

LATHROP: Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12, which includes Omaha and Ralston, parts of southwest Omaha and Ralston. I also Chair this committee. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. If you plan to testify today, you'll find yellow testifier sheets on the table inside the door right over there by that pillar. Fill out a yellow testifier sheet only if you're actually going to testify before the committee, and please print legibly. Hand your yellow testifier sheet to the page as you come forward to testify. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you're not testifying in person on a bill and would like to submit a position letter for the official record, all committees have a deadline of 12:00 noon the last workday before a hearing. Please note that there is a change this year in position letters to be included in the official record. They must be submitted by way of the Legislature's website at nebraskalegislature.gov. This will be the only method for submitting letters for the record, other than to testify in person. Letters and comments submitted by way of the email or hand-delivered will no longer be included as part of the hearing record, although they are a viable option to communicate your views with an individual senator. Keep in mind that you may submit a letter for the record on the website or testify at a hearing in person, but not both. We will begin each hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents and, finally, anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last names and spell them for the record. If you have copies of your testimony, bring up at least ten copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green; the yellow light is your one-minute warning; and when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we would like to remind everyone, the use of cell phones and other electronic devices is not allowed during public hearings, though you may see senators use them to take notes or stay in touch with staff. I would ask that everyone look at their cell phones and make sure they are in the silent mode. A reminder that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause to ask you to leave the hearing. Since we've gone paperless in the Judiciary Committee, you'll see senators use their laptops to pull up documents and follow along with each bill. We tell you that because they're not like absorbed in Facebook or are horsing around when they're doing that. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration, but senators may have bills to introduce in other committees or have other meetings to attend to. And with that, we will have the senators introduce themselves, beginning with Senator DeBoer.

DeBOER: Hello, everyone. Good afternoon. My name is Wendy DeBoer. I represent District 10, which is northwest Omaha.

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

McKINNEY: Terrell McKinney, District 11, north Omaha.

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

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

LATHROP: So there's your senators for today's hearing. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Neal Erickson, our-- one of our two legal counsel. Our committee pages today are Bobby Busk and Logan Brt-- Brtek?

LOGAN BRTEK: Brtek.

LATHROP: Brtek, OK. We thank both of them for their service to the Judiciary Committee today. And with that, we will begin with Senator Pahls and his introduction of LB833. And while Senator Pahls is getting situated, I will just offer this. From time to time, introducers have people that have come from some distance to testify. That's the case today. Everyone is going to get their opportunity to testify, for or against or in a neutral capacity, on all the bills that we'll hear today. But Senator Pahls has a list of what I would call invited testifiers, so we'll take those first, then take general proponents of the bill, then we'll have opponents and neutral testimony. And with that-- pardon me? Oh, and so that we know, Senator Cavanaugh, I think, has the next bill-- pardon me, Dorn. And so we can tell Senator Dorn how much time before we're on to the next

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

bill, how many people intend to testify on Senator Pahls's bill? One, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11-- about 11, 12. OK. Senator Pahls, you may open. Welcome to the Judiciary Committee.

PAHLS: Good afternoon, Senator Lathrop and members of the committee. My name is Rich, R-i-c-h, Pahls, P-a-h-l-s. I represent District 31, southwest Omaha. LB833 is intended to strike the statute of limitations for a third party in civil cases of child sexual assault. I sent out an amendment yesterday and I have-- I think I'm sending it out. Yes, the pages are giving that same copy. I'm also enclosing a copy of the study by the Attorney General that came out in November. The amendment that I sent out and that you also received today corrects the bill to match our intent, which is to strike the statute of limitation for all third-party civil child sexual assault cases not time barred at the time of the enactment of this bill and all cases occurring thereafter. I want people to understand this bill does not enact a revival-- revival window which would renew time-barred cases, and it does not hold public entities liable, which would be a violation of the State Tort Claims Act. The average age of a child sexual assault comes-- that a person comes forward is 52. And I have two excellent testifiers to follow who will speak to that issue. Our current statute of limitation limits it to 12 years after the plaintiff's 21st birthday. Simply put, a-- a victim has until the age of 33 to pursue a civil action against a third party. If you can recall, I said 52 is the average age coming out; our state's 33. I'm going to cut out some parts of my testimony because I do want to give some time for the ex-- expert witnesses. I know this bill falls on the heel of the Attorney General's report on clergy sexual abuse, which I think-- which you should have in front of you right now. But it actually addresses the broader-- broader issue of third-party children predators in general, be that a youth organization, sports organization, the Boys and Girls Club, a daycare provider, or any institution that has-- has enabled this kind of abuse. This will enable victims to pursue bad actors on their terms, and it will be an-- as an-- act as a deterrent to any institution that might seek to put their own interests above the safety of children in the future. I'm-- I'm going to quit my comments right now, but I would like to add that the Attorney General does support this bill and I do intend to make this my priority bill for this session. If you have any questions I'm looking to answer, I'd suggest that the experts behind me know the importance of this bill.

LATHROP: Senator Geist.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

GEIST: Thank you. Thank you for this. And-- and I-- you were going through a list of-- of entities that this would affect.

PAHLS: Right.

GEIST: Would it affect any public entities like a public school or--

PAHLS: No, [INAUDIBLE]

GEIST: No, that-- that's my question.

PAHLS: --the state, because that would be involving the state in a-- I'm looking at my paper here-- the tort.

Unidentified: Oh, the--

PAHLS: Yes.

GEIST: OK.

LATHROP: State Tort Claims Act?

PAHLS: State-- yes.

GEIST: OK.

PAHLS: But I just want to let you know this is the beginning of my adventure. I will have other bills in the following years, and that may include that, or revival bills, which would be a look back, but that's not in this bill. I'm trying to establish a foundation and move forward.

GEIST: OK. Thank you.

PAHLS: Thank you.

LATHROP: Senator Pahls, I was here when Senator Pirsch passed a similar bill that-- that added, would you say, 12 years from your 21st birthday or something that?

PAHLS: Yes, it was 4 and it went up to 12.

LATHROP: And the-- the idea behind that was repressed memory of people who have been subjected to sexual assault as children, and sometimes they don't even realize that it happened or remember it until a later date. That's the-- that's the-- is that the logic behind your bill?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

PAHLS: Yes, because, as I said, 52 is when a lot of people all of a sudden come forward.

LATHROP: OK, and are the people who were going to-- I-- I have a list here of about six people. Are they going to address that in their testimony?

PAHLS: Yes.

LATHROP: OK.

PAHLS: The first two testifiers--

LATHROP: OK.

PAHLS: --really understand this topic.

LATHROP: Then I'll leave it to their testimony and ask them questions if I have any.

PAHLS: Thank you, Senator.

LATHROP: Any other questions for Senator Pahls? I see none. Thank you.

PAHLS: Thank you.

LATHROP: And you'll be here to close?

PAHLS: I shall be.

LATHROP: We will take-- the first testifier we have is Kathryn Robb from Child USAAdvocacy. Good afternoon and welcome.

KATHRYN ROBB: Good afternoon. Thank you, Chairman and Chair-- members-- committee members, excuse me. My name is Kathryn Robb, K-a-t-h-r-y-n, Robb, R-o-b-b. I am the executive director of Child USAAdvocacy. We're a national organization. I testify all over the country on bills like this or any child protection bills. I am also a survivor of child sexual abuse. Child sexual abuse, as we can see just by watching the press, is an ubiquitous social problem that occurs in all social groups. Many people think that it just happens in the clergy, and that's just not the case. In fact, the evidence tells us and research tells us that the vast amount of child sexual abuse occurs in the family. The most recent data tells us that 38 to 40 percent occurs in the family. That is indeed where my abuse for eight years occurred. A very small part of that ugly pie of child

sexual abuse is clergy, so I know there's a lot of concerns about the Catholic church and that type of thing. By the way, I went to a Catholic school for 12 years. I have no problem with the Catholic church. I do have a problem with child sexual abuse. The data presently shows that more than 10 percent of our children will be sexually assaulted before their 18th birthday. In my written testimony, there are citations to all of this data. One in 5 girls and 1 in 13 boys, presently, that is where the research is landing, and most of those children will be repeatedly sexually assaulted by their perpetrator. This happens in-- with doctors, schools, camps, youth-serving organizations, neighborhood-- neighbors, and, again, family is the biggest part of this ugly pie. Nearly 90 percent of all perpetrators are known by the child. In fact, they tend to have a very close and trusting relationship with that-- with that child. I'd like to talk a little bit about the-- the science of traumatology, if I may. So essentially, the way children's brains respond to trauma is a little bit different than the way the adult brain responds. So what happens when we're traumatized, as we all know, if you're almost in a car crash, for example, or a dog jumps out at you, you have that startle reflex, right? Your heart rate goes up. You start to feel sweaty. You may even feel a little sick to your stomach. Well, that is cortisol working in your body so you can do what? Fight, right? Freeze or flight, right? That is a normal response. But what happens to children that are under chronic-- chronic stress? That those cortisol levels and the adrenaline levels within the brain of a growing child affect the architecture of that brain; it affects the neurotransmitters and the neurons themselves. In fact, we have data that suggests that the hippocampus in the brain shrinks when children are-- are, you know, exposed to chronic stress. By the way, the hippo-- hippocampus, for anyone who would like to know, is the memory keeper. That's where kids store memory. So then what happens? What we know is that then those kids not only suffer from memory issues, focus issues, concentration issues, but we know that they also struggle in school. So what does that do? That affects the state of Nebraska because schools are burdened with the cost of dealing with children that are suffering. It also affects social science-- excuse me, our-- our-- it affects our-- excuse me. It affects our-- our social systems that are supporting social workers, that types of thing, medical. It's across the board. Let me--

LATHROP: So I'm going to-- I'm going to stop you.

KATHRYN ROBB: Yeah.

LATHROP: OK?

KATHRYN ROBB: Yep.

LATHROP: I'm confident there will be questions--

KATHRYN ROBB: Sure.

LATHROP: --because I have some myself, but let's-- just because we got to keep to the light system--

KATHRYN ROBB: Of course.

LATHROP: --and enforce it equally--

KATHRYN ROBB: Yes.

LATHROP: --and consistently or I end up with problems. So let's-- let's--

KATHRYN ROBB: Senator, if I could just add one thing to wrap it up?

LATHROP: Sure.

KATHRYN ROBB: I'm sorry. Right now, 17 states have eliminated their statute of limitation for child sexual abuse, 27 states have revival or window legislation, so this is a national movement. I just wanted you to know.

LATHROP: OK. OK. So do any of the members have questions? Can I ask you-- you were describing the challenges this presents to a developing child's brain, this kind of repeated trauma. What's this do or how does this play into repressed memory and the point in time at which an adult realizes that this happened to them as a child? Are you the person to ask that question to?

KATHRYN ROBB: I-- I believe I am, Senator.

LATHROP: OK. So why don't we have you address--

KATHRYN ROBB: I'm so grateful that you asked the question. So the science of traumatology and the science of delayed disclosure has told us that the trauma of childhood sexual abuse, especially repeated trauma, right? It causes depression, anxiety, eating issues, sleeping issues, all sorts of issues. It is, as a survivor myself, is not something that people shout off the rooftops, right? Especially if it's happening where most of it happens by someone they know and trust, right? So what happens is it's not just repressed memory based on the science. It's also people don't want to think about it. I can

tell everyone in this committee I have not forgotten how terribly abused I was for over eight years. I've not forgotten that, right? So some people are so traumatized, and if we look to the science of traumatology, we understand that when people are in shock, especially children, that data gets sent back in a place where we keep it there because the child must do that, because the child must survive, and the only way they can survive is to send that information in the back of their brains and store it away. Now that gets triggered later on by certain events in one's life.

LATHROP: So I want to ask a question about that because Senator Pirsch did extend the statute of limitations for these kind of causes of action to someone into their 30s, so they have into their 30s to file a suit against an abuser or an institution that may be responsible. When does this generally become-- when does one who has repressed this experience become aware that it actually happened? Because when we talk about, and-- and I may give a little bit of a speech here. When we talk about statutes of limitation, there are policy reasons for those statutes of limitation. Part of it is being able to come up with evidence of what happened, allowing people to defend themselves fairly, so that getting rid of statutes of limitations are really disadvan-- disadvantageous or-- or maybe they're policy reasons not to forever. So when do these folks who have been through these experiences know that this happened to me and, by gosh, I should do something about it?

KATHRYN ROBB: Thank you. I'd like to answer in two parts, if I may.

LATHROP: OK.

KATHRYN ROBB: One-- one is as a-- as--

LATHROP: I think this is central to the bills, so I'm going to ask you--

KATHRYN ROBB: Oh, absolutely. One, as an attorney and as a citizen of this beautiful country, I believe in due process, I believe in statute of limitations. They do indeed serve a purpose, but I would argue that these are not slip-and-fall cases. These are not fender-bender cases, right? These are not breach-of-contract cases. We're talking about the rape, sodomy, and sexual assault of children, so that's one thing. But we also, for the attorneys in this room, as we all know, we have built into our justice system and our civil system-- we have built in the civil rules of procedure, right? We have built in the rules of evidence. Those are safety nets. Attorneys

are not going to take weak cases anyway, and-- and they still have to prove their case. As we know, plaintiffs have to survive a 12(b) motion so they can move forward, so there's already things existing. And I further believe that our laws, our laws that you create, that this body creates, are based on justice, reason, common sense and sound public policy, right? We have exceptions to laws and exceptions to those exceptions. And if we're talking about the rape of children, by God, I think we should have it. Now to answer your question about delayed--

LATHROP: Yeah, that's what I was gonna--

KATHRYN ROBB: --about delayed-- delayed disclosure, the average age, as we understand it right now, is age 52, but we know that--

LATHROP: Pardon me. Is that when they come forward or is that when they realize that this-- that they've been through this experience?

KATHRYN ROBB: The average age of-- of coming forward, well, they're usually-- sometimes are-- they coincide, right? Of course they coincide.

LATHROP: I'm sure sometimes they do.

KATHRYN ROBB: Yes, right.

LATHROP: But what's the average age if a-- if a child is sexually assaulted, and I'll pick an age, eight, seven or eight years old or-- or ten, and they've repressed that memory, something triggers it and they realize that this has happened to me in the past, when does-- when's-- what's the average age of an individual that has that experience?

KATHRYN ROBB: Again, it's close to age 52--

LATHROP: OK.

KATHRYN ROBB: --and it's 40, 50, 60. Sometimes it gets triggered by the death of a parent when you're, you know, getting older or it gets triggered because your child is turning the age when your abuse start-- started, where-- there's a bunch of different triggers-- or you walk into the church or you walk to the camp or you see a bumper sticker and it comes back to you. But--

LATHROP: OK.

KATHRYN ROBB: --most experts would argue that-- that few of these are re-- truly repressed, and this is very nuanced science, Senator. But most would argue that it's more the depression, the fear, the shame that-- that really silences. So I often say, why should sexual predators be protected by the passage of time while victims suff-- suffer in perpetuity?

LATHROP: OK. Do-- Senator Geist.

GEIST: You-- you said something I just-- at-- at the very beginning, so hopefully we can-- I can rewind you back there. You were talking about some states have no statute of limitations and others have some kind of window. What did you say there?

KATHRYN ROBB: Sure. Seventeen states have eliminated their statute of limitations civilly--

GEIST: Uh-huh.

KATHRYN ROBB: --for civil, and that's what we're talking about here, right? And then right now, 27 states have--and-- and this, by the way, is in my written testimony--

GEIST: OK, so--

KATHRYN ROBB: --with charts and graphs and stuff.

GEIST: --in here, OK.

KATHRYN ROBB: Twenty-seven states have either enacted revival, meaning extending the statute of limitations-- so let's say it was age 21. They extend it close-- getting-- try to get-- trying to get close to that 52 number with revival, meaning if you were 30 and barred outside of statute, right, then you can still bring it. Some states, many states have opened up what we call a window. This is becoming the national trend. So essentially, they'll increase the period prospectively, and then they'll also open a one-year, two-year, three-year window. Some states have opened up second and third windows.

GEIST: OK.

KATHRYN ROBB: So it's really-- and-- and the purpose of the window in revival, and I realize that this is not a part of this legislation. The purpose is to expose hidden predators, because really this legislation does three things. It exposes hidden predators, right? It

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

educates the public, right? And most im-- one of the most important things is it shifts the cost of sexual abuse away from the victim over to the bad guys and, by the way, away-- away from the state because it is an enormous financial burden on the state of Nebraska.

GEIST: OK, thank you.

KATHRYN ROBB: Thank you.

LATHROP: Any other questions? I see none. Thank you for being here today. We appreciate your testimony.

KATHRYN ROBB: Thank you kindly.

LATHROP: Our next testifier is going to be Shaun Dougherty. Good afternoon and welcome.

SHAUN DOUGHERTY: Good afternoon. Thank you for having me. My name is Shaun Dougherty, S-h-a-u-n D-o-u-g-h-e-r-t-y. I am the current president of the SNAP Network, which is the Survivors Network of those Abused by Priests. I want to thank you for giving me this opportunity to testify before you today. I was sexually assaulted from the ages of ten through my early teens by my religion teacher, who was also my peewee basketball coach and parish priest. I first disclosed my abuse in 1991 after being administered the military entrance oath that I took at the age of 21. As soon as I swore the oath, I felt an incredible sense of duty to disclose to the authorities what had happened to me as a child, so to protect other children from him. This was the first time in my life that I had ever heard of the term "statutes of limitations" and that I had already timed out. I not only found out that day that there was nothing that I could do about the abuse that I had suffered, but, worse yet, if I did publicly dis-- disclose my abuser's name, I could be held accountable for slandering my abuser. If not for my oath, I had every intention to take the story of my abuse with me to my grave. Since then, I have personally spoken with thousands of men and women that have lived with similar experience as mine. Most victims that I speak with will never be able to bring themselves to come forward. I receive calls from grown men that are locked away in their bathrooms, away from their family's earshot, sobbing about the abuse they'd endured years ago. I've spoken with victims that are currently SWAT officers, United States Marines, corporate CEOs. They all break down in tears. One gentleman even phoned me from his duck blind. They all state the same thing. They wish they had the ability to protect children today from the monster that they experienced as a child. The

regret is real. The fact that we were only children at the time doesn't seem to factor with us. We were frozen into silence until adulthood, but now all carry that burden today. This bill is more about protect-- prevention than it is about accountability. Take the case of Dr. Jack Barto, a convicted pediatrician in western Pennsylvania. He was first credibly accused in 1998, but at the time, the community's support was so great that he barely-- was barely investigated. He went on to practice for 18 more years until he was arrested in 2018 at the age of 70, I might add, for-- and is currently serving a 158-year sentence for sexually assaulting one of his child patients. One of his victims that came forward was his own relative. Dr. Barto has left a trail of victims in his wake. Had Pennsylvanian statutes of limitations been what they are today, many children could have been spared from the horrible stance of child molestation. Statistics show that the average age of a child victim will sh-- will disclose their abuse is 52. I believe that our laws should reflect the data. How many Dr. Bartos are currently practicing here in Nebraska? I would welcome any questions.

LATHROP: OK, thank you for your testimony. Senator DeBoer.

DeBOER: Thank you for your testimony. I'm wondering-- I was kind of thinking about this on the last testifier as well. The sort of 52-year-old average of-- of when they come forward, do you-- do you think that that number might change over time, like maybe if stigma goes away it might become earlier, it might become later, it might-- do you-- is that something that you think is-- is changing--

SHAUN DOUGHERTY: My hope--

DeBOER: --in your experience?

SHAUN DOUGHERTY: My hope is the stigmatism about child sex abuse is changing daily. Since I became public in 2016, as my colleague said, how many different states have changed their laws? We're finding because of the MeToo movement-- my parents, I'm one of nine children, Irish-Catholic. There was a lot of sex going on in my family, but nobody talked about it. Today, children, with the MeToo movement, with hearings like this, with reports that your Attorney General just brought out, it is being talked about more openly. It is not the stigmatism that it used to be. It isn't taboo. So I hope that not only will our age come down, but more children will actually start to feel comfort. Without-- if we don't do laws like this, if we don't make it easier for them to be believed, to be thought of, that's why they stay silent. So I do believe through acts like this, we are

slowly, a little too slowly, switching it on both ends to where the past victims are going to start talking earlier and the current victims will start talking earlier, is my hope.

DeBOER: OK, thank you.

SHAUN DOUGHERTY: Thank you.

LATHROP: Very good. I don't see any other questions. Thank you for being here today and your testimony.

SHAUN DOUGHERTY: Thank you for having me.

LATHROP: Our next testifier will be Stacey Naiman. I hope I pronounced your name correctly.

STACEY NAIMAN: Naiman.

LATHROP: Good afternoon and welcome.

STACEY NAIMAN: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My-- my name is Stacey, S-t-a-c-e-y, Naiman, N-a-i-m-a-n.

LATHROP: Ms. Naiman, I'm going to ask you to speak up just a little bit so we can get a good transcription of your testimony.

STACEY NAIMAN: I live in Kearney, Nebraska, and I support Senator Rich Pahls' bill to eliminate the statute of limit-- of limitations for third parties in civil cases of sexual assault of a child. Sorry. As I sat down to prepare my story, I struggled immensely. Not only is this a very difficult and uncomfortable topic to talk about, it's nearly impossible to truly and accurately describe the unbearable pain that not only I experienced, but my family faced as well. I was born and raised in O'Neill, Nebraska. I attended St. Mary's Catholic, grade school and high school. In 1999, when I was 15 years old, I was groomed and sexually abused by a Catholic priest, Father Mark Merkel. He was my religion teacher, and he also taught me morality as well. The abuse started after having major back surgery to remove a tumor from my spine. At a very vulnerable time, I needed someone to talk to, and he was always there to listen. However, he soon changed the course of our conversations and he began talking sexually to me, as well as touching me inappropriately. He told me all the things he fantasized about doing to me, and he described these in great detail on numerous occasions. I was never comfortable and I told him to stop several times, but he never listened and the abuse continued. Within

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

months, I started slowly slipping into a deep depression. I no longer found joy in anything. I cried daily. I struggled to get out of bed yet had trouble sleeping. I lost weight, looked pale, and many people began asking my parents if I was sick. Nobody could understand why I was falling into such a deep depression, not even myself. The effects of the abuse were debilitating, and the shame and guilt consumed me. I attempted suicide and carved "go to hell" into my leg. I spent numerous days at the doctor's office. I also had to go to school and face the rumors, the bullying, and the disgraceful looks all alone. My parents, who are with me here today, were my only saving grace. In 1999, my case was investigated by the Nebraska State Patrol. After taking my statement, they questioned Father Merkel. He admitted to everything in my report. However, the investigators told us that we had no grounds to press charges. The county attorney reiterated that legal action could not be pursued in my case. I was devastated, defeated, and lost all hope for justice. Five years later, in 2004, my case was reopened, only to be quickly closed again. An officer from the Nebraska State Patrol called and asked if I could remember anything else that may have happened. After replying no, he stated they were going to close my case. At the time, I didn't understand that it was because of the Holt County Attorney's decision to not prosecute. This brought back many emotional memories I had previously suppressed in attempt to move on with my life. My depression came back with a vengeance and I found myself contemplating suicide again. After two unsuccessful attempts to address my abuse through the Nebraska legal system, my parents and I turned to the Catholic church and Archbishop Elden Curtiss of Omaha Diocese. All three of us wrote him letters. Unfortunately, even though Father Merkel admitted to the sexual abuse, there was still no accountability or justice in my case, and he wasn't laicized until 2006. In 2018, the Nebraska Attorney General's Office opened my case for a third time. After an investigator with the Nebraska Department of Justice interviewed me, interviewed Catholic church officials, and reviewed documents from my case, it was determined a crime did indeed happen. After nearly 20 years, I finally felt heard and the crimes against me invalidated. However, because of the statute of limitations, my family and I are no longer able to pursue charges and there remains no justice in my case. For me, this is about justice and preventing an admitted sexual abuser from victimizing additional children, families, and communities. Why is there no accountability? Just because a crime happened years ago, doesn't mean it should be disregarded. In 1999, we did everything right. We reported the abuse to law enforcement. It was investigated and determined to be true. In fact, Father Merkel admitted to it, yet we were not allowed to press charges. If LB833

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

passes, it will protect children from these third-party institutions, and it will force them to confront their inaction.

LATHROP: I'm going to ask-- there may be questions, but I have to-- I have to observe that three-minute light so everybody has an opportunity to testify.

STACEY NAIMAN: Sure.

LATHROP: It's the worst part of this job, is enforcing the red light. But do any of the members have questions for this testifier? I don't have a question. I just want to express my appreciation for the courage it shows for you to come here today and testify. I-- I can't imagine what you've been through, but I-- I can tell you that it-- we see people who come and tell their stories to this committee when they want a change in the law and the courage you showed today to come forward in a very public way and share your account is-- is impressive and I-- I want to acknowledge that and thank you for being here today.

STACEY NAIMAN: Thank you.

LATHROP: OK, thank you.

STACEY NAIMAN: Thank you.

LATHROP: I think we're going to hear from one of your parents too, right? OK. Debra Dappen would be the next testifier. Good afternoon.

DEBRA DAPPEN: Good afternoon. Debra Dappen, D-e-b-r-a D-a-p-p-e-n, and I'm here on-- as a survivor and I'm a leader at SNAP, Survivors of those Abused by a Priest. And thank you so much for the privilege today to talk with you this afternoon. Would you agree no child should have to endure torture, silencing-- excuse me-- and mind control for their entire life? This is why you're here. Even though these crimes against me were-- had happened over 50 years ago, the trauma continues daily: nightmares, health issues, the fear of authority, and living in a constant state of high alert. And that is the killer, whether it be by chronic disease, PTSD, or suicide. Monsignor William J. Devine, a Catholic priest who came from Ireland, was a military chaplain in World War II and was born the same year my grand-- grandmother was, in 1903. When I was six years old, he strapped me to the church altar, raped and tortured me in ways you don't even want to imagine. For the past 20 years, I have been trying to file a police report, not only for justice in my case, but for all of his victims. Due to the statute of limitations, he was never-- he

has never been publicly exposed or investigated and was un-- was able to die a free man. Meanwhile, I've had to carry the burden of his crimes all these years, as all silenced victims do. That is why it's so important to eliminate the statute of limitations on these horrific, life altering crimes. Please support LB833. We need to protect our children and hold criminals accountable for the abusive crimes they make to our communities, and we want to create a safe and healthy environment in which to live. There is no reason to believe these crimes are not still happening today, and the best way to protect our children is to get criminals off the streets. Please do your job and protect children and allow justice to be served. Thank you for your time, appreciate it.

LATHROP: Thank you for your testimony. I don't see any questions today, but we appreciate you being here.

DEBRA DAPPEN: Thank you.

LATHROP: Next is Jack Hoskins. Jack Hoskins here? Good afternoon and welcome.

JACK HOSKING: Thank you. My name is Jack Hosking, H-o-s-k-i-n-g, 12733 Davenport Plaza, Omaha. I want to thank all the senators for sharing their time with us. I particularly want to thank Senator Pahls for his courage to bring this issue forward. The purpose of this bill has-- the-- any of these bills that has to do with sexual abuse are vast, difficult, and perhaps can only be taken one little step at a time. But victims have been lost for years and trying to find a way to come forward, to get rid of the bad feelings, some of which we've heard here today. I'm closely involved with this, what happens to an abused child. I've been involved in attempts at changing the statute of limitations several times now, the last being Senator Krist. They always seem to run into little problems in understanding what good you senators can do. Don't think there's anybody in here, in this room, who doesn't understand the extreme difficulty created not only in victims, but also in the families. I think all of you know that the statutes of limitations was designed for business purposes. I think every state's had statute of limitations. The problem comes in is that you try to use these laws to protect abused children, they were never designed to help abused children and, therefore, we must change-- we must change it. The-- the idea that-- the idea that we could simply pick this one item-- that is, to give victims a chance to sue the entity, the church, the hospitals, the school, that type of thing-- that gives something more than just possibility of money. What it gives them is a chance to

have hope, and that-- and that effort is therapy itself. So anything else, that's very important, and I've experienced that very thing. If we-- if we can allow that to happen, it does other things too. It also helps the entity to start thinking about what they've helped create and protect and perhaps clean up their act too. So that's what I wanted to say to you.

LATHROP: OK.

JACK HOSKING: Any questions?

LATHROP: I don't see any questions today, but thanks for being here.

JACK HOSKING: Thank you, everybody.

LATHROP: And finally, Erin Zakrzewski-- probably torturing that. Good afternoon and welcome.

ERIN ZAKRZEWSKI: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Erin Zakrzewski, E-r-i-n Z-a-k-r-z-e-w-s-k-i. I live in O'Neill, Nebraska, and I support Senator Rich Pahls's bill to eliminate the statute of limitations for third parties in civil cases of sexual assault of a child. I am the mother of Stacey Naiman. In 1999, my daughter was sexually abused by Father Mark Merkel. At that time, he was the assistant pastor of St. Patrick's Catholic Church in O'Neill, Nebraska, and a teacher at St. Mary's High School, where our daughter attended. In retrospect, Father Mark Merkel began grooming Stacey and our family in 1998. He gained our trust, became our friend, and we opened our door to him. He had meals in our home, said Mass, and blessed the family farm. We were blind to what he was doing to our daughter and family. In February of 1999, before the actual abuse began but not prior to the start of our friendship, Stacey had major back surgery. The surgery removed a tumor in the T11 vertebrae and included bone grafting and inserted pins and rods to stabilize her spine. As a result of the surgery, Stacey was required to wear a back brace for six months with minimal activity and no lifting. As you can imagine, for a 15-year-old, this was extremely difficult. Her peers were off having fun, taking part in sports activities, etcetera, and she was left behind. It was at this time, when she was lonely and most vulnerable, that Father Mark Merkel started abusing my daughter. He already had gained her trust and control. The abuse lasted approximately nine months. During this time, Stacey slipped into a depression, had trouble sleeping. She struggled at school and would have debilitating panic attacks. She was prescribed antidepressants, but unfortunately,

her depression and panic attacks worsened, leaving doctors baffled at the cause. After several panic attacks sent us to the ER and multiple trips to the doctor, we were encouraged to try counseling to see if it would help determine the cause of her depression. On the Friday after Thanksgiving, my daughter finally confided in me about the abuse. It was a parent's worst nightmare. Shortly after, on December 1, Stacey had a severe panic attack and carved the words "go to hell" into her leg. We took her to the ER and she was sent to Richard Young Hospital in Kearney. The abuse was reported to the Nebraska State Patrol and, after a thorough investigation, her claims were found truthful and validated by the evidence and statements. However, the county attorney failed to prosecute. The impact this had on our family life was immense emotionally, socially and financially. When Stacey was in high school, I would be called to the school four out of five days every week. She would be in the counselor's office crying uncontrollably, and the counselor-- counselor would call me because she couldn't calm her down. I would either take her home or to the doctor, and it was a continuous cycle due to the depression caused by the abuse. She was afraid to stay home alone. She was afraid to hear the phone ring. She was afraid to answer the door. She was afraid of everything. She couldn't sleep. She would spend many nights on the floor of our bedroom. By this time, she was 16. How many 16-year-olds want their mother sleeping in their room or want to sleep in their parents' bedroom? As a wife and the mother of three children, it was very difficult to do what was expected of me. My husband, Paul, and I owned and operated two businesses at this time. Paul managed Westside Truckstop and I managed Westside Restaurant. Had we not had a good marriage and working relationship, we would not have survived this ordeal, and to this day, I am not sure we have truly survived it, the financial toll, the doctor bills, prescriptions, counseling, the insurance company raising rates over the years ahead, loss of work time so I could care for Stacey and of a social life for myself and my husband. It was all we could do to keep the businesses going. It was just survival mode for the years ahead. Thank goodness my husband and I were on the same page during these years. Our daughter was robbed of her childhood, her innocence, her high school years because this man wanted to pleasure himself. He had total disregard for our daughter and our family. I want what is best for my child. No words would ever describe watching my child suffer and the effect this has had on my family. As a mother, and because of what my daughter and our family experienced, I urge you to vote in favor of Senator Pahls' bill and pass it. I never want another child or family to experience what we have been through, and this bill is the first step towards making that possible. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

LATHROP: Sure. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you for your testimony. Did the county attorney explain why he did not prosecute?

ERIN ZAKRZEWSKI: He just-- he told us that the law didn't allow him to prosecute.

LATHROP: Did you follow up on that to see if what he was saying was factual?

ERIN ZAKRZEWSKI: Who do you follow up with?

BRANDT: That's a great question. Thank you.

LATHROP: I do not see any other questions. Again, thanks for being here. I know it's not easy, but we appreciate you coming before the committee and sharing that.

ERIN ZAKRZEWSKI: Thank you very much.

LATHROP: We will now open the floor to proponent testimony, so if you're in favor of the bill you may come forward. Is there anyone here to testify in support of the bill? Sure. I will ask, if you're going to testify today, if you-- if you have prepared remarks, we have to-- we have to honor the-- the light system. It seems sort of like nit-picky, but as soon as I don't make everybody honor the light system, then I get people that are upset when I have to enforce it. So if you have prepared testimony and you run out of time, we'll have copies of that and we'll-- we will take a look at it and be able to see the balance of your testimony if you-- if you run out of time. And with that, welcome to the Judiciary Committee.

NATHAN ARENTSEN: Honorable Chairman and members of the committee, I stand shoulder-- forgive me. I stand shoulder to shoulder with other sexual assault survivors in supporting LB833.

LATHROP: Could you share your name and spell it for us?

NATHAN ARENTSEN: I-- excuse me. Nathan Arentsen, last name A-r-e-n-t-s-e-n.

LATHROP: OK, thank you.

NATHAN ARENTSEN: I urge you to pass LB833 out of this committee and to vote for it on the floor. In the future, more must be done. I

refer you to LB833, second page, if you have it in front of you, lines 22 to 24. I will read its language to you: This subsection does not extend the statute of limitations applicable to a claim subject to the State Tort Claims Act or the Political Subdivisions Tort Claims Act. Such an exemption is apparently necessary in order for this vital bill to gain enough support to pass. And again, I very much hope that this bill, as it is currently written, does pass. And again, I very much hope that a future Legislature will address this exemption because Nebraska's sovereign immunity should not shield known sexual predators who work with children within our state and local government agencies. Nebraska's Department of Health and Human Services, specifically its Division of Children and Family Services, known as CFS, and its Division of Medicaid and Long-Term Care, have both shown through their actions, through the complaints of current and former staff, and through their internal training and policy materials that they have a systemic culture of ignoring, harassing, and humiliating sexual and domestic assault survivors, and then paying, protecting, and professionally advancing violent sexual predators who work with children within their services. My child and I experienced a brutal, forcible sexual assault from a CFS-paid, -protected, and subsequently rewarded violent sexual predator, and I have experienced years of life-shattering harassment, humiliation, and rejection from state staff when I have tried to come forward. I know-- I will briefly-- I know that I have a yellow light, but I'll briefly describe the assault, if you'll allow me. On August 14, 2019, a CFS child welfare contractor came to my home. At first, I thought it was a blessing, as their-- as their arrival was in response to a violent attack which my child and I had suffered from another individual several weeks before, and the contractor at first seemed reassuring and charming. Gradually it became a living nightmare, one which I still see when I close my eyes. Over the next several weeks, the contractor groomed, isolated, and then brutally sexually assaulted me as my child sat nearby. To groom me, they dismissed my memories of the earlier attack as unimportant and then chillingly told me that they themselves were a habitually violent domestic abuser with a child, and that they thought it was best for me as a survivor to just get over my memories. Then, for several weeks, they encouraged me to be romantic and appreciative, and then finally, during a joint session with my child and myself and another person, the contractor lurched toward me, placed the other person's head on my genitals, forcibly pinned me down under the other person's body weight and then grabbed my wrist. I resisted and struggled, but then prayed that the attack would soon be over. It was not soon over. There were cre-- the contractor made romantic sounds while physically

forcing my hand to rub hard all over the other person's body from head to bottom, again and again. I knew that my one-year-old child could likely hear all of this brutal assault from the next room. When the attack finally ended, the contractor lifted the other person's head off my genitals, released the grip on my wrist, and then smiled right into my eyes.

LATHROP: OK.

NATHAN ARENTSEN: I urge you to please repeal Nebraska's sovereign immunity for sexual assault involving children. Thank you, and I welcome your questions.

LATHROP: OK. I don't see any questions today, but thank you for your testimony and being here today.

NATHAN ARENTSEN: Thank you.

LATHROP: Anyone else here to testify as a proponent of LB833? OK, we will take opponent testimony. If you're in here to testify in opposition to LB833, you may come forward. OK. It's like the third phone that's gone off and one's gone off twice, so please check your cell phone so you're not interrupting someone's testimony or the hearing.

JOHN MEZGER: My name is John Mezger. I thank the members of the committee for listening to my testimony. It's spelled J-o-h-n M-e-z-g-e-r. I sort of feel like the only worm in a fish pond right now as an opponent to a bill that is very, very emotional, and my heart does go out to the people that have spoken. And I, too, truly believe that the perpetrator of crimes should be caught. But I also believe in the right to finding out if a person is truly guilty or innocent. So I'm going to stand up for people that are accused. In the 18-- in the 1980s, news was about a childcare in southern California where it was believed that satanic ritual abuse was going on. The FBI-- the [INAUDIBLE]-- the Scotland Yard and Interpol never found any advice-- any evidence of-- of satanic ritual abuse. It was determined that the idea was put into the children's heads by the counselors. It was suggested and worked on by their questioning and-- and their counseling. Secondly, I attend a lot of criminal cases for sex offenders, and I recently was at a case where a man was accused of-- of touching a child. He claims he didn't do it. Now you can say, well, they all claim they didn't do it, but he was found-- or he-- he-- he pled no contest because he was looking at a court case to prove himself that he did not touch that child. If he were to lose,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

would end up with many years in prison and if he took a plea, which is a nice way of getting out of a real jam, he ends up with five years in prison, and all he did was testify no contest. He was not even given the opportunity to speak for himself in the court, which was very unusual. The judge, usually, in a sentencing, they'll ask the-- the defendant to say a few words. He was-- he started to and she cut him off. A man accused of sexual crime hasn't got a chance. He's guilty the minute somebody te-- somebody testifies and cries in front of the jury or in front of the judge because to-- to go to court, the penalties are so strong that you end up taking a plea. I want to talk about false memory. False memory came up at the trial about-- for a Ms. McKinley-- Mackenzie [PHONETIC] in the latest trial last month, in the sex trial, one of the cases was dropped because of false memory. I have given you a piece of paper, and I will abide by the red light.

LATHROP: I appreciate that. Let's see if there's any questions for you.

JOHN MEZGER: Is there any questions?

LATHROP: I know you've been in front of the committee before, so--

JOHN MEZGER: Yeah, I have.

LATHROP: --I appreciate your adherence to the--

JOHN MEZGER: And I thank you very much.

LATHROP: --to the light system. Thanks for being here today. I don't see any questions for you. Any other opponent testimony? Good afternoon.

GREGORY LAUBY: Senator Lathrop, members of the committee, good afternoon. I'm Gregory C. Lauby, G-r-e-g-o-r-y, C., as in "Christian," Lauby, L-a-u-b-y. I oppose LB833 eliminating the statute of limitations for civil claims based on allegations which do not require collaboration or conviction. The study results vary, but there seems to be an agreement, even with the FBI, that 2 to 10 percent of accusations of sexual assault in criminal cases are false. With that in mind, I would like to read a portion of the Commentaries on the Laws of England by William Blackstone, written in 1765 through 1769. The use-- quote: The use of the statute of limitations is to preserve the peace of the kingdom and to prevent innumerable perjuries which might ensue if a man were allowed to bring an action for any injury committed at any distance of time. Upon both of these

accounts, the law, therefore, holds that-- and rather than mangle the Latin phrase, I'll just read the translation I have, which is: In the interest of society as a whole, litigation must come to an end. Resuming the quote: Upon the same principle, the Athenian laws in general prohibited all actions where an injury was committed five years before the complaint was made; and if, therefore, in any suit the injury or cause of action happened earlier than the period expressly limited by law, the defendant may plead the statute of limitations in bar. The pro-- the protection of a statute of limitations is so deeply rooted in the history and traditions of Western civilization that it may be protected by the privilege and immunities clause of the 14th Amendment. My question, which I hope Senator Pahls will answer before the end of this hearing, is that without a protection from the statute of limitations, what does the state have to protect it if a false accusation is made against the deceased? I believe providing funding for access to competent treatment to speed trauma recovery and healthy closure would be more beneficial to the victim and to the community, but less dangerous to the blameless and the integrity of the court, than elimination of the statute completely. The danger of this bill is clear from the exception given to law enforcement and other state government employees. If there are no further questions or no questions, I thank you for your attention.

LATHROP: I don't see any questions. Thanks for being here.

GREGORY LAUBY: Thank you.

LATHROP: Next opponent. Good afternoon.

TOM VENZOR: Afternoon. Just so you know, there's two testimonies. One is a longer written one, and one is a sort of spoken one I'll give just because the written one's a little long. My name is-- good afternoon, Chairman Lathrop and members of the Judiciary-- Judiciary Committee. My name is Tom Venzor. I'm the-- T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference. Last November, the Attorney General issued his report on clergy sexual abuse. The report documented the abusive behaviors of priests, deacons, and church employees over the span of several decades. While nothing can adequately address the life-altering pain of sex abuse, the church is profoundly sorrowful for these grave failings. To anybody present, and especially for those who've testified today who have been abused, and to their family members, we are sorry for the pain, betrayal, and suffering you've experienced in the church. You deserved better, and we ask for your forgiveness. As a response to

the historic sex abuse scandal unveiled in 2002, the Catholic church engages in best practices to implement robust child and youth protection policies and is committed to the welfare of everyone in our care. Regarding more specifically LB833, we believe it suffers from two basic flaws. First, LB833's extension of the statute of limitations is bad public policy. Statutes of limitations serve a legitimate public policy interest for both parties. Plaintiffs are entitled to a reasonable period of time to raise their claims and, likewise, defendants should be entitled to a reasonable sense of finality to avoid defending against-- against difficult-to-prove allegations 30, 40, 50, and even 60 years down the road. Second, and an even more fundamental injustice in this bill, is LB833-- that LB833 perpetuates inequitable treatment of victims. LB833 goes out of its way to apply only to private entities and not to public institutions. But child sex abuse, as you-- as you've heard already, is pervasive within our public institutions. A 2020 World-Herald report had 56 school educators who were involved in child sex abuse since 2014. A 2004 U.S. Department of Education study estimates that 10 percent of students experienced sex abuse in the public school, and that study's author notes that the-- the abuse problem in schools is likely more than 100 times the abuse problem by priests. The same estimates are true for children in juvenile detention centers. In a 2017 report, Nebraska Inspectors-- Inspector General of Child Welfare identified 50 verified victims in-- of child sex abuse in Nebraska's child welfare and juvenile justice system in a three-- three-year period. These two systems combined care for less than half of the number of children and youth served under the care of the Catholic church. While it is understandable why the church's failures are often magnified, the child sex abuse problem in our society is mostly occurring outside of the church, and I provide some data there from the U.S. Department of Health and Human Services that shows that about 99-point-- that over 99.9 percent of the cases are-- are basically occurring outside of the church in-- in-- based on the Attorney General's report and that data. Ultimately, we believe that LB833 is wholly inadequate without the inclusion of public institutions and fails to provide justice, equity, and fairness to all victims and in its place, we would encourage the committee to consider the adoption of Senator Halloran's LB1200. We do not believe LB833 is the right path forward for providing fairness to third-party institutions and justice for all victims. Thank you for your time and consideration.

LATHROP: Thank you, Mr. Venzor. Senator DeBoer.

DeBOER: What is Halloran's LB1200?

TOM VENZOR: Yeah, yeah, so it's a bill that just got introduced yesterday, so-- but basically it creates requisite exemptions in statute based on the Political Subdivision Tort Claims Act and the State Tort Claims Act in order that it would mirror the liability for those public institutions, similar to those of private institutions currently. So that 12-year-after-21 standard, Senator Halloran's-- Halloran's bill would basically mirror that standard for public institutions.

DeBOER: Is that what this is here? So it mirrors this one or it mirrors what's already in place?

TOM VENZOR: Well, it mirrors what's currently the law under 25-228, so indefinite against the perpetrator and then 12 years after 21 for the third-party entity or the public institution.

DeBOER: And-- and what's this one? I haven't-- I haven't looked at it. What's the numbers on this one? I don't have it memorized.

LATHROP: Sorry, could you repeat that question?

DeBOER: In the Pahls-- in the Pahls bill, what is it? The statute is--

TOM VENZOR: The statute is 25-228, I believe. I got it in front of me. I should know that though. Yeah, yeah, 25-228, in which this-- this provision of statute clear-- without even needing to say so, already clearly only applies to private institutions. And that's why we've noted that it sort of-- it goes out of its way to make very clear that it doesn't apply to public institutions, but that really wasn't necessary to put it in the bill because already, by its nature--

DeBOER: So then it--

TOM VENZOR: --it's not exempting that, Tort Claims Act.

DeBOER: Maybe that's-- that's just about getting your feelings hurt by having it in here though. That doesn't really affect the bill. I mean, if the-- if it doesn't need to be in there, then it doesn't affect the bill, right? So if we mirrored this language between both public and private entities, would you be OK with that?

TOM VENZOR: I think that would be an important start to this legislation. Again, we still have concerns about the extension of the statute of limitations indefinitely, but there definitely should be,

moving forward, equity between public institutions and private institutions. If the goal of this legislation is fairness, justice and equity for victims, that should be applied across the board.

DeBOER: So if-- if we expanded it, you said there are other concerns that you would have even if it was mirrored. Can-- can you go over those with me again? What are the concerns?

TOM VENZOR: Yeah, it's-- so it would be the first concern listed in the testimony, which is just having an indefinite exten-- an extension of the statute of limitations indefinitely move-- going forward. So as a third-party institution, you know, as the employer, when you're dealing with issues of employer liability, it just becomes a lot more difficult to deal with those claims, especially when you're dealing with claims that are 20, 30, 40, 50 years down the road, because you get issues with-- you get-- you get serious issues with memory, with witnesses, with record retention, etcetera, and the-- and those become burdens on the defendant to have to deal with in terms of litigation again. And that's where statutes of limitations just sort of as a philosophical matter are an attempt to basically balance the interests between both the plaintiff and the defendant, giving the plaintiff adequate time to come forward, but also giving the defendant some level of finality in-- in-- with the situation.

DeBOER: So is that-- is that-- like are you making a general legal argument about statute of limitations? Is that kind of what I'm hearing?

TOM VENZOR: Yeah, I mean, yeah, I'm talking generally about sort of the purpose of statute of limitations and-- and why that should apply in this situation.

DeBOER: Is the-- does the Catholic church have a specific angle on that? I mean, I'm-- I'm not trying to be difficult. I'm just trying to say, is there a specific angle or you're just-- you're here as an entity within the community making a claim about--

TOM VENZOR: Well, yeah, I mean, so we-- we obviously are here as an entity that, you know, serves across the state. We have parishes and schools. You know, we employ thousands of people. We have under our care, you know, tens of thousands of children, etcetera. So we do have an interest, obviously, in ensuring that when it comes to these situations, that there's an adequate balancing between the ability for plaintiffs to come forward with their claims. And as-- and on the

defendant side, for us, obviously, knowing that, you know, if there's things that we have to account for, we have to account for, but also just from a general principle of employer sort of liability, when you're having to defend against cases 20, 30, 40, 50 years down the road, that becomes just difficult to do. And so-- and-- and-- and those kind of things ultimately have an effect on-- on the institution, on our mission, etcetera, you know, and-- and the things that we do. And so that-- I think that's just probably going to be a general concern that any third-party institution or entity is going to have, not just sort of the church, but it's going to be the youth soccer league, it's going to be the grocery store, it's going to be whomever.

DeBOER: Typically, I hear those being argued as an attempt to prevent the state from stale claims or things, but I-- I take your point. All right. Thank you. I'm sorry.

LATHROP: Yeah. Senator Geist.

GEIST: Thank you for your testimony, and I-- I do have a question since you're the-- the opponent who actually represents a third party. So as an employer, what-- what would you do to protect yourself? What-- what things have you put in place, I-- I would guess, I would say, as the Catholic church? This has been a-- a difficult situation, so I'm guessing that there are some things you've put in place to make sure this doesn't happen again or--

TOM VENZOR: Um-hum.

GEIST: --could you speak to that?

TOM VENZOR: Yeah, yeah. Yeah, thank you. So, you know, very much in light of the 2002-- the revelation in 2002 of sort of the-- the church's sex abuse, you know, scandal, kind of especially with the Boston Globe Spotlight piece, there has been a lot of reform within the church throughout the country and-- and, in fact, internationally to ensure that that kind of historic sex abuse problem never occurs again. And so since 2002, both at the national level with the United States Conference of Catholic Bishops, which kind of houses all of sort of-- it's kind of a central point, an association for all the bishops and churches across the country. Through the USCCB and at the individual diocese level, and in Nebraska we have three dioceses, we have implemented policies and put in-- protections in place for child and youth protection. So, for example, you know, all of our clergy, all of our employees, all of our volunteers, anybody who's going to

have interactions with the youth in a parish, they've got to go through criminal background check; they've also got to go through regular training, basically, on identifying, you know, grooming, you know, dealing with healthy relationships, you know, how to spot grooming, and then obviously dealing with the duty to report, making sure that everybody knows that they have a legal obligation to report when they suspect any wrongdoing and making sure that that stuff's being reported to law enforcement, etcetera, so any given year, there's, you know, 15,000, you know, clergy, employees, etcetera, volunteers who have that training, are going through that. And then, as well, on the other side, with our-- with our-- our kids that we have in our care, like in our schools and also our religious education programs, they are getting education and training, as well, so that they can identify, you know, safe and healthy relationships, so that they can spot when something's going wrong or when somebody is taking advantage of them, and so that they can, one, identify that and then also speak up about it. I think we've-- we've all-- a lot of us have heard about, you know, things already earlier about the difficulty that there's been historically of maybe bringing those things forward, some of the statements, etcetera, that's been around that. And a lot of these policies and programs are in place so that we can help identify it early and-- and deal with it and so that we can get those allegations dealt with so we don't have situations of serial abuse-- abusers or other things like that. So we-- again, that's been happening since really 2002, and over time we obviously continue to try to strengthen those policies, making them better.

GEIST: So that-- that happens with not only the volunteers and teachers, but people that are within the church as well, the--

TOM VENZOR: Yeah, like the clergy members and, yeah, those folks.

GEIST: OK, thank you.

LATHROP: I see no other questions.

TOM VENZOR: OK.

LATHROP: Thanks for being here though.

TOM VENZOR: Appreciate it. Thank you.

LATHROP: Not an easy assignment today.

TOM VENZOR: No. Thank you.

LATHROP: Yep. Any other opponents to LB833? Welcome.

COLEEN NIELSEN: Good afternoon, Chairman Lightstrip and members of the Judiciary Committee. My name is Coleen Nielsen, that's spelled C-o-l-e-e-n N-i-e-l-s-e-- s-e-n, and I'm the registered lobbyist for the Nebraska Insurance Information Service. NIIS is a local trade association of property and casualty insurers doing business in Nebraska. I'm also testifying on behalf of the Nebraska Insurance Federation, and I'm testifying in opposition to LB833. Nebraska Revised Statute 25-228, the statute that this bill amends, currently provides that there are-- there not be any time limitation against an individual who directly causes injuries or-- or suffered by a child because of sexual assault. The current statutory limitation on entities is already a lengthy one at 12 years after the plaintiff's 21st birthday. This bill would remove this limitation entirely. As discussed, entities could include shopping malls, daycares, foster care facilities, amusement parks and private schools. Entities become liable when they owe a duty of care to a child and the entity is deemed negligent in a way that allowed a sexual assault to occur. These entities will most likely be insured by a business liability policy. The policy obligates an insurer to defend an insured against any suit seeking damages because of personal injury covered in that policy. The insurer is required to defend these covered claims, even if the insured is ultimately found in trial or other civil proceedings to have no legal obligation to pay damages. The insurer's obligation to defend is determined by the allegations contained in the lawsuit. A lawsuit brought against an entity many years after the offense was allegedly committed can be extremely difficult, if impossible, to defend. Legislatures impose statutes of limitations to ensure and promote efficiency in the court system and to preserve evidence and facts. Time can alter or memories fade. Re-- records can be destroyed. Witness-- witnesses can be difficult to find. Others may have become incapacitated or pass away. In essence, the limits are designed to protect us against unfair litigation by requiring certain timeliness. Our civil justice system is filled with rules and limitations to de-- designed to promote justice and fairness in the court system. But as we take away those limitations, we begin to skew it. We tip the scales and push the envelope toward a system that is unbalanced. This may be the unintended consequence of LB833. We ask that the committee vote against moving this bill forward.

LATHROP: Senator Geist.

GEIST: Thank you. I-- I am not an attorney, so I-- this is probably not a smart attorney question, but since I'm not one, it doesn't

matter. What is the standard for proving a third-party entity in this situation was negligent?

COLEEN NIELSEN: It-- it would be by the preponderance of the evidence, rather than beyond a reasonable doubt [INAUDIBLE] cases.

GEIST: OK, so that's a lower standard.

COLEEN NIELSEN: Right, it's a lower standard.

GEIST: OK. OK, thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you. Thank you for your testimony. I was curious. Earlier test-- earlier individual-- earlier, some individuals testified that the average time where someone probably remembers what happened is around 52. Would you guys be open to it being extended to 52 or, let's say, 55 to 60? Would you still oppose?

COLEEN NIELSEN: Generally, I-- I-- I don't-- I don't have the authority to-- to give an answer to that question, but we certainly would consider it, but-- rather than removing the statute of limitations entirely.

McKINNEY: All right, thank you.

COLEEN NIELSEN: Thank you.

LATHROP: So if I understand your testimony, you're not concerned about that lawsuit against the individual because that's not an insured event.

COLEEN NIELSEN: Correct.

LATHROP: A sexual assault is not an insurable event.

COLEEN NIELSEN: Right.

LATHROP: It becomes an insurable event if an employer negligently permits an employee to engage in that kind of conduct.

COLEEN NIELSEN: Right, yes.

LATHROP: OK. And your concern is with the latter, the entity that's insured, who would have to answer for their negligence in permitting an employee to engage in some kind of a sexual assault.

COLEEN NIELSEN: Yes.

LATHROP: So I was here when Senator Pirsch passed a bill that extended the statute of limitations in these circumstances to I think it's 12 years beyond their 21st birthday, so to 33. Did you see a rush of claims in that-- as a consequence of Senator Pirsch's claim-- or bill, rather?

COLEEN NIELSEN: I'm sorry, I don't have that information. I can try to-- I-- I can try to find out for you though.

LATHROP: I-- I'd like that.

COLEEN NIELSEN: OK.

LATHROP: I'd like to know if we're dealing with a handful of claims, are we dealing with a-- you know, when we talk to insurance companies and they testify before the committee, it's like, oh, my God, the sky is going to fall, and we don't know if that means the sky's gonna fall because two people are gonna make a claim or it's gonna fall because a thousand claims will come in a year if the statute of limitations is broadened.

COLEEN NIELSEN: Yes. Well, if I may-- if I may just add, a lot of times in these cases, I think the concern is, is that-- the concern is, is that we may not know a lot about a lot of these cases because the cases were settled and-- and often settled because there is lack of evidence, and so-- but I will try to find out how many claims we've-- we've seen.

LATHROP: Yeah, I'd be interested to know what effect Senator Pirsch's claim-- bill had on claims-

COLEEN NIELSEN: Right.

LATHROP: --in this arena. OK. Does that prompt any other questions? I see none. Thanks for being here. Good afternoon.

KORBY GILBERTSON: Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the American Property Casualty Insurance Association, or APCIA, in opposition to LB833. In an effort not to repeat what Ms. Nielsen talked about, I wanted to also bring to light some things that I raised with Senator Pahls in that, in addition to there being a lower standard of proof in-- in the civil cases, that

our issue remains with having something wide open, which obviously I had other testimony based on the way the original bill was drafted and we were not privy to the amendment, so I assume it just removes everything that was in the original legislation. But the concern with getting rid of the statute of limitations altogether is that then in Nebraska, you could potentially go back to 1989 for different causes of action against a third party that may not-- the owner of that business might not be the same owner. There may not be the same people there working. They may not have any knowledge of the act-- of the crime that was committed. They weren't involved. They didn't cover anything up. There are no additional guardrails in this legislation that would help guide whether or not suits could be brought. And a lot of times-- and this unfortunately is just a truth. We are a very litigious society and you will have some people that, even though they are not guilty, will still have to defend a lawsuit, and the cost of defending that lawsuit can be so high that they would choose to instead settle a claim rather than go to court. That's just a fact of life, and whether or not they are guilty or any of these things could be built-- be proven is left to the side. So I'd be happy to answer any questions.

LATHROP: I just want to comment on one thing, since you both brought it up. The preponderance of the evidence is the same standard used in every civil case, right?

KORBY GILBERTSON: Right.

LATHROP: There's nothing unique about this type of a lawsuit that would make a preponderance of the evidence unfair. It's just the standard of proof for civil cases.

KORBY GILBERTSON: Right, for a civil suit. That's--

LATHROP: OK.

KORBY GILBERTSON: Yeah, for civil.

LATHROP: OK. I don't see any other questions. Thanks for being here.

KORBY GILBERTSON: OK. Thank you.

LATHROP: Any other opponent testimony? Anyone here to testify in the neutral capacity? Seeing none, Senator Pahls, you may close. As you approach, I will, for the record-- this bill has generated three position letters, three proponent and no opponent and no neutral letters.

PAHLS: OK. Thank you.

LATHROP: Senator Pahls, you may close.

PAHLS: Thank you, Chair. What I do hope you do is recall some of the information that the people we brought in, who deal with this all over the United States, and also want you to think-- think about this. We all know what insurance is. They're there to make money, so they're-- they're going to try to find the easiest way to. That's just life. I know that because I was Chair of Banking, Commerce and Insurance. I know what they do. Doesn't make them bad, I just know what they do. That's-- and also I understand-- I did try to stay out of the-- bringing the Catholic church involved. I did give you the booklet that the Attorney General did supply. This was his work, and he even said out of the 258 people, they probably missed a number of them. This was-- they had a team of people investigating and they captured 258 people, but they still had questions that they did not capture. And one of the reasons I made it very clear that I was going to separate, take this one step at a time, now the Catholic Conference, they want to put this in there because they want to mess this bill up. I will go after that in the future. I need to start to establish something. That's the game plan I have here. So just to be honest with you, I'm going to read two quotes out of this, and I wasn't going to do it, but I want you to be so curious what's in this report from the Attorney General. And I'm just-- the-- these are not my words. This is talking about the Bishop Bruskewitz of Lincoln, who did not sign the charter. He did not sign. I think he was the only one in the United States, in Lincoln, so, you know, let's-- let's play with a level field. But I am going to read his comments. They are talking about an individual. This is what he wrote to a priest. He, Bruskewitz, acknowledged the allegations made by the victim were true. This is what he wrote in parentheses, "Only the Lord knows how much our diocese might be in for." That was quoted from a bishop. There's another thing. They knew this was wrong. They did not report it. They did not report it. That was in early 2000. It was reported in 2018, which a lot of these were reported in 2018, that-- when the Attorney General did his investigation. There are a number of cases that were not even reported. So I'm telling you, we've got to look at this whole log, [INAUDIBLE]. Now, here's a final statement from the Attorney General. You-- you can see this sort of got me because I talked to the Attorney General and he does support this bill. And if you would listen to him, you could hear the ache in his voice when he made the presentation of this. And if you read this, I-- you will ache yourself. There are several hundred people-- if this book-- as I stated earlier when I was being reported-- from the report, I said,

if this book could cry, there would be a river of tears. And the only reason I'll bring this up is because-- and we all know the Catholic church has a very strong lobby here. So I am fighting the Catholic Church and the-- the insurance company. But this is a statement that, and I-- like I say, I wasn't going to do this until I heard some of the things like, gee, why pick on us, we're the sinners, let's pick on everybody, but we're OK. Doggone it, stand up. You have the power right now to investigate all those people and help them out. I don't hear that. You just say we're-- we're sorry, we're-- apologies. I'm telling you, you need to help them out. But here, getting back to my final point, I apologize for taking so much time. Though there have been improvements, there is still a need for accountability. "Within the past ten years, there were accounts of significant grooming activities and questionable behavior by priests." These are his, the Attorney General's, words: Moreover, there are hundreds of victims who will never see their abusers brought to justice. Though we did not publish the names of these victims in our report, we attempted to provide a voice to those hurt by these-- those who were abused. In this, you need to read it, and it also shows you what the dioceses are doing. They are making corrections. They are. I give them credit for that. But to say, don't pick on us, our sins are OK, that's-- that's the irritating part, and I happen to be Catholic. Thank you.

LATHROP: Any questions for Senator Pahls? I see none.

PAHLS: Thank you.

LATHROP: Thanks for being here. Thanks for introducing the bill. We appreciate that--

PAHLS: And I appreciate your listening.

LATHROP: --respectful hearing. Thank you, for those of you who appeared on LB833. With that, we'll close our hearing on LB833 and take us to our second hearing of the day, which is Senator Dorn and LB763. Since we have a lot of people moving around, let's wait just a second so that-- hey, Fred Knapp, can you guys take that out-- outside? OK. You're opening in Senator Dorn's stead.

JANET ANDERSON: Correct, correct.

LATHROP: You may proceed.

JANET ANDERSON: Good afternoon, Senator. Hear from members of the committee. My name is Janet Anderson, J-a-n-e-t A-n-d-e-r-s-o-n. I'm the legislative aide for Senator Myron Dorn, and I'm introducing

LB763 today. Currently in the recreational liability statutes, the definition of land includes things such as roads, water, water courses, private ways, building structures, machinery, equipment, etcetera. The definition of recreational purposes includes activities like hunting, fishing, swimming, boating, camping, picnicking, pleasure driving, etcetera. LB763 expands these two definitions to include private runways and airstrips under the definition of land; and the definition of recrea-- recreational purposes, the bill adds noncommercial aviation activities. Many other states cover these activities in their recreational liability statutes. There is language in the law also. Under recreational purposes, the language says "includes, but is not limited to," so it may be possible that these activities would already be covered that we're trying to add in. We just want to make it clear. The bill, again, just adds private runways and airstrips under the definition of land and then adds noncommercial aviation activities under the definition of recreational purposes. It is really that simple. Senator Dorn would be happy to work with the committee and anyone else who has concerns to see this bill move forward. We do have a constituent here that will testify. He was the one that brought it to us. But I'd be able to hand-- answer any questions. And if I can't, I will make sure you get them. With that, that's it.

LATHROP: OK. We don't really ask questions of legislative aides, so--

JANET ANDERSON: Thank you. [LAUGHTER]

LATHROP: --you're going to get a pass on that one. OK, we will take proponent testimony on LB763.

BRAD DUSENBERY: Hi, good afternoon, everyone.

LATHROP: Good afternoon, welcome.

BRAD DUSENBERY: My name is Brad Dusenbery. It's B-r-a-d D-u-s-e-n-b-e-r-y. I'd like to thank you all for the opportunity to testify on bill LB763 for language to add aviation to Nebraska's RUS. My background is I've been flying for 46 years. I received my primary flight training right here in Lincoln and Beatrice. I'm currently a 787 captain for American Airlines, and I'm nearing retirement here in about 40-- after a 40-year career as an airline pilot. I'm also a third-generation landowner with farmland that has been in our family for over 100 years. I'm sure that I don't have to tell you that general aviation is a vital part for our transportation system. It will continue to grow as our population grows. The great benefit to

this bill, it has zero cost to the taxpayers, adds no government oversight, opens private land for people to use at no cost to them. Currently, there are 35 states that have language in their RUS's that specifically cover aviation activities. Nebraska has neighboring states of Kansas, Missouri, South Dakota and Wyoming. They all have aviation in their RUS's currently. By adding the language, you'll be telling insurance companies that Nebraska supports private landowners and private general aviation. Let me give you an example of what has happened in the past right here in the state. There's an insurance agent out in the western part of the state, had a rancher that approached him. He wanted to build a grass runway so he didn't have to drive 30 miles to the nearest airport to fly his aircraft on-- on his property. He notified the insurance company that he represents, since he was his agent, and of course, what does the insurance companies say? No, if you do it, we'll cancel you, end of subject. So you can imagine what the outcome was. He didn't-- he didn't build his own runway, still driving 30 miles to do it. I personally have called several insurance companies, and the rates that you get just for liability insurance, it's not like you have on your house or your current farms. It is very, very high. We're talking X factors, 20, 30- plus compared to what it normally is for operations have very, very limited. It's a private airstrip, so it's-- you-- you'll have a friend come over occasionally, maybe once or twice a month, maybe a few other people, and that's about it. But when you're looking at between \$5,000 and \$10,000, just liability-only insurance without having something specifically in the RUS, it-- it really astronomical raises the rate. So the main part is, is why other states have-- there's other people that supported it-- to get the gray areas out of the RUS and specifically put aviation in as a recreational activity. So there is-- only by-- it's only by permission for you to let someone land. It's not a public airport. Nebraska has 82 airports that are already public, state funded, federally funded, for everyone to use, so this is all just private. So thank you for letting me testify. If there's any questions, I'll be happy.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Dusenbery, for testifying today. Do I understand you correctly, you do have your own personal airstrip?

BRAD DUSENBERY: No, I'm currently planning one on one of our farms.

BRANDT: OK. And the reason you don't today is because of the high cost of insurance.

BRAD DUSENBERY: That's partially, yes.

BRANDT: What-- if-- if Nebraska were to enact this statute, has your insurance agent given you a cost differential?

BRAD DUSENBERY: Actually, no. Most people, after the RUS's are in place with aviation language, most people do not even worry about liability insurance for their farms--

BRANDT: All right.

BRAD DUSENBERY: --or their property. It-- it basically levels out the playing field when-- there has been past case law in other states where there's been an accident or someone was hurt or injured and they have sued that property owner and once it came into the courts and the judge has noticed and it's presented that, hey, this is covered under the RUS, it-- it ends there.

BRANDT: All right. Thank you.

BRAD DUSENBERY: OK, thank you.

LATHROP: If you establish this, what's the purpose in having the-- the airstrip? Who's going to use it?

BRAD DUSENBERY: Oh, it's recreational. It's-- there's-- all you have to do is look at YouTube and watch all the recreation people. There's thousands that film what they do for fun. And a lot of people, there's-- matter of fact, here in Nebraska, they have what they call a Passport program where it's a little booklet and it's to record each place. It's actually to drum up business for different airports in the state and you check it off. You get points and then they award, you know, gifts like cups and different things, and it promotes the aviation and those people go all over. It's all for recreation. This is strictly noncommercial. There is a no profit motive whatsoever.

LATHROP: OK. So when you-- when you do this, is it going to be a grass field--

BRAD DUSENBERY: Yes. Yeah, for me.

LATHROP: --that you're just going to go out in the pasture and--

BRAD DUSENBERY: Yes.

LATHROP: --and mow it short and flat?

BRAD DUSENBERY: You've probably heard of Super Cubs before or the Cub airplanes. They're just a two place, but they-- they fly them up in Alaska, people back into the bush.

LATHROP: OK.

BRAD DUSENBERY: Basically, they have big tires and they roll over just about anything. And so on a grass runway, those, it doesn't affect them at all. They're-- they're designed, they're called a bush airplane, and they're designed to do that.

LATHROP: So what's the risk you want to get insurance to protect yourself from?

BRAD DUSENBERY: The risk is, is if someone would fly in, an invited guest, they would have an accident-- you know, no fault of yours, just a bad day for them, and they turn around and sue you, that the RUS, just like hunting, you've given permission. They come out, they fall down and break their leg and then turn around and sue you for your medical bills. An RUS would cover the landowner from responsibility from being sued.

LATHROP: Have you ever landed at one of these places?

BRAD DUSENBERY: Yes.

LATHROP: Do you think it should be safe when you land?

BRAD DUSENBERY: Yes, and it-- and it always is.

LATHROP: Or what should happen if it's not safe?

BRAD DUSENBERY: What should happen?

LATHROP: I'm reading this statute and, if we included this, the landowner, the person that owns it--

BRAD DUSENBERY: Right.

LATHROP: --has no responsibility to make the thing safe.

BRAD DUSENBERY: Well, actually, you do still with the RO-- with the RUS, if you-- you-- if you're negligent as a landowner, for example, if you were out hunting. I have put a big trench out there and you walk across it and break your leg, and I did that deliberately

without warning you, I could still be responsible for that. The RUS, it does not re-- absolve you from a landowner if you've made something dangerous and given permission and that person gets hurt. It's still my responsibility.

LATHROP: So the statute, and I'm just looking at it and then I'm going to let it-- let it go--

BRAD DUSENBERY: Sure,

LATHROP: --because I don't want to be argumentative, but--

BRAD DUSENBERY: Oh, no.

LATHROP: --37-731 says an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes. So you don't have a responsibility, but--

BRAD DUSENBERY: Well, I have--

LATHROP: --you may have a responsibility not to create a trap.

BRAD DUSENBERY: Right, that's-- that's--

LATHROP: But you don't have a responsibility to keep the place safe.

BRANDT: Exactly. That's what I was trying to say. You can't deliberately do that. But if something has happened, I guess-- now, listen, I'm an airline pilot, not an attorney, so I can't--

LATHROP: Well, when you land your plane, you want a good runway.

BRAD DUSENBERY: Exactly, but the airplanes--

LATHROP: And I'm not a pilot, but I'm a lawyer.

BRAD DUSENBERY: [LAUGH] There you go. The-- the main thing with this is, is these bush airplanes can land on a runway that's not even there. They're designed to land on rough, rough ground. I mean, if you watch the YouTubes and all these, they're landing on sides of mountains, they're landing on rivers, they're landing-- there is no runway there at all. That's what it's somewhat designed for, yes. A hard turf is--

LATHROP: OK. I think I get it. I think I get what you're after.

BRAD DUSENBERY: Yeah, the hard surface runways, there are out there private runways. A lot of the agriculture guys, they-- they have that. It's cost prohibitive, as-- as you know. It's-- you know, a mile of-- of road is \$800 to a million dollars, so--

LATHROP: OK.

BRAD DUSENBERY: --yeah, it's all grass. You might have a gopher out there, but that's what these tires--

LATHROP: That's-- that's the problem, the gopher, or I was in Ag Committee last week and we were talking about the colonies of the prairie dogs.--

BRAD DUSENBERY: Right. right.

LATHROP: --pop up and come over from the neighbor's property and create pits all over a pasture.

BRAD DUSENBERY: Surprisingly, with 31-inch tundra tires, or even 29 inch, they'll roll right over. Yeah--

LATHROP: OK.

BRAD DUSENBERY: --they're amazing things. That's why they use them in the bush up in Alaska and Canada.

LATHROP: I don't see any other questions. Thanks for being here.

BRAD DUSENBERY: Yep. Thank you.

LATHROP: Any other proponents, people in favor of the bill? Anyone here to testify in opposition to LB763? Good afternoon again.

GREGORY LAUBY: Again, thank you. Senator Lathrop, members of the committee, my name is Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y, and I'm here to oppose LB833 [SIC], which, as I understand it, would provide immunity for injuries to guests on-- that occur on private airstrips or runway-- runways or during commercial aviation activities. It seems to me that the owners and operators of such instruments and land-- land and-- and are operating those activities have the financial resources and hopefully the good judgment to have adequate insurance coverage, and this is a little bit on why. The family farm that has a place that's suitable for nonfamily members to go hiking or a pond where they can fish, even some timber where they might hunt, and the state wants to open that up and protect him so

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

that he can allow nonfamily guests in with little liability on occasion. Whether this is noncommercial in the sense that it doesn't actually require a charge, it certainly enhances the risk to guests and to neighbors of any kind of accident that might occur if it's through an aviation operation. I'd also note that the use of the disjunctive "or" between "private airstrips or runways" may mean that all runways, including public and commercial runways, would be included by the statutory language. And with that, if there are any questions?

LATHROP: I don't see any questions.

GREGORY LAUBY: Yeah, I thank you for your attention.

LATHROP: Thank you. Other opponent testimony? Good afternoon.

JOHN LINDSAY: Thank you, Mr. Chairman. Members of the committee, my name is John Lindsay, J-o-h-n L-i-n-d-s-a-y. If I had known we had chairs here, I wouldn't have brought my own. [LAUGH] I-- I'm here on behalf of the Nebraska Association of Trial Attorneys in opposition to this bill. And first, as-- as you know, the Nebraska Association of Trial Attorneys oppose limiting, by specific immunity or by statutory bodies of law like the recreational liability, but anything that limits access to the courts by people who have been injured through no fault of their own, through someone else's carelessness, they should have access to have their case heard. This case would take-- it may be broader than we think. This case-- I mean this statute-- would take away liability for any noncommercial aviation activities, which we're not sure yet, but we-- that may include drones, could be drones that are over the land but maybe taking a-- taking a look at their neighbor's land. And-- and if they're hovering over the house, they're close to it, they would be-- they would be immune from liability. You also-- it also covers the people who are flying in to stop there. And what happens when they just, through whatever, not checking for wind shears, not-- getting disoriented from the horizon, and they-- they crash into a neighbor's house? It's-- that's-- there's no liability again. Finally, I think the proponent made clear of why this-- why this is being sought, and he mentioned how expensive insurance is. And you probably are all aware-- kind of wish the insurance lobby had stayed-- stuck here, but that's expensive for a reason. Insurers are going to track everything that's going in claims and how much those claims are and what activities are associated with those claims, and they are-- if it's a higher risk to the company, it's going to be a higher premium. So insurer comp-- the insurance companies who have their financial

self-interest at stake Spain are going to increase those premiums so that they're not losing money on it, and I think that should be the best barometer of how dangerous these activities could be is that if the insurance is high-- I mean, we all know that with drivers who--who have bad driving records, their insurance is going to be higher because the risk for the insurer is high. And I think that just tells you that the activities we're talking about are-- are considered, at least by insurers, to be high-risk activities and we would urge that the bill be indefinitely postponed.

LATHROP: OK. Any questions for Mr. Lindsay? I don't see any. Thanks for being here today.

JOHN LINDSAY: Thank you.

LATHROP: Any other opposition testimony to LB763? Anyone here to testify in a neutral capacity on LB763? Seeing none, I guess LAs don't close on bills, do they? OK, well, before we close the hearing, let me make sure that we don't have any position letters. LB763, we do have one position letter. It was a proponent of the bill and that will make-- made part of the record. And with that, we'll close our hearing on LB763. Thanks for being here. And that will bring us to Senator Blood on LB694. Senator Blood. Good afternoon, Senator, and welcome to the Judiciary Committee.

BLOOD: Good afternoon, Chairman Lathrop, fellow senators, friends all. My name is Senator Carol Blood; that is spelled C-a-r-o-l B, as in "Boy," -l-o-o-d, as in "dog," and I represent District 3, which is western Bellevue and eastern Papillion, Nebraska. Thank you for the opportunity to bring forward LB694 to your esteemed committee. Before I start, I'd like to point out that we did amend the original bill and the white copy becomes the bill. I bring this bill forward because of the environmental crisis caused by the egregious actions of AltEn, an ethanol plant in Mead, Nebraska. What has happened in Mead is a slap in the face to the citizens who reside there, and I have taken several steps, working alongside the watchdog group Perivallon to help remedy this issue. LB694 is only one piece of the puzzle, but we must come together in order to alleviate the burden that AltEn has caused to the surrounding community. The purpose of LB694 is to extend the statute of limitations up to ten years in the case of negative exposure to toxic chemicals. This bill is vital to the health of future citizens of Mead. It's vital because AltEn, whose original goal, outside of generating profit, was to be helpful to the environment by using grain to produce environment-friendly biofuel, it was instead using corn seeded-- treated-- corn seed

treated with poisonous insecticides called neonicotinoids, or "neonics" for short. Research has shown that neonics cause negative health issues to mammals and insects. But until recently, it was not clear that there may be under-recognized health risks as science delves more into the effects on humans. Neonics are designed to diminish in plants treated with these chemicals over time, but research has shown its half-life runs up to 1,400 days. This means they have the potential to accumulate into the environment. I should also point out that neonicotinoids are water soluble, which means the water runoff can and does carry them into the lakes and rivers surrounding the area. Neonics have been banned in at least 20 countries because of potential dangers it presents. AltEn advertises itself as a recycling location for ag companies to dispose of excess supplies of pesticide-treated seeds. In fact, AltEn bragged that it took 98 percent of the nation's excess coated seed. It gave AltEn free supplies, but left Nebraskans with a waste product too ridden with pesticides-- pesticides to even feed animals. In Mead, AltEn also created giant piles of corn seed treated with neonics, otherwise called "wet cake," outside with nothing to cover it and with nothing to protect the soil underneath. The AltEn facility housed enough wet cake to cover a football field 150 feet deep, and it's been freely exposed to the volatile weather conditions of Nebraska. When the spring rain fell and winter storms melted on the wet cake, the neonics mixed with the water runoff, seeping into the soil surrounding the facility and ultimately into the waterways of Mead. It has left the people, animals, and insects who call it home sick or dead. Additionally, wastewater from the plant has spilled onto nearby land and waterways. Remember, as well, that the Todd Valley Aquifer is nearby and that feeds Valley and Lincoln groundwater. Record shows that early testing found neonics in AltEn waste at levels many times greater than that would-- that which would be deemed safe. For example, safe levels of neonics in food or water is up to 70 parts per billion. At AltEn, one of the large hills of AltEn waste tested at 427,000 parts per billion. A wastewater lagoon tested at 31,000 parts per billion. An excerpt from the article by The Guardian, it further details a grim tale: For the residents of Mead, Nebraska, the first sign of something amiss was the stench, the smell of something rotting. People reported eye and throat irritation and nosebleeds. Then colonies of bees started dying. Birds and butterflies appeared disoriented and pet dogs grew ill, staggering about with dilate-- dilated pupils. The effects of neonics on humans, animals and insects vary greatly, though they all have the similarity of being devastating to their critical functioning systems. Developmental or neurological effects of neonics on humans can include malformations

of the developing heart and brain, autism spectrum disorder and a cluster of symptoms, including memory loss and tremors. There has been research that points to organ damage, reproduction issues, respiratory issues and, of course, cancer. We have to be really honest today. Mead, Nebraska, got a really raw deal, one that was perpetuated by Nebraska's lack of an early response and oversight. It's not my opinion. It's documented on NDEE's own website. So tell me, how long is too long before we pull the plug on these big companies making Nebraskans collateral damage? Citing them 12, 13 times with the expectation that they will do better but never really pulling the trigger to end this fiasco, only added to this environmental crisis. Remember, there are other communities now that are going through similar types of issues, such as Alvo, Nebraska, right now. This lack of oversight is how we got to today's bill. How do we make this right? How do we protect those who will likely become ill as a result of this crisis? At the very least, victims deserve to have the ability to recover damages when a medical authority is able to verify that their illness or loved one's death was caused by exposure to toxic chemicals. Was there reasonable diligence? Was there care and attention that is expected from an ordinarily, exercised by a reasonable and prudent person, under these circumstances? So today I am asking that when Nebraskans are exposed to toxins and that there is a clear connection this is what has caused their health issues, that we give them up to ten years after the cause of action as accrued for victim recourse, nothing more, because much like Agent Orange, asbestos, arsenic, benz-- hydrocarbons, radon, and a long list of others. We didn't always know from the beginning how much harm we were causing by using those chemicals until it was too late to help those people who were exposed. So I thank you for your time today and I'd encourage you to wait for additional questions at my closing, as I have several testifiers here who will likely know those answers and help complete the story during their time on the mic today. I do apologize. We had Dave Domina, who actually helped me write the bill, who had to exit and go to Omaha for court. So we are down at one, maybe two testifiers because of the time, but I still think we have a lot of great testifiers that are going to help you complete the story.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Blood, for bringing this bill. And I don't know. I wish Mr. Domina was here--

BLOOD: Me too.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

BRANDT: --because this is kind of a legal question. Maybe you know the answer to this. Is there a statute of limitations? I mean, are you putting the ten years in here because there is no statute of limitations or there is no--

BLOOD: Good-- good question, yeah. Actually, depends on-- on what category you're talking about. But in state statute, it's two years right now as opposed to ten.

BRANDT: Well, so basically the--

BLOOD: So we're expanding it from two to ten.

BRANDT: All right.

BLOOD: I think asbestos is at four in state statute, if I remember correctly, so-- and we know, because of the type of medical issues they're going to have, it's not going to happen in the next two years.

BRANDT: All right. Thank you.

BLOOD: Um-hum.

LATHROP: I see no other questions. You will stay to close?

BLOOD: Yes, sir.

LATHROP: Sounds like it. OK, good. Thanks, Senator Blood.

BLOOD: Thank you.

LATHROP: We will take the proponent testimony on LB694. Good afternoon. Welcome back to the Judiciary Committee.

AL DAVIS: Good afternoon, Senator Lathrop, members of the committee. My name is Al Davis, A-l D-a-v-i-s, and I'm here today as the registered lobbyist for the Nebra-- 3,000 members of the Nebraska Sierra Club in support of LB694. Nebraska chapter of the Sierra Club wants to thank Senator Blood for bringing LB694, which modifies the statute of limitations as it relates to the exposure of toxic chemicals. There have been significant advances in medicine over the last century, and we now know that many illnesses which develop later in life are tied to early exposure to different environmental hazards with extensive periods between when someone is exposed to a contaminant and when the illness expresses itself. As you might

suspect, the bill was developed in response to the developing ecological disaster near Mead, Nebraska, where an unethical company manufactured ethanol from pesticide-treated seeds and stockpiled tons of waste product and contaminated water on the site over a seven-year period, thus exposing nearby residents to airborne contaminants and polluting soil, ground, and surface water for miles around. You may remember that I testified before you last year on LB634, a bill from Senator John Cavanaugh, which assigns liability to companies and individuals who dispose of treated seeds in an unsafe manner. I would remind the committee that LB634 is still alive and active and should be pursued, since the troubles at AltEn have become more and more evident as the months have gone by. Most Americans know Vietnam veterans or Vietnamese nationals who were exposed to Agent Orange decades before their disease became apparent. One of the chemicals associated with Agent Orange was dioxin, which is responsible for many of the cancers associated with Agent Orange exposure, as well as Parkinson's, birth defects, and other health problems, despite the fact that only about 370 pounds of dioxin were spread across the thousands of acres of jungle in Vietnam over several years. Dr. John Schalles is a Creighton University biology professor who is working with the Mead investigatory team. Dr. Schalles has expressed grave concern that the chemical mix at AltEn will continue to break down, forming new compounds, and that dioxin could be one of those. It appears that the contaminated water and wet cake will remain on the site for a significant period of time, continuing to expose Mead-area residents to airborne pollutants, and the ramifications for groundwater are still unfolding. What we do know is that the lagoon liners at the site failed years ago, and contaminated water has seeped into the ground for several years. There are voluminous studies of various chemicals and chemical compounds detailing the variation between the time someone is exposed to the product and the time of illness, the time the illness expresses itself. Many of these may be ten or more years. Nebraska's right to recovery for damages shouldn't be limited to a short window when so much is at stake. This bill's protections are needed for all Mead-area residents and for all Nebraskans. We urge you to quickly move LB694 to General File for debate. Thank you.

LATHROP: Very good. Any questions for Senator-- for Al Davis? Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Davis, for your testimony today. This is my question. As-- as it appears, between what Senator Blood said on her introduction and what your

testimony is, is a lot of this pertains to Mead and the cleanup and the-- and the things that had happened there. But as a farmer, neonicotinoids, used in a lawful and researched and regulated way, are coating corn seeds that are put in the ground six inches apart and on an acre of-- of corn ground, you maybe use 15 pounds of seed, and what you're dealing with here are tens of--

AL DAVIS: Millions.

BRANDT: --tens of thousands of tons of-- of contaminated wet cake that this is a bad situation. My only, I guess, question or concern is that doesn't come back and ban a-- a useful component of ag seed used in a proper way. I mean, do you see that with this bill, that that could happen?

AL DAVIS: No. This bill is-- what this bill is designed to do is essentially protect all-- all Nebraskans, whether you're in Mead or Lyons or Harrison, for exposure to chemicals that might have happened ten years ago. So, you know, there are states where neonics are being looked at. Nebraska is not one of them, and I don't think that will happen. You know, one of the things that I've learned about neonics is, so the seed is treated with the-- with the pesticides and about five percent of it is absorbed by the plant and about 95 percent is dissipated into the soil. So over time, it does build up in areas next-door. I think if there's ever anything done with neonics, it will be on a national level, probably. There-- there are about 30-- there-- we've been using them for about 30 years, so, you know, the science is still sort of unfolding on-- on the product itself, but--

BRANDT: All right. Thank you.

AL DAVIS: Thank you.

LATHROP: OK. I don't see any other questions.

AL DAVIS: Thank you.

LATHROP: Thanks for being here.

AL DAVIS: Thank you.

LATHROP: Good to see you again.

AL DAVIS: You too.

LATHROP: Next proponent. Good afternoon.

KEN WINSTON: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name's Ken Winston, K-e-n W-i-n-s-t-o-n. I'm appearing on behalf of the Bold Alliance in support of LB694, and Bold has consistently advocated for the protection of land and water and-- and legal rights because we-- we know that pollution can harm people. The contamination that has resulted from the use of pesticide-treated seeds at the-- to make ethanol at the-- the AltEn plant in Mead is one of the worst environmental disasters in the history of our state, and it-- and that provides a vivid example of the need for this legislation. The thousands of tons of wet cake that are stored on site, which is a hazardous waste, and there's hundreds of millions of gallons of liquid waste on site, and runoff from the facility has ki-- has totally killed everything in a pond that's six miles away. In addition-- sorry, my nose is running. Sorry, a little aside there. I had to take care of a little personal housekeeping. [LAUGH] There-- in addition, there's contaminated wet cake that's been applied to fields surrounding the facility, and we don't know all the places that-- that it's-- that it's been applied, all the places that-- that it may have an-- an impact. And the runoff has actually gone-- in-- during the floods of 2019, the runoff directly from that site runs directly over the Lincoln water supply, so there could be contamination of Lincoln's-- Lincoln water supply. We don't know at this point. To date, we-- there's no evidence of that, but it could have-- it could have contaminated Lincoln's water supply. So the idea is to extend the statute of limitations so that people who've been harmed may recover. Part of the problem is that people don't know, but they-- they may not realize that they're being impacted by these substances. They're out there in the environment. They're-- it may be in their drinking water, it may be in the soil that's around them, and so it may take years before-- before the-- the impacts surface. And there's a number of-- of health impacts that have been associated with long-term exposure to pesticides, including cancers of various kind, Parkinson's disease, Alzheimer's, respiratory illnesses, and reproductive disorders, including infertility in both men and women. And of course, the problem is that these-- these impacts may not manifest within four years, and so the idea is to extend the statute of limitation to give people more time to bring their claims so that-- that they can recover from their ener-- injuries. So I'll be glad to respond to questions.

LATHROP: So I'm going to ask a question because I'm looking at this amendment. It creates-- paragraph (6) in this particular statute, which is 25-224, number (5) deals with-- the pre-- the preceding paragraph deals with asbestos. Right?

KEN WINSTON: Correct.

LATHROP: And it basically says that you have four years from the point in time, four years from the point in time at which some doctor has told you there's a relationship between your asbestos exposure and your condition.

KEN WINSTON: Yes.

LATHROP: Would you agree with that?

KEN WINSTON: Yes.

LATHROP: OK. And what's different between this and the preceding paragraph, this new language, is it says, if you get exposed to hazardous or toxic chemical, you still measure time from the point at which a doctor tells you there's a causal relationship between the exposure and your underlying health problem that's a consequence, right?

KEN WINSTON: That's correct.

LATHROP: But then it gives you ten years from that date to sue. So why-- why are we-- like, I do this for a living. I'm-- I'm OK with big statutes of limitations, generally, but I don't understand why after somebody-- after somebody's told you, you were exposed out at the plant in Mead to whatever this particular chemical is and now it's causing you this, whatever the medical consequence is, cancer, you name it, why-- why ten years, not four?

KEN WINSTON: Well, first of all, I didn't draft this, this language, so I--

LATHROP: OK.

KEN WINSTON: --so I don't want to-- I don't want to claim knowledge of why that choice was-- was made. But-- but the-- my understanding was-- well, I guess I understood that it-- that they were-- they did not know that they-- when it was--

LATHROP: So in both circumstances with asbestos, and I won't go on very long about this, but with asbestos the clock doesn't start to run and measure the four years you have to sue until somebody's told you your mesothelioma is a consequence of asbestos exposure. And in this bill, it says, if you have an exposure to toxic, same thing, the clock doesn't start to run until somebody tells you that your cancer

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

is related to the exposure. But then we do something unusual. We say you have ten years instead of four or two, for example.

KEN WINSTON: Well--

LATHROP: I'm putting you on the spot.

KEN WINSTON: Sure. And-- and as I said, I-- not being the drafter of it, I don't want to-- to--

LATHROP: OK.

KEN WINSTON: --speculate as to exactly what was intended. But my understanding would be that-- that-- that the person, even though they may have known there-- because of the fact there's kind of a lingering impact of these kinds of substances, that that-- there's kind of a slow buildup due to long-term exposure. So that would be my understanding as why-- why you would do the ten-year statute of--

LATHROP: OK.

KEN WINSTON: --limitations as opposed to--

LATHROP: OK.

KEN WINSTON: And just to do a little bit of-- it seems to me that there's more acceptance of the idea of the dangers of asbestos and-- and--

LATHROP: Well, I don't know if people accept the dangers of asbestos. I mean, it was in school classroom ceilings and things like that. I just think that you catch the break in this statute in the preceding paragraph by not having the clock run until you know or should know that your cancer, leukemia, whatever it is, was caused by the exposure. And so that ten-year runway to file suit, you-- you already catch a break because the clock doesn't run from the date you happen to inhale this stuff. It starts from the date you get symptoms and the doctor says, Ken, your symptoms are related to the exposure. There's kind of two pieces to this.

KEN WINSTON: Right, yeah.

LATHROP: One is, when does the clock start? And the other is, how long do you have once you know or should know that you have a viable cause of action against somebody who exposed you to this stuff? That's all.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

KEN WINSTON: Well, I think I've answered--

LATHROP: The ten years is a long time.

KEN WINSTON: Yeah, well, I-- I think I've answered it to the-- to the best of my knowledge at the present time.

LATHROP: OK.

KEN WINSTON: I-- if I do some research and I'll-- I'd be glad to forward that--

LATHROP: OK.

KEN WINSTON: --to you, so.

LATHROP: Fair enough. Any other questions or comments or dialogue? OK. I don't see any. Thanks for being here.

KEN WINSTON: I don't really think you want me to do a song and dance for you, so.

LATHROP: No, no, no, no, don't need that, even on a Friday. Any other proponents? Good afternoon.

JANECE MOLLHOFF: Good afternoon, Senator Lathrop and the committee. My name is Janece Mollhoff, J-a-n-e-c-e M-o-l-l-h-o-f-f. Hold on, got my help. I'm testifying on my own behalf and not for any organization, though I do live downstream from Mead. I'm a re-- a nurse and a retired colonel in the U.S. Army. In a new paper published in Science and Technology, it's noted that there are about 350,000 different types of artificial chemicals currently on the global market. That's from pesticides to industrial chemicals like flame retardants and insulators. So this bill, I don't think, should really be about Mead, AltEn, or one chemical, neonics. The rapid rate at which novel chemicals are being produced, compared to the snail's pace at which governments assess risk and monitor impacts, leaves society largely flying blind to the chemical threats. If and when a negligent spill or an accidental release of these chemicals happens-- we're not talking about use of the chemical for a livelihood. If and when these spills or releases happens, there's really not enough research to determine the long-term effects of exposure for first responders, employees or nearby populations. According to their website, public health experts led by UNMC College of Public Health have launched an investigation into the Mead area to determine the extent of the contami-- the chemical contamination and the path of

chemicals from AltEn into drinking water and its impact on the lives of Nebraska. They have projected it will take ten years to fully determine adverse effects on the environment, wildlife and human health. That's why a ten-year statute of limitations is important, not just for Mead but for Nebraskans across the state, because even though one health effect shows up, there could be another one in five years and another one in ten years. As Nebraska's successful economic development draws more industries that manufacture and use chemicals, either in pure form or in combination with other compounds, there's increasing likelihood that spills and discharges of untested chemicals happen. Illness will not always manifest immediately after exposure, as we have seen with Agent Orange in our veteran population. Organ damage, weakened immune systems, reproductive problems, birth defects, mental, intellectual and physical development in children, and cancers take a lot of time to diagnosis and treat. Ten years is not unreasonable to determine damage from exposure to toxic chemicals. I would ask that you would advance LB694 out of committee to consideration by the full floor.

LATHROP: OK.

JANECE MOLLHOFF: Any questions?

LATHROP: This has been a nightmare for you--

JANECE MOLLHOFF: I've-- yes.

LATHROP: --I mean, for the entire community.

JANECE MOLLHOFF: For the--

LATHROP: And it's been--

JANECE MOLLHOFF: For the county.

LATHROP: --on the radar--

JANECE MOLLHOFF: For the county.

LATHROP: --for a time and really the Department of Environment, whatever the-- Energy and Environment or whatever we call it over there, failed the people in Mead--

JANECE MOLLHOFF: Yes, sir.

LATHROP: --like they just kept accepting excuses from these people.

JANECE MOLLHOFF: Yes.

LATHROP: It's very, very, very unfortunate. I'm sorry for what you've been through. Any questions for this testifier? I see none. Thanks for being here.

JANECE MOLLHOFF: Thank you.

LATHROP: Any other proponent testimony?

JOHN LINDSAY: Thank you, Senator Lathrop, members of the committee. My name is John Lindsay, J-o-h-n L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys. We support larger limitations of actions because sometimes if the significant information is not available within the shorter period, sometimes people don't-- they're in denial about-- that they even have cancer, much less that it was caused by-- by their neighbor. But all those things, each piece is individual. All those things, I think, work towards those larger, longer limitations of actions. You've heard the-- the arguments earlier about the reason for statutes of limitation, and that is correct, that-- that at some point it's got to end. But those time periods that you all put in statute have to reflect the particular type of-- of action that-- that is-- that is-- has occurred. I think Senator Blood, in her opening statement, said the half-life of the material at-- at-- in Mead is 1,400 days, which by my quick calculation is 3.8 years, and the current statute of limitations is four years. That doesn't give a lot of time to-- to really assess whether you've been injured by fault of the toxic chemicals. I think back to my-- we didn't know till I was an adult, but my childhood, I-- when I was raised in northeast Omaha and later find out it's a Superfund site, because of the amount of lead in the soil, that they've had to do all sorts of removal of soil since then. And I'm sure it-- maybe it's Senator McKinney's district now, but I'm sure he's heard complaints about-- about that and it wouldn't matter. Those statutes are all gone now, but-- but even those we don't-- we don't see the injury become apparent until sometimes years after. I think moving that statute to ten years is a-- is a small, small step towards giving folks the opportunity to-- to engage, be heard in a court of law. Thank you very much. I'd be happy to answer your questions.

LATHROP: OK. Any questions for Mr. Lindsay? I see none. Thanks for being here. Any other proponent testimony? Anyone here to testify in opposition to LB694? Anyone here in-- opposition or neutral?

RON SEDLACEK: Neutral.

LATHROP: Neutral, OK, neutral testimony. Good afternoon.

RON SEDLACEK: Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce and Industry. I've also been asked to testify, or to include in my testimony the National Federation of Independent Business in Nebraska. We had previously thought about testifying in opposition to the bill. We have talked with the introducer of the bill and would like to see what we can-- what can be done to-- what I would call cleaning up or maybe getting a focus to the intent of the legislation as it relates to the statute in question here, which is a product liability statute dealing with the statute of repose as an exception to the statute of repose addressing the statute of limitations. As you mentioned previously, the statute of limitations for-- as an exception to the statute of repose, which-- which is two tiered-- if it's manufactured in Nebraska, manufactured out of Nebraska-- the-- for asbestos cases, that that's one situation. This is attempting to make a second exception and lengthen then the statute of limitations, as opposed to the-- the as-- the-- as opposed to the asbestos situation, which would be four years to ten years. The question that we have-- and we've had many, many questions here, perhaps a number, a bit of misunderstandings as well, but if you look at the asbestos language in the legislation on page 2, line 14, talks about competent medical authority that such injury was caused by exposure. So there's a causation, right? However, you look at the new language, and I'm looking at the amended version that is offered, it says when you are informed by competent medical authority that the injury or death is related to, so it doesn't have anything to do with causation. But there may be a relationship? That's kind of vague. We have issues with that. We're also talking about in the situation particularly at hand with-- with the particular plant where there's a misuse, potential misuse of-- of a product, essentially, where all this-- this combination into one-- one area. Senator Brant mentioned use in general agriculture. Is that toxic then in general agriculture or not? It is the chemical. It's not aggregated. Who is liable? If that particular entity is bankrupt, does the liability go to those that sold the seed to that entity or is it to the manufacturer or the-- of the seed, the seed companies? Where does this start and where does this end? Third, the bill deals with all situations, and I'll stop here.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

LATHROP: The one thing I'll say is we're not going to sort out the who, right? We're just going to sort out, how much time do you have to find out?

RON SEDLACEK: Right.

LATHROP: Right? But that-- that's true in all-- all product liability litigation--

RON SEDLACEK: Um-hum.

LATHROP: --which is quite complex. Any questions for Mr. Sedlacek? I don't see any. Thanks for being here.

RON SEDLACEK: OK.

LATHROP: Anyone else here to testify in opposition or, pardon me, in a neutral capacity to LB694? Seeing none, then Senator Blood, you may come forward and close. The record should reflect, and I'll enter this as you approach, position letters have been received from four proponents and one opponent. That will be noted in the record.

BLOOD: So as Danielle Conrad always says, let's unpack this briefly. So in reference to the last testimony, going back through my notes, I believe the RCRA and the CERCLA applies to that, would give him his answers as to who would be liable. Senator Brandt, during my research, one of the things I found that was really interesting is that they have been doing studies about neonicotinoid-coated seed and uncoated seed, and they're finding that as far as bushel per acre-- acre, there's really no difference anymore. So I think that might be something that we need to start looking into, but I think you are going to see these companies that are responsible for these seeds starting to be-- pull some of this back based on what's been going on in other countries and what's been going on here, not just in Nebraska but across the United States, because pollinators, as you know, are so important to the state of Nebraska when it comes to our farmers and neonicotinoids are killing our pollinators. And without pollinators, we'd be in big trouble, so we actually are going to have to take a step back and start looking at that. But I do think that, as far as liability and the concerns that you have, we're talking about people who were purposely abusing how the product should be used based on what's on the label. You are not doing that. There's a huge difference in the type of-- of liability that you're concerned about and what they were doing. And again, I'm not a lawyer and I'm not pretending to be. But the ten years was based on what we looked

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

at, first of all, in Ohio, Virginia, Kansas, and several other states-- those are the ones that come to mind right now-- and looking at the science of what's going to happen. So right now, we know sores in the mouth, vision issues, respiratory issues, but we know that it's likely based on the multiple chemicals that are involved with neonicotinoids, that they'll likely have two, three or more types of health issues that will be connected to this. So in reference to the language, that is why the language ended up that way. That is why we had that ten-year window of time. Are we concrete in-- in the phrasing if we think it's going to prevent our bill from getting out? Absolutely not. We are flexible and we would bow to your expertise on this committee. But I do say that this is a very important bill, a bill that I will likely make my priority bill because we've got to help the people of Mead. We have not done them justice. And I don't know if you've seen the-- the cleanup that they're allegedly doing now, but we're going to have secondary issues because of the way they're doing the cleanup. And if we had this statute in place, we'd at least protect the citizens from what's going to happen next. With that I'd--

LATHROP: OK.

BLOOD: --be happy to answer any additional questions.

LATHROP: I do not see any additional questions. Must be Friday afternoon at 4:00.

BLOOD: Yee-haw.

LATHROP: OK, thanks, Senator Blood.

BLOOD: Thank you.

LATHROP: We appreciate your testimony and-- or your introduction of LB694. That'll close our hearing on LB694 and bring us to Senator Matt Hansen, and LB870. Welcome, Senator Hansen.

M. HANSEN: Good afternoon.

LATHROP: Good to see you.

M. HANSEN: Thank you.

LATHROP: You may open on LB870.

M. HANSEN: Appreciate it. Thank you, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. Today, I'm introducing LB870, which makes several changes to clarify when attorneys' fees can be paid as a part of the state claims process. Specifically, its goal is to confirm that these fees can go to outside counsel hired by state agencies when they are unable to be represented by the Attorney General due to a conflict of interest. These funds are traditionally managed as a part of the risk management program and spent as part of the state claims process. Any agency wanting to make use of these funds need apply to the State Risk Manager, who then processes the claim alongside other claims as part of the State Miscellaneous Claims Act. Some portions of state claims process currently provide for the ability to pay for, quote, awards, settlements, and associated costs, including appeal bonds and reasonable costs, end quote. However, this list does not currently include clear authority to cover the attorney fees of any outside counsel-- any outside counsel hired by the agency, which is the intent of my bill. In many instances, this isn't an issue, as representation is typically done by the Attorney General's Office and any cost of representation provided for in that budget. It will mainly come up in situations where the Attorney General Office is conflicted out and thus the outside counsel is required. This concern arose specifically during our 2020 Session when we passed our state's claims bill, as the Legislature is required to do, and there was a specific case there where the State Racing Commission was being sued by the Attorney General. The Attorney General was obviously unable to represent the state racing commission, and so they hired outside counsel and then there was unable to pay the legal fees out of their cash funds. This process then went, as I explained earlier, that the agency notified the risk manager of the insufficient funds. The risk manager submitted the judgment to the Legislature under the State Miscellaneous Claims Act, and the Legislature then reviewed the settlement and judgment to make an appropriation, if appropriate. At that time, there was discussion kind of both in committee and on the floor as to whether or not fees paid to the council retained by the agency were eligible for the Self-Insured Liability Fund. Eventually, the consensus seemed to be, yes, that they were and they should qualify, but that some clarifying language could help improve the state claims process in the future, which is my goal here with LB870. The bill also includes a requirement that the agency reporting that they have insufficient funds also include the documentation backing up that claim when submitting the claim to the Risk Manager. I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

appreciate your attention to this bill and I'll try and answer any questions.

LATHROP: It's basically a clean-up bill.

M. HANSEN: That's my hope.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Hansen, for bringing the bill. Is the Attorney General in support of this?

M. HANSEN: I suppose we'll see. I have not confirmed.

BRANDT: All right. Thank you.

M. HANSEN: Thank you.

LATHROP: OK.

GEIST: Can I just ask a quick question?

LATHROP: Yes, pardon me, Senator Geist.

GEIST: Again, new to this. Is-- is because the AG has a conflict of interest the only time that an outside counsel is hired?

M. HANSEN: You know, that would be the main time. I'm not sure it's the only time.

GEIST: OK.

M. HANSEN: In theory, I suppose, the AG could decline for another reason that wouldn't necessarily be a conflict of interest.

GEIST: OK. I'm just asking--

M. HANSEN: Um-hum.

GEIST: --because I'm wondering how frequently this would happen.

M. HANSEN: I could-- I could imagine a scenario in which there are maybe multiple state agencies or something like that could come up. It's just not often, is my guess.

GEIST: OK. Thank you.

M. HANSEN: Um-hum.

LATHROP: OK. Thanks, Senator Hansen. Are you going to stay to close?

M. HANSEN: I will.

LATHROP: OK. We will take proponents of LB870. Anyone here to testify in support of the bill? Seeing none, anyone here in opposition? Anyone here in a neutral capacity? You know how to bring them in. [LAUGHTER] There are-- there are no position letters either. OK, so this is the epitome of no controversy. Thanks, Senator Hansen. That'll close our hearing on LB870 and bring us to LB953 and our own Senator John Cavanaugh.

J. CAVANAUGH: I don't know if I qualify for "own." I've spent a lot of time here, but nobody will let me be on the Judiciary Committee.

LATHROP: You've-- you've spent enough time here to be one of our own. [LAUGHTER] We need to talk.

J. CAVANAUGH: You guys-- you guys just make me feel welcome all the time, and so I just enjoy my time.

LATHROP: All right, Senator Cavanaugh, you may open.

J. CAVANAUGH: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I'm here representing the 9th Legislative District in midtown Omaha. I'm here to introduce LB953, which would provide limitations on liability for property-- properly permitted land management burns. I sit on the Agriculture and Natural Resources Committee and, as a result, have had the opportunity last summer to tour the grasslands of Nebraska and learn of the struggles many farmers and ranchers have with the spread of eastern red cedar on their lands and the utilization of prescribed burns, or land management burns, to try to control that spread. What is a prescribed burn, you may ask? The U.S. Forest Service defines it as a controlled application of fire by a team of fire experts under specific weather conditions for the purpose of restoring health to ecosystems that depend on fire. Under Nebraska law, prescribed burns are known as land management burns, defined as the controlled application of fire to existing vegetative matter on land utilized for grazing pasture, forest, or grasslands to control weeds, pests, insects and disease, prevent wild-- wildland fires, manage watersheds, care for windbreaks, and conduct scientific research. If you look at the cosponsors and proponents of this bill, you may be surprised to see that I'm the one introducing it, but I came at this from an

environmental perspective. Grassland preservation is important not only for our farmers and ranchers, but also for our environment. Native species rely on these grasslands, which store most of their carbon underground. A well-balanced ecosystem benefits all of us. Those behind me will go into more technical details about why prescribed burns are a useful and necessary tool and why providing a safe and effective way for landowners to utilize prescribed burns is so important. LB953 provides that a landowner, tenant, or other landowner's agent shall not be liable for damages caused by a properly permitted land management burn, except in cases of gross negligence or willful misconduct, provided they follow all of the requirements set forth in the permit. It is-- it also makes clear that a fire chief or designee is not liable for damages simply for issuing a land management burn permit or assisting with a properly permitted burn. The burn must be conducted according to a plan, the requirements of which are outlined in existing Nebraska Statute 81-520.05. That section is not amended in this bill. The limitations of liability in this section is for those who conduct a land management burn in accordance with 81-520.05. If the burn is not in accordance with the statutory requirements, the ordinary negligence standard would apply. I have been contacted by the State Fire Marshal's Office regarding language in Section 1 of this bill. They are seeking an amendment-- the section in this-- the amendment to the same section in a bill from Senator Halloran, LB1098. As this language does not conflict with the intent of LB953, I would be open to accepting language in place of the language of Section 1. I thank the members of the committee for your time and I ask you to advance LB953 and I'd be happy to take any questions.

LATHROP: Senator Brandt, go for it.

BRANDT: Thank you. Thank you, Chairman Lathrop. Thank you, Senator Cavanaugh, for bringing this. And I'm only asking this because you're probably the only attorney that's going to testify on this. I could be wrong. But if this-- if this fire gets away and it burns up a half-mile of my pasture fence, wood posts and the wire, there's a considerable cost there. Does this relieve somebody of the liability of taking out my fence?

J. CAVANAUGH: So first off, the-- the fire would have to get out after and cause all that damage with the-- the individuals complying with the burn permit for them to-- the standard to be gross negligence. So if the-- that happens and causes all that damage, the standard for liability to them would be gross negligence. But they have-- if they-- if the fire gets out as a result of them not

following the burn permit, then it would be the ordinary negligence standard that currently applies then.

BRANDT: So what if they're following the burn permit and they still burn up a half-mile of my fence? Who-- who's paying for it?

J. CAVANAUGH: Well, I would think you will hear from the folks here that, when they come and testify, that that's extremely unlikely to happen under the properly followed burn permit. But again, they would be liable if the-- if the reason it got out was as a result of their gross negligence.

BRANDT: All right. Thank you. I'll-- I'll listen to the testimony.

J. CAVANAUGH: Nothing else?

LATHROP: No questions from me.

J. CAVANAUGH: All right.

LATHROP: I understand it perfectly. [LAUGHTER] Proponents of the bill may come forward to testify. How many people are going to testify on this bill, one way or the other? Two, four, six, eight, ten or so? OK. Some of you have arrived since I started this hearing at 1:30. The way we-- the way we work, proponents will come up. You're-- you're welcome to come up. All of you-- all of you will have an opportunity. You get three minutes and we have a light system: green light; after two minutes, the yellow light comes on, letting you know you got one minute left; then the red light comes on, we ask you to stop at that point. OK? Just because you weren't here, I'm going to say that and give you a little reminder and tell you what the rules are. By the way, if you have a cell phone, silence that and come on up. Good afternoon.

ALICIA HARDIN: Good afternoon. My name is Alicia Hardin. I am a wildlife division administrator for the Nebraska Game and Parks Commission.

LATHROP: Oh, one more thing: When you get here, say your name and spell it for us.

ALICIA HARDIN: Absolutely.

LATHROP: OK. Thank you.

ALICIA HARDIN: That's A-l-i-c-i-a H-a-r-d-i-n, 2200 North 33rd Street, Lincoln, Nebraska, 68503, is my headquarters office. So the Game and Parks Commission would like to go on record as being a proponent for this legislation. We're especially excited about the gross negligence language that is in here. Ninety seven percent of the state is in private ownership, and the greatest amount of conservation that happens happens on our private lands. Before I became an administrator for the Game and Parks, I worked as a private lands biologist in the central Nebraska and southwest Nebraska area. As I worked out there, we worked with lots of landowners and producers on how to make grasslands more productive, both for their farming and ranching needs and also for the benefit of wildlife. One of the best methods out there is prescribed fire. And I noticed, after years of working with the landowners, that there are a lot of barriers that they were facing. Some of them involved just understanding what prescribed fire was, the kind of equipment they needed, and how to do the fire. We provided a lot of that amongst our different organizations and agencies, workshops for them to understand how to do that, equipment, access to other landowners. We provide financial assistance, technical assistance with the burn plans, and then actually on with the burns with them to help them get to know how to do that. But one of the big things they kept bringing up was liability. You know, they're afraid of what if it does get out? Again, if you follow a well-written burn plan and it's approved by the fire chief and you have a burn permit, it's not likely that that's going to happen. But that fear still falls with them, and it was hard for us to make them feel better about that. So this legislation does help deal with that situation. Coming up soon, we see a need for more fire on the landscape, and we do see some other initiatives coming that will help fund that, so we think that there is going to be more fire out there. We would like them to have the ability to feel more comfortable out there to provide that production needs that they have and also the wildlife benefits that we would like to see. And with that, I would take any questions. I did submit written testimony, too, so.

LATHROP: OK, I don't see any questions yet, but thank you for your testimony.

ALICIA HARDIN: Thank you.

LATHROP: Next proponent. Good afternoon.

MARK ROBLEE: My name is Mark Roblee; that's M-a-r-k R-o-b-l-e-e, and I'm here today on behalf of the Curtis Volunteer Fire Department to

testify in support of LB953. I'd like to start by thanking the Judicial Committee for hearing my testimony today. I am a life--lifelong resident of Curtis, Nebraska, and I have been a member of the Curtis Fire Department since 2006. Currently, I hold the office of wildland captain and I'm currently one of the department's designees for issuing burn permits in our district. In my time on the CVFD, I've seen a major change in the fire department's perspective of prescribed burning and burn permit issuance in general. Our area has seen a dramatic increase in invasive species in our rangeland. These invasive species have touched the lives of everyone in our area, either directly or indirectly, by threatening the entire economy in our agricultural community. Along with this dramatic increase in invasive species, I have seen a significant increase in landowner knowledge as it relates to prescribed burning, as well as fire in general. These two factors have changed our perce--perspective on the use of prescribed fire by landowners in our district. When I first started, our department absolutely did not view fire as a tool for landowners to use. Today, our department believes in the science behind using fire as a tool to protect our natural resources and sustain our way of life in rural Curtis, Nebraska. We believe in it because we have seen firsthand a group of landowners start from scratch, take the time to learn new techniques, take every safety precaution, and jump through every hoop to put fire on the ground, just to protect their own livelihood. Landowners in our district have done this with a huge amount of success, and in doing so, they have made our fire district much safer by reducing excess volatile fuels and even acting as a mutual aid resource when we are in need of extra people. The Curtis Rural Fire Department strongly supports our landowners and the use of prescribed fire, and we believe that LB953 will give them su-- the support they need to protect their livelihood in the future.

LATHROP: OK. Senator Geist.

GEIST: Thank you. So do you help draw up these prescribed burn plans?

MARK ROBLEE: I don't draw the prescribed burn plans. I-- I merely look at them--

GEIST: OK.

MARK ROBLEE: --and-- and approve them, and then I issue a burn permit. And our whole system is-- we have an extensive system. There is a fire chief and then there's three designee-- designees, who are officers on the department, who have the ability to look at these

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

plans and review them. And then we actually go out and review the area or look at the area where they're planning to burn--

GEIST: Um-hum.

MARK ROBLEE: --ahead of time and approve the work that they have done to prepare it. And then we have to ask another person, one of the other three-- we-- it's a two-person signature, basically, on the burn permit.

GEIST: OK. So there is-- I'm just curious, and maybe I should have asked the lady who came before you, but there is this provision in here about smoldering and if it continues to smolder after it's out-- out and results in a subsequent wildfire, that does not without further as-- evidence constitute gross negligence. And I guess my question is, do you follow up afterwards to go make sure the fire is out?

MARK ROBLEE: Well, the burn group, so we have one main burn group in our-- in our area, and that is certainly part of their-- part of their plan. It's part of the burn plan, as well, that it has to be patrolled for so long after--

GEIST: OK.

MARK ROBLEE: --depending on how big the fire is, and it--

GEIST: Which is why this shouldn't happen. I'm guessing.

MARK ROBLEE: Right.

GEIST: OK.

MARK ROBLEE: Yes. And the-- I think there's people coming up that will explain how often it does happen. Yeah.

GEIST: OK. All right. Thank you.

LATHROP: Who prepares these plans?

MARK ROBLEE: Well, in our area, there is a-- there-- there's people coming up that could answer that question a lot better than I can.

LATHROP: OK. All right. I'll wait for--

MARK ROBLEE: OK.

LATHROP: --one of those people that do the plans.

MARK ROBLEE: Yep.

LATHROP: Have you-- oh, I-- I know what I was going to ask you, and that is, are people doing the burns now?

MARK ROBLEE: In our area, we haven't started because we've had some snow, but this time of the year is when we're starting to look for burn days, yes.

LATHROP: OK. That-- that maybe is the first question I should have asked. When do they typically do these burns? What's--

MARK ROBLEE: Typically in the spring. They've had to work around the Migratory Bird Act, which I think they have-- they're pulling that back a little bit and they are going to open up the burning available-- available time.

LATHROP: So sometime as winter turns to spring--

MARK ROBLEE: Right.

LATHROP: --is the-- is the season for these burns.

MARK ROBLEE: When the dry matter is there, when the grass is dried up, it hasn't turned green yet, is-- is the prime time.

LATHROP: OK. And are they doing these out there--

MARK ROBLEE: Oh, yeah.

LATHROP: --like do you have people that are saying, I'm not going to do a burn until I have immunity?

MARK ROBLEE: Oh, I believe that there are places in our area. Like I say, it's been a long process and it's taken a long time for the fire department to build, to see the-- to-- to put the trust in the landowners and for the landowners to learn and the landowners to-- to prove to-- to the burn-- to the fire department that they're-- they're capable, you know.

LATHROP: OK. And I have one more question for you. If I get a permit to burn and I got a section of land, it's all like grass or whatever needs to be burned and-- and whatever benefits that are derived from that, are you guys going to be there while I burn this section of land?

MARK ROBLEE: There-- so that's-- that's one of the-- one of the things that LB953 handles a little bit. Our fire-- our fire district, our fire department is extremely concerned about being out in that situation, about our insurance and whether or not we're-- we're insured or our firemen are insured while they're out there, being as they weren't paged out, so there's not as much support out on the ground as there could be if-- if they knew they weren't going to be liable.

LATHROP: OK, so I'm going to go back and ask the question. I appreciate that explanation. I don't want to sound argumentative, but are you going out to these things?

MARK ROBLEE: I am a--

LATHROP: Given the things you just talked about, are you guys out there?

MARK ROBLEE: OK, so I'm glad you asked that question. I am the vice president of the Loess Canyons Rangeland Alliance. I-- which is our burn-- burn group, OK, as well as I'm on the Curtis Fire Department.

LATHROP: OK.

MARK ROBLEE: So when I go, and I do go to every burn the LCR it has, I do it with-- I take my fire department hat off and I put my LCR hat-- hat on.

LATHROP: You drive your fire truck out there?

MARK ROBLEE: I do not drive my fire truck out there.

LATHROP: So you--

MARK ROBLEE: I drive my own personal equipment.

LATHROP: And you're just watching and then if something gets out of hand, you [INAUDIBLE]

MARK ROBLEE: No, I'm actively helping in the burn. I'm actually the resident fireman on the burn, so.

LATHROP: OK. Have you seen any of these get out of hand--

MARK ROBLEE: Yeah.

LATHROP: --like some ember gets up and then now it's over in Brandt's--

MARK ROBLEE: Yes. I have seen it and--

LATHROP: --fenceline?

MARK ROBLEE: --and what-- what's going on at that burn is we'll have 50 to 75 people pretty typically at our burns, and they all bring their own equipment and they're all right there. And there's actually people that that is their job all day long is to watch for those embers. So most typically, it's a very small area if we do have an ember start a spot fire, and it's the [INAUDIBLE]

LATHROP: But you've seen it happen.

MARK ROBLEE: Oh, yeah.

LATHROP: And have you seen it go and burn something you didn't intend to burn?

MARK ROBLEE: Oh, well, anytime it's outside of the fire, outside at the burn line, it's something we didn't intend to burn, right? But we were there and we put it out and-- and--

LATHROP: OK, so it might not be a half a mile of Brandt's fence, but it might be some of it.

MARK ROBLEE: It might be a fence post and-- or-- or it might be a half a mile. And in our country, we fix your fence, you know?

LATHROP: OK, Fence is pretty easy--

MARK ROBLEE: Yep.

LATHROP: --compared to a house or a shed or a farm.

MARK ROBLEE: Well, that's true. And if there were a-- if there were a structure, it would be in the burn plan that there is going to be protection equipment at that structure while this burn is taking place.

LATHROP: OK. That's been helpful. I appreciate you answering my questions, and I don't see any others.

MARK ROBLEE: Great.

LATHROP: OK, thank you.

MARK ROBLEE: Thank you.

LATHROP: Next proponent. This a little bit like church. Everybody wants to sit in back. If you're going to testify and you want to get up, you-- we have these seats up front that are sort of the-- the backup seats and you're welcome to-- to the front. Good afternoon.

JERRY McDONALD: Good afternoon, Senators, Senator Lathrop. My name is Jerry McDonald, J-e-r-r-y M-c-D-o-n-a-l-d. Thank you for your time today, appreciate it. I'm the field service manager with Pheasants Forever. I grew up Fillmore County, Senator Brandt, so-- and I currently reside in Senator Geist's area. Been around for Pheasants Forever for 12 years, but I am representing Nebraska Pheasants Forever today with our 25 biologists, 65 chapters, and over 10,000 members. Nebraska Pheasants Forever history of prescribed burn associations goes back to 2008. Pheasants Forever is testifying in favor of LB953. We feel there are consequences that removal of fire has on our-- we feel there are consequences that removal of fire has on our wildlife and our economy. And I understand you had a long day yesterday. a long night, and it's a long day today, so I trimmed my testimony down to be respectful of your time. Four main areas, four main barriers to getting fire on the landscape, and our organization works hard to break down these barriers. First barrier is training, and we've created a network of volunteer training opportunities each year across the state. We have conducted 171 burn workshops with over 43,000 attendees-- 4-- 4,300 attendees. Our burn workshops start with the teaching of basic prescribed-- prescribed fire, and then our advanced burn workshops go deeper into more specialized training. We feel we have the best volunteers, best-trained volunteers around. Access to people: We've helped form and created 11 burn-- 11 prescribed burn associations with over 1,000 live burning training opportunities on over 80,000 acres. We have done this with an impeccable safety record. Access to equipment, that was brought up. We have 15 mobile prescribed burn units that include the starting blocks for safe and successful prescribed burns. We continually evaluate needs and help provide additional equipment every year. We've done our homework to get prescribed fire on the landscape, but our last barrier is liability, and we could really use your help on liability. The most common thing we hear when recommending prescribed burns is no. We hear no because of fear of liability. With over 1,000 prescribed burns conducted-- conducted by our prescribed burn associations, we have not had one major incident or large insurance claim. Prescribed fire is one of the safer activities conducted by

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

people on the farm and ranch, and it is the top of the list for best practices for habitat conservation. In closing, by implementing these changes as outlined in LB953, we hope that the future of wildlife conservation and cattle production throughout Nebraska continues to thrive for generations to cherish. Thank you, and I am very happy to answer any questions that you have.

LATHROP: OK. Well, Senator Geist has a question.

GEIST: I'll make it short.

JERRY McDONALD: No, I don't care. Yeah, no.

GEIST: It's nice to meet you.

JERRY McDONALD: Nice to meet you.

GEIST: Pheasants Forever, prescribed burns, I wouldn't put those two things together, so I'm curious if this helps pheasant habitat.

JERRY McDONALD: It does. It's one of the most, I guess, greatest conservation activities that we can do on the land because the fire reestablishes the old seed base. It removes a monoculture a broom or-- or winter cover, and it puts diverse seed bases into that culture, which is great for nesting cover for little chicks that need forbs to eat the bugs and the seeds from the forbs, so, yes, it's tremendous what it does for pheasant and quail population.

GEIST: OK. All right, that's it. I just-- trying to draw the connection.

JERRY McDONALD: Yeah, good question.

LATHROP: All right. Thanks for being here.

JERRY McDONALD: Yeah, thank you.

LATHROP: Next proponent. Good afternoon, welcome.

SCOTT STOUT: Thank you, sir. Hello, my name is Scott Stout, S-c-o-t-t S-t-o-u-t. I appreciate the-- the Judicial Committee for hearing this testimony. I would like to submit my testimony, but I think my time would better be spent answering questions for you about burn plans and submitting those. I am a technical support-- supp-- excuse me, provider for the NRCS here in Nebraska. I write the burn plans for a

lot of the burns that are done in our area, so I'd like to answer any questions I possibly could for that.

LATHROP: OK. So thank you for being here. And I do have a question about these burn plans. You write them. Does everyone have somebody with your-- I assume you have some expertise in writing them.

SCOTT STOUT: Yes, sir.

LATHROP: Does everybody get someone with your level of expertise to write a burn plan, or can a landowner write one and submit it to the--

SCOTT STOUT: In our area, I probably write 100 percent of our burn plans that are within our group. There are several other TSPs across the state that do write burn plans, most generally, that the burn plans are written by a certified individual. Up to state statute, there has to be-- it has to meet certain criterias in order to be a significant burn plan to be presented to that fire department.

LATHROP: OK. And without going into the minutiae, what's a burn plan look like? What's in it?

SCOTT STOUT: So the typical burn plan would-- it has several pieces of information in it that would give you the location of your fire, the wind direction that you need, the special parameters that it would take in order to perform that fire in a safe and effective way. It has the landowner's name, how-- you know, a lot of the legal, technical areas of what-- how the fire would be conducted as like an ignition sequence and stuff like that, how many different individuals it takes to con-- control and perform that fire. So there's a lot of different aspects that go into the burn plan that the ones I write for the NRCS is about 29 pages long.

LATHROP: OK.

SCOTT STOUT: So it is-- it goes in-- very in-depth, but state statute does not require everything that is in that.

LATHROP: Is there a standard for how many people need to attend to a-- one of these fires?

SCOTT STOUT: That depends on the objective of the fire and what it calls. There's no set number that-- a specific amount of acres. There's really no set number that it takes to do that. But as a burn planner, you have a set of-- set of jobs that you establish for that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

burn and that burn will allow-- or that would li-- kind of give you an idea of how many people that would take to do that fire. So it's very-- it's-- it's more of a educated guess on how many it would take; and I've been doing it long enough, I think I have a pretty good grasp of what it would take in order to do these more volatile, higher intensity fires.

LATHROP: Do you have a limitation on how much wind there can be when one of these [INAUDIBLE]

SCOTT STOUT: Yes. And state stat-- the burn plans that we write, we put a limit of between 5- and 20-mile-an-hour on, depending on what time of year. There is a--

LATHROP: Twenty-mile-an-hour is quite a bit of wind, isn't it?

SCOTT STOUT: Yes, sir. It depends on what your objectives are. When you're dead-burning different times of the year, the green-up in, say, your spring or-- or late spring, early summertime, there's a lot of green-up, some travel, rate of spread is not as great as in times of spring when things are drier. So you kind of take that into consideration when you're writing these burn plans, what time of year you're going to be burning and how volatile and what objectives you're trying to meet.

LATHROP: If you do a burn plan, say, March 1, how long do I have to take that plan and execute it? In other words, does it-- does it have a shelf life? Like if I do a burn plan for you, you better-- I might do a different plan if you wait more than two weeks.

SCOTT STOUT: No, sir. That-- that-- that burn plan pretty much is-- is-- has enough information that in your timeframe, you should be good through what time of year that you are burning. Now, if you move that into a different time of year or your parameters change a little bit, then, yes, you'll need to revamp that burn plan. But that burn plan lays out the criteria of what you're trying to accomplish and the wind parameters that you are trying to perform under, so you need to really-- it's more-- not more of a timeframe, but more of what-- what your objectives are and what-- what weather is going to fit that burn plan through it.

LATHROP: OK, one last question from me. Do these burn plans call for the fire department to be nearby, at the scene--

SCOTT STOUT: No, sir.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

LATHROP: --at the ready with a hose?

SCOTT STOUT: No, just as long as they-- just as long as the burn plan [INAUDIBLE] you know, specifies how many people there and meets all of what fire departments want to have in that burn permit, then the fire departments are-- have no legality or specified needs to be there other than if they want to be there on their own decision making.

LATHROP: OK, that's all the questions I have, Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Would there be any objection on your part into inserting into-- language into the bill that said there must be a certified burn plan from the NRCS or whatever agencies do this?

SCOTT STOUT: No, sir. I don't-- I-- I would not want to have a specific set of plans or name a plan in that burn. I would like to meet-- see the criteria or the state statutes stay the same. There's a lot of burn plans that need to be done that-- that don't require 39-- or 29, 30 pages of burn plan itself. I want to see it, you know, the criteria be simple but yet be something that's going to meet everybody's objectives.

BRANDT: OK. And I guess I had the opportunity to speak to the Fairbury Volunteer Fire Department this last year, and I don't remember whether the gentleman was from Kansas, and we went through an hour and a half of-- of how these burn plans work. And I don't think maybe the committee understands that you round up all the neighbors and you divide up into squads and you have fire captains and everybody has a specific job.

SCOTT STOUT: Yes, sir.

BRANDT: Would that be a fair statement?

SCOTT STOUT: Yes, sir.

BRANDT: OK.

SCOTT STOUT: Yes.

BRANDT: Thank you.

LATHROP: Senator DeBoer.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

DeBOER: Thank you very much for your testimony. So I want to kind of follow up with something you were talking about with Senator Lathrop about whether or not a burn plan will expire. I understand the change of the seasons. Is it communicated within the burn plan, like, you know, this maybe is good until April and then after that, that's the com-- so have you communicated within the burn plan what you think the kind of seasonal parameters on-- are on that?

SCOTT STOUT: That is-- through the burn plans that I write for the NRCS, that is-- that is written in when-- in the wording that if-- if conditions shall change from-- from season to season, yeah, they'll be needing to be updated or wrote to where it fits that type of timeframe.

DeBOER: Do-- do you tell the-- the person you're creating the burn plan for when you think the season will change?

SCOTT STOUT: I-- that is-- I mean, that varies between weather-- weather incidences or, you know, a drought. It just-- there's so--

DeBOER: OK.

SCOTT STOUT: --many different variables in there that it's-- your burn plan cannot specify each one of those where there's so many unpredictables.

DeBOER: So if I had you draw up a burn plan for me--actually, we need to do a burn at my parents' land--and I had you draw up the burn for me but things-- whatever, we didn't get it done, could I use that burn plan-- you drew it up for me in, say, February. Could I use it the next year?

SCOTT STOUT: Right, so that-- yes, you can, because there's-- it doesn't really have a shelf life on it, but there are a list of parameters that you need to follow. Just as long as you're meeting those parameters within that burn plan, it should not matter what-- what year that parameter-- that burn plan was written.

DeBOER: So if I successfully do a burn in year one, in February or something, could I then use the same burn plan, just-- just go get it off the shelf and do it, use it for now a second burn in the next--

SCOTT STOUT: If that's what your objectives are trying to meet and it's following the weather parameters that you are sent in there and you feel comfortable with that. I don't see a problem with that. If you wanted that you update it or change your lines or, you know, have

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

updates that you may change that burning in-- in some specific reason, then I think you need to update that burn plan.

DeBOER: And you keep saying objectives. Can you-- because, you know, I don't really have enough information.

SCOTT STOUT: OK.

DeBOER: So what are the various--

SCOTT STOUT: When we-- when we speak objectives--

DeBOER: --kinds of objectives?

SCOTT STOUT: So when you look at it, the reason you are burning is why. The object-- objective that I have is cedar tree encroachment. A lot of ours-- burn-- burn units that we're doing. There's different objectives, like grazing management or increase diversity-- diversity in your grassland, wildlife improvement. So there's di-- so many different objectives that go into that consideration when you're thinking about burning this unit that you really need to think to yourself, why am I going to do this, how this is going to help me, and what type of things do I need in order to make this happen?

DeBOER: So on our land, I know we have the red cedar problem, and, you know, there's like a certain width, once the trunk gets past that width, then it's probably not going to be as effective to burn it or something like that.

SCOTT STOUT: That's inaccurate.

DeBOER: OK, good. I'm glad to know that, actually. Thank you. So, all right, but I guess what I was gonna say is, if I have one objective, do I use a different kind of burn than another objective, like one goes faster, one goes--

SCOTT STOUT: There's--

DeBOER: --because I was just thinking--

SCOTT STOUT: There's different types of-- of-- types of burning. The general-- your general type of burning would be your kind of ring fire technique. There's a backfiring technique where you want to keep it low intensity. There's so many different things that you want to-- in our area, for instance, you know, we have a lot of canyon, rough terrain, steep topography, so we use a lot of ring fire techniques

with internal ignition that, you know, allows you some more erratic fire behavior to get rid of those larger scale trees.

DeBOER: OK.

SCOTT STOUT: So there's a-- it's-- it-- it's-- there's just a lot of things that go into that in order to-- that needs to be considered before you're able to do that.

DeBOER: So because there is this sort of difference, right, between if you're trying to burn some of those slightly larger trees than if you're just going to do-- you've got, you know, a straight grass area. When you do some of the trainings-- maybe you didn't-- I think it was another gentleman who talked about the trainings. Is there different training techniques that are-- that are shown to landowners for those various types of--

SCOTT STOUT: Where we have-- as a landowner-driven group, we have kind of become self-sufficient. We train within our own group. The techniques that we use are something-- you know, are things that we-- would be viable to us. Pheasants Forever offer a lot of training throughout Nebraska that get your basic fire behaviors down, techniques in order to weigh the burn, equipment that they need. That would be a great place to start. It's just the things that we teach as-- as landowners might be-- not be exactly what, you know, in-- at Fairbury, would def-- necessarily need to have in order to do these burns. So, I mean, there's just a lot of different areas across the state that would take different fire applications.

DeBOER: Have you ever seen a fire that you wrote a burn plan for sort of get out of hand?

SCOTT STOUT: Yeah, we've-- we've seen them have "slop-overs." Most of them were all mitigated there. They're, you know, taken care of, the small incidences. I-- in my report, you'll see also the-- towards the middle of the end of the testimony that there is-- Oklahoma State did a-- a study. And if I get this wrong, I apologize, but there is a 99.7 percent-- or 99.3 success rate in the Great Plains when it comes to prescribed fire. There is-- it's more likely to have a volunteer fireman, 3,350 percent more liable-- or likely to be hurt on a wildfire than he would be a prescribed fire. So the aspects of it, and that's why we're doing this, is to increase their grazing as landowners, reduce the amount of wildfire per-- our area. Everybody sees the-- the distance that-- or the reactions of wildfire here in the United States lately. By doing the prescribed fire, it reduces

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

the amount of volatile fuels out there in those rangelands that, you know, potentially cause danger or whatever. So it's kind of the reason we're-- mainly from a grazing standpoint, but where there's a lot of hidden aspects of it that are beneficial.

DeBOER: OK.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. I think there's a little bit of confusion on the committee between a burn plan and a burn permit.

SCOTT STOUT: Oh, excuse me.

BRANDT: And-- and-- no.

SCOTT STOUT: OK. Sorry.

BRANDT: And I guess maybe to clarify a little bit, my son is on the volunteer fire department. You cannot burn anything without a burn permit--

SCOTT STOUT: That is correct.

BRANDT: --from the volunteer fire department, and that permit would say specifically what day you're going to burn. And correct me if I'm wrong, but your burn plan says it might take you a week to put a burn plan together to get the equipment, get the people--

SCOTT STOUT: Right.

BRANDT: --and look for that optimal day.

SCOTT STOUT: A lot of these burn plans that we have developed are developed months in advance and presented to the fire departments for review. Once they review those, and in accordance with what they believe ought to be in there, then they will issue the burn permit. It varies from department, department, but our department allows you to have one-- a burn permit for one day, so.

BRANDT: Thank you.

LATHROP: OK, that helps. I don't see any other questions. Thanks for sharing your expertise.

SCOTT STOUT: You're welcome. Thank you for having me.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

LATHROP: Yeah, appreciate having you here. Next proponent. Good afternoon.

ERIC HANSEN: Good afternoon, Senator. Chairman Lathrop, members of the Ju-- Judiciary Committee, my name is Eric Hansen, E-r-i-c H-a-n-s-e-n. I serve as the vice chair of the natural resources committee for the Nebraska Cattlemen, and I'm here to testify in support of LB953. I am a fifth-generation Sandhills rancher, and over the past 15 years have spent an estimated \$60,000 on the mechanical removal of eastern red cedars on my ranch. Now, saying that, I consider myself very fortunate that I don't have a big cedar tree problem like a lot of these guys sitting behind me. I-- I have yet to have to use fire as a tool to control the cedars on my ranch. If the spread keeps continuing my way from the east, I foresee definitely having to use fire. I'd like to emphasize to the committee that 15 years ago, I was totally against prescribed fire. I couldn't wrap my head around why someone would want to make-- to start a fire in the Sandhills on purpose. We spent a lot of time putting them out. Since then, I've seen how impactful land management burning can be to curb the rapid expansion of eastern red cedar trees and other woody species that are rapidly taking over grasslands in our state. Over the years, I've had the opportunity to learn that prescribed fires are conducted with extensive preparation, planning, and careful execution by very passionate and intelligent people. Today, I believe land-management burning is a critical tool to assist ranchers in their efforts to preserve and protect our grasslands from the encroachment of cedar trees. Ranchers routinely demonstrate that land-management burning can be completely-- can be completed safely. LB953 removes a barrier that deters ranchers from conducting land management burns. As you'll hear repeatedly from ranchers here today, land management burns provide a much-needed acceleration of eastern red cedar control. Thank you, Senator Cavanaugh, for your support of local landowners in their battle with woody encroachment in our grasslands. Nebraska Cattlemen supports LB953 and asks members of the Judiciary Committee vote to advance this bill out of committee. I'm happy to take any questions.

LATHROP: I don't see any questions. I think we're getting-- we're getting the drift of this bill.

ERIC HANSEN: Yep.

LATHROP: Yep, thanks for your-- thanks for being here.

ERIC HANSEN: These guys are much better at this than I am.

LATHROP: Welcome.

TELL DEATRICH: Thank you. Thank you to the committee. My name is Tell Deatrich, T-e-l-l D-e-a-t-r-i-c-h. Thank you for the opportunity to testify in this hearing. I'm a fourth-generation rancher from Lincoln County. I'm also the treasurer for the Loess Canyon Rangeland Alliance. We're the premier burn association in Nebraska. We have safely and successfully conducted prescribed fire on over 90,000 acres and we represent, total landholdings, about 200,000 acres that our members control. I was there for one of the first burns conducted in our area in 2002, and my family was an active player in recognizing the economic danger of unchecked brush encroachment on our native prairies and the usefulness of fire to re-- to reduce the destruction that we were seeing. We as landowners and collectively as the [INAUDIBLE] have set out to do what we were told could not be done and have been blessed with a community that continues to work together to reach new heights in utilizing fire as a tool to improve rangeland health and, as I learned this week also, further protecting an endangered species, causing its population to increase, which has never been done in the way that we're doing it by private landowners. We've been in the front of the effort to increase fire awareness and reduce the barriers of entry to landowners and managers in utilizing fire in the Great Plains region. Because of the desire to improve rangeland and to see landowners free to exercise their right to manage their own land using the most effective tools available to them, we support this bill. Fire has long been one of the most safe and effective tools available to land managers, and it has been made this way by the guidelines put in place for a multi-year planning process. We're talking five years if we want to put fire on the ground, whether it's 50 acres or 3,000 acres. This bill reflects the responsibility given to managers to apply fire, and then it also protects their efforts to do so. It also protects the fire chiefs who are partners with them in en-- ensuring that good fire is applied to the landscape. And finally, it makes it easier for responsible individuals to obtain a burn permit on burn days, both for burning free piles in preparation so that we can ensure that it's going to go off safely, and then for the land management burn also. By removing barriers to entry, namely liability, this bill paves the way for land managers to improve the fire awareness of our communities. An educated and prepared population lessens the strain on fire departments in the events of wildfire, something that is increasingly a concern for Nebraskans. In our community, we want to be on the cutting edge, the leading tip of the spear, so to speak, of looking down the road and saying wildfire is coming here and it's going to be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

bad and we want to be private landowners actively working to stop this, and we think this-- this bill will help get more landowners on board.

LATHROP: OK, thank you, I don't see any questions. We appreciate you being here.

TELL DEATRICH: Thank you.

LATHROP: Good afternoon.

JAY FERRIS: Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Jay Ferris, J-a-y F-e-r-r-i-s. I'm the director of political advocacy and state policy for the Nebraska Farm Bureau. I'm here today in support of LB953 on behalf of Nebraska Farm Bureau. We would like to thank Senator Cavanaugh for introducing this bill. I just want to point out that controlled burning-- burning is an important management tool for landowners, for the control of weeds, pest, insects and disease. Many times field burning is less expensive and can provide better control than most other methods, such as pesticides or tillage. Nebraska Farm Bureau has a long-standing policy that's-- that supports prescribed burning as a landowner right for proper land management. L0953 does provide liabil-- some liability protection for landowners and local fire departments for damages if the permitted-- permitted land management burn were to get out of control and there's no evidence of gross negligence. It further protects the right of landowners by including it in the public interest in not considering it a nuisance, if the following-- if-- if you're following all state laws and regulations. On a personal note, I am a landowner myself, have had some permitted burns in the past, and I will also state on the liability protection for fire departments., I will say it was-- many times we would partner with the fire department and use our prescribed burns as training. Two instances, the fire department was happy to come out and use it, but then they got nervous and said, because of liability issues, we can't come out. As a landowner, it was very good to-- because they're-- I'm not experienced in fires, and having the fire department assist and help with that burn was something that was of benefit to me at the time. With that, the changes that are proposed in LB953, we believe, are needed and supported by the grassroots members of the Nebraska Farm Bureau. And I encourage this committee to advance LB953. And I thank the committee for your time today and be happy to answer any questions.

LATHROP: OK. Senator Brandt.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Ferris, for your testimony today. Do you see this bill as a blanket liability for the fire department, the landowner, the crew? Everybody involved with this gets liability-- or-- or gets immunity?

JAY FERRIS: Within reason. It-- just for-- providing you're following the-- the best management practices, the guidelines, get your burn permit. If things get out of control that are beyond your control, it would protect you from liability, in my opinion.

BRANDT: All right. Thank you.

LATHROP: I don't see any other questions. Thanks for being here.

JAY FERRIS: OK. You bet. Thank you.

LATHROP: Yeah.

JAMES LOWERY II: Hello.

LATHROP: Good afternoon.

JAMES LOWERY II: Good afternoon to you guys, Senators. My name is James Lowrey, II, J-a-m-e-s L-o-w-e-r-y II. I'm-- I'm a-- I'm from-- I'm a rancher up in Garfield County, and I live 20 miles north into the Sandhills there, and we've got a pretty big tree problem. I kind of wanted to focus on actually the school section that we own. We have about 4,000 acres around that school section and-- and it's in the same position as are our personal land is. And the-- in the last several years, we've been losing money on the school section, running it because of the tree population's gotten so thick that our cattle numbers had to go down because we couldn't graze it because the tree population is so thick. And 15 years ago, I had asked the school section land and-- the Board of Land Funds people to cut-- I'd had a contractor made a bid to cut-- cut that-- cut the trees for it, and it was supposed to be \$45,000 to cut those trees on a full section. And they didn't decide-- they didn't think they needed to do that and, 15 years later, it got so thick that you can't hardly drive through there. The deer population won't go through it, let alone my cow population. And so we've shrank down from 64 pairs running on that section, down to 55 pairs. And I'm we're losing close to \$30,500 every year on that school section because of the rent. And so with that, I- I come to them, and the lease was coming up this year, and I told them, we need to do something; otherwise, I'm letting go of the lease. And that lease has been in our family for over 100 years. It's been-- whether it was my great grandfather or my grandfather or my

father or my-- or mine for-- I'm a fifth generation rancher and-- and it's been in our family that long, so letting it go isn't exactly something easy to do. But where you're losing money on it wasn't worth it and they weren't cutting trees, well, I finally got them talked into doing so. And they decided they would go ahead, so I-- we made bids and contracts. And now the bid, the lowest bid, they came in and were going to cut the school section this year and-- and I decided to go ahead and lease it again, but it's going to be \$145,000 now to cut it. And we're going to follow up with two-- two years later to burn it, to get the rest of the small cedars, because you don't-- if you just cut it, you're making more room for more cedars and-- and you're just gonna have a worse problem after you've done that. And we're cutting a swath through that land. Me and my neighbors, we've kind of finally started getting onto burning and stuff. I was kind of the first one that jumped into it. Nobody wanted to burn out there. We're in the Sandhills. Everybody is against it. But I decided this is the only way we're going to get this conquered because we've been trying to cut them and it just isn't working. We're falling farther and farther behind, and this is the only way we're going to conquer it because on our land, we're going to cut it at the same time this next August and it's going to cost \$250,000 for our land. OK. So if you have any questions,.

LATHROP: Our land being 4,000 acres?

JAMES LOWERY II: Just two sections for our piece of land.

LATHROP: \$400,000 for two sections?

JAMES LOWERY II: Two-- 200-- it's \$252,000 to cut our-- our section, our two sections, and then the one school sec-- section will be \$140,000.

LATHROP: Are those all red cedars?

JAMES LOWERY II: Yes. Yes, all eastern red cedars.

LATHROP: And by burning, you can kill them?

JAMES LOWERY II: Yeah. Well, if we can go ahead and clear-cut it now, we've gotten to a place where we have so many big trees, we have to clear-cut it and then come back with fire. If we don't come back with fire, it'll be three times as worse as it is now. And so you just kind of cut a cedar tree, you move it out of the way for another ten to come in. And so we have to come back, confirm, and I've been doing burns the last two years, but that's-- and-- because I've actually

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

watched it. It looked like a pretty decent way of doing it, so we've been actually burning for the last two years every spring.

LATHROP: Okay, good to know. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. This is right up my alley. I've been fighting cedar trees my whole life. So why don't you just light the damn section?

JAMES LOWERY II: Well--

BRANDT: Big trees burn too.

JAMES LOWERY II: Well, one of them we have because we had to get ahead. And there was no funding right at the time. I found out there's more partnerships to-- starting to help. And now we're starting again the EQUIP program, so there's starting to be some funding to help us. But most of my neighbors are pretty nervous about fires. But I did-- got them. I'm trying to change the culture in our neighborhood and bring in, some of our neighbors in, in on it. And now actually I have handed both the torch and-- and told them to light it up, and they actually helped with the burn, you know, under supervision of everybody that knows what's going on. And they decided that now they're going to go that direction, too, because that's the only way we're going to tackle this cedar population is to do this because we're losing-- losing money on our-- on our land from the overpopulation of cedar trees.

BRANDT: All right. Thank you.

LATHROP: What county did you say you're in?

JAMES LOWERY II: Garfield County.

LATHROP: OK.

JAMES LOWERY II: Yeah, Burwell, Nebraska, there, big rodeo, so--

LATHROP: Oh, OK.

JAMES LOWERY II: --and the Calamus.

LATHROP: Senator DeBoer.

DeBOER: For keeping down a section like that, that you're grazing, would you have to do a burn every year or every other year, or about

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

how often do you think you-- you need to kind of do it to-- to keep them at a level that you can deal with?

JAMES LOWERY II: Well, some of it's a little experimental from us, but I've been watching other burn-- burns and people that have been working; like even where Scott was working, I've been watching there what they've been doing. And what I've-- what I've got set up to do is I'm going to do about a seven-year rotation down on our-- about our 4,000 acres, and every year I'm going to burn a piece of-- at least a section or-- or maybe a little bit more than a section. And so as I rotate around that, so about every seven years, I'm thinking i might have to come back to it because you'll wipe-- get rid of the big trees and then you burn-- burn two years later when the little ones come up--

DeBOER: Yep.

JAMES LOWERY II: --the seedlings, and then it should be, I'm thinking, three to five years before you'd have to do it again, and then it should get easier because you're getting rid of all the seed stock.

DeBOER: Yeah.

JAMES LOWERY II: So that's what we're trying to get to.

DeBOER: All right. Thank you.

JAMES LOWERY II: Yeah.

LATHROP: OK, very interesting.

JAMES LOWERY II: All right. Thank you.

LATHROP: Thanks for being here.

JAMES LOWERY II: Thank you. It was [INAUDIBLE]

LATHROP: Be safe on the drive back yeah.

JAMES LOWERY II: Thank you.

LATHROP: Any other proponents of LB953? Anyone here in opposition to LB953? Good afternoon once again.

JOHN LINDSAY: Thank you. I-- I believe I've heard your admonition that it's now 4:00 on a Friday after-- or 5:00.

LATHROP: It's now 5:00 on a Friday afternoon. [LAUGHTER]

JOHN LINDSAY: My name is John Lindsay, J-o-h-n Li-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys. And, Senator Brandt, I've-- I've heard several people today say "I'm not a lawyer," but I will say I'm not a farmer. But this has been instructive to me. What I've heard from the folks behind me, I found fascinating and-- and, like I say, instructive for a seventh-generation city boy from Omaha. And I wish I could do maybe a burn in my backyard. The our concern with this, like we find often, is-- is immunity from liability, that there's-- the bill tends to make no one liable for-- or no one accountable for errors that may come up. And-- the probably the most fascinating thing I've heard is from all the folks behind me. I found them to be very professional, very knowledgeable in-- in open burns. I was surprised how much goes into it. But the other thing that caught me by surprise was the bill is not needed because there is nothing actionable in what they said. They are doing-- we have to go back to basic tort law which-- which says you have to have a duty, you have to have a breach of that duty, you have to have causation and damages. And what we find here is they certainly have a duty. Everybody has a duty to-- to not burden their neighbor's land. And the question is, is there a breach caused by carelessness? And from what I'm hearing, under these plans, if they're properly executed, nothing I've heard has said that if a fire gets out, that it-- that it's going to be considered negligence. And that's part of the problem with some of these bills like this is we're shadowboxing. There's-- there's really no opponent because there's a misconception out among the general public about liability. The fact that your neighbor's yard or barn burns is-- does not make you liable. You have to have done something to breach of duty you owe to your neighbor. And- and that's what you do if it's-- if it's carelessness that's-- that's involved. And the folks behind me. I haven't seen anything that would tell me that they were careless in the way they're doing it. It's just the opposite, and I think that's what you want to encourage, is folks to-- for-- for farmers, ranchers to utilize the structure that's been described at this hearing. And if they do, they would already be doing it in a proper manner because followed the rules or following the plan in a-- in a safe, reasonable manner. There's not going to be any liability. But those who-- who don't use these types of people to help them do the plan and-- and guide it, I think that's-- it's good that they're scared if they're not going to go through it the way the [INAUDIBLE] has been describing. So that's-- our concern is any time you-- you give immunity from liability, you encourage a lack of accountability. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

I would just give a shout out to, like I said, the folks behind me. I think they're doing it all right from what I've heard and-- and-- and we appreciate hearing that. Be happy to answer any questions.

LATHROP: I don't see any questions today.

JOHN LINDSAY: Thank you.

LATHROP: OK, anyone else here in opposition? Thank you for your testimony. Anyone else here in opposition to LB953? Anyone here to speak in a neutral capacity?

JERRY STILMOCK: Mr. Chair, members of the committee, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of my client, Nebraska State Volunteer Firefighters Association, neutral position. There are three areas addressed in the bill. Senator Cavanaugh addressed the first issue; that is, how are permits issued? And he referenced Senator Halloran has a bill coming up in Business and Labor. Whenever that may be scheduled, that's probably the better way to go. Just comment as to why this-- this measure-- and to the first area on this permit. It's because right now the Fire Marshal has a written document that's administered or distributed throughout the state. The volunteer fire departments use that. The chief signs off on it; the designee signs off on that permit. What this bill would do is would require the volunteer departments to submit their form to the Fire Marshal to be approved, and that would be chaos. That would-- that would be very difficult. The area, too, talking about liability or the immunity from liability on the owner or the tenant or the owner's agent, that's really outside of what-- what the volunteers are about. Two specific reasons, though, why. I got to share with you, and-- and I'm gonna get the red light, but I'll keep talking quick like-- I won't name her name. There's a firemen's rule in Nebraska that's been followed, most recently, ironically, out of Syracuse. So it goes like this. A fireman is injured-- this isn't the Syracuse case. The Syracuse case was property of the fire department, fire district, specifically. Fireman is injured at a fire. What's the result? What happens if the landowner was negligent, even grossly negligent? What happens to that firefighter? Workers' Comp. It's Workers' Comp. It's Workers' comp. It doesn't matter whether there is liability or not. We know that part. What about property damage? OK, well, if the fire district or the city's equipment is damaged, what happens in that state, in that instance? The fireman rule kicks in and the fireman's rule simply says, look, firefighting is a public service, public service is provided because of tax dollars, and even though tax dollars go for labor-- think the opposite of that,

volunteers, but the rule still applies. So there's a policy argument in the Supreme Court has followed in Nebraska and other states that says the fireman's rule. Look, if that property is damaged, you can't go back against that negligent person. So area two really goes away as well. So area three, area three is that part that talks about immunity to the fire chief or the chief's designee for writing the permit. And then I point to Political Subdivision Tort Claim Act. It's like a discretionary item. If the chief doesn't want to sign it, the designee doesn't want to sign it or does sign it, it's a discretionary item by the chief and-- and, therefore, the Political Subdivision Tort Claim Act is not going to open up immunity or open up-- release for sovereign immunity. I misspoke. And therefore, the Political Subdivisions Tort Claims Act does not apply, it does not open a door, therefore, the door remains closed and there's no-- there's no recovery. There were tons of questions I would love to answer, but I'll defer to see if-- if there were tons of questions raised, great questions.

LATHROP: I agree with everything you just said.

JERRY STILMOCK: All right.

LATHROP: I think you're right that there's a-- there's immunity if you are a political subdivision and issue a permit under the Political Subdivision Tort Claims Act, I think.

JERRY STILMOCK: Yes, sir.

LATHROP: Yeah.

JERRY STILMOCK: I--

LATHROP: And the fireman's rule, I agree with that. It's a-- it's a version of assumption of risk.

JERRY STILMOCK: True.

LATHROP: So there's no liability on the part even of a careless person that starts a fire with a discarded cigarette.

JERRY STILMOCK: Yeah.

LATHROP: You injure a firefighter and they can't make a claim but for Work Comp benefits.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

JERRY STILMOCK: You didn't ask me a question, but I'll be polite. Red light went on.

LATHROP: OK. People are all looking around like they want to ask a question, but it's 5:00.

JERRY STILMOCK: I wish they would. I wish they would.

LATHROP: Well, I think we understand the-- the issues. Is this written in a volunteer firemen's-- the volunteer fire departments section? Is that why you're concerned?

JERRY STILMOCK: No. No, it-- burn permit's universal, volunteer, pay, career. There are many levels. I-- I want to-- I want to do more. I want to provide more to the committee but [INAUDIBLE]

LATHROP: But the-- but th-- the volunteer fire departments aren't exposed in this process anyway. It's the-- it's somebody that performs a burn and does it in a careless manner.

JERRY STILMOCK: True. And that goes to the point, Senator, of, do volunteer fire departments do this, do this, actually carry out the burn? Yes, they do, in some instances, because why? Because funding, trying to get a new truck, trying to get something new, some new equipment, bunker gear, whatever it may-- so it's a-- it's a way for some of the fire departments to-- to raise money, which is ludicrous that they're out there doing this to raise money.

LATHROP: Well, let me ask a question about something somebody brought up, which is we don't send our fire trucks out there because we don't have insurance unless we get called to a fire.

JERRY STILMOCK: Right.

LATHROP: Did you hear that?

JERRY STILMOCK: Yes, sir.

LATHROP: Is that true?

JERRY STILMOCK: I believe it is.

LATHROP: So a fire department, if there's going to be a controlled burn at somebody's ranch or somebody's place and it covers a lot of area, you can't just have the fire department like watch--

JERRY STILMOCK: Depends on that pol--

LATHROP: --be close?

JERRY STILMOCK: I'm sorry, sir. It depends on that policy. If it's-- if it's termed in terms of a training-- training activity, then I believe insurance coverage would be in place.

LATHROP: But just to get closer to what might become a problem and get to it sooner, there's no coverage because they haven't been called to it.

JERRY STILMOCK: Yes. In your statement, yes. And there's--

LATHROP: I'm not familiar with their insurance, so.

JERRY STILMOCK: No, no. Yeah, and there's-- there's a whole national group. This has gone on for 20 years, 25 years at the Legislature. This is just the next phase of it. You take Nebraskaland Magazine, you-- you stop at a truck stop up and down I-80, there are training sessions that are happening. How-- what level of training should happen before a plan is put together by the author? What-- what does that author need? And so the term comes up, National Wildlife Coordinating Group, that they have parameters of different certification that's required. And we-- when we talk certification, then-- then the-- gets quiet. It gets quiet in terms of who should be the author of these plans.

LATHROP: I can see where that's an issue because if somebody just sets up a shop and says, I know how to write these plans and his brother-in-law is the fire chief, then you have a guy who may not be capable writing a plan that's approved by the fire chief. Right?

JERRY STILMOCK: You-- you-- you're correct. Maybe I can get with counsel. I have to be polite with all of your time.

LATHROP: OK. Senator DeBoer.

DeBOER: All right. I'll ask some questions then. The training, do you know the-- is this training that is done, training that is performed by firemen, volunteer firemen, something like that? Do you know anything about the kinds of trainings that are being done in these burn situations?

JERRY STILMOCK: From the-- I have not attended a burn training event, but it's usually in conjunction with the people that testified, Game and Parks, NRCS, volunteer-- or Pheasants Forever. And it's, you know, it's a one-day-- my understanding, it's a one-day training, and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

that's provided, that-- that-- that they provide information on how to write a plan.

DeBOER: They-- they provide information on how to write the plan or do they provide information on what to look for when you're in the field and there's an active fire?

JERRY STILMOCK: Yeah, it's-- it's-- it's to write the plan.

DeBOER: OK.

JERRY STILMOCK: Yeah.

DeBOER: All right, thank you.

JERRY STILMOCK: Yes.

LATHROP: OK. Thanks.

JERRY STILMOCK: Thank you all, appreciate it.

LATHROP: Appreciate it.

JERRY STILMOCK: Yes, thank you.

LATHROP: Next neutral testifier. Good evening.

DIRAC TWIDWELL: Thank you. Yeah, good afternoon, Senator Lathrop and members of the Judiciary Committee. I'm Dirac Twidwell, D-i-r-a-c T-w-i-d-w-e-l-l. I'm an associate professor at the University of Nebraska at the Institute of Agriculture, Natural Resources. I'm also a science advisor for the USDA Natural Resources Conservation Service for my expertise in grasslands, fire, and science-based solutions for woody encroachment. I'm also on the board of directors for the Great Plains Fire Science Exchange, which exists to facilitate the flow of science information to support resource managers and policymakers. My testimony today provides neutral information on the state of fire science in Great Plains rangelands and pertinent information relevant to LB953. I'm acting in my own personal capacity as an expert on this topic and not representing the University of Nebraska, USDA, or other entities. One of the most common questions asked of scientists on this topic is, why do people use prescribed fire? A 2015 survey published by the Great Plains Fire Science Exchange revealed that control of eastern red cedar was the number-one reason given by landowners throughout the Great Plains on the use of prescribed fire. As part of a national rangeland science team, we have now developed

models that quantify production losses in rangelands due to woody encroachment for every county, for every state, and for every year since 1990. In 2019, Nebraska lost more than 419,000 tons of rangeland production to woody encroachment. To put these losses into context, 419,000 tons is equivalent to losing 523,750 round bales of rangeland production in a single year. If you lined up these round bales side by side, they would span 495 miles, or roughly equivalent to the distance of Lincoln, Nebraska, to Denver, Colorado, on I-80. Importantly, Nebraska is following the same trajectory observed and measured in neighboring states. Kansas used to look like Nebraska, and they have now lost over 2 million tons. Oklahoma used to look like Kansas. They have now lost over 4.4 million tons. In addition to these losses, the threat of wildfires increasing in the Great Plains have been linked to the increase of volatile woody fuels like eastern red cedar. Four of the ten largest wildfire complexes in the continuous U.S.A. have occurred in the Great Plains since 2010. Woody vegetation burned disproportionately more than any other land use type in the Great Plains and wildfires were more likely to occur once woody vegetation comprised greater than 20 percent of the landscape. New research shows prescribed fire can reduce wildfire danger in Nebraska landscapes dominated by eastern red cedar. In addition, prescribed fire, when coupled with grazing, can reduce fuel accumulations in rangelands, decrease flame lengths, and lower rates of fire spread compared to grazing alone. So while control of eastern red cedar was given as the top reason for using prescribed fire, at least seven scientific surveys published since 2000 identified liability as the main reason individuals do not use prescribed fire. Now multiple scientific studies have been implemented over the last decade to quantify actual risks associated with prescribed fire on privately owned rangelands. Following a request for an NRCS national policy review, I led a study that shows first approximations of fire risks with prescribed fire relative to other management techniques. A key conclusion from the study was that risks of fatal injury were lower for prescribed fire than alternative management techniques commonly used to manage woody encroachment. In addition, we found that 99 percent of prescribed fires by landowner burn sessions are implemented without incident, which is consistent with safety records of federal agencies. So I see the red light. I'll stop right there.

LATHROP: OK. So 99 percent of these are done without incident?

DIRAC TWIDWELL: That's correct. That was a published study in 2015 for Great Plains Prescribed Burn Associations, and what it shows is that 99 percent of prescribed fires are done without fires that turn into fire escapes, which require, say, like a call to the fire

department or something like that. In addition, Oklahoma State, since that study now keeps a database for the Great Plains, they actually have 23,147 burns in that database that's now been recorded, which is the most anywhere in the U.S. on the private sector of fire. Consistent with that previous study, 99.3 percent of those were successfully implemented without an escape. That would be a 0.7 rate of fire escape.

LATHROP: Let me ask a question then. If these individuals are all landowners, right, and so they're landowners, they're businesspeople, they have a business liability policy, this-- with that success rate, I can't imagine that their premium-- reflects a significant risk associated with this activity.

DIRAC TWIDWELL: So it's a great question. And without the previous safety record, that was something that came up a lot in insurance discussions and liability. That's why all those studies have been implemented really over the last five, you know, and years and a little longer. So that's new and additional information that insurance companies haven't had in the past. But in those same surveys, especially going back to 2000, liability and insurance were commonly some of the biggest things brought up in terms of concerns and fears over why groups, individuals did not want to use prescribed fire in the private sector.

LATHROP: It's that fear thing, and we do a lot of those-- this is like civil liability day in Judiciary Committee, and a lot of times we find ourselves looking at bills that are responsive to fears and not really the risk. The risk sounds low given that 99.3 percent of these are done without incident. That risk is quite low and it's an insured event if it gets out of hand. I-- I understand-- I understand the fear. OK. Senator Geist.

GEIST: Just a quick question.

DIRAC TWIDWELL: Yes, ma'am.

GEIST: Define escape. Is that just a little ember or is that like a big fire?

DIRAC TWIDWELL: So it's-- yeah, and it's a really important distinction. So prescribed fires, when they talk about spot fires, 90 percent of spot fires in that Oklahoma State database were less than an acre. So those are just an ad-- an ignition that you didn't plan for where an ember went outside a planned burn unit that immediately

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

was then put out by the group that's there-- in this case, say, for example, the-- the ranchers or whomever that's conducting the burn. An escape is where a spot fire is not initially contained and then spreads and requires external personnel that aren't part of the prescribed fire unit.

GEIST: OK.

DIRAC TWIDWELL: So, for example, that might be a call to the fire department.

GEIST: OK.

DIRAC TWIDWELL: So that's the difference. Now--

GEIST: So it's a bigger deal than a little-- a spot fire.

DIRAC TWIDWELL: Exactly.

GEIST: OK.

DIRAC TWIDWELL: Exactly.

GEIST: OK, thank you.

LATHROP: OK, very good. Thanks for being here and sharing your--

DIRAC TWIDWELL: Sure.

LATHROP: --your expertise on the topic.

DIRAC TWIDWELL: Thank you.

LATHROP: Neutral testimony? I think you're the testfier we've been looking for all day. [LAUGHTER]

SHELLY KELLY: I'll see if I can deliver on that.

LATHROP: All right.

SHELLY KELLY: Good afternoon, Senators.

LATHROP: Good afternoon.

SHELLY KELLY: My name is Shelly Kelly, S-h-e-l-l-y K-e-l-l-y. Thanks for this opportunity. I'm representing the Sandhills Task Force and we're taking a neutral stance. I'm the executive director for the

Sandhills Task Force and I'm also a cattle rancher. The Sandhills Task Force is a rancher-led nonprofit organization that promotes conservation and private, profitable ranching in the Nebraska Sandhills, which covers about a third of the state of Nebraska and is mainly comprised of native, intact rangeland. The healthy, productive native rangeland is managed by ranchers that sincerely care about the land, just like what you've heard before. They also care about the animals, both domestic and wild, that reside there. A little about me: I grew up on a ranch in the Sandhills during and after college. I worked for the NRCS for ten years, where I received most of my training on conducting and writing, conducting prescribed burns and writing plans for them. Over the years, I've achieved Level 3 job approval authority on writing complex burn plans, and I've assisted and served in leadership roles during the burn plan-- or during the prescribed burns. The Sandhills Task Force formed in 1993, and ever since then the organization has helped ranchers address natural resource and ranching concerns through technical assistance and financial assistance. Eastern red cedar encroachment has easily been the number-one natural resource concern-- natural resource threat to the Sandhills rangelands because cedars are taking over the Sandhills and the rest of Nebraska. Cattle don't eat cedars, and our wildlife and birds are not adapted to their presence. Eastern red cedar removal on private lands, through both mechanical means and through prescribed burning, has been the largest focus of the Sandhills task force and the ranchers working with us. Prescribed burning is the main focus of LB953. The Sandhills Task Force supports the use of prescribed burning by helping ranchers create safe and effective burn plans for their property, helping them offset the cost of the prescribed burn, and through an incentive program to encourage volunteer fire departments to assist landowners with safe prescribed burns while training their volunteers. Ten different volunteer fire departments have assisted with prescribed burns in the Sandhills and participated in our program. In 2000-- we haven't had any more of-- more than that because of stated concerns with liability and if their insurance will cover them or not. And there's both things that we have heard. In 2021 alone, the Sandhills Task Force worked with 36 ranchers on 47,000 acres, with a total project cost of all partners involved of \$2.3 million. Sixty-five percent of those acres were cedar removal, either through prescribed burning or mechanical needs. We have-- we have projects planned that will be completed on an additional 56 ranchers, and 48 of them are cedar projects. There has been a drastic in-- increase in the interest in prescribed burning and lots of questions in the last two years. I see the yellow light.

I'll give the time. I-- I would sure be happy to answer any questions if you had any.

LATHROP: I got one for you. You're a-- you are a rancher currently, so I assume you have a liability policy?

SHELLY KELLY: I do.

LATHROP: Does that policy excude a controlled burn?

SHELLY KELLY: It is not stated that it excludes it, but when I looked for policies, there were not many insurance representatives that would tell me that a prescribed burn was covered, and I interviewed a lot of them.

LATHROP: So the policy generally protects you from liability for negligence other than the operation of a motor vehicle. It may-- some commercial policies might include the motor vehicle, but you have a liability policy that covers you for your negligent conduct. And as long as you-- if you do something that is negligent, they-- they will cover it unless it's excluded, right? So--

SHELLY KELLY: Correct. But they do always have a statement that says that-- a clause that states it will not cover an intentional negligent act. And there are pol-- there are companies that view lighting your land on fire as an intentional-- intentional negligent act.

LATHROP: OK, I may disagree with that, but I'm not going to offer legal advice from here. What I will say is liability policies will exclude intentional acts. You can't insure-- I can't get a policy, insure myself, assault him, and then-- then turn it over to insurance when he wants me to pay for his medical expenses. If you set a fire, that setting the fire may be intentional; if you set your barn on fire, not covered. If you set your-- your grass on fire and it gets away from you or you had a bad plan, I don't think that's an intentional act. I think that's negligence and should be covered by the liability policy. Now there's other lawyers in the room and they may disagree, but I-- but I-- we do struggle in this committee when people want immunity for something they're afraid of. And today we had somebody on another one of the bills that was the airport bill. The guy-- the guy can't get insurance and it-- and it really is a fear of liability. His isn't so much a liability concern as there's so few of these that nobody wants to create a pool of them. You can't create a pool of them to have an insurance product, and they just

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

go-, there aren't enough of these, we're not getting in the business. But in this case, I-- I'm struggling to see where this is-- this is-- the-- the need for the immunity exists only because the general liability policy should cover carelessness in managing one of these things, which sounds like a very rare occasion. That's a personal editorial from the Chair, for whatever that's worth.

GEIST: Short--

LATHROP: Yes, Senator Geist.

GEIST: One short question, is it more cost effective to do a controlled burn than a mechanical removal of the trees?

SHELLY KELLY: Nearly always. If you have-- if you have a lot of trees, it makes a lot more sense to do the prescribed burn. And also, the prescribed burn consumes the little cedars in the grass that you just can't see.

GEIST: You can't get through.

SHELLY KELLY: Yeah. You could try to clear them all, but you can't see them.

LATHROP: OK. I don't see any other questions.

SHELLY KELLY: Thank you.

LATHROP: But thanks for being here. We appreciate it. We appreciate hearing from all of you. I-- I serve on the Ag Committee, along with Senator Cavanaugh. One of the things that I know about serving on the Ag Committee, and today is a little bit of an Ag Committee type of a hearing. People come from a long ways to be heard and I very, very much appreciate it. I think the committee's been well educated on the topic today. And so thanks for being here. Have a safe trip back to the far reaches of Nebraska from which you came and-- and a great weekend, Senator Cavanaugh, you may close on the bill. I will add for the record that we have position letters, five from the proponents and no position letters from opponents or neutral-- neutral testimony.

J. CAVANAUGH: Thank you, Chairman Lathrop, and thank you, members of the committee. Can I-- there's-- I actually have a written testimony from somebody who had to leave, if I could circulate to the committee-- I have a copy of it-- from the Nature Conservancy. They wanted to make sure you guys got to see their position. And I think

that's an important point. I wanted to make sure you got their testimony, as well, because as I stated earlier, the reason that I was interested in the prescribed burn initially is that it is an issue that is supported by ranchers, farmers, hunters, environmentalists, and they all share the passion for this and the interest in this issue, because as you've heard in the testimony, particularly, I think, from Dr. Twidwell-- Twi-- Twi-- I'm sorry, I may be mispronouncing, but the professor here-- about that we're losing land. We've lost 2 million tons' worth of biomass material, which can be food for livestock in the state of Kansas, and we've lost 419,000 tons since, I think he said, 2019 in the state of Nebraska. And what that essentially means is we're losing productive land in Nebraska, and that we are-- and when we lose productive land, it is our business-- agricultural business is less efficient. It's more costly and less productive. And that same land is habitat to animals that people want to hunt, that people want to appreciate in other ways. And these red cedars, in particular, are sucking up our vital water resources, which Senator Lathrop knows. We just had a long hearing in Agriculture this week about water being taken up by invasive species. And so this is an issue prescribed fire addresses a lot of the concerns that we're facing as a society and as a state going forward, and it does it at no cost to the state of Nebraska. There's no fiscal note associated with this bill and what the people who are advocates for this are asking for is more certainty in the liability and a little bit more protection if they follow this rigorous process that they described to you. Senator Brandt made a very good point about the fact that there's a difference between a plan and a permit, and that the plan is the plan and the permit is issued on a very specific basis. And we've had this conversation in a hearing about immunity and fear and things like that, and fundamentally-- and I think people talk about in these situations and I think kind of hinting around whether there's a necessity for a bill like this when we have already people who are undertaking this. Ninety-nine percent out of 23,000 are successful, which means there's no liability or real risk in terms of financial harm to people. But the-- it's clear that more people would undertake this process if they had more certainty and security in how they were going to be treated after the fact. There is a question of-- about getting firefighters, being on site and whether they have insurance. There is that one portion in the bill about allowing-- I could read it, but specifically allowing them to treat it, to consider a-- the-- to-- that they can use it as a training-- for training purposes, they can con-- assist a properly permitted land management burning for training purposes. And I think that is to address that kind of concern, to allow more volunteer firefighters,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 21, 2022

more volunteer fire departments to come and be on site and be-- have that security to allow them to make sure that they're there. But ultimately, the interests of this bill is to (1) to encourage people to follow this rigorous process that is successful in doing this safely and that-- and this process is safer and more cost effective than other methods of achieving this objective. And the objective is one that will put more lands in production, will be better for the environment and better for the habitat of wild animals. And so that is why this is a good idea and this is why it is necessary. And that is why there are so many people here to be-- to testify on behalf of this bill. And obviously, as I said before, you know, I think Mr. Stilmock and Mr. Lindsay brought up some points and that I've said-- I've expressed my interest to them before that if there's ways we can work with them to still serve the intent and purpose of this bill, we certainly are interested in doing that. And I would point out, you had mentioned those letters and I circulated that testimony. There-- those are some very good letters, have some very good points. And as Senator Geist asked about the cost effectiveness, I think one of the letters submitted specifically tells you the cost difference between mechanical removal per acre versus the prescribed fire cost per acre, and it's pretty stark difference. I appreciate your time on a Friday evening and I appreciate everybody's hanging in here with me. But if you had any questions left, I'd be happy to take them now or off the mike.

LATHROP: I don't see another question. [LAUGHTER] Thanks, Senator Cavanaugh, and thanks, everyone.

J. CAVANAUGH: Thank you, Chairman Lathrop and Judiciary Committee.