessees may also sell these permits. Before I go further, let me talk for a moment about what kind of damage the antelope and the deer and the elk do. And this is a particular problem in western Nebraska although it occurs all across our state. Today, you're going to hear from someone who will testify from eastern Nebraska. So this is not peculiar just to western Nebraska. But first of all, antelope, deer and elk graze in the fields and eat the crops of our farmers. And we do not know how much farmers lose every year in terms of the amount of lost revenue they suffer in terms of deer and antelope and elk eating their crops. Secondly, antelope and elk are notorious for destroying fences, especially in western Nebraska with the elk and the antelope. They are notorious for tearing down and destroying fences. Third, whenever elk defecate on hay, cows will not eat the hay. It destroys the entire batch of hay. I forget what they call it, but third, fourth, antelope spread bind weed and Canadian thistle. They do this by digesting the seed and then spreading it, especially bind weed. It spreads by going through the digestive system of the antelope and farmers that I've talked to, especially in western Nebraska, told me that if you have a bind weed on your property and you have antelope, it is impossible to ever catch up with the problem. You just have to let it go. It's-- it's a nox-- these are noxious weeds and they are next to impossible to get rid of and antelope in particular are the ones responsible for spreading it. So why are we introducing this bill today? Every year that Senator Erdman has been in office, every single year he has asked me as his Legislative Aide

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to make a personal call to the Game of Parks Commission and especially ask them to increase the number of elk tags, and I have done this. And every year I get the following response. We'll look into that and maybe we can-- we can increase it by one or two elk tags. That is the response that I get. This has been a problem that has been growing and increasing to the point where the farmers and the ranchers are now beside themselves. And they are clamoring for this kinds of-- this kind of legislation be done because they have been ignored by Game and Parks for years. One or two elk tags will not solve the problem. Game and Parks has been growing the population of antelope, deer and elk herds. In fact, nobody knows the size of these herds. They will tell our constituents in Nebraska that there are less than 100 elk in western Nebraska, but then they will turn around and they will issue a single farmer 50 depredation permits. If that is the case, then they have just decimated half of the herd in western Nebraska. They do not know how many elk are in our state. They are not counting how many elk are in our state. They don't know how many antelope are in our state, and they do not know how many deer are in our state. Whatever they tell you, well, they've told our constituents that there is only 100 elk, or less than 100 elk in western Nebraska. Landowners in western Nebraska are losing too much money. I have given you a handout by an email that I received by a man by the name of Jay Galloway. Not sure how to pronounce his name. I want you to look at that email for just a second. I want to read that email to you. It says, my name is Jay Galloway and I live in Sidney, Nebraska. My farm is in the southern Panhandle of Nebraska at an elevation of 4,300 feet, roughly 100 miles east of the Rocky Mountains. The average rainfall is 14 to 16 inches and we are subject to high winds above 40 miles per hour during the winter months. I have an animal problem that the Nebraska Game and Parks will not address. Since 2015, I've tried everything that they have suggested to protect my crops, land and income. In addition to paying my real estate taxes, I am being taxed twice by Nebraska Game and Parks, first by uncontrolled year-round grazing of my crops. Second, by having to clean up after the antelope deposit their waste on my fields that contains noxious weeds like Canadian thistle and bind weed. The crop loss to uncontrolled grazing is variable and difficult to estimate. Prior to 2015, I would spend one or two days spot-spraying noxious weeds. With the increasing antelope numbers, I now have to find five or six days to spot-spray costing me about \$3,000 per year in time, in chemical. I have better uses of my time and money than cleaning up after antelope. In closing, I have attached two photos that were taken on February 8, 2020 on my field southwest

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of Lorenzo, Nebraska. In the first photo you can see a long line of antelope running across my growing wheat and millet stubble. In the second photo, in the middle you will see a cloud of dust generated by an estimated 100 antelope bunched together. They are powdering the soil in a sensitive area and increasing the chances for wind erosion and a high wind. I need help and relief from the management practices of Nebraska Game and Parks. And if you just take a look at the first picture there, everywhere you see a little white dot, that is the behind of an antelope. And you can see that the antelope stretch for as far and as wide as-- well, as wide as the camera lens will-- will let you. In the second picture, you can see the cloud of dust that-- that he is referring to in the picture. A year ago, November, I went out to the Panhandle to travel with Senator Erdman. We did nine town hall meetings and all but one of those town hall meetings, farmers came out to tell us what a problem the antelope and the elk were. In fact, we-- leaving those nine town hall meetings, we left believing that it was the second highest problem in western Nebraska next to property tax relief. This has been an ongoing problem. And when we were in Harrison, after we left Harrison, we were coming down Highway 29 towards Scottsbluff and I couldn't believe my eyes what I saw what we-- together we saw Senator Erdman and I, we encountered a herd of antelope that was at least 1,000 antelope. Now I have driven across Wyoming probably a dozen times and every time I drive across Wyoming, I count the antelope. I love the animals. I love to count them. I-- every time I drive across Wyoming, the entire distance on I-80, I count somewhere between 500 to a 1,000 antelope. We encountered a single herd of at least a 1,000 antelope in Sioux County off of Highway 29. I couldn't believe it. That's amazing. Now imagine the damage that a 1,000 antelope would do to your fields if left alone to do-- to graze, to destroy your fences, whatever. This is a problem that Game and Parks has been ignoring and this is why we're bringing this bill. But I'm not done. You've been given a fiscal note today that the fiscal note calls for an estimate of about a million dollars of cost to the state. Here today to tell you that that fiscal note is a joke. I'm going to tell you why that fiscal note is a joke. That fiscal note is a joke because it ignores the much larger problem that is at stake. I have given you a copy of the Nebraska State Constitution, and that is-- that copy contains Article 1, Section 21. I want to call your attention to that and I want to read that to you right now. Article 1, Section 21 of the Nebraska State Constitution says, the property of no person shall be taken or damaged for public use without just compensation therefor. Now I have also given to you a

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letter that I wrote to the Attorney General's Office dated October 3rd. When I wrote this letter to the Attorney General's Office, we had not yet written LB1173. I want to be very careful this morning. I am not here to throw the Attorney General under the bus this morning or this afternoon. In fact, I would have done exactly what the Attorney General did and the Attorney General did the exact right thing to do. But in that letter, I want to just read that letter to you. Dear Mr. Peterson-- Peterson. Article 1, Section 21 of the Nebraska State Constitution says, the property of no person shall be taken or damaged for public use without just compensation therefor. I have two questions I would like to answer-- you to answer for me regarding this section of the Nebraska State Constitution. First, does the Nebraska State Constitution, Article 1, Section 21, entitle-- I may go to hell for using the word, entitle. I will pray to God for forgiveness for using that word this afternoon. But again, does the Nebraska State Constitution, Article 1, Section 21 entitle landowners to just compensation from the state for damages caused to real property by wildlife such as damages caused to fences by antelope, deer or elk? The second question, does the Nebraska State Constitution, Article 1, Section 21 entitle landowners to just compensation from the state for the loss of crops caused by the natural free range grazing or feeding of wildlife such as corn or hay eaten by antelope, deer or elk? Thank you for taking the time to answer my questions. The Attorney General refused to answer these questions. The excuse that the Attorney General gave was that we did not ask this question in regards to a specific piece of legislation. And again, I had not yet written up LB1173. But ladies and gentlemen, I want to show you that the only answer to these two questions could be yes. And before I get into explaining why, I want you to think about what this would actually cost the state of Nebraska if we gave just compensation to every farmer and every rancher who has suffered loss of crops and damage to property according to Article 1, Section 21 of the Nebraska State Constitution. I believe the only answer to my two questions can be yes. State-- and then to read to you a section from Henderson v. City of Columbus in 2013. This case decided that state agencies should use-- they should foresee and forecast the results of their actions. And here's what it says. In order to meet the initial threshold of an inverse condemnation case that the property has been taken or damaged for public use, it must be shown that there was an invasion of property rights that was intended or was the foreseeable result of authorized government action. Game and Parks has the capability to foresee the damage that is being done by the antelope, the deer and

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the elk, and they have intentionally done nothing. Again, every year we have called and we have asked them to increase the number of elk permits and they may issue one or two extra elk permits. I continue. In regards to entitlement, I will cite Ewing v. City of Oakland, 1990, where private property has been damaged for public use, the owner is entitled to seek compensation in a direct action under this constitutional provision regardless of whether the plaintiff could have sued in tort under the political subdivisions Tort Claims Act. I will cite Kula v. Paso-- Prososki, 1988, where crop land no part of which is taken temporarily suffers compensable damage, the measure of compensable-- of compensation is not the market value, but the value of the use for the period damage. That is the value of the crops which could-- which could and would have been grown upon the land. I continue. Parriott v. Drainage District No. 6 of Peru. This is 1987, when private property has been damaged for public use the owner of such property is entitled to seek compensation in an action under this section, referring to Article 120-- of Section 21. Also, just in case you're wondering if all damages are included. That was decided in Quest v. East Omaha Drainage District in 1952. This case said all damages which diminish market value of private property may be recovered and then Wagner v. Loup River Public Power District. This is 1948. Proof of negligence of-- or the commission of a wrongful act is not necessary for recovery. Let's talk a minute about just compensation. W.E.W. Truck Lines, Inc. v. the State of Nebraska--

MOSER: Mr. Chairman-- Mr. Chairman, may I interrupt for a second?

HUGHES: Normally we do not put a time limit on opening statements for bills.

MOSER: Even though we're arguing the case rather than presenting the bill?

JOEL HUNT: I'm presenting the bill.

HUGHES: We don't limit the time.

MOSER: Thank you.

JOEL HUNT: The right of a landowner to just compensation per property taken or damaged for public use is guaranteed by this section. I underscore the word, guarantee. Finally, I want to show you how I went about writing this bill. How did I come up with the contents for this bill? The transferability portion of the bill I got from Wisconsin.

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Wisconsin has a similar law to-- to the one that we are proposing and in their statutes, it says a person authorized to purchase a license for a permit or harvest authorization issued under a cumulative preference drawing may transfer their worded permit or harvest authorization to another who meets the required qualifications. In the state of Idaho, they allow transferability to youth. In Kentucky, they allow the owner of the permit to sell their permits. I'll read a section here from the Kentucky statutes. Landowner cooperator permits are provided to landowners who open their property to public hunting. For each 5,000 acres enrolled in a public hunting agreement with KDFWR, the landowner receives one permit. Landowners may give away or sell these permits. Where did I get the idea for killing animals before the permit is issued? I got that straight from the New Mexico statute. New Mexico allows landowners to kill the animals before they get the permit. A landowner or lessee or employee of either may take or kill an animal on private land in which they have an ownership or leasehold interest, including game animals and other quadrupeds, game birds and fowl that presents an immediate threat to human life or an immediate threat of damage to property, including crops. Provided, however, that the taking or killing is reported to the Department of Game and Fish within 24 hours and before the removal of the carcass of the animal killed in accordance with regulations adopted by the commission. A landowner or lessee or employee of either may take or kill animals on private land in which they have an ownership or leasehold interests including game animals and other quadrupeds, game birds and fowl that present a threat to human life or damage to property, including crops according to regulations adopted by the commission. I'm reading this to you because I don't want you to think for a moment that this idea of landowners going out and killing the animals themselves and then reporting it to the commission is a foreign idea. This has been going on in New Mexico for quite some time. Finally, the idea of 320 acres, I got from the Colorado law. Colorado actually limits theirs to 160 acres. I doubled it. I thought that would be conservative, so we said 320 acres for Nebraska. And then finally, the quantity Colorado allows their landowners to apply more than eight times. Landowners may obtain more than eight applications only if the division has verified that the land is the size reported by the landowner and meets the conditions required for eligibility under paragraph A, subsection 2 of this section. That completes my opening. I will take my seat in just a second, but the people behind me are going to be lawyers and I think they need to be asked why it is that landowners are not being

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compensated for the damage done to their property. Now, we're not even coming to you today asking for compensation. We are simply asking for landowner permits that are transferable. Thank you for your time.

HUGHES: Thank you, Mr. Hunt. Proponents of LB1173. Seeing none. OK. If you wish to testify, please come populate the front row. Welcome.

JOHN ROSS: Good afternoon, Chairman Hughes and members of the Natural Resources Committee. My name is John Ross, J-o-h-n R-o-s-s. I want to thank Senator Erdman for introducing LB1173. I have owned land and farmed since 1971. Landowners, farmers and ranchers have been bearing the loss of crops and property damage without-- with limited help for too many years. Very little was done when they spoke up. Almost all the land in Nebraska is privately owned. We all know that. The people that own this land are a very small percentage of the population of the state of Nebraska, so their voice is small. This small number of people are expected to bear the cost of these animals eating their crops to stay alive with almost no help from the rest of the population. There are people that make money guiding hunters, guiding people who want to just view wildlife, people that take photographs and paint and they sell those pictures and paintings. They are making money. A farmer or rancher, unless he wants to totally close his land off and everybody has to pay a fee to hunt, is kind of limited in how to recoup some of the cost of losing those crops. If we don't reward the landowners and renters, in time they may all start charging a fee to hunt, view or photograph wildlife. When I was farming, there were times when deer ate a lot of my crops. I love to deer hunt, so I lived with the loss. A simple thank you of a special permit would have went a long ways for me opening my land up to other hunters. Game and Parks did help a little with a limited landowner permit at a reduced price and I appreciate that. Thank you. Limited transferable permits would be a very nice thank you that may get more landowners to allow people to enjoy the wildlife on their land. Limited transferable permits along with some other changes are needed to help make this problem go away. Thank you.

HUGHES: Thank you, Mr. Ross. Are there any questions from the committee? Senator Gragert.

GRAGERT: Thank you, Chairman Hughes. Limited transferable permits, are you looking to get a certain amount of permits and then sell them to other hunters?

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JOHN ROSS: Well, according to this bill, if I read it right, you can only get one permit for 320 acres. So you would be able to get six or seven or eight or 10 permits is the way I read the bill. And I think you can only get either a limited landowner permit, which is half price, or you could get the transferable. I don't think you can get both permits. I may be wrong, but that's the way I read the bill. I got it here in front of me, would take me a little while to look through it, but on that point the 320 acres, I understand that the area where this bill came from was out western Nebraska. And that's not a lot of land. Most ranches are a lot larger than that. I only own 250 acres. So for maybe for deer, in mine, I'm speaking of deer in my area, I think maybe that number of acres to get one transferable permit should maybe be lower. It's just my feelings on that.

GRAGERT: For getting that permit, are you-- are you-- are you looking to sell that permit or just give it to somebody?

JOHN ROSS: I'd probably would give it to a grandson or son-in-law. I can transfer it.

GRAGERT: OK. Have you got a deer population problem?

JOHN ROSS: Yes, I have had in the past years, I had a pretty big. There was--

GRAGERT: Do you let people hunt on your property?

JOHN ROSS: Most years when I offered for people to come and hunt on my property and reduce the herd by shooting an antlerless deer, they said, no, I want to shoot a buck. And I said, no, I need the herd reduced, but I was-- my hands at that time were tied. I could only get one permit.

GRAGERT: OK. Thank you.

HUGHES: Senator Albrecht.

ALBRECHT: Thank you, Chairman Hughes. And thank you, Mr. Ross, for coming down to testify. So do you carry crop insurance?

JOHN ROSS: Yes.

ALBRECHT: So if those deer on your property would destroy your crops, would you be able to have that covered by your crop insurance?

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JOHN ROSS: Normally, the loss to collect crop insurance has got to be very, very significant. I would probably say on my farm, I have had 300 acres of row crop and in one or two years I've lost one to two acres, which when you add that into the entire production for crop loss with insurance, you usually don't collect. But 200 bushel corn at-- it quite ain't there at 400-- at \$4 an acre, that's \$800 an acre loss of revenue.

ALBRECHT: Thank you very much.

HUGHES: Any additional questions? Seeing none, thank you Mr. Ross for your testimony.

JOHN ROSS: Thank you for listening to me.

HUGHES: Are there additional proponents of LB1173? We do have two letters of support, one from the Nebraska Farm Bureau and one from Jay Geu. So we'll switch to opponents of LB1173. And if you wish to testify, please come populate the front row. I'm getting cold. Welcome.

TIMOTHY McCOY: Good afternoon, Chairman Hughes, members of the committee. My name is Timothy McCoy. I'm the deputy director of the Nebraska Game and Parks Commission. I work at our headquarters office located at 2200 North 33rd Street, Lincoln, Nebraska. I'm here testifying for the Nebraska Game and Parks Commission in opposition to 11-- LB1173. The commission opposes this bill, which will create free transferable land owning-- landowner hunting permits for deer, antelope and elk based on the wildlife damages to crops or property. I'd like to start-- begin by emphasizing that Nebraska's wildlife resources are held in trust for all the citizens of Nebraska for their aesthetic enjoyment and recreational hunting, with hunting as a preferred tool for manage wild-- managing wildlife populations. The wildlife resources do not belong to the Nebraska Game and Parks Commission, but to all Nebraskans and as a state agency, we are the trustee charged with managing those resources, using professionally trained biologist, using science to manage those in the best interest of all the people. That includes providing equitable and fair access for any hunting activities used to manage those resources. The bill would create a new, complicated and likely highly controversial system to award free, transferable landowner permits which can be sold and can be used, as this bill is written, outside of the regular deer, elk and antelope seasons. When we-- when we talked to hunters and

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landowners, and I'd say sometimes with questions from senators, one of-- one of the pleas we hear is to please do more to simplify what is going on with your regulations for big game permitting and for hunting. This bill does add new layers of complexity, potential for confusion, and unintended consequences. We believe it will-- could create some very big challenges from a law enforcement standpoint. The bigger issue is, I'm not sure this bill actually addresses the underlying issue of damage to prop-- to property by wildlife that it's really directed to address. And that's-- that's something that we have been working on in the last year, and so I did provide all of you a handout that has a couple of pages on it. The first one is the activities we've undertaken in the last year. In 20-- it started in 2019 as this issue really came to the forefront. We've rewrote our response protocol and retrained our staff, focusing on improving customer service and liberal-- liberalizing the use of damage control permits, streamlined our regulations. We've held depredation meetings. We've charged our staff to call back the people that have had depredation issues in the last three years. There's-- there's a host of things that we've been doing. You know, one of the things that's been said is we don't take this seriously and we're not taking action, so I just want you to know we've not been out advertising many of these actions, but they are actions that are within our control that we are been-- have been taking on. One of the things that we did re-- sort of reinstitute was our sign-up program for antlerless deer hunters as a tool to be able to help landowners find hunters that are interested in killing antlerless deer to hunt on their land when they're having population issues. We also utilize our staff in our district offices for those-- for general hunters that have an antelope or elk tag and are looking for a place to hunt antlerless doe fawn-- doe fawn, antelope or cow elk. So we try to make those connections and help provide that information from landowners that we know are interested in taking more antlerless hunters. At the bottom are some of the things that we did in the last year. We took at-- we undertook efforts to really increase our mule deer antlerless harvest in the Frenchmen unit. That was the unit that had the-- that there are many issues identified last year that we started to work on right away. We've-- we've increased our antlerless harvest in the Loup East unit by 22 percent. That's a unit that we've had concerns about due to the number of depredation complaints we get. Those depredation complaints are tracked every year. They are part of what we look at when we set regulations because from the standpoint of managing Nebraska's wildlife populations, we are always concerned about that balance of

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the impact on the landowner. And there may-- there may be a small number of those, but, you know, we see two or three instances of depredation. That's an issue we-- we take seriously in trying to figure out how can we get more pressure on that herd? How can we get more antlerless animals shot? How can we do those things that help reduce the population? And in that Loup unit, we did something our wildlife staff came to us with a great idea that we'd never tried before. And that was to add an extra antlerless permit, so-- so basically a double bonus antlerless permit in that unit to try and on the regular season permits to--

HUGHES: Mr. McCoy, your red light is on.

TIMOTHY McCOY: --to get more of those deer harvested. We'd ask you to hopefully hold this bill, and we think there are a lot of bigger things that we need to deal with to continue to deal with the depredation and not-- not create additional issues and complexities to deal with.

HUGHES: OK. Thank you. Are there questions from the committee? Senator Bostelman.

BOSTELMAN: Thank you, Chairman Hughes. Thank you for being here, deputy director McCoy. Can you tell me, in the opening it was stated that we don't have any idea as to how many elk or antelope or deer, do we do surveys on deer, elk and antelope in the state, and do we have a-- somewhat of an idea as to what--

TIMOTHY McCOY: We do not-- we do not do what I would call a census survey. That's pretty impossible to do with wildlife. We have estimates. We look to improve those estimates all the time. The-- the numbers that I have off the top of my head are, we probably have between, you know, I would estimate-- we would estimate between 2,500 and 3,500 elk in the state right now. Between whitetail and mule deer, probably somewhere in the 400 to 450,000 range with a larger majority of those being whitetail deer because they're more well-distributed across the state and probably around 12,000 pronghorn antelope. And if you include turkeys, which aren't in this bill, but we count, we consider sort of like big game, about 160,000 turkeys in the state. Those are not exact estimates. They aren't censuses and those numbers are changing all the time.

BOSTELMAN: Okay. Thank you.

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HUGHES: Senator Gragert.

GRAGERT: Thank you, Chairman Hughes. In the opening statement, we also heard that this is the probably the second biggest problem in-- out west other than property taxes. I believe we've asked you in previous, what is there any-- any records of complaints to the Game and Parks either local and/or to the state and how many, you know, how many, and if you would just touch real quickly on how those complaints would be addressed.

TIMOTHY McCOY: Well, when we receive complaints about depredation, they are-- those complaints are logged. They're ran through our district offices because our wildlife district managers respond to those. We've got numbers of depredation complaints statewide. I've got a recent summary that I'll just shoot you a few numbers from. If when we look at our total depredation complaints received by the agency in 2017 we had 115, 2018, 96 and then 2019, 137. We can break those down farther. Deer complaints in 2019, we had 90 deer complaints. By far our largest number of complaints sent around deer. We had seven elk depredation complaints and we had three pronghorn depredation complaints. Now, I think there are issues out there and-- and I know this was was brought up when we were at the LR legislative resolution hearings. I think there is a sense from landowners that-- that, you know, why call them, they won't do anything. Well, it does two things. It makes make sure that we are-- are drawn to the direct issue to help provide whatever-- whatever we can do to help avoid or mitigate or recover, you know, deal with damage from wildlife. We can issue kill-- kill permits to deal with those animals where they're causing problems. And furthermore, when we know there are these depredation issues, we-- we see that as a huge key to upping our antlerless-- our antlerless animal harvest to help control those herds. So we need those, we need that report.

GRAGERT: On those-- can I follow?

HUGHES: Yeah, sure.

GRAGERT: On those complaints then, would you happen to have any idea how long it would take the Game and Parks to react to go out there and look at the wildlife damage? They mentioned fifteen days, I believe you would have to react. Is that a sensible amount of time?

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TIMOTHY McCOY: It can depend on the time of the year and what's going on. I will tell you, if it's during the current firearm deer season when we're actively operating check stations across the state for 10 days, it will be challenging. There are other times of the year that that will be better. Typically, we try to respond as-- you know, we try to respond as soon as we can within a week. We also try to coordinate with landowners on their schedules and there are times where landowners will-- will say, you know, want to pick a time, come out, tour with them, look at the damage. Make sure you have that conversation about what's going on and what-- what they're interested in doing. Sometimes landowners aren't interested in, you know, in depth, in damage control permits to kill those animals, and also explain how those work that they can assign shooters so they don't have to do it all themselves, that those shooters can then kill those animals and also take care of the meat or share that meat with other people that need it.

GRAGERT: One last question. Depredation. I know you try to match up a shooter with the deer, with the elk, or with whatever your-- your after. However, if that doesn't happen is depredation, can the producer end up to shooting that deer and burying it?

TIMOTHY McCOY: The way-- the way the regulations are written and the statutes are written, the carcass of any animal that's killed under a-- a damaged tag for-- for damage tag for elk, antelope, deer has to first be offered for human consumption. If that's not possible, then they can dispose of it in any manner. The times that most typically has come into play is when landowners are dealing with deer marauding cornfields in the summer. In many cases, those deer are moving in and out in the evening or early morning and it's very possible they shoot deer and can't recover them until the next day and when it's hot out, then they're done.

GRAGERT: Depredation then, is there a time a year or could you shoot animals all year long under depredation?

TIMOTHY McCOY: We try to-- we try to really avoid when we have had fawning periods in the spring. But-- but we have, you know, have started them and at times we will-- we will do them in, you know, as early as July where we start to have damage, but we'd like to avoid that if we possibly can. We also like to get on sites where there's damage starting before damage really gets bad and starting to happen,

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see if there are things we can do to keep the animals from continuing to come back.

GRAGERT: So, in the middle of winter or during dead winter, can you go out there and shoot? Would you go out there and ever shoot animals during-- for depredation purposes? I'm talking even after the harvest, they've made the problem. They've had, you know, and you know that there's an excessive amount of animals, can you just go out there in the middle of winter and shoot them then?

TIMOTHY McCOY: We've done it when we've had the direct damage at that time of the year. I don't-- usually we try to get the animals that are causing the damage when they're doing it. But-- but I don't think there's anything that completely prevents us from doing that. We did something different this year where we actually extended the antlerless season and a couple of these units extend antlerless kill by going through the end of January. Typically, we would-- if we did offer them, I think we would try to wrap up in, you know, March or April when really serious shut-- gestation is going on, you know.

GRAGERT: Thank you.

HUGHES: Any additional questions? Senator Albrecht.

ALBRECHT: Thank you, Chairman Hughes, and thank you for being here. A couple questions. So you-- you take it upon yourselves as a-- as a commission to-- you go to the commission and ask or do-- does your agency just decide that we need more permits in one area or the other? How is that decided? Is it because you yourself get the complaints or because you are just aware of, and I can't imagine with the drones today, you wouldn't be able to know where every major herd would be, but how do you determine and how often do you change those numbers? Because every season you only have so many permits, but if there was a situation where there were too many gathered in one area, do you, I mean, just arbitrarily just say, well, let's just give him another 150 permits or--

TIMOTHY McCOY: We-- we actually do make permit adjustments every year. We-- we-- the decision-- the decision making process, which is what I think what you're asking is, those are set-- the big game seasons when including the permit allocations are set annually by our-- by our board of commissioners. The process our-- our staff really after the-- the November firearms season and then also the close of all the big

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game seasons, they will compile-- will compile all of the preliminary data from our big games season. In December through January, we start looking at recommendations. We also have land-- we have what we call big game meetings that are an open meaning for the public to come. We ex--- we provide the information on what happened in that last year, and then also hear from sportsmen and landowners about their concerns, what they are seeing in the herd, where their problems are at.

ALBRECHT: And how-- and where are those meetings held and how many do you have in a-- after the season is over?

TIMOTHY McCOY: I think we typically do about at least-- at least six in the state. We may be closer to eight. I can't think of that off the top of my head. We move them around in every one of our four-- we have four districts. So we have a district manager in the southwest, in the northeast.

ALBRECHT: So my other question would be, do you have a-- do you have a budget line item that you can spend money to advertise? I mean, I've seen commercials where you guys are out there promoting Game and Parks. Do you have a budget for informational type things or do you just hand-- like this information you're showing us today, all the wonderful things that you're doing, but the public really doesn't know, would they be able to see it on a website? I mean, how do you-- how do you let these folks know? Because if-- if this bill shouldn't go anywhere, what kind of action would you be taking with your board to make certain that things like this start to happen, that the public realizes that you're currently already doing.

TIMOTHY McCOY: Well, there's-- there's several things. We-- we-- we are continuing to try and get more and more information out to landowners. We try to get information in local newspaper and local radio stations also when we're having big game meetings, because we do not hold them in a single location year after year. We try to move them around in those-- in those areas. We try to hit areas where we know there's really-- real issues that we're aware of to make sure we can have those conversations. So following those meetings, then that-- that staff come back-- comes back, makes an orders recommendation that's reviewed with our administration, myself and the director. Those are then-- come to our commission as an order with a 30-- with a hearing and then the commission makes the final decision as to what we're doing in terms of adjusting those-- those permits.

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ALBRECHT: OK. I may have another question, but it will come to me later. Thanks.

HUGHES: Senator Bostelman.

BOSTELMAN: Thank you, Chairman. In the proposed bill, my question is, it talks about damage, but it's not defined what damage means. So on a depredation crop type of loss that you receive, someone complains, what is it typically-- and I don't want you to speak necessarily-- define this bill, the damage, but what is it on damage that-- that you consider depredation damage? I'll say you as in the biologist whoever-- because it's here, it says damage, but it doesn't define damage. And who-- and it seems it's up to the landowner to determine how much damage is required in order before they can go ahead and shoot that animal or animals.

TIMOTHY McCOY: Those-- those-- those are concerns with how the bill is constructed because in terms of damage, we've used some in-- I'd call them internal thresholds of, you know, \$500 of damage. It's, you know, in terms of really looking at depredation, the kill permits. We have landowners that have potential damage. We will-- we will come investigate. We will talk to them. We will suggest ideas as ways activities they can do to avoid. Maybe it's an area where-- where we can place a zon gun, which is a-- a-- a-- a propane-powered can that blows off intermittently to help-- help scare animals away. Maybe we can use some sort of fencing to help with those issues. But the way the bill is written sort of is an on or off switch. It is-- was-- is there potential damage, yes or no? And then-- and it's-- and the question is, if we have some-- the question I have, we have, is how do we make that judgment call of somebody-- somebody, you know, has-- has a deer that-- that ate off the tops of the flowers in front of their house.

BOSTELMAN: OK. The other question I have in here is reading it on page 11. And you may or may not have it in front of you, but page 11, line 26, you get towards the end of it and it says that the landowner or lease holder may kill or take any animal of such species believed to be responsible for causing damage to the property. So I'm sure there's areas in the state where you have deer, whitetails or muleys, as well as elk that could come into-- let's talk about a cornfield. Now, obviously you could look at prints, you know, hoof prints and stuff to determine what it is, but really any animal, you don't know when those animals went through there, which one did, so it kind of leaves it

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open. If you feel like there's damage and you think that animal or animals are the ones that damage, no matter what species it is, that this would say that you could go ahead and take those animals. And I-- I guess I'm kind of going more for this as a little of a concern that it's not-- it's pretty open.

TIMOTHY McCOY: It is pretty open. And one of the challenges with the way this bill is written is it starts with looking at these transferable tags as sort of a depredation tag. Doesn't require following the existing laws for hunting seasons. It's unclear if we can require them to be checked, what information we can get about the animals that are killed on them. It's not very clear how the bill-- how a permit is actually transferred or if it has to be, because it indicates that-- that these permits can be used by others, which means they would be in the name of the landowner. Indicates that landowner needs to make sure that person is qualified to have a permit in the state. We have requirements in Nebraska that we have to identify whether their rights to hunt have been banned in Nebraska or in another state for a wildlife violation. We also have a responsibility to ensure that they certify that they don't have unmet child-- well, forgot the name of the word, sorry.

BOSTELMAN: That's OK.

TIMOTHY McCOY: Yeah, there are-- there are-- there are things that-- that are qualifications that are not just, you know, you're a hunter, you have a-- you have a history of it.

BOSTELMAN: OK. Thank you.

HUGHES: Additional questions? Senator Halloran.

HALLORAN: Thank you, Chairman Hughes. So, Mr. McCoy, thanks for being here. What's an ideal deer population in the state of Nebraska?

TIMOTHY McCOY: An ideal deer population in the state of Nebraska. I've been doing this for quite a while. We manage-- we work on deer-- we work on big game management. We work on deer management every year. And-- and the ideal is one where there's balance. And I think there are-- there are concerns have been raised in some areas where we may have some issues of balance between-- are the-- are the users and the hunters happy? Are the people that like to view deer happy? Are the landowners-- you know, are the landowners unhappy? Are the landowners screaming at us? It's constant-- it is a-- it's a constant movement.

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And there are other issues that can happen, like disease events when we had a big bluetongue outbreak several years ago.

HALLORAN: Would you say we have an ideal population now?

TIMOTHY McCOY: I don't think there ever is an ideal population because much of what we're talking about isn't a scientifically set carrying capacity for deer, because with the amount of private land, the amount of production that we have, it's-- it's really trying to-- to manage within tolerances of the private landowners is a big part of what we have to consider and think about in all of our deer management.

HALLORAN: In an old expression, and it's something like this. It's only an issue depending on who's bull gets gored. All right. And I contend that if you had 50,000 deer in the city of Lincoln, there would be some serious management done to reduce that herd because you'd have a high population of people that quite upset. You mentioned flowers being eaten or whatever and those aren't crops. Those aren't-- it's not damage to someone's income. But we have a serious problem out in rural Nebraska. And I don't think you're taking it lightly, but on the other hand, the problem doesn't seem to be going away. It seems to be getting a little worse or a lot worse. We went to-- had an interim study in Scottsbluff and McCook and we had evidence of, you know, we had people testify on what the damages were. We had drone pictures of fields that weren't utterly destroyed, but the evidence that was given was a lot of expense. And, you know, if we don't start paying for the damages that wildlife does to these farmers, then what is the solution? If this isn't the solution, if this bill isn't the solution to at least let the farmers where they have high population, and it's not a uniform population all over the state is it, clearly it's not. So where they have high population it's hard for me to see the harm or foul in having the farmer be allowed to have an extra permit to shoot a deer. But that's-- I'm stating my opinion, I'm not asking the question, but why is that a problem.

TIMOTHY McCOY: Well, I think there are other-- there are other implications of transferable permits. These will, you know, we're talking all about depredation. Transferable permits are likely going to be sold or used by people that will be either sex permits that want to shoot horns, and antlers. That's going to be where it's at. That's words out with most deer hunting. And-- and that's where it's at with most big game hunting and-- and the challenges we need to figure out how to cooperatively work with our-- our landowners, our sportsmen,

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to-- to figure out how we really get these connections to actually utilize the permits that we have. We have a large number of permits-- permit. I will tell you, permit successes will always weigh higher for antler permits than it is for, you know, people that are meat hunters. We have to figure out how to solve some of those other underlying issues. We have to figure out how we can help each other and utilize-- utilize those tools that are available, I think more effectively. I think we've-- we've shown some success in some areas in doing that. We have more to do. And landowners are always going to control access to the wildlife of the state. I know they will. It's private land. You know, a landowner can-- can say, I want all the wildlife I want and-- and may be satisfied with the damage, and the landowner right next to him wants none. So it's-- it's challenging, their opinions and tolerances, and everything that ties into this.

HALLORAN: Here's a very impractical question or suggestion, and that is maybe we have some sex change operation for the deer, so there's more antler deer. Anyway.

TIMOTHY McCOY: I'll take that under advisement. [LAUGHTER]

HUGHES: Any additional real questions? Senator Gragert.

GRAGERT: Thank you, Chairman Hughes. I just want to ask, you know, and I think I may know the answer, but I would just like to hear your, as the subject matter expert, I consider you as the Game and Parks in your position, the subject matter expert in a wildlife management and all that, but can you explain to me how valuable hunting is to managing wildlife herds?

TIMOTHY McCOY: Well, hunt-- hunting is very valuable from-- from-- for-- for several reasons. First, one of the reasons is that the-- the way the-- the-- that Nebraska's game law was developed and actually the model of conservation in North American, in North America for wildlife conservation was-- was tied to this idea that the-- that the user pays that-- that the user pay-- helps pay for the management. The user takes-- takes that role and has some responsibility. You know, the other-- the other part that's really important for us, that was at a time where the whole point was trying to recover, you know, trying to recover populations. We're at the point deer, antelope, elk have largely recovered in this state and then done tremendously well and it's causing those issues. But those-- those same-- those same hunters under a constitutional amendment for the right to hunt, fish and trap

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were also identified that hunting is the preferred method for controlling those wildlife populations. We agree with that and we support that and we want to utilize that to the extent we can. Now, there are times and places where dealing with sick animals, dealing with high concentrations of animals causing damage, animals that may be posing a threat to people, there are times kill permits are a big part of solving this problem too.

GRAGERT: In talking about or-- or visiting about steady state wildlife or any kind of population of anything, rabbits, coyotes, isn't it constantly on an up and down, up and down.

TIMOTHY McCOY: It is, and not only is it up and down, it can be very different in different parts of the state. You know, we can-- we can have an area where, you know, fawn recruitment for mule deer looks like, you know, it's-- it's 10 or 11 percent one year, and another area where it looks like that fawn recruitment was 40 percent. And so it's a lot of that's weather-related. Sometimes it's predat-- predator community related. If you got an area that-- that coyotes are really rolling in versus an area where mange has been taking place in the coyote, there's a lot of different factors that are always playing in on that.

GRAGERT: And probably most important habitat.

TIMOTHY McCOY: Yeah, habitat plays a-- plays a-- plays a big role in it.

GRAGERT: One last question, I promise this is my last question. Are game wardens allowed to go on private property?

TIMOTHY McCOY: Game wardens are allowed to go on private property to-- to-- to check hunters, to investigate potential infractions of the game law.

GRAGERT: OK, thank you.

HUGHES: OK. Additional questions? I guess I just have a couple. So how does Game and Parks go about determining the number of permits for deer in any given year? I'm assuming you're doing some sort of population estimation. When-- when is that done? Is it done more than once a year, you know, by unit. Can you-- can you just walk me briefly through that?

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TIMOTHY McCOY: Sure, I'll walk-- I will walk you. I'll try to walk you through it. I've got some-- some more information. Maybe at some point I'll-- I'll make copies of this and share it with you. It kind of goes over our main process of the big game management. So we are-- we are-- we are looking at several-- several key factors when we look at-- at making our recommendations for permits the next year. We-- we-- we look at success of, you know, success for the different types of permits that can be-- often that's looking at both those that allow shooting of antlered animals, shooting at animals without antlers. We look at the age structure of-- of what's going on in the herd based on the sampling that we do to see if it looks like the age structure is-- is-- is in a good state and we don't-- don't have other issues going on. We are reviewing and looking at records of diseases or deer that have-- deer in an area with disease. And so we go through that process. A lot of that is by our staff. We do some survey flights annually. We try to do those often in the winter with snow on the ground. However, with Nebraska's weather, sometimes we have snow on the ground, sometimes we don't. So we get hit or miss results with those. And they're never, you know, they're never a complete canvass of the state or a complete count. But we use those as estimates for what's going on. We also take input from what we're hearing from landowners. We take input at our-- at our deer meetings from what their-- what their-- what their feelings are on what they're seeing for deer. We get a lot of that input at our deer check stations. Especially for firearm deer and for people that are-- that are calling in and asking questions about hunting-- hunting in their unit of-- if they've been hunting somewhere and they're going, I can't find any deer, I can't find any elk, help me find some.

HUGHES: So do you do any type of estimation of the crop of the birth in the spring to have-- have some kind of an idea of what-- what the population may be going forward, assuming those-- those young animals won't be harvested in the fall season, but just to get a-- get a better handle on what the population is in an area, you know, whether it's going up or down or--

TIMOTHY McCOY: We are doing-- we are doing some research projects right now in your part of the state with some mule deer to really get a better-- better handle on-- on what the-- what those survival rates are. But, and it's similar in every other study that's been done around the country they can vary greatly by year, so that you can use some-- you can use some rules of thumb on what an average survival is and look at that-- look at based on your population, what sort of

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recruitment you may-- you may have. But we typically don't really have a great measure of that until we get through our hunting season.

HUGHES: OK. Any additional questions? Seeing none, thank you, Mr. McCoy. Appreciate it. Next proponent-- oh, opponent, excuse me, opponent. Welcome.

JIM KING: Thank you, Senator Hughes, and members of committee. My name is Jim King, K-i-n-g, and I reside in east Lancaster County in Senator Geist's district. And I'm here in opposition of LB1173, and I've just got a few brief comments and I've been aided significantly by some of the testimony to maybe bring some comments that I feel are relevant to some questions. To validate my opinion and to give it some credibility, our family is involved heavily in agriculture, either very indirect, very directly or indirectly. We've got ground and row crop, cattle, and type of operation in Lancaster County, Knox County, Jefferson County and Dawson County. I'll talk a little bit about the Dawson County property as it's where the deer activity is most heavily. I've been an avid sportsman and involved in agriculture all my adult life, and my feeling is this. This bill appears to me to be making sweeping changes for the parsing of big game largely due to the depredation. I've had a lot of experience with the Game and Parks Commission over the years. I was formerly in law enforcement. I spent eight years with highway patrol. I interacted with game wardens and other professionals from the commission and I can only tell you that they're dedicated to conservation and taking care of animals and provide a great experience for the public. And so I've got the highest regard for them. Little out of school a little bit, but if anybody hasn't had the opportunity to buy a deer permit and you'd like to do that, don't do it online. Go over to headquarters. They got about a half a dozen gals there that work right behind the desk and they're the most helpful people I've ever met. And from a state organization, they're there to support you and give you question-- answer any questions, promote sales. It's just that it's an awesome experience when you're a hunter-citizen of the state to have that type of support. You know, I am concerned that this bill has not been vetted enough. My feeling is that it needs a lot more work and there could be a lot of validity to the depredation issues. And I'm sure there is because we have experienced it in Dawson County. I think, Senator Gragert, you mentioned the responsiveness to the depredation issues with the deer. I contacted one of the commissioners who are very approachable, and I might echo the comments on Dan Kreitman, he's very-- very worthy of a reappointment, but I contacted one of the

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commissioners about the depredation. And within 24 hours I had a call from a biologist. I'm not sure if it was Kearney or North Platte office, very responsive. He said, when could I come out and meet him. I said, I can't. He says, give me permission to come out. I said, absolutely. Within no less than 72 hours, he's back on the phone. And he's basically explained to me what he saw in the amount of depredation damage. He said there's several ways to carry-- he said there's several ways to handle the problem. Depredation permits obviously are available to you. Landowner tags are very inexpensive and we were eligible for them. But in any event, I contact-- we do share crop that farm, and I contacted our farmer who's been on that piece of ground for me for 15 years. And I asked him, what do you think, Dave? He says, I kind of like it, and so we chose not to do anything about it. My wife and I went out there a few weeks after that and we sat in a couple of lawn chairs and watched the sun go down. There were 50-head of deer out there on the alfalfa-- this is a quarter -- moving in and out of the field and out on the alfalfa grazing. It was quite the sight, quite frankly, and if you talk about deer depredation and not being fair for the humans, that was it. ,So then I'll fast forward about a month and a half. Deer season rolls around even before the hunting season started, those numbers dropped considerably and even through the dead of winter, I think there was 15 deer out there, but they were concentrated because of the alfalfa. I believe it's the responsibility of the citizens of the state of Nebraska to be concerned about sustainable of our wildlife. Wildlife have no voice. I would urge that the members of the committee kill this bill and study the matter very thoughtfully and very thoroughly. When my time runs out, I'll stop, but I do have-- I did have a good experience in Wyoming years and years ago with a coupon type thing where the hunters were allowed to pay a landowner for the privilege. And, you know, there may be a lot of people that wouldn't be supportive of that as hunters, but we are happy to tear the tag off of our permit and we cancel the tag and give it to the rancher. And then he receives some remuneration from the state and I'm sure we paid for it as hunters. I don't know where else you can get more fun for 25 bucks, and last weeks, you can't even hardly go to a movie. So I think as an end user of sportsmen, I know I can't speak for everybody, I'm happy to have the ability to buy deer tags, but I think it's a bargain, so. Any questions?

HUGHES: Thank you, Mr. King. Are there any questions? Senator Geist.

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GEIST: Yes, I don't have a question. Actually, I just want to thank you for coming and testifying. It gives us a good idea, for one, who's in our district, because I'm perceived to be a urban senator, and it's nice to show my colleagues that I do have some rural constituents in my district. And I just appreciate your perspective so thank you for sharing that.

JIM KING: Thank you. Thank you.

HUGHES: Any additional thoughts? Senator Albrecht.

ALBRECHT: Thank you, Chairman Hughes, and thank you for being here as well. My observation is you said you share crop that alfalfa field, and so you just basically fed the deer that season, and you're okay with it.

JIM KING: Yes. Absolutely.

ALBRECHT: That's good.

JIM KING: Yeah. They've got to live.

ALBRECHT: Not everybody has a problem. Thank you.

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

JIM KING: Thank you.

HUGHES: Next opponent.

SCOTT SMATHERS: Good afternoon, Chairman Hughes.

HUGHES: Welcome.

SCOTT SMATHERS: My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I represent the Nebraska Sports Foundation as executive director of 501(c)(3), nonprofit organization on educational issues for sportsmen in the Game and Parks and all the DNRs and NRDs. I am also a resident of Senator Geist's district. And I live in the pavement, not on the farm. With that said, I'm here to represent also the Game Conservation Association in opposing LB1173. A lot of points were made brought up by deputy director McCoy's testimony, the questions that you provided to him and you'll hear more behind me. This bill was fraught with wide ranging, wide scope, unclear, dangerous language that opens the door to fraud and we know it will happen. We can say it won't. We can say,

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we're all honest Abe's, but when you start selling permits that you have no tie to as actual work of it, fraud occurs. One of the tenents of this bill states that if the Game and Parks did not respond within 15 days, the landowner then has the opportunity to automatically-- and I love the words choice --kill any suspected animals on their property, and then report it back within three days to Game and Parks. If you don't think there's gonna be 30 or 40 animals harvested and dumped in a drainage ditch, canal, a pond and five are reported to Game and Parks, you're misled. We have worked all summer. Sportsmen's organizations, the Game and Parks, Senator Hughes, several other senators in this committee on depredational issues, it exists. We know it exists. As an outdoorsman, I know it exists. As a hunter that hunts on two sides of state, east and west, it exists. There's better programs that don't open the door to ambiguity, fraud and opportunity for theft. The Constitution was brought up earlier. Well, LR40CA in 19-- in 2012 was also put in the Constitution to protect the right to hunt, fish and trap and use wild-- hunting as a wildlife management tool, as a preferred wildlife tool in the state. Senator Gragert asked the question in a roundabout way. Hunting represents \$780 million annually in the state by 280,000-plus sportsmen and women. We have to have a balance between ag, sportsmen and the overall production for the state that we can find that balance. And I know sportsmen are willing to do so. One of the other things that I heard early in the opening is that a tag for 50 elk was presented to a landowner for depredation. I want to correct that record for the final time. It was not 50 tags. It was one depredation tag where they harvest up to 50. Eight were harvested and they were all bulls, which does nothing to control depredation issues. So whether there's three people here testifying in favor or opposed, there are a large number of folks around on this issue and are paying attention. Sportsmen in ag, by the way, 60-- 62 percent of our now 15,000 membership are ag producers, active ag producers. So it's not lost on us that this issue is out there. We've worked with Senator Hughes, Senator Bostelman and other senators in this committee to try to address those issues. LB1173 is the wrong vehicle, too wide scope, does not define, it's poorly written, sorry. With that, I'll close my testimony.

HUGHES: Thank you, Mr. Smathers. Are there any questions? Seeing none-- oh, I'm sorry. Senator Halloran.

HALLORAN: Thank you, Mr. Chairman. So, and you didn't have any control over this one permit for depredation of--

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SCOTT SMATHERS: Up to 50.

HALLORAN: Up to 50.

SCOTT SMATHERS: Yes.

HALLORAN: And you didn't write the permit, so you're not responsible for it. But don't you think the depredation permit should have been for cows?

SCOTT SMATHERS: Personally, yes, that's-- as a sportsman, and as somebody that manages my own ground for strictly recreational purposes and a small cattle operation, I'm going to take does and select my bucks very selectively for size, management, and growth, yes. But to control my population, I'm going to does. I'm going to shoot the ones that are dropping twins and triplets.

HALLORAN: So if you would've been in charge, it would have been one permit and cows only.

SCOTT SMATHERS: Let's not assume that I would ever want that position, quite frankly.

HALLORAN: I'm not assuming, I'm just saying if you--

SCOTT SMATHERS: I'm not a lawyer either or going to be a vet and do the surgery.

HALLORAN: Just a straight question, if you would have been responsible for that permit.

SCOTT SMATHERS: Again, it's easy to sit back, hindsight, I wasn't in their situation. Yes, I probably would have pushed for a doe harvest, or a cow harvest in that particular case, yes.

HALLORAN: OK. Thank you.

HUGHES: Any additional questions? Seeing none, thank you, Mr. Smathers.

SCOTT SMATHERS: Thank you.

HUGHES: Next opponent. Welcome.

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MIKE LUTT: Welcome, Senator Hughes, members of the commission. Appreciate this opportunity to come talk to you. I come at this maybe a little bit different than some of the other people here. I'm a landowner in northeast Nebraska.

HUGHES: Could we have a name and spell it, please.

MIKE LUTT: Sorry. My name is Mike Lutt, last name, L-u-t-t, and I'm from northeast Nebraska. I have property in Wayne County, Thurston County and Dakota County. I've worked with-- yeah, I've worked with the Game and Parks with depredation issues before in probably 2008. The property that I have is Missouri River bluffs with not too much agriculture, but all the bottom ground around it. Not much habitat, but that's where all the crops were. So the deer would come to my property in the wintertime and we'd have an overabundance of deer and there was no way to really control the deer that were doing all the damage down in the river bottom. And we got together with the Game and Parks and were issued depredation permits and for several years-- it took about five years, but we started out we would get depredation permits of 20 or 30 and we'd try to shoot these deer early in the year. So the fawns-- you were shooting even fawns even though we hated shooting fawns, we'd shoot the fawns and does to help get the population down. None of the bucks were shot because if you shoot the females, obviously you're getting the herd down farther. After several years, we were shooting 120 does a year. We were finding plenty of people that would take the meat. Wasn't easy to shoot these deer and harvest them, but there was plenty people that wanted that. On my property alone there's probably 35 first-time hunters that not with the depredation permit, but with regular permits shot their first deer on my property. We didn't allow them to shoot the big bucks because that's kind of why we had the property. But there's-- what I'm saying is there is a way to control this and there's a way that it does work and the Game and Parks was tremendous in how they helped us out to get this under control. It took some time and it wasn't easy at first. One of the other things that happened so we could shoot quite a few early in the year, but then later in the year, in the winter, a lot of them moved on to the property so there was more and there weren't on these other people's properties so they couldn't use their depredation permits. They started issuing these river antlerless permits so you could get one river antlerless for \$11 and shoot two does. So I would buy several of these permits or pay for the permits for my employees or friends or something so we could get that herd down. And-- and it did work. And I just want to say that originally we had to pay \$25. We

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got one doe and people weren't very interested in spending that much money so the Game and Parks helped. We dropped it down, or they dropped it down to \$11 to shoot two. So that helped out a lot and so then we were able to harvest a lot more deer and made a great, great improvement on that. I feel as a landowner, I want to be a good steward of the land and part of the reason when you buy land, you have to realize that you're gonna have wildlife on there. And that's part of owning-- owning the property. Do I like to let people hunt on my property all the time? Not really, but that's part of the responsibility that I need to take as a landowner to help out with that. I'm also a member of the Nebraska Bow Hunters and I've been a member of the Nebraska Bow Hunters for 35 years. They sent a letter to you guys and I hope you read that. We have about a thousand members. We have about 600 that come to our annual meeting in Kearney every year, and they're a great group of people that are real concerned about the wildlife and definitely opposed to what we have going on here with this bill.

HUGHES: Thank you, Mr. Lutt.

MIKE LUTT: Thank you.

HUGHES: Are there any questions? Senator Moser.

MOSER: So when you get large numbers of depredation permits, do you shoot those deer yourself or do you have other people shoot them or--

MIKE LUTT: So with the depredation permits, they would allow you to shoot them yourself and then you can, I think, five or six other people put on that list to help shoot those deer.

MOSER: So you declare who those shooters could be or whatever hunters could be.

MIKE LUTT: Yep.

MOSER: I mean, that would be a lot of animals for one person to shoot. I mean, that would be a full-time job.

MIKE LUTT: Yeah, and the 120 weren't taken just on depredation permits. Those would be taken with depredation permits of regular season permits, archery permits, things like that. So there's, I think if I remember right, your river antlerless permits weren't unlimited

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to how many you could have yourself. So there was years when I would maybe shoot 10 does myself with archery equipment as long as I--

MOSER: It's more work to-- to--

MIKE LUTT: It is, but that's part of my responsibility as a landowner. That's how I feel. I mean, if I'm a steward of the land and I own property. If I'm not--

MOSER: I mean more work to shoot them with archery rather than a rifle.

MIKE LUTT: Yes, you shoot one and it lops off and the other one doesn't know it's walking into the same problem, so sometimes--

MOSER: Sometimes it's better than--

MIKE LUTT: Yeah.

MOSER: Okay. Thank you.

HUGHES: Any additional questions? Seeing none, thank you for your testimony. Welcome.

JERRY McDONALD: Good afternoon, Senator Hughes, and committee members, Senators. My name is Jerry McDonald, J-e-r-r-y M-c-D-o-n-a-l-d, and I, too, am in Senator Geist's district, so I appreciate that. And as I heard all of you explaining where you're from, I represent Pheasants Forever and we have an active Pheasants Forever chapter in each one of your communities and want to personally extend an invitation to come out to a fundraiser for Pheasants Forever. I may be MCing there for you, but I am the senior regional representative of eastern Nebraska and I am here representing Pheasants Forever and Quail Forever. We have 62 chapters throughout the state of Nebraska and close to 10,000 members in Nebraska that are Pheasants Forever members. And I'm here to testify in opposition of LB1173. This bill goes against the ability to have sound wildlife and herd management and contradicts the North American model of conservation. The ability to harvest species at anytime of the year goes against sound, biological and scientific harvest management decisions. The impacts of this bill allowing the ability to sell three harvest permits sets a bad precedent for not only our state but also our country. Nebraska hunters have done their due diligence to apply for certain permits and wait sometimes years for an opportunity to harvest these species. Allowing free permits of

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such choice, again sends a bad precedent and creates a divide among landowners and hunters. Free permits also creates significant funding issues for our state that would impact millions of dollars. License sales create nonfederal match, which is leveraged with federal Pittman-Robertson dollars and brings back money and funding to the state of Nebraska. These funds are then utilized to improve habitat, which creates more opportunities for hunters that travel and spend their funds in rural communities boosting rural economics. We also feel this would be very difficult to regulate and would not only remove a funding source for the state, but also cost the state even more money to implement. Again, LB1173 is a bad policy for wildlife and natural resource management and this is why Pheasants Forever is opposed to LB1173.

HUGHES: Thank you, Mr. McDonald. Are there any questions? Seeing none, thank you for your testimony.

JERRY McDONALD: Thank you.

HUGHES: Next opponent. Welcome.

KIT HAMS: Thank you. My name is Kit Hams. I'm from Lincoln, Nebraska. I'm been happily retired for the last couple of years but prior to that worked for the Game and Parks Commission and worked in the big game program.

HUGHES: Spell your name, please.

KIT HAMS: K-i-t H-a-m-s. Six, seven years ago, eight years ago with the time Mike's talking about, we had deer coming out of our ears in this state and we came up with several different innovative ways to try to increase harvest as Mike was explaining. It was difficult and challenging, but we had-- we had reduced fee youth permits. We had bonus tags. We had extended seasons. And we-- we begged and pleaded and with our hunters and they responded. And the landowners that had too many deer, we advised them, contact your hunters, require them to shoot antlerless deer. We've got the permits. The permits were like \$11 for shooting two antlerless deer. And if you're in a unit like the Frenchmen unit, which has quality mule deer, and that's what everybody in this country east of us does not have, they don't have mule deer. When they come to Nebraska, they want to shoot mule deer. And if you, as a landowner, require them to take antlerless whitetail or antlerless mule deer, before they're allowed to take a mule deer buck,

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most of them would comply. And if they-- and you'd have to follow up and you have to encourage, but you also have to penalize. And if they don't follow what you ask, you wouldn't let them back on in future years. But those programs that we implemented when we had all those deer were very successful. People cooperated. We started don-- deer donation programs where hunters could donate deer to other people. There was a lady I talked to, she had her whole garage set up to process deer and she said she was processing 25 deer a year. I'm not sure what they did with all of them, but she said that's all they ate. Her husband couldn't eat like pork or beef due to allergies they had and so they ate deer. So the tools, the tools are there. But you need to keep track of the permits. Who's buying the permit and how it's being used? So that people don't cheat and so in the end of the season, you have an accurate count. And we-- we have those-- those harvest numbers been tracked at the unit level, at the county level. So you can compare what happens from one year to the next. The fact is, on whitetail we have one of the smallest whitetail populations in the country. And one of the smallest deer herds in our whole neighborhood. Every state around us has higher deer population than we do. And as you go east, all those states have much higher deer density populations than we do. So we've got the hunters and we've got the expertise and the experience with how to control numbers. But the Game and Parks and the landowners, they've all got their own part to play and the hunter does too. And I don't think LB1173 is the way to go. I don't think it will solve, I think it will create more confusion, more illegal activity, and poor motive to get access to maybe the elk permits or mule deer permits when really you want them to take those antlerless deer.

HUGHES: Thank you, Mr. Hams. Are there any questions from the committee? Seeing none, thank you for your testimony. Next opponent. Welcome.

FRANK ANDELT: Hello, Senators. My name is Frank Andelt, F-r-a-n-k A-n-d-e-l-t. I'm here up to speak briefly opposed to LB1173. I'm speaking on behalf of myself as a retired farmer and landowner in Saline County and a hunter. I just don't feel that LB1173 is the answer to handling issues with depredation problems. I think we have a good program that works well, at least in our area with the permits that we give now, landowner permits. I make use of those each year. I think people could direct hunters to their property, encourage them to take the does, the does or females of elk and deer, antelope, all of them are what we need to have them work on in order to reduce the

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population. I'm not a big fan of commercialization of wildlife, and this looks like it would do that big time with the sale of permits and this kind of thing. And I think there's-- there are other simpler ways to do it just with the depredation permits and landowner permits that we have with the bonus tags that require people to take does, that kind things already. I don't see where more needs to be done as this would propose to do. That's all I'd have.

HUGHES: OK. Thank you, Mr. Andelt. Are there any questions from the committee? Seeing none, thank you for your testimony. Next opponent. Welcome.

TERRY MUNTER: Good afternoon. I want to thank you first of all. I think this is one of the greatest things being a citizen of the United States, we have the opportunity to do this.

HUGHES: Could you give us your name and spell it, please?

TERRY MUNTER: Terry Munter, M-u-n-t-e-r. I've got some-- some thoughts that I want to share on this bill, and I'm going to switch gears just a little bit. I want to predominantly talk about the elk situation that we have in Nebraska. We've got a resource here that is second to none. We've got something that's started out here in the state in Nebraska, but on the same hand, we're a little bit different than Colorado or Montana or some of the other big elk hunting places. And the fact is, that where we're divided up into 1500-acre lots or 5,000-acre pastures or 320-acre fields, we can't just go out into the woods and have 10,000 acres to hunt elk on. Now, if you take a look at the bill, in my mind, the primary purpose of this is to go back into herd management. And we've talked about numbers a little bit. And the area that I had the opportunity to hunt in this year, we know there was at least 350 elk in there because we counted them on the hillside almost every day. And with this-- but there's a whole story to my hunt as well. But if we went back into the limited landowners and the elk, they have to be in a prescribed zone to be-- to qualify for that. It's not like where you just get the Wahoo area where you can hunt any place. So the limited landowners permits are narrowed down to where the elk populations are. And so if we do go back and we want to give the people that apply for a depredation tag, if that might be or for the extra tag, I think a couple of things should happen. First of all, elk season in the state of Nebraska is only open to the residents of the state and I'm a little bit selfish when it comes to that, I don't want to share that. And there's a reason for that too because I'm 70

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years old. I burned an elk tag this year. I can't send in for another cow tag until I be 75. And for me to get a bull tag it probably never gonna happen just because of statistics. If you take, for instance, this year in the general draw, we had about 4500 applicants for, oh, what have we got? Hundred-- we had 78 bull tags and there's forty-four hundred and sixty three applicants for that. You do the statistics. If you're going back into priority points, it probably take me 23 to 24 years or if you go-- even go into bonus points, you're talking 10 years. So, but we know that we have to-- we have to go out here and utilize the herd management and the way to do that is to get rid of cows. So I think if we go back to depredation tag, I think first of all, we have to be able to take the cows out. We've got a class of 400 bulls here in the state of Nebraska that make us very unique. And I think we're probably gonna see maybe one of the next world record elk going to come of the state of Nebraska. We've got the makings for that here. But you can't shoot all of them. You've got to start-- you've got to start taking some of the other stuff with it. And if-- if we take just the cows, that's going to help go ahead and control the population. And another thing, I don't think they should be for sale. I think if we give an elk tag to Senator Hughes, I think it's got to be you or your immediate family and you're going to harvest it on the ground that you own or you lease, and I think we can-- we can get by with that. Now, this year in the Bordeaux unit where we hunted, there were 34 cow tags issued in the general session and then 17 landowners. And I haven't seen the final tally on the success, but it's probably going to be less than 50 percent. The biggest thing was here was access. We watched the 350 elk on the hillside and all you can do is watch. You can't get over to them. They don't come out of there and so it's all about the access. So if we do get somebody a depredation tag, I think that they ought to go along with that and say that you have to open up your ground to hunting as well.

HUGHES: Your red light is on, if you'd finish up, please.

TERRY MUNTER: OK. I thank you very kindly for the time.

HUGHES: OK. Thank you, Mr. Munter. Are there any questions? I do have one for you. So you were hunting this year the-- so there was not access to the 350 elk that were across the valley or on the hillside?

TERRY MUNTER: That's correct.

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HUGHES: The landowner was hunting himself, or did you talk to that landowner?

TERRY MUNTER: Yes, I did. And I was told that if I wanted to bring a pair of mountain lion ears back to him, that I could come in and we'd talk about hunting the cow. And it's-- that's a whole another story. That's not what this bill is about, but it's-- it's about access out there. And when you're in the state of Nebraska, you have to have permission on at least eight or 10 different ranches out here before you can really hunt. The elk are, you know, kind of migratory. It's not like they're going to hang there until you get into the fall. And the first of December and middle of November, those elk went back into that place. And prior to that, we couldn't hunt because everybody said, well, we need to take a look at-- we've got bull tags, so we don't want you to interrupt the bull hunting season. OK. I go along with that. Then they came back and said, well, we've got cow tags to fill. OK, I respect that too. By the time my turn came, and by the way, I spent 16 days out there and we have permission on 12 to 13 different places, so it's not like we just didn't do anything about this. And out of the total, there was one day we didn't see any elk, and there was one day that we had access to the elk, maybe for two hours, but the snow was about three to four feet deep back in the canyons and it was the day we were leaving, and if we had got one down, I didn't know how we were going to get it out.

HUGHES: So all the-- the elk that were on the hillside was-- was that landowner? I mean, why were they there? Were they being fed or why were they congregating there?

TERRY MUNTER: It's-- I believe they were. They're-- they're in the cornfield. There was hay being hauled back in there all the time. I don't know, it's--

HUGHES: So when--

TERRY MUNTER: But there's no high fence. I mean, there's-- there's no nothing like that.

HUGHES: So the-- the corn wasn't harvested, so what time frame are we? Was this in the middle of October or was it December?

TERRY MUNTER: Well, we hunted the last day of January-- or fifteenth day of January was the end of the season and there was some harvesting. But-- excuse me, between our December visit and the 10th

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of of January when we got out there, some of the corn had been harvested. I'm not quite sure of the date, but it was very late in the season.

HUGHES: So was most of the other corn in the area harvested, there was just kind of this one place.

TERRY MUNTER: There's very little corn in that country out there.

HUGHES: OK. So was this, in your opinion, was this more of a food plot than actual farming?

TERRY MUNTER: I'm not a-- I'm not a biologist, but it looked like it was pretty good pickens back in there for the elk.

HUGHES: OK. Any other questions?

GRAGERT: Quick comment.

HUGHES: Yes. Senator Gragert.

GRAGERT: Quick comment now. I guess if I were you, I would suggest to you, if I was your age and still hunting actively like you do, I go to the Game and Parks and get some preference points for being over 70, 75.

TERRY MUNTER: Well, thank you. I'd like to see it work that way too. But you know, I'm not here for me. I've hunted and fished all my life. And I get more of a kick out of watching the 350 on the hillside or to call that Tom Turkey in for me to you. But I've got grandchildren and I've got a son that loves to hunt. I'm here because of them.

GRAGERT: There you go.

TERRY MUNTER: I want-- I want the preserve this resource that we have because we've talked about how many elk do we have? Well, I just got a-- I just kind of bet that with this herd and another herd that we know is over here, and one that's right here, there's a thousand elk up in that area. But there's some things that need to change up there, too, as far as maybe the progression of seasons and maybe the size of the units. And I've talked to the biologists. I was at the game management meeting in Chadron and also in Gering. Got to talk with the biologists and so this is-- but this is something that I believe in.

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GRAGERT: You did good.

HUGHES: Very good. Any questions? Thank you, Mr. Munter, for coming in today.

TERRY MUNTER: Thank you.

HUGHES: Appreciate it. Any additional opponents? Seeing none, anybody wishing to testify in the neutral position? We do have letters in opposition from the Rocky Mountain Elk Foundation, Theodore Roosevelt Conservation Partnership, Congressional Sportsmen's Foundation, the Wildlife Society of Nebraska, Thomas Welstead, Jenny Prenosil, Jeremy Schaaf and Matt Buresh [PHONETIC]. And you are neutral, correct?

JAMES KEHR: Yes.

HUGHES: OK, very good. Welcome.

JAMES KEHR: Thank you, Senator, and committee. My name is James, or Jake, last name Kehr, K-e-h-r, and Terry Munter was just up here. I was his hunting partner. And I will relay a letter to you that I sent to Game and Parks and have some comments. I think the bill that's being introduced, LB1173 is a nuclear job. This is just gonna blow up hunting in Nebraska as we know it, if we go ahead and allow this. I think the Legislature and Game and Parks need to get together and start working together to satisfy some of the issues that are going on. My letter to the Game and Parks was about our hunting experience. Said my name is James Kehr. I recently competed-- completed my hunt for a cow elk in the Bordeaux area in northwest Nebraska. There were two tags left after the general sign up where someone didn't pay for those tags. My friend, Terry Munter and I were lucky enough to draw these tags on a first-come, first-served drawing on August 1st, 2019. I say lucky only in drawing these tags, as the hunt was a total waste of time. Our story is as follows. We visited the Bordeaux lake-- Bordeaux unit in late August to begin asking for permission to hunt on private property. I have a match attached to the match branches that we have permission to hunt on. Each rancher said they would happy to give us permission, but didn't want any cow hunters to spook their bulls, so come back in September. We came back in September and were told until the bulls were taken, no cow hunters are allowed. I get these ranchers wanting to control the bulls, they are their source of money and stake for them, and that creates another issue. We came back in December 3rd and all the cow elk had moved off the ranches to a

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private angel who had protectively purposes baited them on to his ranch. On each treet-- trip we had seen either elk in the cornfields or ground we couldn't hunt, but seeing over 300 elk on one ranch was eye-opening. Again, January 11th we came back just before the season ended and these elk hadn't moved an inch off that ranch since December. We hunted 16 days totally throughout those months, and saw every elk every day. The elk were there, just not accessible, which brings me to the problem with this and other units in this area. If the goal of the commission is to return cow herds, how is it possible that one individual or three individuals in these units can control between 300 to a thousand head of elk? Sorry, kind of nervous here. We visited with the game wardens and biologists from the area before we started asking permission of the owners and again, game big-- big game meetings in Chadron and Gering to better see what our options were. It was really revealing that we knew-- that they knew the unit we were in and the problems we had faced. The statement was, we know the problem, but we don't know how to fix it. Looking back on this, I think Game and Parks should have disclosed that they have a problem with the Bordeaux area and possibly others with individuals locking up elk herds and stopping hunters from fulfilling their permits. This would have stopped me from purchasing my permit. It's evident that there is a problem when 55-- excuse me, 51 cow tags were given out in that area and only 23 tags were filled with nine of those tags being filled off the ranch where the herds were baited in. We sat through the big game meetings in Chadron and listened to several ranch-- ranchers from the Hat Creek and Ash Creek units crying for elk-- cow elk hunters, and we were stuck in Bordeaux with no chance of filling our permit. It would have been great to been able to help them rather than eat a tag and lose our ability to draw another one for five years. I'm 63 years old and personally I would like to see my money refunded, my bonus points restored, and be given a chance to take a tag this next year in another area. Game and Parks need to address the private individuals with baiting herds on their properties, the law needs to be changed on this. It's considering baiting. Planting 700 acres of corn and not harvesting until the harvest season is over isn't farming for agriculture, plus watching the same individual roll out bales for the elk while his cattle are bellowing for food, again is baiting. These individuals are holding a state-owned asset away from the general public as well as the local ranchers who had cow elk permits that went unfilled. Holding these herds on these land will end up causing problems from a disease standpoint, with CDW already being known to be in areas, which will lead to no one being able to hunt for the elk

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because nature will take its course and will kill them all off. And my interest in the cow tag was for me, plus being a lifelong resident of Nebraska would have been really fun to have killed an elk on place, probably like I hunted on in Nebraska. But having seen this situation, this is going on in this area, I don't think many cow elk are being harvested and a reduction of the herd by hunting cows is a joke. Someone needs to be done by the commission or by Legislature, and I'd be interested to be heard from. Here is the plat map that we had and I'm sorry I didn't know I was going to have to have 12 copies, but again, we had permission from everyone around this little white area here and that little white area is the land where those elk are held in. So we did our due diligence. We went out there and knocked on doors, the old-fashioned Nebraska way, and said, can we hunt? And at most, everybody said yes. So depredation hunting is OK, but what we know about that is after you fire a shot, kills six or seven animals, they move. I've been involved with depredation hunts on whitetail here and around Lincoln, Nebraska. So, it's tough. But Nebraska is a unique state and I hope we can continue to have the help-- elk population we have, but I do not want to see this state opened up now to state hunters. And I think one of the issues that was caused by this law would be the fact that those owners can sell that permit to anyone they choose to. So, thank you for your time.

HUGHES: Thank you, Mr. Kehr. Are there questions from the committee? Senator Moser.

MOSER: Do some landowners charge hunters to come hunt on their ground?

JAMES KEHR: Yes. The going fee that we ran into was between two and three hundred dollars for access. That meant just getting on the ranch, done. And I don't have a problem with that because most of them were saying they would help us get the elk off. They would bring their pickup, whatever hydrobed thing they had and gut it for us. Do whatever we needed done. But the other part of it was the prices that are being charged for bulls. The going rate up there is five hundred to get on, minimum two thousand to get off with your bull, upwards to eight thousand for that bull.

MOSER: Do you think this fellow who is harboring or--

JAMES KEHR: Well, the guy who is pulling all the elk into his property?

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MOSER: Yeah.

JAMES KEHR: Has 18 family members assigned to hunt on his land. So every three years he has six family members applying for resident licenses. He knows how to play the system. And I can't say that he's baiting because it's not against the law. He owns the land and it's great to see those elk, but I'm sorry, but when you're leaving 700 acres of corn out in a field till January 15th or later, it's no longer an agricultural product. It was left their intentionally.

MOSER: But his 18 family members, they can't transfer those tags.

JAMES KEHR: No, but he's going to have six of them for sure every year because of the way the landowner system is set up.

MOSER: And they said make sure when they turn him in that they have the right person's name on it?

JAMES KEHR: I'm not gonna argue that point. And when I talked to a couple of wardens they-- we couldn't bring up his name because there are some issues, I guess, about investigations going on.

MOSER: OK, thank you.

HUGHES: Any additional questions? Senator Bostelman.

BOSTELMAN: Thank you, Chairman Hughes. Thank you, Mr. Kehr, for being here. I think you've-- you stated very well as to what the problem we have with deer or elk in this state. And the problem is, is we do have areas where we have large populations of deer, and we have areas where landowners refuse to let people on to hunt those deers so we can-- so we can reduce those populations. Those of us that are out there that want to harvest those animals-- on my place, we harvest on our farm, but there are those locations out there and there is nothing that we're going to be able do as a Legislature to change that as far as forcing people to let someone on the ground. So I just-- I'm only making a comment. If you want to say something, you can, but I just want to thank you for coming in, and you're really highlighting the challenge that is in the state and what's really happening out there in the state, because if we have someone come in that doesn't allow anybody to hunt but yet they're going to complain about depredation, that's just wrong. And so we need to figure out a way to allow both of those things happen and you've just highlighted that situation now.

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JAMES KEHR: I saw the yellow light. I left out a paragraph and I'll read it, if that's OK. I have some suggestions for seasons and tags. First, eliminate the private land cow elk hunt for two reasons. One, it's too warm, it takes place in August, goes from August 15th to September 15th. And I don't think that's the exact dates, but for one, it's too warm and if you do take a cow, it's going to spoil before you can get it to a locker or get it to a cooler. Two, it would eliminate owners worrying about disrupting the bulls. Now, have a bull season only starting September 1st or September 10th whatever you want to do while allowing for the rut, and closing that season whenever the commission feels is right. So if they want it to go from September 1st to October 15th, fine. If it's September 15th to the end of October, great. Now, then have your cow season immediately after the bull season, open it up til December 31st, January 15th, but-- allow us to have transferable cow tags for northwest unit so we can go either to Hat Creek, Ash Creek or Bordeaux. And if somebody in Ash Creek is begging for a cow hunter to come over, hey, I got a permit that allows me to do that.

BOSTELMAN: OK. Thank you for being here today. I appreciate it.

JAMES KEHR: Thank you.

HUGHES: Any additional questions? Thank you, Mr. Kehr. Appreciate it.

JAMES KEHR: Thank you.

HUGHES: Any additional neutral testimony? Seeing none, that will close our hearing on LB1173 and we'll open on LB861, and I'll turn it over to Vice Chairman Bostelman.

BOSTELMAN: We'll open the hearing on LB861. If folks would please exit quietly so we can get the-- hear our opening on-- for Senator Hughes. Senator Hughes, you may now open at your leisure, please.

HUGHES: Good afternoon, Vice Chairman Bostelman, and members of the Natural Resources Committee. For the record, my name is Dan Hughes, D-a-n H-u-g-h-e-s, and I represent the Legislative District 44. I'm here today to introduce LB861. Over the past decade, numerous cities and other local governmental units have been subject to special interest activism that would either ban or tax consumer merchandise packaging and other containers or products used by consumers, items like plastic bags, bottles, cups, cutlery, straws, styrofoam, and other similar products have been subject to this tax. If any of those

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proposed local ordinances have been enacted, the business sector would have been subject to an amalgamation of city ordinances, local mandates, taxes, fees and regulations. It would have made it impossible for them to comply with regulations within their communities, state-- across state lines and the global economy. LB861 amends the Nebraska Intergovernmental Solid Waste Management Act by defining the terms, consumer merchandise and container. The bill provides that local governments should not adapt-- adopt regulations that set standards or requirements regarding the sale or marketing of consumer merchandise and containers, therefore, allowing more uniform regulation. With this change, business and industry will avoid having to comply with varying or conflicting regulations among and between local jurisdictions. It would provide for additional state policy under the act to encourage recycling and secondary uses of solid waste through biomass and pyrolysis-- and pyrolysis processes. LB861 continues to allow local governments the authority to regulate solid waste, recycling collection, solid waste and recycling programs. This bill was brought to me by a group of Nebraska retailers, including the Grocers Association. There will be others following me who may be able to answer any question you may have. Thank you, Mr. Vice Chairman.

BOSTELMAN: Thank you, Senator Hughes, for your opening. Are there any questions from the committee? Seeing none, I'm sure you'll stick around for closing.

HUGHES: Absolutely.

BOSTELMAN: We'll invite the first proponent for LB861 to step forward, please. Good afternoon.

JIM OTTO: Good afternoon. Good afternoon, Senator Bostelman, and members of the committee. My name is Jim Otto. That's J-i-m O-t-t-o. I'm president of the Nebraska Retail Federation. I appear today to testify in favor of LB861 on behalf of the Nebraska Retail Federation and the Nebraska Restaurant Association, and we thank Senator Hughes for introducing it. My testimony will be brief. I simply want to state what the bill does not do and what the bill does. It does not prohibit a ban on plastic bags. It does not prohibit bag fees. It does not prohibit a ban on plastic straws or styrofoam containers or other containers like that. It simply says those actions must be taken at the state level instead of city by city. Statewide uniform-- statewide uniformity is very important to retailers and restaurants. If a retailer or a restaurant is required to distribute different bags or

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containers to different towns across the state, it complicates the container distribution system and increases expenses for the business. In short, patchwork let-- regulation is frustrating and costly for businesses and consumers. I would also like to add that I met with members of the Nebraska Recycling Council about this bill several months ago just to give them a heads up. While we didn't come to agreement on this specific bill, it was a good discussion and it may surprise you that retailers and recyclers have several areas of agreement. Many retailers have receptacles to recycle plastic bags, and we would actually welcome a more comprehensive discussion on areas that we can work together to achieve our mutual long-term goals. In short, it is our position that something this important deserve statewide attention and that the passage of LB861 will encourage the development of a well-thought-out and comprehensive statewide recycling policy. Thank you, and I will attempt to answer questions.

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

GRAGERT: Thank you, Senator Bostelman. LB905, are you familiar with that. Senator DeBoer, she also--

JIM OTTO: Yes, I am familiar with that.

GRAGERT: She has-- that's LB905 wants to implement a 5-cent fee on single use. Would the retailers be in favor of this?

JIM OTTO: I've actually-- thank you. I've actually visited with Senator DeBoer about that bill. We-- it has several factors in the bill, for example, it's only plastic bags, it's not paper bags. It's where the-- where you buy the bags. There were several concerns with the bill, but as far as actually-- the actual concept of a fee, we-- I actually told Senator DeBoer that we would like to be a part of that discussion in the future. I don't think that bill is actually going anywhere this year, but we would-- we're not absolutely-- we're not opposed to a fee down the road if we can be structured right. But we are opposed to an outright ban because that doesn't really change behavior like a fee.

GRAGERT: Thanks. Thank you.

BOSTELMAN: Other questions? Senator Geist.

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GEIST: Yes, thank you. I'm curious, would you explain to me or just help enlighten me on-- on why it-- you need a uniform-- recycling uniform container. What-- why is this important?

JIM OTTO: Well, if-- if for example-- I don't know, let's just say, if Kearney has one policy that you have to use a certain size bag or a certain thickness bag, most of the things that have popped up then single use plastic bags they're the ones you get at the grocery store, well, the ones that have popped up so far, they actually had certain businesses not required and some actual major retailers weren't required to do it, some smaller ones were required to do it. It was just kind of all over the board. And I think those things happened because they've got to figure out maybe what they can get past, but we really need a uniform policy. If you're got to have a certain size bags to this store, in this town, but then you have to have a different size bag to this town, and if you have more than one location--

GEIST: --thinking of whether a change of--

JIM OTTO: Pardon? Yeah, I'm speaking of retailers with more than one location.

GEIST: OK. OK. OK. Thank you.

BOSTELMAN: Other questions? Seeing none, thank you, Mr. Otto, for your testimony. Next proponent, please. Good afternoon.

DALE GUBBELS: Good afternoon. Thank you, senators. My name is Dale, D-a-l-e, Gubbels, G-u-b-b-e-l-s. I'm the president and CEO of Firststar Fiber. We're an Omaha-based recycling company but we have a operation in Lincoln and we also provide recycling marketing services across the state and throughout much of the Midwest. My main reason for supporting LB861 is this section which recognizes that Nebraska's goals to reduce waste and create valuable products can be achieved through pyrolysis. If you're unfamiliar with the term pyrolysis, and frankly I was until just a few years ago, the process consists of heating up plastics in the absence of oxygen. And the plastic then volatilizes the gases, then cool. and as they cool they become products like diesel, heating oil and naphtha, which is actually the building block from which plastics can be recycled again. And I dropped off in your-- many of your offices or handed some of you some of the samples of a cube that we came across a few years ago as we

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were studying how to deal with plastics of all types in the flyer that was passed out. We started working with the Dow and Reynolds, which makes a hefty energy bag. Our recycling facility receives daily about 100 to 125 tons of recyclables commingled together, which we then separate. And some of the very products listed on the flyer are not recyclable. However, you know, the public is very excited about doing a better job of recycling. We actually call them wishful recyclers. They wish this could be recycled, so they throw it in, hoping that we do it. Unfortunately, it doesn't work that way. However, with the energy bag and with our plan for a pyrolysis plan, we can actually turn a great deal of the plastics that are going into Nebraska's landfill into a-- these valuable products. A few years ago, the Department of Energy-- Environment and Energy did a study that found that about 20 percent of everything we landfill was plastics of all types, and they estimated about half of it could be turned into new products such as in Kearney, there is a company that is making mats out of milk jugs, and there's in Sioux City there was a company that was making pipe-- irrigation pipe also out of detergent bottles and so forth. Well, there's a lot of things that we can do with these plastics and as I showed some of you earlier today, even plastic lumber that we've sent some of these types of products to a Canadian firm and they made it into decking. And that is just the start of the things that we could be doing with those-- almost four hundred thousand tons per year of plastics that are being landfilled. But in addition to that, and I know many of you are farmers, or in this state we're all probably one or two generations away from a farm, this should be a major concern to try to find uses for these plastics, because more and more farmers are relying heavily on plastics to store our grains and if you don't think that farmers would like to see something done about plastics, you need to talk to one of them as they're moving the plastics from a piece of their equipment. They may have a few choice adjectives to go along with their predicament, but it is a problem. We believe we can solve that problem by promoting pyrolysis in recovery to make-- and this is a conservative estimate, we could actually produce 8 million barrels of diesel for the state in Nebraska a year, every year if we get behind this as a solution. Be happy to answer any questions you might have.

BOSTELMAN: Thank you, Mr. Gubbels. Are there any questions from the committee? Senator Geist.

GEIST: I just might as well ask. So do you envision not only having a statewide plastics idea or program, but also a statewide recycling

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program so that everyone's plastic that is recyclable for this py--
pyrolysis?

DALE GUBBELS: Pyrolysis. It took me two years to learn how to say it.

GEIST: Pyrolysis, it's a new word. And so that all of our plastic that is recyclable to that would go there so we're all doing the same thing. Is that what this tries to achieve or is that just the ultimate goal?

DALE GUBBELS: Pyrolysis in this form of chemical recycling was not recognized when the Resource Conservation Act was passed in 1992, it was left out. LB861 recognizes this is a very viable way to deal with that. And to your point about could it be done statewide? Very much so. You know, the last time I looked, every part of the state has farmers and ranchers who are producing plastics that could be turned into diesel and about-- I grew up on a farm. I still know that we've had diesel and I'm sure there's still diesel uses out there across the state, so this would be an in-state end market for something that we're now paying easily \$20 million a year to landfill. And that doesn't take into account the amount of plastics that are ending up in ravines and groves being burned and just not disposed of properly.

GEIST: Thank you.

BOSTELMAN: Senator Moser.

MOSER: So do you need this bill to recycle your plastic?

DALE GUBBELS: We need more end markets in our state to be able to recycle more plastics. And this bill--

MOSER: End markets, you mean places to get rid of the diesel or more places to get plastic from?

DALE GUBBELS: More places where the plastic takes on a value and that is either diesel or plastic lumber or a variety things. To answer your question specifically about do we need this bill? Perhaps not, per se. However, I do support the concept that we should have uniformity in the state in how we deal with this issue.

MOSER: You're just saying if there is a surplus of plastic, you've got a potential idea how to handle it.

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DALE GUBBELS: Absolutely.

MOSER: So you're reducing one of the barriers to allowing plastic to be used for carrying out groceries or whatever.

DALE GUBBELS: Correct. This Hefty EnergyBag Program we've introduced in Omaha about three years ago, we're now getting about 20 tons a month of material that was otherwise contaminating our recyclables, other recyclables. And we just introduced it in Lincoln this past fall, or June, I guess it was, but it's spreading across the state. Ogallala, its recycling facility now is buying the bags and selling them to their residents, asking them to put their nonrecyclable plastics in there and they are buying them wholesale, selling them retail. That's adding a little more revenue, which David City, for example, is something that we want to talk to them about.

MOSER: There's a market for some plastics?

DALE GUBBELS: There's a market for these materials if we get them corrected.

MOSER: But you say there are some recyclable plastics, some nonrecyclable plastics?

DALE GUBBELS: Correct. Most everything on that list has multiple layers are resins and the plastics that are being recycled like a milk jug, that's a single resin type.

MOSER: They can't mix the types of plastic in that recycling.

DALE GUBBELS: Not easily, no. You have to have a special technique.

MOSER: But in your process, you can mix them together?

DALE GUBBELS: Correct.

MOSER: Thank you.

DALE GUBBELS: You're welcome. Thank you.

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

DALE GUBBELS: Thank you.

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BOSTELMAN: Next proponent, please. Good afternoon.

KATHY SIEFKEN: Good afternoon, Vice Chairman Bostelman, and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, and I am the executive director and registered lobbyist for the Nebraska Grocery Industry Association here in support of LB861. While most of my testimony is in regard to plastic bags, merchandise containers in general are being discussed nationwide. This bill addresses all containers that are used by consumers to carry merchandise, and there are two things that I'd like to specifically address. One is the fact that the pyrolysis system that Dale Gubbels recently testified in regard to, we believe is a solution to a statewide plastics problem. His system can take all contaminated plastics like the candy wrappers and the potato chips bags and straws and single use plastic bags, all of those kind of things and recycle them into products that we can continue to use. We believe that that is the solution to the plastics problem in Nebraska. The other thing I'd like to address is the impact that single use plastic bags have on the environment based on science and not on emotion. The handouts that I provided are-- include two studies that indicate that environmental resources used for a single use plastic bag are much lower than other alternatives. To match the resources used for just one 17 micron, a plastic bag, a paper bag must be reused from five to seven times, a nonwoven polypropylene bag seven to eleven times, a woven polypropylene bag 25 to 33 times, and there are different studies. One study said that a cotton bag must be used 71 to 88 times and another study said 131 times and that's only one single use bag. If you repurpose that bag for picking up after your dog or lining your trash bag-- your trash liner, using for a trash liner, those numbers double. So the point is that that the single use plastic bag is an environmentally friendly item that should be-- should not be banned in local areas. The handouts that I gave you, there is an article there that says that about 78 percent of plastic bags are reused or recycled. Additional information is available in the handouts and I'd be happy to answer any of those questions regarding the studies, however, my main point today is that this is really an issue that should be addressed at a state level, not a local level. The Omaha City Council actually proposed an ordinance to initially establish a fee on plastic bags. When we voiced our concern about the impact a bag fee would have on low-income consumers, the proposal changed and became a ban on single use bags with exemptions for certain entities like Walmart and those facilities that had less than 10,000 square feet. When we stated our concerns about the

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unfairness of that proposal, the ordinance changed to remove the Walmart exemption. The ordinance that was passed by the Omaha City Council and eventually vetoed by Mayor Stothert was a bag ban solely on grocery stores. Everyone else got off scot-free. The vetoed Omaha ordinance that exempted many types of plastic bags from newspaper sleeves to potted plants and things in the-- the meat department. But my point is that the plastic issue-- the plastics issue in Nebraska is much bigger than a single use plastic bag. In the areas that have talked about bag bans, they're not talking about anything but a bag ban. They're not really addressing the real issue and that is an issue of too many plastics across the state of Nebraska. As it stands now, any local government can propose an ordinance that's unfair and makes winners and losers of various stores based on who they are and what they sell. There's absolutely no-- there was no absol-- absolutely no consideration in Omaha for the fact that there's not enough paper to replace the plastic bags that the ordinance prohibited, the additional cost of paper over plastic, which is three times as much, nor was there consideration for the new technology such as the pyrolysis center. We believe that this is the answer to those problems. If you have any questions, I'd be happy to answer.

BOSTELMAN: Thank you, Ms. Siefken. Are there any questions from the committee? Seeing none, thank you for your testimony.

KATHY SIEFKEN: Thank you.

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

TIM KEIGHER: Good afternoon. Is it still afternoon? Senator Bostelman, and members of the committee, my name is Tim, T-i-m, last name is K-e-i-g-h-e-r. I appear before you today on behalf of the Nebraska Petroleum Marketers and Convenience Store Association in support of LB861. And since it's been a long afternoon, I'm going to be brief, but I have been thinking, you know, following the deer and antelope playing in the field and maybe we can recycle these plastic items and create the antlers year after. [LAUGHTER] It's getting late, you know. I guess I don't really have anything to add. We would if, you know, my members have children and grandchildren, they want to protect the environment as well. I learned a new term and I haven't learned how to pronounce it yet. Paralysis [SIC] is how I pronounce it. I wrote it down. But, yeah, we would be in favor of being part of the discussion in whatever comes about. And I guess we're here to support this effort

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and become part of the discussion. So with that, I will try to answer any questions you may have.

BOSTELMAN: Thank you, Mr. Keigher. Are there any questions from the committee? Thank you for your testimony. Next proponent, please. Good afternoon.

RON SEDLACEK: Good afternoon. Mr. Chairman, and members of the Natural Resources Committee, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, and I'm appearing on behalf of the Nebraska Chamber of Commerce and Industry. And as the afternoon has gone by, I've got a few more entities to where I present, so to speak, the tail of the kite is getting longer, but I'm also appearing on behalf of the National Federation of Independent Business in Nebraska, the Greater Omaha Chamber of Commerce and the Lincoln Chamber of Commerce. Our small business council, as well as our energy and environment council at the State Chamber reviewed LB861 with great interest and were educated on the issue of uniformity of this type of regulation and what has been handed out to you, will show you that this is not a novel idea. And, in fact, as I can see by the map and it has been updated now February 5th of 2020, there are about 21 states that have enacted some type of state uniformity laws in some form or another regarding the use of consumer merchandise containers or packaging, including our neighboring states of Iowa, Missouri and Colorado. Legislation is pending in five states. Wyoming doesn't meet. Their Legislature does not meet this year, but there will be legislation introduced next year from what I understand. This is a trend and the trend is exactly what has been mentioned before. When you have a patchwork of-- of community type or local ordinances or regulations, and particularly in areas where you may have suburban communities involved, it gets really difficult for not only the retailers or those in the hospitality industry trying to comply with the various regulations, the expenses involved with that. But it's also very hard on our manufacturers or processors or distributors as to how do you comply with all these various ordinances and so forth in one state or another. And that's why the trend has been that many more states are saying if we're going to regulate this or if it's necessary to regulate, then let's do it on a uniform basis and make it a statewide policy so everybody has a level playing field. Now, what does the bill not do? This bill does not tell a landfill operator or a city or county or whoever is operating that landfill, it does not tell them that they can't have particular rules. In other words, Lincoln has a man on cardboard in the landfill. This does not affect that whatsoever, and it's not

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intended to. A city or-- or a landfill operator has control over that landfill as to what goes in and what goes out. If they want to say no plastic containers in that landfill, that's fine. And that's on page 3 of the bill starting on line 30 to 31 where it says this sub-- section shall not apply to county, municipality or agency recycling or solid waste collection program and so that's the intent. They own the landfill, they can control it. But by the same token, they're not going to control necessarily how merchandise is delivered to a consumer or how a consumer would like to have that merchants-- merchandise packaged in that particular case. So, yes, all of our entity, all the entities that I represent, they strongly support LB861 and I believe that-- that it is very important legislation to-- to provide a friendly climate for manufacturers, for processors and distributors, as well as the retailers here in Nebraska.

BOSTELMAN: Thank you, Mr. Sedlacek. Are there any questions? Senator Albrecht.

ALBRECHT: Thank you, Vice Chair Bostelman. I'm going to attempt to ask this question and maybe you don't know, maybe I should have asked somebody before you. But if-- if we're trying to do this uniformly throughout the whole state, they're gonna-- a consumer, if you will, will continue to take their-- or have their recyclables go somewhere to-- to a landfill. So would-- would there have to be like a transfer station so they just pick up those certain things in this orange bag, but what if this orange bag isn't throughout the whole state? How would they-- how would they pick up all this plastic in other areas of the state? So-- so, do you see what I'm saying?

RON SEDLACEK: I understand your question.

ALBRECHT: Your going to ask them all do it the same way, but to me there would have to be transfer stations at all the different landfills so that they would be able to pick those up and take them and do whatever they're going to do with.

RON SEDLACEK: It would depend if the Legislature ever did choose to regulate this, that-- that would be part of the parameters as to how-- how you would do that and so forth. But also, we are creating a market in that-- in that regard too. So, it may be more of a market-based system that you're talking about. What you heard in testimony before wouldn't necessarily be a requirement but these reusable-- or these

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plastics, as an example, could-- or could be turned into, so to speak, a value-- a more valued commodity. So that would help in regard to--

ALBRECHT: But I'm thinking about not just-- I mean it could be tires, it could be cans, it could be, you know, glass, what-- whatever, but I just know those transfer stations are somewhat expensive for cities and-- and counties. So I hope, behind you, if there is anyone else to talk about that, that would be great to know. But it's interesting that this map does show that there's a lot of uniformity throughout the country. They're trying to figure out ways to-- to take care of that. And as a farmer, we recycle everything. So I would like to be able to see places throughout our state that give us all access to recycling paper and cardboard and everything else. So, thank you for your testimony.

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

RON SEDLACEK: Thank you.

BOSTELMAN: Next proponent, please. Good afternoon.

DUSTIN ANTONELLO: Good afternoon, Vice Chairman Bostelman, and members of the Natural Resources Committee. My name is Dustin Antonello. It's spelled D-u-s-t-i-n A-n-t-o-n-e-l-l-o. I'm here today speaking on behalf of the Lincoln Independent Business Association in support LB861. LB861 will prevent a piecemeal approach to regulating single use consumer merchandise and containers from taking effect across Nebraska municipalities. Right now, many of the bans on plastic and styrofoam products that have taken effect throughout the country have occurred on the county or city level, which has made it more complicated for businesses that have locations across multiple jurisdictions. Local regulations on plastic and styrofoam products create confusing and varying regulations and lead to increased compliance costs for retail and food establishments. Last year, the city of Omaha attempted to ban single use plastic bags in stores larger than 10,000 square feet. Had the mayor of Omaha not vetoed this ordinance, it would have created two sets of regulatory environments for LIBA members who operate stores in both Lincoln and Omaha. It also would have caused confusion for consumers who regularly patronize stores in both cities. LIBA believes that any new regulations or bans on plastic or styrofoam products should be considered on the state level because it will allow for a larger debate on the unintended consequences of regulating or banning those products. When cities ban

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or impose fees on plastic bags, plastic straws or styrofoam cups, stores are often forced to substitute these products with paper products that are worse for the environment and not as effective as plastic products. The life cycle of pulp and paper is the third largest cause of air, water and land pollution in the United States releasing over 100 million kilograms of toxins per annum. According to a study analyzing 139 California cities and counties that regulated plastic bans prior to the statewide ban, which took effect in 2016, plastic ban-- plastic bag bans caused consumers to turn to paper bags, which led to an estimated 80 million pounds of extra paper trash per year. Paper trash-- paper trash bags may be biodegradable, but they are also more environmentally harmful to produce than plastic bags. It takes around 10 percent more energy to create a paper bag than a plastic one and around 4 percent more water. To compensate for higher emissions on the production side, a paper bag would have to be reused at least five times to neutralize its environmental impact relative to a plastic bag. Retailers have also turned to paper cups to replace banned styrofoam cups, creating new environmental challenges. These paper cups are typically lined with the kind of plastic known as polyethylene to prevent liquid from leaking out or soaking through the paper. The presence of polyethylene makes it challenging to recycle paper cups because it's difficult to separate the polyethylene from the cups during the recycling process. Municipal bans on plastic straws have also forced retailers to switch to paper straws. The shift to paper straws has inconvenience-- inconvenienced customers because they tend to disintegrate before consumers finish their beverages and create challenges for people with disabilities. LB861 will prevent barring regulations of plastic and styrofoam products from being enacted in municipalities across Nebraska that will create new burdens for restaurants, retailers and consumers. I urge you to vote LB861 out of committee. Thank you. I'd be happy to answer any questions.

BOSTELMAN: Thank you, Mr. Antonello. Are there any questions from the committee? Seeing none, thank you for your testimony.

DUSTIN ANTONELLO: Thank you.

BOSTELMAN: Next proponent. Good afternoon.

BLAIR MACDONALD: Good afternoon. Vice Chairman Bostelman, and members of the Natural Resources Committee, my name is Blair Macdonald, B-l-a-i-r, M-a-c-d-o-n-a-l-d, and I am appearing before you on behalf of the Nebraska Beverage Association. The Nebraska Beverage

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Association is very supportive of LB861 and this type of preemption. We represent all of our state's local bottlers and distributors of soft drinks and bottled water, so all the Coca-Cola Company organizations, Dr. Pepper Keurig, Snapple Group, and PepsiCo. So obviously we don't want to see these types of ordinances cropping up around the state creating a patchwork of bans on different types of containers. But I would also like to highlight Senator Hughes' bill from last year, LB367, which extends the sunset on state funding to keep Nebraska beautiful. Our members helped establish that ongoing state funding for local recycling efforts back in 1978. So we hope to see LB367 pass this year potentially in a package so that we can continue to fund recycling programs. We certainly don't want to upend recycling programs across the state. You know, we-- we're the bottlers, the manufacturer side of things. We feel very responsible for our bottles and our packaging. That is why our parent company, or our parent association this year, the American Beverage Association launched its Every Bottle Back campaign to educate and cure-- encourage and help organize more recycling nationwide. So we-- we see LB367 and LB861 going hand-in-hand together to work towards greater recycling efforts. So we hope that you consider supporting this bill and advancing it out of committee.

BOSTELMAN: Thank you, Ms. Macdonald. Are there any questions from the committee? Seeing none, thank you for your testimony. Is there anyone else would like to testify as a proponent for LB861? Seeing none, would anyone like to testify as an opponent to LB861? Please step forward. Good afternoon.

MICHAEL J. O'HARA: Vice Chair Bostelman, members of the committee, my name is Michael J. O'Hara, M-i-c-h-a-e-l, middle initial J, O'Hara, O-'-H-a-r-a. I'm appearing on behalf of Nebraska Sierra Club. Environmentally friendly, that's what Sierra Club is all about, and we're appearing in opposition. I think we're all-- appreciate artful practitioners of the English language. LB905 and-- suggested a 5-cent fee on bags statewide. And would you want to guess how many of those who appeared proponents today appeared on January 30th and testified on that day in favor of statewide regulation? Umm-- no. They want a ban on ban. This bill does two things. It bans local control. Generally, that's not a good idea. How often do you appreciate federal preemption? And it suggests doing pyrolysis. The Sierra Club is opposed to both ideas. Generically, we take the approach of reduce. This does not do any reduction. Reuse, it doesn't do any reusing. Repurposing, one could argue it does little of that, and recycling. I

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find interesting that this bill does not contain a section of existing statute and that is 13-2018. It does 13-2001, 13-2003, 13-2017, and 13-2023. What's missing? It sets up a state policy of reduce, recycle, you use-- reuse, land disposal and incineration for energy recovery, which is one of the purposes of pyrolysis. The last thing you should do is pyrolysis. In terms of local control, as already noted, the city council in Omaha had adopted an ordinance, but the mayor vetoed it. Looks like local control is working to me. I really enjoyed learning what I wrote when I didn't write a lot of the things that I said I wrote in that ordinance. In terms of preemption by upper level of government to a lower level government, it can be appropriate. Even President Reagan once preempted those Energy Star ratings you get on your appliances. He-- he had to preempt because all the states were doing their own thing. If it really will make it impossible for business to do business if you have different rules, then you need the upper level of government to tell the lower level of governments to do so. The bags that you hand to people isn't that type of cost. It isn't integrated into the entire production process. I was in Europe and I went to the store and I asked for a bag and everyone in line and the merchants looked at me like I was crazy, and finally someone just said, oh, you're an American. Everybody else brought a bag to reuse. So those numbers that were suggested in order to hit bioequivalency, they're accurate. And I you-- reuse my bags that frequently. The central concept to environmental laws in the United States has always been local government is allowed to choose cleaner. If it's gonna cost more to do business in the local community and the local community wants to be cleaner, the local community gets to pick cleaner. They don't get to pick dirtier because if you pick dirtier, it bothers your neighbors. You pick cleaner, your neighbor gets a benefit. We have lots of expenses imposed on government by having these single use bags. When we're working on the city ordinance every unit of government, every division within government wanted us to get it passed but nobody could say it in writing because they were represented by-- they were working for executives that did not want to incur that type of attention. But it cost tens of thousand of dollars to have these single use bags. Now, that's a reason to have a statewide policy. It's called an externality. Businesses are treating as profit imposing costs on government. You should probably consider having a statewide fee. I'd prefer a fee to a ban because I'm an economist, and I always think prices are better. In terms of having statewide regulation, no regulation is not statewide regulation, and

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that's what this would propose. If you have any questions, glad to answer them.

BOSTELMAN: Thank you, Mr. O'Hara. Are there any questions from the committee? Senator Halloran.

HALLORAN: Thank you, Vice Chairman Bostelman. So how does a fee solve the problem?

MICHAEL J. O'HARA: You change the price of various products and then it changes their competitiveness. Currently, every store that gives you a bag is incurring a cost to do so. That cost is internal to them and they think it's profitable to incur this cost. The bags, depending upon which plastic bag you get, cost between 2-cents, 5-cents apiece. So they're already paying that. If the state were to put a fee on it, it would change the internal perception of profit of the business and create a revenue to start paying those cost. As we went through it, water treatment facilities in terms of the recycling that the city of Omaha does, every time we have these plastic bags floating around, they get caught in the machinery at Firststar. In terms of the parks department, they're paying to pick them up, pull them out. Douglas County owns the landfill in Douglas County and they have to pay people to walk around and pick up all the plastic bags. All those costs--

HALLORAN: So you believe a fee is more productive to cure the problem than recycling is?

MICHAEL J. O'HARA: Oh, I want it to recycle and I think it would encourage if it was a recycling fee that went to people to go pick things up. Every place where they have a fee on a container that the fee partially funds picking it up, they have a lot fewer things on the street because someone can make a living going and picking up all the cans.

HALLORAN: A living, OK. Thank you.

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

ALBRECHT: Let me just ask a quick question. Sorry.

BOSTELMAN: All right, Senator Albrecht.

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ALBRECHT: OK, so if-- I always feel like we're the big brother, when there happens to be problems throughout the state and you have a big city like Omaha that the mayor has to veto something, I wasn't following that and why, but I just know if we want to recycle how important it would be to-- for everyone to be doing the same thing. Because if I live in a small town, I'd have to be thinking, now can I go to West Point or could I go to South Sioux or can I go to Wayne? Where is it that I don't have to carry my own bag in because I might want-- excuse me --I want those plastic bags. When I shop, I shop for a month's time and I'm not going to be bringing-- I'd probably have to bring suitcases in. So I like my plastic bags and-- but I'm also recycling and I'm doing what I need to do, what I feel I need to do for the environment. So-- so, if the cities all want to do their own thing, and some of the cities are right next to each other, I mean, how is that going to work that-- I mean, don't you believe that we need to have some sort of conformity to-- to bring everybody into the fold? I can't imagine us charging somebody because ultimately it comes back to the consumer, so I'm-- I'm not quite following your ideas.

MICHAEL J. O'HARA: OK. You have three different concepts. First, in terms of having a bag and you didn't bring one, if you were to do something like LB905, it defines a multiple use bag and the store may give you a multiple use bag, you're less likely to just treat it as trash. That's the first one.

ALBRECHT: OK, but there again, you have-- I'm going to have to pay for a bag here and then I'm gonna go to Bomgaars and they're going to have something, and then I'm going to go to the farm store and they're going to have something else so--

MICHAEL J. O'HARA: At some point you may choose not to incur that cost.

ALBRECHT: I'm going to have lots of bags at my house-- bring my own or--

MICHAEL J. O'HARA: As an economist, I always like having incentives.

ALBRECHT: But I like the idea that I'm seeing that this is going throughout the country, that it's evident that we need to figure out ways to recycle everything.

MICHAEL J. O'HARA: Oh, yes.

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ALBRECHT: And not have to hodgepodge things. I mean, I guess I like a clear-cut way of doing business, but that's why I just wondered where you were at. Well, thanks for being here.

MICHAEL J. O'HARA: I would definitely support a statewide ban or fee.

ALBRECHT: You like the fee. OK. Sorry.

MICHAEL J. O'HARA: And to be clear, in Omaha, we suggested a fee. The mayor objected and said no new taxes on food, I would prefer a ban. So we switched to a ban and then the ban passed and she didn't like that either. But you know how it is to be a politician, you have to make decisions sequentially sometimes.

BOSTELMAN: Thank you. Are there other questions from members? Seeing none, thank you, Mr. O'Hara. Next opponent, please. Good afternoon.

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n, represent the League of Nebraska Municipalities, and appreciate the opportunity to oppose this bill this afternoon. In 1992 when the Legislature mandated that cities deal with solid waste management, what-- what evolved from that was a group of 15 to 25 high tech landfills, another 30 or 40 transfer stations and probably a 100 independent recycling operations, some are government owned, some are private owned, it's-- but it's-- it's a hodgepodge. And what-- what drives regulation of recyclables and landfill bans, even though this bill doesn't deal with necessarily with landfill bans, is there's-- there's a few high profile Omaha ordinances, but what drives it, for the most part is cold, hard, free market economics. Re-- what we-- what we see with recycling for the most part is the-- it's the fun part where the fourth graders are putting-- doing stuff like this, but the vast majority of the time and money spent on recycling is finding a use for the product. If nobody is buying your plastic or even taking your plastic or willing to buy it, or let you pay them to take it, that plastic goes nowhere. And what's-- what's evolved is-- is in Kearney they may use ABC company to buy their brown bottles, but in-- in Jackson, they may use company XYZ. Those companies might have different requirements for their final product. So uniformity becomes very difficult because it-- because it's based on what the end-- end users want from the product. And plastics are particularly complicated in that there's dozens of different kind of complications. And Mr. Gubbels, Mr. Gubbels does have a lot of-- I think cities have a lot of confidence in his product, but-- but savvy, experienced landfill

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managers have seen high profile end use-- we're going to recycle, take all your recyclable opportunities, come and go over the years. They come, they disappear quickly. So they've become a little wary of-- of quick solutions to getting rid of all their plastic, getting rid of all their brown bottles, getting rid of all their tires. And they're-- and they're open to these suggestions and-- and-- and I will say that-- that solid waste and recycling management has evolved a lot since 1992. And the-- and the folks associated with it do talk. They talk a lot more than they use to, and-- and I think, and there's been numerous efforts over-- over time to find somewhat common end use products that they can sort of collaborate on to-- to-- to send all their stuff to the same place, who has the same needs. And sometimes a particular end user may not have a big enough need for all the plastic or all the tires or-- or whatever. So it's-- so there's free market economics come into play in it in a big way. And that-- and that's-- that's the evolution of a lot of the regulation. Yeah, and I know groups like the recycling council, I mean they work endlessly to try to coordinate landfills and recycling operations to try to create some commonality in these things. But it comes and goes. For instance, a few years ago, no, no one in the Midwest would take a brown bottle. These things just set. What happened is they set in storage units or they went right back in the landfill. You could recycle them all day, they were never becoming a product of any kind. Boulevard Brewing at a certain point they somehow got it, got involved in buying glass. Now they take most of them. Now, if they-- if they cease to do that, then suddenly brown bottles are-- they're-- they're-- you can recycle them, you can put them in the recycling, they're not going to go anywhere. And so the landfill managers do coordinate a lot and they work extensively with the nonprofits in the state to try to make this work. But I guess since cities have this mandate, we're really afraid to have any tool taken away to help us comply with the mandate. And-- and this is probably not a tool that's extensively used, but we'd like to make sure that the tools stay in place so we can deal with this mandate.

BOSTELMAN: Thank you, Mr. Chaffin. Are there any questions from the committee? Senator Albrecht.

ALBRECHT: Thank you, Vice Chair Bostelman. So what-- how is this a tool if we mandate that everybody do the same thing? What is this tool?

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LASH CHAFFIN: Well, the tools are--

ALBRECHT: Are you picking winners and losers of who can do it and who can't, and how-- how would you manage to?

LASH CHAFFIN: I would say a typical city wouldn't view themselves in the macro economy. They would view themselves--

ALBRECHT: What if you're a big city like Omaha?

LASH CHAFFIN: Yeah, in Omaha you might bill it, but it's at Kearney or a-- a Sidney--

ALBRECHT: Trust me, we recycle a lot where I'm at and we're small.

LASH CHAFFIN: Very, very extensively in-- in the Jackson landfill does. But-- but we're reaching a point where unless somebody takes that recycled item and does something with, it's really not getting recycled. You know, you and I might recycle it. My kids might recycle it, but--

ALBRECHT: OK, but if you're-- this tool that you're going to use--

LASH CHAFFIN: Is directing what a business might-- what they can recycle and what they can and can't put in the landfill or manipulate through-- trying to manipulate the waste stream in a small sense locally.

ALBRECHT: But you have--

LASH CHAFFIN: I don't know that it's extensively done, but we want to make sure that tool would be available if we had needed it.

ALBRECHT: So-- so what happened in Omaha that was vetoed?

LASH CHAFFIN: I'm not completely sure. I did not follow the Omaha ordinance that closely.

ALBRECHT: You did not, so then I won't ask you. Thank you.

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

LASH CHAFFIN: Thank you.

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ALBRECHT: Thank you.

BOSTELMAN: Next person like to testify in opposition. Good afternoon.

MEGAN JACKSON: My name is Megan Jackson, M-e-g-a-n J-a-c-k-s-o-n. I'm here on behalf of the Nebraska Recycling Council. We are a statewide nonprofit organization working with a lot of our municipalities in rural regional areas and helping them navigate the challenging environment of materials management to maximize as our mission goes, maximize the economic environmental benefits of resource recovery. So naturally, we are here to oppose this legis-- this proposed bill. It strips power away from local government to ever adopt, regulate or manage plastic pollution for their communities. At the heart of a community's decision about whether to restrict or ban a product would be a set of values or a particular problem. Communities may choose to restrict products for several reasons, including they just addressing some environmental impact or a desire to reduce greenhouse gas emissions, energy, natural resources, air, water pollution. They may want to achieve solid waste reduction goals, or with greater ambitions to become a zero waste disposal community. They may want to mitigate the damage of litter and the adverse impacts to ecosystems and wildlife, or for the betterment of public health, pollution prevention and toxin reduction. You know, whatever the reason, innovative solutions come from communities that take on the mantle of these issues, but this enfaces for this entire bill is to avoid the burden on retailers of having to comply with varying regulatory policies. This burden isn't greater than the importance of protecting local control for the common good. We do not believe that legislation should take away a community's right self-determination and this bill is written too broadly to provide wholesale benefit to all of our communities, including our rural populations. There's great diversity in recycling across the state and a variety of challenges and opportunities for municipalities striving for sustainable materials management. Managing materials with bans or taxes keeps control with the communities that are most aware of their own local issues. Allowing citizens and their representatives choice and freedom to create solutions that are best for their local economy, environment and for business. Last, in addition to prohibiting the management of single use containers and plastic bags, so that's been the focus a lot today. There is particular language where you have significant concern about and about the unintended consequences. There is a broad definition of consumer merchandise in section 3 that I want to call your attention to that may include for products that could pose public

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health and environmental safety concerns. It just-- I'm just going to leave it at that. There's unintended consequences that I'm not certain what that language could-- could potentially include. Where the state may fail to regulate toxic and harmful materials, communities must retain the power to protect the public health and environment for their citizens. While I've got a little time, I wanted to address senator's comment or question about fees and how they solve this problem. Fees have-- fees have an-- a stronger impact than doing-- doing bans locally and it's not in particular-- it's reduction. You know, before we go to the hierarchy and looking at the hierarchy and taught as kids, it's reduce, reuse and then recycle. Communities are aspiring for something far greater than pyrolysis, but even far greater than just recycling as well. And these are the tools that community-- local communities have. Last, I just want to say this isn't proposed-- this bill isn't proposing a solution at all. There is no solution in this. It's just limiting our local governments from creating their own innovative solutions for reduction and recycling. Thank you.

BOSTELMAN: Thank you, Ms. Jackson. Are there questions from-- from the committee? Senator Albrecht.

ALBRECHT: Thank you, Vice Chairman Bostelman, and thank you for being here and sharing your information with us. So tell me again who you're with.

MEGAN JACKSON: The Nebraska Recycling Council.

ALBRECHT: OK. So what are you-- what-- what is your purpose? Do you work with landfills? Do you work with cities? Do you--

MEGAN JACKSON: Mainly-- oh, quite a bit with municipalities, but also businesses too, so we're a nonprofit working on-- what area, I'm sorry.

ALBRECHT: Northeast Nebraska.

MEGAN JACKSON: Yeah. One of our-- we worked on a project, one of our first hub in-- we called it the hub and spoke and the concept with this work was to-- to look for opportunities and identify the challenges to regionalize recycling systems. So, you've each got a patchwork of communities that either have small drop-- have various recycling programs. And-- and some communities that don't have access.

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So, we were-- have been looking and exploring with the city of Norfolk to be a hub that can collect recyclable materials.

ALBRECHT: So that's what I'm wondering with what you do with your nonprofit is, you know, this has got to be an overhaul for our whole state, but if we allow all the different cities to do something different, I don't care if it's just with this, if it's with tires, if it's with paper, if it's with glass, I mean, it's all recycling. But we have to start somewhere and we can't-- if we just-- I look at it like if you just allow a city to do what they want to do, it's-- it's just-- it doesn't solve the whole problem. What you're taking on is a big task too with the-- with the organization that you're with, and I applaud you for doing that, because trust me, we do recycle everything. We just got all of our recycling taken away from us up in northeast Nebraska.

MEGAN JACKSON: What community are you from?

ALBRECHT: Emerson, and I-- it's just killing us because every Saturday that's what you did. And I have three little boxes in my garage that are stacking up now, I don't know what I'm going to do with it because I need to go find a place. So, but to me, something like this would be one step forward. And not-- because if I don't have somewhere to take it unless I just want to throw it in the landfill which I don't want to have to do, I would like to see a recycling somewhere to take it. The Boy Scouts used to take care of all the newspaper that we have, like on a weekly basis at the farm. But-- but what's the-- I mean, if this isn't a step forward, what is.

MEGAN JACKSON: Yeah, this isn't it at all.

ALBRECHT: OK, but--

MEGAN JACKSON: But yet it would be so-- because this preemptive and stripping away what local-- local municipalities can do. So as a state, as a Legislature, then it would be setting greater state standards for--

ALBRECHT: But wouldn't you want that if you're a nonprofit trying to recycle, wouldn't you want to see the whole state be able to do what you're asking--

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MEGAN JACKSON: But this bill isn't doing that. So the other bill, is it LB905-- off the top of my head --the bill for a statewide fee, that-- that does something-- that does something, this bill does not.

ALBRECHT: But we still have to--

MEGAN JACKSON: This bill--

ALBRECHT: But we still have to do something, don't you agree? We still have to do something with that plastic. We don't want to take and put somebody out of business because they have containers that they send people home with.

MEGAN JACKSON: Are you asking about the pyrolysis piece in this-- in this bill?

ALBRECHT: Well, that's-- yes.

MEGAN JACKSON: I mean, we don't need this bill to have--

ALBRECHT: No, we don't.

MEGAN JACKSON: --Firststar-- we don't-- and the bill--

ALBRECHT: But we do need to have it recycled. If you're-- if you're still going to have plastic bags, and I still have to pay 5-cents, they have to go somewhere, right? I mean, the bag and the cups and the styrofoam, and it would still have to go somewhere into a--

MEGAN JACKSON: Correct.

ALBRECHT: --recycling or a landfill. I don't want it in the landfill. I would like it to be recycled.

MEGAN JACKSON: This bill wouldn't be doing anything about it getting recycled.

ALBRECHT: But-- but it would in the fact if you-- if you have municipalities, they can do what they want to do with it, that some can, some can't.

MEGAN JACKSON: This bill isn't-- wouldn't do anything for encouraging recycling nor reduction. So-- and retailers are doing nothing-- like very little less than-- yes, some-- some retailers are-- are-- provide plastic film recycling receptacles and are taking back their bags.

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Less than 5 percent of bags nationwide are being recycled. Retailers aren't-- aren't doing this. They're not our champions recycling. What they're doing right now is pushing laws nationwide to strip local municipalities from doing more.

ALBRECHT: So-- so what would you-- so in charging somebody, what if they just all had a recycling spot? Do they-- do they have that in the big cities? Recycling for their plastic bags or--

MEGAN JACKSON: I also patchwork-- that patchwork to some-- some retails and plastic film is per ticket. So drop off programs do not-- municipalities do not take-- you typically do not have recycling containers for plastic film or the plastic bags, right? But retail, some retail operations do.

ALBRECHT: Well, I appreciate what you have to say because I'm trying to piece this all together, but I just don't want to see all the different cities do something different. And I think sometimes it ends up in front of us because we have to help them help themselves make a decision that is right for the greater good of the whole state rather than just--

MEGAN JACKSON: This isn't even making any decisions. It's just taking decisions away. And also to your point, if we had more local municipalities actually doing-- because and it's not, you know, Senator Hughes, you call it special interest activism. I would say it's grassroots community activism that's making changes happen. With-- with bag bans or-- and we would be also stronger opponents-- proponents for-- for bat-- for fees. When enough municipalities-- so either you as a Legislature get a statewide fee, you do that or munici-- enough municipalities will and you will cross a threshold where the state Legislature will finally take action and do that themselves. But if you-- if this bill takes power away from local municipalities, even advocating or trying to advocate for that, this bill isn't the answer. It is--

ALBRECHT: But I--

MEGAN JACKSON: I can-- I can totally keep doing this work. I absolutely agree on comprehensive statewide approaches, this isn't it.

ALBRECHT: Thank you.

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MEGAN JACKSON: You're welcome. I also appreciate want to appreciate your-- all of your comments that you've made about recycling, and we'd love to chat with you about what's going on.

BOSTELMAN: Are there other questions from committee members? Thank you for your energetic testimony. Appreciate it. Next opponent, please. Anyone else like to testify in opposition to LB861? Seeing none, we do have three letters I want to read into the record in opposition. One is from the American Cancer Society Cancer Action Network. One is from Omaha City Council. One is from City of Lincoln. Would anyone like to testify in a neutral capacity? Anyone like to testify in the neutral capacity? Seeing none, Senator Hughes, you are welcome to close on LB861.

HUGHES: Thank you, Vice Chairman Bostelman, members of the committee. I appreciate the discussion. It is interesting to get the perspective of a lot of different people who are affected by the decisions we make in this-- in this body. I do want to address LB905. I do not believe Senator DeBoer indicated to me that that was not a serious attempt. That bill was a group of grade school kids who wanted to understand the process of the Legislature. They chose to bring a bill that made a 5-cent cost to plastic bags. That was more about the process of what we do as a learning experience, not a serious attempt to put a charge on grocery bags. LB861 would create uniformity which leads to a greater possibility of reduced landfill quantities. That's the target. We have a plastics problem and if we can find a way to begin to reduce that, I think it's a good idea. And I certainly get the city's unwillingness to give up any authority. We had those of us in Transportation, which half of us are, we heard yesterday from a lot of cities about the authority that the iron fist that they rule with when it comes to rightways. You know, they absolutely don't want to give up any of that, but sometimes the state needs to step in when things aren't going the best direction for the citizens. If LB861 passes and we have that uniformity, it will allow new technologies to gain popularity while generating economic activity and that's solving our plastic problem. The pyrolysis that we're talking about where you're taking plastic and turning it into diesel fuel, you know, at the very least, you'll be able to get your money back when you have a semi-load of plastic jugs, you can at least pay for the diesel fuel. It's not costing the local entity to have a recycling center. You know, we recycle all the time. You know, my wife does a great job of it. You know, we do it. But our local recycling facility lost their opportunity to recycle plastic. You know, I don't know what they're

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doing with it, but it is piling up. We need to find a way to get rid of that and not just put it on our landfills. We have enough stuff that can only be on our landfills. Plastic is something that can be recycled, turned into other products. LB861 creates some uniformity that will help streamline that process to make it move forward. So with that, thank you very much for your time.

BOSTELMAN: Thank you, Senator Hughes. Are there any questions from the committee members? Seeing none, that will close our hearing on LB861. Thank you, everyone, for coming and have a good evening. Good night.