

Transcript Prepared by Clerk of the Legislature Transcribers Office
Agriculture Committee January 28, 2025

DeKAY: [MALFUNCTION] the Agriculture Committee. I am Senator Barry DeKay of Niobrara, Nebraska. I represent District 40 Legislative District, and I serve as chair of this committee. The committee will take up bills and confirmations in or-- in the order posted on the agenda at the door. Our hearing today is your public part of the legislative process. This is your opportunity to explain your position on proposed legislation before us today, to offer insights and information for our consideration. The committee members might come and go during the hearing; this is just part of the process, as members can have bills to introduce in other committees. I have asked you to abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Introducers will make initial statements, followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please fill out a green sign-in sheet that is available on a table at the back of the room before you come up to testify. Please print. And it is important to completely fill out the form in its-- in its entirety. When it is your, your turn to testify, hand the sign-in sheet to a page or to the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today, but would like to indicate your position on a bill, there are yellow sign-in sheets at the back of the room; these sheets will be included in the hearing record. If you have written statement or other handouts, please have 12 copies and hand them to the page when you come up to testify, and they will distribute those to the committee. If you do not have enough copies, a page will make sufficient copies for you. Please speak clearly and into the microphone. Tell us your name, and please spell your first and last name to ensure we get an accurate record. We will be using a light system for all testifiers. You will have five minutes to make initial remarks to the committee. When you begin, the green light will be on. When you see the yellow light, that means you have one minute remaining, and a red light indicates your time has ended, and you should conclude your remarks. Questions from the committee that follow will provide an opportunity to further explain your position. No displays of support or opposition to a bill, vocal or otherwise, are allowed at a public hearing. Offenders may be asked to leave. The committee members with us today will introduce themselves, starting with my far left.

McKEON: Dan McKeon, District 41. I have eight counties in Central Nebraska.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

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IBACH: Teresa Ibach, District 44, which is eight counties in southwest Nebraska.

DeKAY: Senator Ibach serves as vice chair of the committee. To my far right.

STORM: Jared Storm, District 23, all of Saunders, most of Butler and Colfax County.

KAUTH: Kathleen Kauth, LD31, the Millard area.

HANSEN: Ben Hansen, District 16, Washington, Burt, Cuming, and parts of Stanton Counties.

DeKAY: To my immediate right is committee research analyst Rick Leonard, and our committee clerk Linda Schmidt is seated over to our far left. Our pages today will introduce themselves.

LAUREN NITTLER: Hi, I'm Lauren, I'm from Aurora, Colorado. I'm in my second year at the University of Nebraska-Lincoln studying ag econ.

TATE SMITH: I'm Tate, I'm from Columbus, Nebraska, and I'm going to UNL for political science, third year.

DeKAY: With that, we will open the hearing for the first item on the agenda. Myself, Senator DeKay will open with LB7. Good afternoon--

IBACH: Thank you, Senator-- thank you, Senator DeKay. Go ahead.

DeKAY: Thank you, Vice Chair Ibach. Good afternoon to Senator-- Vice Chair Ibach, members of the Agriculture Committee. For the record, my name is Senator Barry DeKay, spelled B-a-r-r-y D-e-K-a-y. I represent District 40 in northeast Nebraska, and I'm here today to introduce LB7. As some committee members may recall, last year I introduced LB1301, which created the Foreign-owned Real Estate National Security Act, and modernized Nebraska's foreign-owned land ownership to deal with challenges posed by foreign adversarial nations seeking to acquire land in Nebraska, especially near sensitive military installations like the Panhandle missile silos. The idea was that Senator Hardin's LB1120 would act as a tripwire so that enforcement action could be undertaken within the state with LB1301. LB7 is a technical cleanup bill for both LB1301 and LB1120. Over the interim, my office reviewed similar foreign land ownership changes enacted by other states, and consulted with the Attorney General's Office and the executive branch to get to where we are now. LB7 does four things. First, the bill would define Native American tribes and clarify that

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such tribes are not foreign governments. This is-- this addition is being brought because the state of Idaho saw some confusion in how to handle transactions involving Native American tribes, following the enactment of their foreign land ownership law in 2023. The short version, because tribal law can get a bit complicated, it is that that the 2023 Idaho law was interpreted to mean that Native American tribes were foreign governments and were banned from acquiring certain land in the state of Idaho. The Idaho Legislature ultimately had to come back with a bill in 2024 to clarify that tribes are not foreign governments. That bill, House Bill 496, passed unanimously in both houses. LB1301 happened to use a very similar definition as the original 2023 Idaho law, so I feel it is important to be proactive and avoid possible unintended consequences from happening in Nebraska down the road. Second, LB7 would update federal regulations used in LB1301 and LB11 [SIC] to identify some of the federally-designated foreign adversaries, subject to more restrictions with regard to acquiring land in Nebraska. Originally, both bills used the 15 C.F.R. 7.4 for this purpose, which listed out six foreign adversaries: the People's Republic of China, Russia, Iran, North Korea, Cuba, and the Bordero [SIC] regime of Venezuela. Over the summer, the federal government reorganized some regulations, and transferred 15 C.F.R. 7.4 to a new title number, which is now 15 C.F.R. 791.4. This bill would have Nebraska adopt the same change made at the federal level. Third, LB7 would add references to the federal regulation in Section 6 of the bill relating to the exemption we granted certain entities who have undergone review by the federal government, and by the Committee on Foreign Investment in the United States, or CFIUS. CFIUS reviews the national security implications of foreign investments in the United States companies before they can go forward. If CFIUS finds something concerning, they can work with the President and executive branch to order a divestment action, as illustrated by what happened in Wyoming in May of last year, when CFIUS investigated and worked to divest a Chinese-owned crypto mine, located 1 million from F.E. Warren Air Force Base, with alleged equipment capable of facilitating surveillance and espionage activities. The federal regulations cited in Section 6 of this bill mirror those found in portions of a Kansas bill that was brought in their legislature last year, and is simply meant to add more precision in identifying-- identifying who can get an exemption by going through CFIUS. Finally, this bill would add a requirement that the Legislature be notified in, in an event of a divestment action as ordered by the court against a person in violation of the Foreign-owned Real Estate National Security Act. Right now, only the governor would be notified if a divestment order was issued by a court. I feel that the Legislature should also be made

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aware of any divestment action, should one occur in this state, given the possible security implications that this may have for this state and our country. Everything else is intended to harm-- in a harmonization by Bill Drafters. These other changes, like defining a person, was made by Bill Drafters to ultimately make the bill more succinct when reading it. For those of us who were here last year, it was a chaotic time when this bill made it out to the floor, and Bill Drafters wanted to use the extra time that they had over the summer and fall to clean up the law a little bit, since they were rushed toward the end of last session. Finally, I want to touch on two amendments that I have on this bill, AM25 and AM68. AM25 would just address a few cleanup items that were brought to my attention by Bill Drafter-- but does not-- it-- you-- change the original intent of the bill. The only "substaining" additions are, one, clarifying that the Clerk of the Legislature receives notice of a divestment, and two, adding language to define the term "foreign corporation" to clarify that corporations from other states like Iowa or Missouri are not interpreted as being subject to this bill, unless they also happen to be owned by restricted entities, or acting on behalf of restricted entities. AM68 would clarify that accepted real estate foreign states, as determined by CFIUS, which is Australia, Canada and the United Kingdom, are exempt from provisions of this act, unless a restricted entity or agent, fiduciary or trustee thereof. AM68 also includes the changes made by AM25. There are testifiers here on both amendments who can explain the changes proposed by these amendments. With that, I will wrap things up and see if there are any questions from the committee. Thank you.

IBACH: Thank you, Senator. Are there questions from the committee?
Senator Hansen.

HANSEN: Thank you. That was the longest opening for a cleanup bill I've ever heard.

DeKAY: I wanted to get-- I wanted to get my 15 minutes of fame, man.

HANSEN: But essentially-- my question is, it is a cleanup bill, though, right?

DeKAY: Right.

HANSEN: It seems like all the stuff you were talking about is just kind of, you know--

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DeKAY: Right. These are just minor changes to clean it up and make it more intended for what we wanted it for. So, yeah.

HANSEN: OK. Just wanted to verify. Thank you.

IBACH: Any other questions from the committee? Seeing none. Thank you, Senator. We'll ask any proponents of this bill to please step forward. Don't forget to state and spell your name.

KENT ROBERT: Good afternoon, Senator Ibach, and members of the Agricultural Committee. My name is Kent Rogert, K-e-n-t R-o-g-e-r-t, and I appear today before you on behalf of the Ponca Tribe of Nebraska. We'd like to thank Senator DeKay for bringing this bill forward to clean up the act he passed last year. There have been no trouble so far, but in all fairness to county clerks and title companies, the Ponca Tribe has been reclaiming some homeland whenever they come up for sale, and we don't want to cause any problems at the courthouse. So we just would encourage you to move this to General File, and I'll answer any questions if I can.

IBACH: Thank you very much. Are there questions from the committee? Seeing none. Thank you.

KENT ROBERT: Thank you.

JOEY ADLER RUANE: Good afternoon, Vice Chair Ibach, and members of the Agricultural Committee. My name is Joey Adler Ruane, J-o-e-y A-d-l-e-r R-u-a-n-e, and I am appearing before you as a registered lobbyist for the Winnebago Tribe of Nebraska. Their letter that's going around has more details, but we are asking-- we worked with Senator DeKay's office to add in a piece, which is in the second-to-last paragraph in the letter, that is a foreign corporation means a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, agency, or instrumentality or any other legal or commercial entity that is not organized under the laws of the United States, the laws of any state of the United States, or the laws of a federally recognized Indian tribe. My client really appreciates Senator DeKay working on this bill, and we would just like this for some clarity. Happy to answer any questions if I can.

IBACH: OK. Thank you. Are there questions from the committee? No? Thank you for your testimony.

JOEY ADLER RUANE: Thank you.

IBACH: Welcome.

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HANNES ZETZSCHE: Thank you. Thank you, Vice Chairman-- Chairperson Ibach, and members of the Agriculture Committee. My name's Hannes Zetzsche, H-a-n-n-e-s Z-e-t-z-s-c-h-e. I'm a real estate attorney here in Lincoln, I, I practice with the Baird Holm law firm. I reached out to Senator DeKay's office last week about some concerns some of my clients have had under the Foreign-owned Real Estate National Security Act. Their concern was that it inadvertently prohibits their American entities from holding Nebraska crop land. The act broadly has defined nonresident alien and foreign corporation, and it actually doesn't have a, a, a definition for that foreign corporation term. So, our-- or, their concern is that those terms arguably extend the act's bar to any non-Nebraska entity, including American entities. Nebraska-- Nebraska farmers, for instance, commonly use Iowa LLCs to hold their crop land. I have, frankly, had to tell the clients that I'm not sure, the act may actually cover their entities. To protect them, this amendment that I've, I've, I've proposed to Senator DeKay's office-- it would, it would define that foreign corporation term, and it would clarify the nonresident alien term to clarify, they don't extend to American entities. I, I think that's totally consistent with what the Legislature passed last year in the act, and I, I really appreciate Senator DeKay's work in, in supporting this. I-- so I know that-- I saw a version of the amendment last night, and it sounds like we're moving that forward, and I, I ask the committee to support it. I welcome any questions the committee has.

IBACH: Right. But you're a proponent, correct?

HANNES ZETZSCHE: I'm a proponent, yes ma'am.

IBACH: OK. Thank you. Are there questions from the committee?

HANNES ZETZSCHE: Thank you.

IBACH: Seeing none. Thank you. Other proponents?

BRENT SMOYER: Almost fumbled the hand-off there. I could have been with the Chiefs. Good afternoon, Vice Chair Ibach and members of the committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, and I am appearing today as a registered lobbyist for Blackshirt Feeders. Just want to thank Senator DeKay for bringing the cleanup amendments as well as this bill. I know in the case of Blackshirt and a few other entities in similar situations, there was some battles between lawyers. I think, until we listen to Shakespeare and kill all the lawyers, there's always going to be battles between lawyers, and so, interpretation has always been back and forth. And so, this clean up

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here, bringing in the CFIUS definitions, expedited [SIC] countries, which of course would include UK, Canada, New Zealand and Australia-- they all seem to have a common thread, there-- bringing that in, and clarifying that they would be acceptable entities under this bill is going to help smooth things out; of course, avoid the fights between lawyers as a result from this. But again, we appreciate Senator DeKay's work and his willingness to bring this friendly amendment, and happy to take any questions.

IBACH: Thank you very much. Are there questions from the committee? Seeing none. I think Senator DeKay did include those.

BRENT SMOYER: Yes, he did.

IBACH: So-- OK.

BRENT SMOYER: It's part of LB68-- or--

IBACH: Part of the--

BRENT SMOYER: AM68.

IBACH: The-- yeah. OK, great. Thank you very much for your testimony.

BRENT SMOYER: Thank you.

IBACH: Other proponents? Welcome.

JOHN HANSEN: Good afternoon. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union. We're the second oldest and the second largest general farm organization in the state, and we supported LB1301 last year, and we would have-- we would have taken the bet if there was a wager on the table as to whether or not we thought there would be a cleanup bill this year. We thank Senator DeKay for wading into this territory, which we thought needed to be worked. And so, the, the cleanup language that we see seems pretty simple and straightforward. We're in support of the amendments that have been brought by the Winnebago. We work to a, a-- not a large degree, but to a substantial degree with the tribes in the state on a whole host of different kinds of issues where it's appropriate. And so, we certainly didn't intend to get them caught up in this particular area. So the clarifications are, I think, appropriate. And with that, I'd be glad to answer any questions if you have any.

IBACH: Perfect. Thank you very much. Senator Raybould.

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RAYBOULD: Thank you. Mr. Hansen. I remember your testimony last year or the year before, and you were criticizing that our bill had no bite, or any penalties or any repercussions, or anything like that. Have, have we improved on it, from your perspective?

JOHN HANSEN: Improvement, yes.

RAYBOULD: OK.

JOHN HANSEN: And we were saying if you're going to have a law on the books, enforce it. And if you, if you are not going to enforce it, get rid of the law, but don't pretend you have a law and then, not enforce it.

RAYBOULD: Have we achieved that bar for you?

JOHN HANSEN: Well, I-- we're, we're much more comfortable with this than where we were when we started.

RAYBOULD: OK. Are you going to wager that we're going to have another cleanup bill next year?

JOHN HANSEN: Unfortunately, I've done this job way too long, so I, I wouldn't take that wager that we would not.

RAYBOULD: OK. Thank you.

IBACH: Thank you, Senator.

JOHN HANSEN: I would hope it be so much simpler than, say, for example, fence law.

RAYBOULD: OK.

IBACH: Thank you. Any other questions from the committee? Seeing none, thank you to-- for your testimony today. Any other proponents? Any opponents? Seeing no opponents, anyone testifying in the neutral?

NICK GRANDGENETT: Good afternoon. My name is Nick Grangenett, spelled N-i-c-k G-r-a-n-d-g-e-n-e-t-t. I'm a staff attorney with Nebraska Appleseed, testifying in a neutral capacity on LB7. Like most, most Nebraskans, we would agree we don't want to see hostile foreign governments, hostile foreign corporations or restricted entities from buying rural farmland. But, as we read through both LB7 and LB1301, we just see a couple of opportunities to make a couple of clarifications to ensure that the underlying law isn't inadvertently being applied to

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local immigrant community members. If the bill does advance to General File, we would just encourage this committee to join it with LB476. Essentially, that bill just makes a couple of clarifications, to clarify that immigrant Nebraskans who qualify for advance parole-- which is an immigration procedure that allows a person to leave the country in case of an emergency-- isn't inadvertently subject to the act. There's a couple other scenarios where that could be a problem as well. We understand that the law is not intended to read that way, but it would just be helpful to make these clarifications. We also really appreciate the expertise and time and attention to detail that this committee and Senator DeKay have brought to this attention-- brought to this matter. With that, I'll end, and happy to answer any questions.

IBACH: Great. Thank you very much. Questions from the committee? Senator Raybould.

RAYBOULD: Thank you very much for your testimony. And so, you're talking about immigrants, but would this impact refugees that have status as they come into our country as well? Is that the population of immigrants that you were concerned about?

NICK GRANDGENETT: Our concern is more just about people who are, like, navigating the immigration code. So, there are some scenarios where people are allowed to leave the United States for a period of time because they have a family emergency back home, or have to leave the United States to meet qualifications for an immigration visa. I think as the term "nonresident alien" is drafted, it could inadvertently kind of exclude those people in those scenarios. It's a very small class of people we're talking about, but it's just a class of people we don't want to forget, so.

RAYBOULD: Thank you.

IBACH: Very good. Any other questions? Seeing none. Thank you very much.

NICK GRANDGENETT: Thank you.

IBACH: Any other testimony in the neutral position? Seeing none, that will conclude our hearing on-- oh, sorry. Oh, sorry, Senator. Do you have a close?

DeKAY: Just because of Senator Hansen, I have a closing for you. And it's longer than the opening. I am happy to work with this committee if there are any concerns. And if there are any questions, I'd try to

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answer them now. Otherwise, I appreciate, appreciate your favorable consideration on LB7. Thank you.

IBACH: OK. Any follow-up questions from the committee? Seeing none. We did have letters that were submitted online. We had two proponents, no opponents, and none in the neutral. So, thank you all very much. This concludes our hearing on LB7.

DeKAY: Next, we will have LB372. That is introduced by Senator McKeon. Whenever you're ready.

McKEON: Good afternoon, Chairman DeKay, and members of the Agriculture Committee. I'm Senator Dan McKeon, D-a-n, McKeon, M-c-K-e-o-n. I represent District 41 in the Nebraska state Legislature. I'm here today to introduce the LB372 at the request of the Department of Agriculture. The purpose of this bill is to repeal unnecessary provisions within the department that have never been used, implemented, or enforced. There are three items that will be repealed or eliminated by this legislation: provisions related to the Agriculture Suppliers Lease Protection Act, honey standards statutes [SIC], and the Nebraska Origin and Premium Quality Grain Certification inspection program. The Agriculture Suppliers Lease Protection has never been implemented by Nebraska Department of Agriculture. It was adopted to create a system to resolve lease disputes between railroad property owners and agribusiness tenants. It was also meant to guard against unreasonable lease renewals and unfair lease terminations. There is a cash fund for this program, but has not had a balance or seen any activity for two decades. The honey labeling statute requires the Nebraska Department of Agriculture to establish a standard of identifying for honey labeling. According to the department, the regulations previously adopted are outdated and unnecessary because honey is a raw agriculture product. The Nebraska Origin and Quality Grain statutes [SIC] are obsolete since the NDA referred to it-- refers to anyone requesting a grain-- grain grading certificate to the Federal Grain Inspection Service. The FGIS inspectors are certified to issue grain grade certificates, while the NDA inspectors are not trained to conduct these inspections. The cash fund for this program was also never created. To reiterate, these regulations currently within the Nebraska Department of Agriculture are unnecessary. Thank you again, Chairman DeKay, and the members of the Agriculture Committee for any time today-- for your time today. I am happy to answer any questions.

DeKAY: Are there any questions from the committee? Senator Ibach.

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IBACH: Thank you, Chair. I just have one quick question. I kind of looked up some of these, just to kind of get a reference. And I'm just wondering if any of the statutes, before we get rid of them, might be used as a deterrent to maybe encourage some compromise between parties, or a useful tool to use before we get rid of them?

McKEON: That is a great question, and I want to defer that.

IBACH: OK. I will ask it again, then. Thank you. Thank you, Mr. Chair.

DeKAY: Thank you. Are there any other questions from the committee? If not, thank you. We will have our first proponent.

SHERRY VINTON: Good afternoon, Chairman DeKay, and members of the Agriculture Committee. My name is Sherry Vinton, S-h-e-r-r-y V-i-n-t-o-n, and I am chairman of the Nebraska Department of Agriculture. I'm here to testify today in support of LB372, and would like to thank Senator McKeon for introducing this legislation at the request of our department. LB372 would repeal three obsolete Department of Agriculture provisions related to honey standards, the Nebraska Origin and Premium Quality Grain Certification inspection program, and the Agricultural Suppliers Lease Protection Act. While reviewing regulations of our department, these items were identified as being obsolete due to their inactivity, our ability-- inability to enforce them, and the lack of funding related to these programs. The honey labeling statute adopted in 2-- 2011, mandates that our department adopt regulations establishing a standard of identity for honey labeling. Such regulations were codified within the Nebraska Administrative Code, 19 N.A.C. 3, in 2012, but there is no apparent purpose for these regulations. Our department does not regulate the standard of identity on honey labeling, as it is considered a raw agricultural product by our food program. If there are concerns about honey and honey labeling, the FDA provides their own guidance on proper labeling of honey and honey products. The USDA also provides grades and standards for extracted honey. LB372 would also repeal the Nebraska Origin and Quality Grain statutes, which were adopted in 1986. Currently, NDA refers anyone requesting a grain grade certificate to the federal-- Federal Grain Inspection Service with the USDA Agricultural Marketing Service to do this exact type of work. USD-- federal grain inspection-- inspectors are certified, and follow the federal grain standards to issue grain grade certificates. Department expect-- inspectors are not trained to do these inspections. Additionally, the cash fund for this program was never created. Lastly, our department identified the Agricultural Suppliers Lease Protection Act as obsolete, since it has never been utilized by

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the department since its adoption in 2002. However, we have since spoken with interested parties, such as the Nebraska Cooperative Council, and determined that this act, despite not being directly used, may still serve a purpose as a negotiating tool to keep both railroads and cooperatives reasonable when dealing with right-of-way lease disputes. Therefore, therefore, the department is OK with amending this portion out of LB372. We are happy to work with Senator McKeon and the committee to make these changes. In summation, the department would like to see the honey statute and the Nebraska Origin and Quality Grain statutes repealed, to harmonize existing provisions, and lessen the number of unnecessary regulations in our department. We would also like to see LB372 amended to exclude the Agricultural Suppliers Lease Protection Act. Again, thank you, Chairman DeKay and members of the committee. And I'm happy to try and answer any questions you would have at this time.

DeKAY: Are there any questions from the committee? Senator Ibach.

IBACH: Thank you. I think you answered my question, so I don't have to ask it again. But I really appreciate the fact that you're condensing and, and getting rid-- or, or maybe streamlining some of the programs in the bills that are in the department. That's always appreciated. So, thank you.

SHERRY VINTON: Thank you.

DeKAY: I have one question real quick. Thank you for being here today. My question is, are you aware whether there are any federal or private sector parties that could provide the service on a grain quality certification or not?

SHERRY VINTON: Yes. The department refers anyone requesting a grain grade certificate to the Federal Grain Inspection Service with the USDA Agricultural Marketing Service, and the FGIS has inspectors that are already certified for federal grain standards to issue those grain certificates. The history of the program, I'm told, is Nebraska enacted this program in 1986, and then, a year or so later, the federal government started their own program that's providing the exact same service. So, Nebraska was just a little bit early. But it's a duplicate service.

DeKAY: OK. Thank you. Are there any other questions? Seeing none, thank you.

SHERRY VINTON: Thank you.

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DeKAY: Any other proponents? Any opponents?

ROCKY WEBER: Good afternoon, Senator DeKay, members of the Agriculture Committee. I'm Rocky Weber, R-o-c-k-y W-e-b-e-r. I am the president and general counsel of the Nebraska Cooperative Council, appearing today on behalf of our local cooperative members in the state of Nebraska. I understand at the, at the department level, why some would consider the Agricultural Suppliers Lease Protection Act obsolete, because a hearing as provided for in the act has not been requested, as far as I know, in the 23 years since the act was passed. But if it's obsolete, so am I, because 23 years ago, I sat before this committee and testified-- maybe two years in a row, Rick. I got a-- I don't quite remember-- testified in favor of passing the Agricultural Suppliers Lease Protection Act. In the act, the Legislature found that agriculture production in this state is highly dependent upon businesses providing inputs for agricultural producers, and markets for agricultural commodities, which have historically been located on lands owned and served by the railroads. The Legislature further found that the purpose of the act was to establish a system for fair resolution of lease disputes that may arise between railroad property owners or their successors and agribusiness tenants, and to guard against unreasonable lease renewal terms or unjust lease terminations. And I will tell you, in order to, to get some context here, the purposes of this act have been met very well over the last two decades by the very evidence that we-- nobody has had to request a hearing. And so, while I was in the private practice of law representing cooperatives across the state of Nebraska, and now nine years into serving as president of the Nebraska Cooperative Council, I know of no instance when a hearing has been requested, but I know of several instances where, in the negotiation of either a lease renewal, terms and conditions of a lease, lease rate increases, or anything like that, there were certainly times when either party have said, "I think this is time that we take this to the Department of Agriculture and have a hearing," at which point the parties become reasonable, because there is no cost to the department for these hearings; all the costs for such hearings lie with the parties that are party to the hearing. And so, nothing I'm saying here today is an indictment about the railroads or the industry. They are our strategic partners, we rely on them a lot, they rely on us a lot. They are good partners to have, but in every long-term relationship, from time to time, there are disputes. Back in the 19-- late 1990s, before the passage of this act in 2002, it was the lease rates that were starting to increase substantially. And, at that time, the grain companies, both private and cooperative, were saying, "We don't know that we can afford these

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lease rates, and we think these rates are not market rates, and it may impact our ability to be profitable." The railroads did not agree with that, and that was what prompted the Nebraska Grain and Feed Association, who started this process, and then the Cooperative Council joined them in, in drafting this act and getting the act passed back in 2002. Things have not changed that much today. We've had several lease renewals over the period of time. Rates may not be as big of an issue today as other terms. We've had env-- significant environmental terms that have come into these lease agreements, and requests by railroads that, that these companies move certain activities away from the railroad right-of-way, and things of that nature. But the fact remains, once the railroads came through Nebraska, agricultural facilities were built next to the railroads on the right-of-way under lease agreements to make sure that the commodities Nebraska growers were producing could find their way out of the state. That's why they're located there. So, millions of dollars of investment already at the time in the-- in 2002 when this was passed, but even more so today, multi-millions of dollars in investment sit on these railroad right-of-ways according to these leases, and this act has provided a great mechanism to make sure both parties remain reasonable in keeping these leases active and keeping these companies active. And with that, I'll answer any questions you may have.

DeKAY: Are there any questions from the committee? Senator Kauth.

KAUTH: Thank you, Senator DeKay. So, if, if this is removed, this Ag Suppliers Lease Protection Act is removed-- because you do see it as a preventative maintenance, kind of per-- putting guardrails up, so people don't act poorly,--

ROCKY WEBER: I--

KAUTH: If that's removed, then you have no objection.

ROCKY WEBER: If we take this out of the bill, I think the guardrails stay in place. And the, the piece that has existed for 20 years will continue, it will continue to operate the same. And I, I was remiss in saying-- we appreciate so much working with the Department of Agriculture, with their legislative staff, with Director Vinton, and also with the governor's office. When we brought this to their attention last week, they looked at it, responded, understood our concerns. And so, thank, thank them for their willingness to do that and for Director Vinton saying today that requesting the amendment

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from the committee to remove the Agricultural Lease Suppliers Act [SIC] from LB372.

KAUTH: OK. Thank you.

DeKAY: Any other questions? Thank you.

ROCKY WEBER: Thank you, Senator.

DeKAY: Next opponent.

JEREMY WILHELM: Senator DeKay, members of the ag community-- committee. I-- my name is Jeremy Wilhelm, J-e-r-e-m-y W-i-l-h-e-l-m. And, in light of some of the testimony earlier today, I won't read my full testimony, but you have a copy of it being distributed to you. I'm the CEO of Frontier Cooperative here in Lincoln. We have 60 grain and agronomy energy locations throughout eastern Nebraska that are owned by 4,000 of our farmer-owners. We have 17 railroad leases at-- between those 60 locations, and while it's not ideal to build something that's not land that you own, in some cases it's a necessity just because of getting access to the rail, and being landlocked in the communities that we're in. On those 17 leases, we have millions and millions of dollars of infrastructure that we've built over the years. Grain elevators, agronomy storage facilities, propane storage facilities, and within the last two years, we have used this act, not officially, but unofficially in a dispute that we had with the railroad. That dispute led to us being notified that our lease was immediately terminated and we had 30 days to destroy the infrastructure and bring the ground back to its original condition. That would have cost us millions of dollars and provided a detrimental service to our farmer-owners that would have been hard to overcome. And so, while the act has not officially been used, we do use it as a negotiating tool when we get into disputes with the railroads from time to time. So, it's a critical tool, and with, with the amendment to take it out, we would be in favor of that. Happy to answer any questions.

DeKAY: Are there any questions? Seeing none, thank you.

JEREMY WILHELM: Thank you.

DeKAY: Next opponent.

BILL KUTILEK: Good afternoon, members of the committee. My name is Bill Kutilek, K-u-t-i-l-e-k. I'm an attorney with Crosby Guenzel law firm, 134 South 13th Street, here in Lincoln. I am testifying here in

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opposition to that portion of LB372 related to the Ag Suppliers Lease Protection Act in my capacity as a lawyer with the firm. Crosby Guenzel represents most of the agricultural cooperatives in our state, and has for such a long time. I've had the privilege for the past 26 years of, of continuing that practice and have an opportunity to, to assist them and counsel them as general counsel. And, and I recall, back in 2002, as, as Mr. Weber and, and Mr. Wilhelm stated-- I don't need to reiterate what they stated, but-- I remember 2002 and having some level of excitement with this particular act, because as representing the ag suppliers on railroad-leased ground, we are at a disadvantage, and to the extent you can get excited by legislation, I, I certainly was at that time. It gave us a tool in the toolbox. I have counseled-- I personally have counseled managers across the state on the existence of that act and, and opportunities that it, it presents. I'm aware of, of the incidents of-- that Mr. Wilhelm had spoke about, but I'm aware of others as well, where we were at the threshold of, of seeking input and the dispute resolution opportunities that this particular legislation provides through the department's process. So, I can tell you that, that it's out there and it does have an ability, and, and certainly I can attest that the railroad was made aware of these steps, and it may have led to the resolution. We don't want to use the-- this, this particular avenue to resolve disputes, and most of the time they can be resolved. But what I have seen in the last ten years is an uptick in the, I'd say, aggressiveness of railroads in enforcing their lease terms. It may not be as much of the lease rates are the biggest concern that I, I was hearing in the early 2000s, but certainly it's, it's the enforcement of other terms. And so, this particular act provides a safety net. Nobody wants to use a safety net, but they want it to be there. And so, that's certainly what, what I'm here to, to seek to protect. I appreciate the director's comments regarding removing this from, from the legislation, and I certainly would encourage that to happen. So, as I stated, I'm here in opposition to LB372 and I appreciate your time. Ask any questions you have.

DeKAY: Thank you. Are there any questions from the committee? Seeing none, thank you.

BILL KUTILEK: Thank you.

DeKAY: Any other opponents? Seeing none. Anybody here in a neutral capacity? Seeing none. Senator McKeon, you're welcome to close on your bill. And while he is coming up,--

McKEON: Can I waive-- can I waive it?

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DeKAY: You can wave them.

McKEON: I'll waive.

DeKAY: Senator McKeon waives closing, but we did have five letters: zero proponents, four opponents, and one in neutral com-- capacity. So, with that, that closes the hearing on LB372.

McKEON: Thank you.

DeKAY: Next, we will have LB145, introduced by Senator Ibach.

IBACH: Ready?

DeKAY: You're-- you're welcome to start whenever you're ready.

IBACH: Good afternoon, fellow members of the Agriculture Committee. My name is Senator Teresa Ibach, T-e-r-e-s-a I-b-a-c-h, and I represent Legislative District 44. Today, I'm here to introduce LB145, a bill that will increase the appropriation to the Noxious Weed and Invasive Plant Species Assistance Fund from \$3 million to \$6 million, beginning in fiscal year '25-'26, for the management of vegetation within the banks of the floodplain of a natural stream in our state. For background, in 2007, the Nebraska Legislature first appropriated \$5 million to help control the invasive species in our state's waterways that soak up not just Nebraska's water, but the water that is due other states downstream from us, which could put us at risk if we do not uphold our requirements under the various water compacts. Due to some lean budget years, funding is nowhere near what the Legislature imagined, contributing just \$706,000 to this program, which, in my opinion, is not near enough, given that the program has been expanded to include tributaries and floodplains. LB145 also requires the director of the Department of Agriculture to carry out the statute as the Legislature intended. Last year, I heard from numerous weed management agencies across our state that the Department of Agriculture accepted those applications for grants under this program, but on the day the grants were to be distributed, these were instead given a letter stating that the NDA will no longer be funding grants this year to provide agency-wide savings of general funds, and that the reduction of General Fund spending aligns with our budgetary goals as well as the governor's statewide savings plan. Prior to last year's special session, funding for this program was proposed to be swept. The Legislature, realizing the need for this program, protected those funds, and yet the Department of Agriculture did not carry out the statute as we intended. With areas of the state facing drought, and

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water resources becoming more and more stretched, choosing not to fund grants that are proven to be effective in clearing our waterways of species that suck up the water needed for human agriculture and industrial needs is concerning. Our weed management agencies are doing great work, and we, as a state, need to support their efforts. There may be changes needed to LB145 to allow grants to be distributed for two years rather than one, as I have heard from some weed management agencies that they can save money if they have a two-year contract with third party entities that provide, provide the remediation services, such as helicopters. Testifiers following me will also explain why this legislation is needed, but with that, I will ask for your support of LB145 to not only increase the funding, but to require the department to carry out the statute as intended. I look forward to assisting the Department of Agriculture with this crucial funding, and to im-- implement this important program. Thank you, and I will look forward to a closing but will entertain any questions if you have any.

DeKAY: Thank you. Are there any questions? Senator Kauth?

KAUTH: Thank you, Senator DeKay. Senator Ibach, can you-- you mentioned water responsibilities downstream. Can you go through and explain how this weed management impacts the downstream water, and what happens if we don't give it to them?

IBACH: So we have a compact with Kansas that, back in 2008 or 2007, we really faced being sued over the water that was not being sent on to Kansas. And by remediating those streams, or the lower Republican River, we were able to remediate the invasive species and-- which allowed the water to flow freely, ac-- actually resulting in not having the dispute with Kansas, and not having us have to provide funds in, in remediation.

KAUTH: How much would that lawsuit have cost the state?

IBACH: Oh, that's a good question. I think it was-- I don't want to say, because I don't want to misquote. Millions.

KAUTH: Millions. Are there people behind you who might know the answer to that?

IBACH: I'm certain there are.

KAUTH: Thank you.

IBACH: Thank you.

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DeKAY: Thank you. Senator Raybould.

RAYBOULD: Senator Ibach, thank you very much for this. You know, reading in all the letters of support for this from a lot of county weed control officials that-- phragmites are still the biggest problem out there, and-- can you help me understand? So this restores the funding cuts from the previous two years?

IBACH: So they-- excuse me--

RAYBOULD: No, go ahead.

IBACH: They were allocated the first year, the last biennium, but they were not allocated last year.

RAYBOULD: And then, this year, are they-- were they on the chopping block again as well? Or it-- there was just no funding, it was started out at zero?

IBACH: The \$706,000 is still available--

RAYBOULD: OK.

IBACH: --to the end of June this fiscal year. But after that, then there will be no funds available.

RAYBOULD: OK. Thank you.

IBACH: So we could-- we could grant those dollars from now until the end of June, yes.

RAYBOULD: OK. Thank you.

IBACH: Thank you.

DeKAY: Thank you. Any other questions? I have one question. What's the most prevalent invasive species of weed on that? Is that, like, purple loosestrife, or?

IBACH: Purple loosestrife is included, but phragmites is probably the biggest culprit. When you drive down the interstate or any of our county roads, it's very pretty, but it's very invasive because it goes underground to spread. And so, remediation is really important.

DeKAY: OK. Thank you. Any proponents?

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DON BATIE: Chairman DeKay, and members of the Agriculture Committee. My name is Don Batie, D-o-n B-a-t-i-e. I am a farmer from Dawson County, and I irrigate using both ground and surface water. I have involved with water discussions and negotiations for over 30 years, and I'm currently chairman of the Nebraska Natural Resource Commission. Today, I am here on behalf of the Nebraska Farm Bureau and the Nebraska Ag Leaders Working Group in support of LB145. The Ag Leaders Working Group consists of the following organizations: the Nebraska Cattlemen, Nebraska Corn Growers, Nebraska Farm Bureau, Nebraska Pork Producers Association, Nebraska Sorghum Producers, the Nebraska Soybean Association, the Nebraska State Dairy Association, Nebraska Wheat Growers Association, and Renewable Fuels of Nebraska. Noxious weeds can infiltrate and severely damage both crop life as well as-- Senator Ibach mentioned stream flows and clogged waterways. The state has successfully tried to-- been eradicating some of these, especially phragmites, but it is a very expensive, and it is an ongoing battle. At one point in time, to spray phragmites was running about \$1 million a mile. So, we're talking a lot of money, which is why the funding is needs to be maintained. These would be done as-- partly as a cost-share benefit. A question was asked about the effect of not taking care of the phragmites in downstream users. Senator Ibach is exactly correct. Nebraska was in very dire straits on the Republican River. We managed to-- get a lot of the Republican River sprayed and eliminated noxious weeds, and we actually delivered more water to Kansas than they could handle themselves, because of this. Without spraying them, we would-- the streams could not handle anything. There's currently an issue around North Platte, the North Platte River going on the north side of North Platte reaches flood stage very quickly because the far-- phragmites have narrowed the waterways so much that even delivering irrigation water that has been stored in Lake McConaughy down the river will put it into flood stage. That's another area that's very tough. So, we need to keep our finger on the phragmites. There are other noxious weeds that are also impacted under the bill, and it is-- they are all extremely difficult to maintain and control. With that, I would be welcome to answer any questions you might have.

DeKAY: Senator Hansen.

HANSEN: Thank you, Chairman. This bill always gives me heartburn, but I learn about-- a lot about weeds. Except there's no pictures this year, so-- [INAUDIBLE] that was-- no, last, last year, I think the last time we had it, we got all these pictures about what phragmites look like, and that was very educational. What I have heartburn about though, is-- and I-- we've brought this up before-- is property

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rights. And so, is it the state's ability, or who would they, maybe, give the grant to, to go on somebody's property to spray these weeds?

DON BATIE: Far as I understand this bill, this-- either a county weed district, or a farmer or a contractor could apply for grants from the Department of Agriculture to control it, so. And under the noxious weed law, if you have an invasive species or a noxious weed on your property, you are required to control them. And if you do not control them, then the county weed-- or the district can come in and control them on your behalf, and then bill you for them. So, usually it's not a problem. Most farmers don't want these weeds to start with. I'd say they're, they're very tough to get rid of. We have them on our property, and we spray them every year and we kill them back, and they come back every spring. So, I don't think private property rights is as big a concern, because this is one that people want to have controlled.

HANSEN: So if I had property and I didn't want them to spray my weeds, somebody could forcibly come on my property and spray them for me?

DON BATIE: If it's a-- if it's a noxious weed and-- you would be turned in to the county weed district; they would come out and inspect, and then they would send you a letter. You would have 30 days to comply by the state law, or they would come take it care of it for you. And yes, they would do it, whether you wanted to or not. The state law gives them that authority.

HANSEN: OK. And what kind of spray do they use?

DON BATIE: Depends on the, on the stream. A lot of times, it is a helicopter sprayer. They can go up and down the streams easier than a fixed wing plane. Usually, a ground rig can't get into the river very well. So, typically, they use a helicopter. A lot of times they'll use a, a helicopter first. Then, they actually come in with some type of a tillage tool and actually stir the the roots up to kill them further. It's a, it's a combination.

HANSEN: What-- why-- specifics-- specifically was the type of chemical they use? Do you know?

DON BATIE: I am not an expert--

HANSEN: That's kind of a-- that's kind of a specific question, it's not [INAUDIBLE].

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DON BATIE: I- I'm not-- I believe it's a form of aquatic Roundup, but I'm not positive. I-- it has to be labeled for aquatic use, which is a very small list of chemicals, because of, obviously, the fish that are in the streams and birds that are there, so. There are herbicides that are labeled for aquatic use, but I'm not-- I'm definitely not an expert on that.

HANSEN: OK. Can I ask one more question, please?

DeKAY: You just did. [LAUGHTER] Yes, you can.

HANSEN: Good point, Chairman. OK. And this might be my ignorance. We're talking about the Republican River, especially, where have a lot of issues when, when, when we're talking about with Kansas and that, that-- it's actually [INAUDIBLE] them.

DON BATIE: The Republican River is maybe the poster child for this, but I think it affects virtually every stream in the state. My wife used to own property around Battle Creek, and we actually had a-- got a letter from the county weed district that we had phragmites on her property, and we had to hire a helicopter to come in and spray her property. So, it's-- phragmites are pretty much everywhere in the state. So--

HANSEN: OK. And so if-- this, this has to do with Perkins Canal. Did that-- does that affect the Republican River or not?

DON BATIE: Perkins County Canal was not in the Republican basin, it's a Platte basin.

HANSEN: That's it. OK. All right. I didn't know if-- for-- somehow, we open up the Perkins Canal, and then, all of a sudden, now, where the water goes up, and we kill them--

DON BATIE: Yeah, the Perkins-- Perkins County may be in the Republican basin, but the Perkins County Canal is off of the Platte River, and is not meant to be trans-basin diversional.

HANSEN: OK. Thanks.

DeKAY: Thank you. Any other questions? Senator Raybould.

RAYBOULD: Yes. Thank you, Mr. Batie, for being here. And it seems like you have represented a lot of ag entities out there. Have they expressed to you concerns about getting grant funding distributed? Or grant funding out to the counties to assist with the eradication of

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all the phragmites? Has there been-- has that been an issue, or is it just more not enough funds to go around?

DON BATIE: It's-- I think it's both a combination of not enough and, and the funds just aren't-- haven't been available.

RAYBOULD: OK. Thank you.

DeKAY: Senator Storm.

STORM: Thank you. I've actually sprayed phragmites before, with an airplane. The chemical they use is called "Rodeo;" it's an aquatic Roundup. But you made the comment \$1 million per mile to treat this?

DON BATIE: I think that was wrong on that. I think I'm off a zero.

STORM: Because I've never made that money, I can tell you. Like, wow, that'd be--

DON BATIE: I think it-- it might be more [INAUDIBLE] this grant. It's several thousand a mile, I'll put it that way.

STORM: So if, like, Senator Van-- Hansen said, isn't it the property owner's responsibility to, to pay for this? Is--

DON BATIE: On your own personal property, it's the property owner's responsibility. The, the question comes in on streams, like the Platte River--

STORM: State ground, you're saying.

DON BATIE: --which is essentially-- ownership is sometimes questionable. Depends on where the stream is, and it is in the state's best interest to take care of noxious weeds, especially on river beds, because,--

STORM: Right.

DON BATIE: --as you well know, things move in the water.

STORM: Yeah.

DON BATIE: Seeds move in the water, roots moving down the water. Piece of phragmites stem travels down river a mile or two, it hits dirt, it'll sprout and have another phragmites. It's a nasty thing.

STORM: Yeah, it's very invasive. Very hard to kill.

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DON BATIE: Very hard to kill. It's very invasive.

STORM: Yeah. OK. That's all I had. Thanks.

DeKAY: Thank you. Any other questions? Senator Raybould.

RAYBOULD: Just-- last one. Are phragmites indigenous to Nebraska? Or how did they get here?

DON BATIE: No. They are-- they are an invasive species. I believe, probably from, possibly Africa. They're related to-- oh [INAUDIBLE], the name just went out of my head. There's a, a ornamental grass that is not a phragmites, but looks kind of like it, and that's how it came in, they think. It was through that-- through an ornamental, then crossed. But it is extremely invasive. I don't know if there's any pests that eat phragmites in the United States. I think it is completely-- once it starts, it's almost fair game for it to spread forever.

RAYBOULD: OK. Thank you.

DeKAY: Thank you. I have one question. With that-- what's the residual effects of, like, the Rodeo? After you spray it, going down stream, can it be carried downstream, a new plant absorb it through the roots and kill it? And-- but-- the adverse effects, could it kill natural grasses that are right up there along the edge of the stream?

DON BATIE: As far as I'm aware-- and I may defer to Senator Strum [SIC], because he might have a little better idea. It is absorbed through the leaf tissue and work-- works through the plant's roots and kills the plant. I do not believe if it gets into the water, it would-- could kill anything downstream. I know definitely, if-- once it hit soil, it's neutralized, just like Roundup is. Roundup, once it hits ground, the microbes neutralize it within a matter of minutes. So, I believe it only works by hitting the leaf tissue area of the plant, and kills that specific plant.

DeKAY: All right. Thank you. One comment. Senator Hansen, he was asking about how it, it's enforced and stuff. With most noxious weeds, as a state, if it does go to the county and you don't comply to-- the county, will take, spray and then they will bill you-- bill the landowner on that, so.

DON BATIE: And if they-- and if you don't pay your bill, they attach it to your property tax.

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DeKAY: Question.

HANSEN: Thank you, Chairman. I think that's where my heartburn comes in. I'm just not a huge fan of Roundup. I mean, they've not been the most honest company in the world, especially when it comes to agriculture in Nebraska, and when it comes to non-Hodgkin's lymphoma. And so, when I say we're spraying Roundup in our waterways with a helicopter, and that's where I get a little concerned, so. That, that's why I brought that up. That's all.

DeKAY: Thank you. Next proponent.

JON CANNON: Chairman DeKay, members of the Agriculture Committee. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials, also known as NACO, here to testify in support of LB145. We really appreciate Senator Ibach bringing this. This is an issue that NACO has been a proponent on for a number of years in a row. I mean, with it-- the story that the weed managers will, will bring to you as-- or, I'm sorry, pardon me, the weed superintendents will bring to you is very, very compelling. And any opportunity that you have to attend any of their conferences where they talk about this particular issue, I-- certainly, take advantage of that if you can, because it's-- it is very educational, Senator Hansen, to your point. You know, just going back in time, the Republican-- we, we've been talking about Republican River Compact, so I'll kind of focus on that. The Republican River Compact was signed in the '40s. The signatories were the states of Nebraska, Kansas and Colorado. It allocates water in the basin among Nebraska, at 49%; Kansas gets 40%, and Colorado gets the remainder 11%. And so, if we don't meet our, our levels to-- that we provide to Kansas, they have the opportunity to sue under the compact. Those suits are an original case, they originate in the US Supreme Court. And so, in times of drought, you'll-- you know, there's always going to be great concern as to whether or not Kansas is getting its proper allocation. And then also, when, when you've got an invasive species like phragmites that are sucking up the water in the basin, then Kansas is going to be very, very concerned as well. And so, back in-- I, I think it was 2010, the state of Nebraska was sued by the state of Kansas. And Senator Kauth, your question about how much it was, they sued us for over \$70 million. The Supreme-- the US Supreme Court, through a number of, of arguments that the state of Nebraska made, because we had a-- we have a good attorney generals here, but also through some of the proactive efforts that we were making to control these invasive species, that number was reduced by the US Supreme Court to 5-- I think \$5.5 million. And so, the return on the investment certainly is,

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is something that I, I, I, I think speaks for itself. There is no question that this is a state obligation, right? This is-- it was state of Kansas vs. state of Nebraska; it wasn't state of Kansas versus Red Willow County, or Hitchcock, or Furnas, or any of those counties along the southern tier that are in the Republican River Basin. The Nebraska Constitution prohibits the state levying a property tax for state purposes, and that extends to forcing counties to levy a property tax for state purposes. Article 8, Section 1A is the relevant provision, and, and there's a number of cases that have described that, and frankly, some that have described it in the, in the near term. And so, it's not that, that our weed superintendents and the, the counties are not ready, willing and able to, to perform these duties; we do, and we will. The problem is-- the que-- I mean, the fundamental question is whether or not we can without state funding, because otherwise, it's going to go onto the property taxpayers. Period, full stop. Like I said, our folks are ready, willing and able. We just would like to have the appropriate level of funding so that we can take care of the issue as robustly as we would like to. With that, I'm happy to take any questions you may have.

DeKAY: Are there any questions for Mr. Cannon? Go ahead.

RAYBOULD: Thank you, Mr. Cannon. How much funding do the, the counties need to be provided from the state to be able to adequately treat and eradicate the phragmites?

JON CANNON: So the funding has level-- it has varied over time. I, I think the first year that Senator Carlson, if I recall correctly, that had this funded, it was once it was a couple million dollars. Of course, that was a long time ago. There are folks behind me that'll probably testify a little bit more accurately as to the history of this. The amount that Senator Ibach has requested in this bill, \$6 million, is-- I, I think would be appropriate. You know, but again, with an in-- I mean, you've, you've heard described how invasive these, these phragmites are, along with all the other invasive species on the list that, that we want to take care of. You know, I mean, as far as eradicating them, I'm, I'm not sure that's ever going to be possible. And so, you know, I think the amount of \$6 million is adequate for us to, you know, hold a detente with the phragmites.

RAYBOULD: So it's \$6 million every two years?

JON CANNON: I believe that's what's requested in the bill.

RAYBOULD: OK. Thank you.

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JON CANNON: Yes, ma'am.

DeKAY: Any other questions? Thank you.

JON CANNON: Thank you.

DeKAY: Next proponent.

BRENT MEYER: Good afternoon, Chairperson Senator DeKay, and members of Agriculture Committee. My name is Brent Meyer, B-r-e-n-t M-e-y-e-r, and I am the Lancaster County Noxious Weed Control Superintendent. I'm-- you know, recognizing the importance of open, free-flowing creeks and streams and rivers that benefit all Nebraskans, I'm here today to offer proponent testimony of LB145 on behalf of the Nebraska Weed Control Associations-- all 93 member counties-- the Lower Platte Weed Management Area, which is in the eastern part of Nebraska, and Lancaster County Board of Commissioners. Thank you, Senator Ibach for introducing LB44-- or introducing LB145. I want to thank the Legislature for supporting the recurring funding, and recognizing the importance of the work being done across the state. I'm proud and honored as a citizen of Nebraska to be a part of the bipartisan legislation that benefits every Nebraskan. There have been direct, dramatic, positive changes in the riparian areas across the state, from the time Senator Tom Carlson first introduced riparian vegetation management legislation in 2007 to meet our obligation to provide water to Kansas. The flowing water in Nebraska are waters of the state, and it is the state's responsibility to keep them free-flowing. Lancaster County is one of 11 member counties that make up the Lower Platte Weed Management Area. The state of Nebraska has ten weed management areas across the state that benefits from this funding. I've attached a map of the Nebraska weed management areas to the back of the testimony. The Lower Platte Weed Management Area has strong partnerships that have been created because of this legislation, with Nebraska Game and Parks, UN [SIC] Fish and Wildlife, natural resource districts, including, in our area, the Lower Platte South, Lower Platte North, and Pappio-Missouri. The Nature Conservancy, public power districts, Audubon, Ducks Unlimited, just to name a few of the various group, as well as many private landowners, all contribute to the success of the riparian projects. All citizens of Nebraska benefit greatly from the funding provided for the riparian areas. Water conveyance, revus-- reduced flood risk, protecting infrastructure and farmland, recreation benefits, wildlife habitat, nesting habitat for endangered species like the piping plover and interior least tern, the \$14 million a year tourism brought in by the sandhill crane migration, water for agriculture, livestock, water available for human consumption and use

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are just a few of the positive benefits of this legislation. The entities I'm representing support the increased funding to carry out the important work. While our current legislation has always had united-- unanimous, bipartisan support, we continue to work to educate to get it fully funding. To help clarify the intent of the riparian funding going forward, I'd suggest that any future appropriations sent to NDA be earmarked for the Noxious Weed and Invasive Plant Species Assistance Fund, and to only be available for riparian funding. In addition, to give a prod-- broad representation to fairly score and award the grant applications, there needs to be a scoring committee-- and this is my suggestion-- with two representatives from each NDEE, the DNR, the Department of Agriculture, and the Riparian Vegetation Management Task Force, which is created by the legislation. Understanding the physical res-- the fiscal responsibility with this legislation and recognizing the importance of maintaining water conveyance and the many other benefits our rivers provide in Nebraska. The Nebraska Weed Control Association, the Lower Platte Weed Management Area, and the Lancaster County Board of Commissioners respectfully ask the Agricultural to "smittee"-- support LB145. Thank you for the opportunity to testify in support of LB145, and I welcome the questions you may have.

DeKAY: Are there any questions from the committee? Seeing none, thank you. Next proponent.

JOHN THORBURN: Good afternoon, Chairman DeKay, members of the Agriculture Committee. I'm John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I'm the manager of Tri-Basin Natural Resources District in Holdrege. Tri-Basin NRD and the Nebraska Association of Resources Districts support LB145 and urge you to advance it out of committee to the floor of the Unicameral. Tri-Basin NRD is responsible for protecting the soil and water resources of Gosper, Phelps and Kearney counties in south central Nebraska. Our NRD helped organize both the Platte Valley Weed Management Area and the Twin Valleys Weed Management Area. NRD staff worked with these entities, helping to identify areas that need treatment and making contact with affected district landowners to secure their cooperation with phragmites control efforts on their properties. We have also provided as much as \$20,000 annually for the past 15 years to support the Platte Valley Weed Management Area. I personally worked with former sen-- state Senator Carlson to develop LB98 back in 2009. This act created the Noxious Weed and Invasive Species Assistance Fund, which is the subject of our discussions today. That fund was a-- created to address the crisis. At the time, the Republican River below Harlan County Dam was choked with phragmites to such an extent that weeds held up stream flows and

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caused lowland flooding. Phragmites was also expanding through the Platte River. Working with state Department of Ag, we use fund-- we used state funds to leverage local contributions, and got the weed management areas-- or WMAs, as they're referred to-- up and running. Within three years, we nearly eradicated phragmites on the Republican River, and we cleared it from the main channels of the Platte River. Over the past 15 years, WMAs have received modest but steady funding from several sources, and have utilized those dollars extremely effectively, keeping invasive riparian plants under control in our river systems. Steady, predictable funding is key to effective management of invasive plants; this can't be an on-again, off-again process. Missing even one spray season could unravel the project-- progress we've achieved over the past 15 years. We don't expect the state to pay all of the cost of managing riparian invasive plants, but we do need a reliable, predictable partner. I thank Senator Ibach for introducing this bill. I also thank the "consittee" for-- committee for your consideration of this proposal, and infer-- urge you to advance it to General File. I'd be happy to take any questions you may have.

DeKAY: Thank you. Are there any questions? I have one. You said that you basically had it eradicated back in 2015. What-- or-- you thought it was pretty much eradicated. I probably got the year wrong. But what caused it to get reinfested in such a--

JOHN THORBURN: Well, yeah-- if, if I'm not-- wasn't clear on that-- Senator, the Republican River, relatively narrow stream. And in the 2006-2009 period, during the drought, phragmites got established there. As we got higher flows, those phragmites became an obstacle in the river system. Through a pretty aggressive program of helicopter, and airboat and other equipment-- we were able to nearly wipe it out to the last stand. But, as any farmer who deals with weeds know, you just-- you never get the last one somehow. And we were restricted at that time to the stream channel, and I believe we had like a 100 foot buffer outside. And so, even though we had essentially cleared it from the stream in the Republican, and had done a pretty substantial job on the Platte, there was this reservoir of seed in the drainage ditches and, and other areas off to the-- out in the floodplain. So, that was a constraint on our ability to treat as much as the effectiveness of the treatment itself.

DeKAY: OK. Thank you. Any other questions? Seeing none, thank you. Next proponent.

MIKE REED: Good afternoon, Chairman, members of the Agriculture-- culture Committee. My name is Mike Reed, M-i-k-e R-e-e-d. I'm the Riparian Vegetation Management Task Force chair. So, the task force, which was set up in previous legislation to oversee the riparian grant program, I'm the chair of that, chair of that committee, and also I'm the noxious weed superintendent from Douglas County in Senator Kauth's district-- is where I live. I've witnessed firsthand the effectiveness of this legislation and the benefits residents from the east side to the west, across all river basins and your-- and your legislative districts. The continued legislation is imperative to secure and protect Nebraska's water resources against impacts of invasive plants in our river systems. I'm here today to offer proponent testimony on LB145. And again, thank you, Senator Ibach for introducing this legislation. While our current legislation has always had unanimous bipartisan support, as, as, as the Senator pointed out, it hasn't been funded. I've been a previous grant coordinator for the Lower Platte Weed Management Area, and we saw those, those numbers from year to year go up and down. Fortunately, we've had, we've had partners which have helped assist our, our management strategies. Locally, the natural resource districts have been big partners, as well as Nebraska Game and Parks, and the landowners within our weed management area, which contribute 50% of the, of the cost of those programs. Currently, the "deptart"-- Department of Agriculture has, has-- I want to make this clear to the committee that the, the Department of Ag has put the grant program under, under internal review, and it's my understanding there's not a timeline to resume the program, to award funds to their groups to do the-- cont-- to continue to, to do the work across Nebraska. As task force chair, I've been all over the state, so I've seen the "effectness"-- effectiveness of these programs. The impact of last year's loss of a riparian grant program through the Department of Agriculture has already had negative impacts for management across-- of, of Nebraska's rivers. The Republican project lost its coordinator last year, and that project is critical not only for the water rights, but also for the, for the flood management of the Harlan County Reservoir, which recently flooded in 2019. I was there in 2018 as a task force member, and that weed management area and its coordinator and counties-- I want to talk about the, the coordination and cooperation and commitment. To your point, Senator Hansen, those, those landowners have 100% buy-in. So, you'd asked about what happens if the landowner says, I put my hands up, I don't want to participate in this project. Projects like the Republican, the Lower Platte, the Central Platte, all of these that you've heard from today, they have buy-in from all the landowners. There is landowner turnover, obviously, but they have agreements in place from those landowners to

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carry out these projects, so that should help some heartburn on that part. So-- I've saw firsthand how those-- how the tributaries of the Republican project were managed. They removed the trees, they removed the vege-- the invasive vegetation to allow those tributaries to flow freely and to prevent future flooding impacts. The Central Platte receives funding from the Platte River, Platte River Recovery Implementation Program, a multi-state partnership between Colorado, Wyoming and Nebraska. The Central Platte Project is at risk of losing these, these multi-state dollars moving forward if Nebraska will not commit its share of any state funds like its neighboring states, Wyoming and Colorado. All of these projects were under a maintenance level of management prior to last year, but that progress and maintenance is in immediate jeopardy, as John Thornburn [SIC] pointed out. I believe the members of this committee, as well as the senators across the state, have understood the importance of keeping this at the forefront of what is important for state policy and action. The Department of Agriculture must also do their part to implement and administer state statutes. While this legislation is important to increase much-needed funding levels, I do not believe it will be implemented or administered without additional amendments beyond what is already introduced by Senator Ibach. Any future appropriations sent to the Department of Agriculture should be earmarked for the Noxious Weed and Invasive Plant Species Assistance Fund to be only used for riparian funding. They-- I have a few more minutes here, so, the, the Perkins County Canal comment and the flooding that already exists in there-- the state committed over \$600 million to that Perkins County project, and the investment-- future investment in-- and, and maintenance and, and a guarantee of the Perkins County success-- long term success will depend on, on partnerships like weed management strategies in the future to mitigate those flooding concerns and address the phragmites concerns. Thank you.

DeKAY: Thank you. Are there any questions from the committee? Senator Raybould.

RAYBOULD: Thank you, Mr. Reed. You mentioned some comments about additional amendments that would give it a little bit more teeth of enforcement, requiring the Department of Agriculture--

MIKE REED: Yes.

RAYBOULD: --Nebraska Department of Agriculture just to-- to ensure that those payments are going out. What are those techniques you're suggesting?

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MIKE REED: Senator Ibach had, had mentioned that this would be part of a two-year budget package.

RAYBOULD: OK.

MIKE REED: That this \$6 million would be spread across two years. As well, Rick Leonard had joined us on the task force meeting that we had in Lincoln, Nebraska, and Rick had mentioned that, within state statute, that the funding, when it's appropriated, must be, must be earmarked for riparian use only in some way within the state statute. So, I think there needs to be some sort of spelling out of exactly what fund that needs to go to so those funds are no longer available as general funds.

RAYBOULD: OK. Thank you.

MIKE REED: Thank you.

DeKAY: Any other questions? I have one. How is that funding allocated out? And-- I mean, we're talking largely about the Republican River, but how does that coincide with, say, the Elkhorn River, Niobrara River, Missouri River? How do you designate where that-- those funds go?

MIKE REED: So, I believe there was a weed management area map passed, passed around. So, weed management areas can apply-- natural resources-- natural resource districts can apply by district, essentially by water basin and those projects. Does that-- does that answer your question?

DeKAY: Yeah.

MIKE REED: OK. So it's by area, by, by district. And I know phragmites gets a bad name, but there are other targets. Woody targets, woody invasive vegetation as well as phragmites, so the targets for those projects are as varied as the landscape across the state.

DeKAY: All right. Thank you.

MIKE REED: Thank you.

DeKAY: Next proponent. If you intend to testify as a proponent, you want to just move up to the--

KATIE TORPY: Good afternoon, Senator DeKay and "respector"-- respected members of the committee. Please excuse the fact that I mislabeled my

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testimony to the Natural Resource Committee. I'm here today representing the Nature Conservancy, and if I'm-- I'm more accustomed to testifying in front of that committee, and I had some muscle memory there. I don't know if I spelled my name yet. K-a-t-i-e Torpy, T-o-r-p-y, on behalf of the 4,600 member households of the Nature Conservancy, which is a leading conservation organization working around the world to protect ecologically important lands and waters for nature and people. We're here to-- today to support LB145, and thank Senator Ibach for bringing it. We've worked in Nebraska for over 50 years, and currently own and manage over 66,000 acres of land in the form of working ranches and nature preserves. We pay taxes on all of those properties. We support a proactive and collaborative approach to identifying and suppressing the spread of noxious weeds. We have a seat on the Nebraska Invasive Species Council and the Platte Valley Weed Management area. I, I want to emphasize the, the work that those entities do educating on this issue, not only managing against the spread of non-native phragmites and other nat-- noxious weeds. Without sustained inter-- intervention, the economic damage to private landowners is also significant. You heard how phragmites crowd out native plants, altering habitat. These infestations also impact our water resources overall for recreational use and game species. It also has an adverse effect on property value. And now, I know we've stated the importance of consistent treatment, but I, I don't think it can be overstated. Every year of no treatment allows plant populations to bloom quickly, where the next treatment is more extensive and expensive. I just want to give a nod to our, our partners in this space. They come at this strategically. Collectively, we work hard to prevent new invasive species catastrophes through early detection and rapid response. Gaps in funding threatens this systematic approach as well as undermines the, the management of existing infestations. Thank you.

DeKAY: Are there any questions from the committee? Seeing none, thank you. Next proponent.

TODD BOLLER: Good afternoon, Chairman DeKay, and members of the Agriculture Committee. My name is Todd Boller, T-o-d-d B-o-l-l-e-r, and I'm going to testify as a proponent for Fillmore County and the Twin Valley Weed Management Area, which is the Lower Republican and the Little Blue watersheds. So thank you, Senator Ibach, for introducing LB145, and thank you, senators and even past senators for the previous legislation that has allowed us to do the work to keep water flowing throughout the state of Nebraska. Unfortunately, even though money was legislated for this program, last year, the Nebraska Department of Agriculture did not release the funds for the grant

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program. We are always able to team that money with other sources of money to get other grants to do-- get a lot of work done on our river systems in the Twin Valley. Without that money, we were unable to secure other funds as well. The Republican and Little Blue Rivers are two very important watersheds that help us meet the compact with Kansas. And on the back-- I'm not going to read it when we get to the end-- but the bottom of the deal, I did put on the synopsis from the U.S. Supreme Court, from the special master. So, at your leisure, I'll let you read that. In 2007, legislation was passed to begin the fight to preserve our waterways in Nebraska. That was during a time when Kansas had filed a lawsuit against Nebraska for \$72 million for not delivering enough water through the Republican River. At that time, much of the Republican River was being clogged by invasive vegetation that was only allowing 300 cubic feet per second of water to go down the river before spilling outside of its banks. Because of the work done, the Republican River easily handles over 1,100 cubic feet per second, and the lawsuit was reduced to \$5 million. At that time, \$4 million was the investment by the Legislature, and the Legislature made with-- that, and our partners' investments were able-- be able to be-- do \$26 million of on-the-ground work to control the invasive vegetation. We have dramatically reduced the acres of invasive vegetation, and reduced infestations in some cases by as much as 65%, and increased water conveyance. The county weed superintendents and the weed management areas are committed to doing what is right for our lands and waters here in Nebraska. We spend many hours inspecting and treating invasive vegetation, and will continue to work towards protecting our natural resources. We will also continue to educate landowners about the consequences of letting these invasive species thrive, and what they can do to help the cause. We need your support to do so. It is imperative that we continue our quest to rid the natural resources of these invasive species, which in some areas are continuing to strengthen their hold on the waters of the state. Water is life for many things in Nebraska, including biodiversity of wildlife and water for agriculture. Our goal is to help continue to grow Nebraska and protect our waters and land from the attack it's under. We would appreciate your support for LB145. Thank you, and if you have any questions, be happy to answer them.

DeKAY: Thank you. Are there any questions? I have one. It has probably been cleared up earlier, but I just want to reiterate. The land-- who pays for the application of the spray, re-- regardless if it's helicopter, or however it's applied. Is that by the landowner, or?

TODD BOLLER: Yeah. Some of the weed management areas have, have put to-- together a plan for cost share, and so there's like a 50/50 cost

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share. They're, they're vying for that. Twin Valley, in order to meet that compact with Kansas and that-- at that time, we were doing the work. But it was more than just controlling weeds. It was pulling fallen trees out of the water in order to-- you know, instead of having it divert off somewhere else that it gets down that river system so we could meet that compact. But most of them were doing a cost share program.

DeKAY: So the money allocated that you're-- we're asking for today, that's for cost share basis and-- plus eradication of dead trees and stuff out of the streams, or?

TODD BOLLER: Yeah. That, that-- that's only if you know if the funding was there, and it was-- there was an issue. And that is a lot of the work that was done on the Republican. So, a lot of it is done. We are seeing some new fall back in there. How aggressive we attack that, I do not know, but more of, like, the plants that are drinking up the water, as of right now, has been what our target has been.

DeKAY: But for the most part, the cost share that you're asking for is-- or, for the allocation you're asking for is on a cost share basis with multiple landowners.

TODD BOLLER: Yes.

DeKAY: OK. Thank you. Any other questions? Thank you.

TODD BOLLER: Thank you.

DeKAY: Next proponent.

JOHN HANSEN: Good afternoon again, Chairman DeKay, members of the Ag Committee. Again, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n, and I'm the president of Nebraska Farmers Union and also their lobbyist. We have worked on ways for the state of Nebraska to honor their state obligations relative to the compact that the state of Nebraska signed, which is the Republican River Compact. This is not the southwest Nebraska irrigators who signed the compact; this was the state of Nebraska with the full force of the state who signed and negotiated a lawful compact, but they signed it. And so, there's not the ability to-- for flexibility or escape, as were present in later compacts. And so, here we are. Kansas is not going to let us go. That would be one of the things that you would need to do to escape it. So then, how do you comply, and how do you meet your state obligations? So, we've always said that there needs to be a consistent and coherent state response to meeting those obligations.

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And so, as we looked at the shortage of water that was in play, you know, depending on, you know, what annual rainfall does. But certainly, farmers have done a better job of, of keeping more of the water that falls on their property closer to where it falls-- that's called conservation, that's a good thing-- so we don't get as much runoff. The Republican River, depending on the part of the river it is, is either gaining or losing water. It's not a simple hydrology to figure out in that river. But one of the things that was very clear to us, and why we were a strong supporter of Senator Carlson's efforts in, in the first place, was that we could-- within a consistent and focused kind of way, we could clean up the river bed and we could substantially increase the total amount of water that did reach the river from going down the, the stream bed and ending up in a lake, which is well long past its prime and long past its matter-- maximum holding capacity. So, if, if we were in charge of ARPA money, we would have said clean that Harlan structure out so we get the capacity back, so that we're not always living kind of hand-to-mouth relative to the need to meet our obligations with Kansas. So, what we've done so far, when we've done it consistently, has worked. So, when I read Senator Ibach's bill, we were on it when we saw two of the amendments, and one was the changing of "may" to "shall," and the other one was \$3 million to 6, and \$6 million is a much more reasonable figure in our view, and it needs to be done consistently. And so, therefore, we think the "shall" is, is needed because there's, there's no better way to waste weed control management efforts than to just do it intermittently. And so, if you think about how you control weeds, we struggle to keep our lawns from being overtaken by invasive either weeds or grasses. And that's about the easiest place you could possibly get control of things. So, think about pastures, think about crop land, think about really rough pasture ground. All real challenges, but one of the toughest places to control weeds is certainly river basins, because there's protection and there's water. And so, there does need to be a state hand, and we would be in agreement with the, the previous testifiers and we would urge the committee to support this bill. Thank Senator Ibach for bringing it. I'd be glad to answer any questions if I could.

DeKAY: Thank you. Any questions from the committee? Seeing none, thank you.

JOHN HANSEN: Thank you.

DeKAY: Next proponent. Any other proponents? Seeing none, first opponent. Any other-- any opponents? Seeing none. Anybody testifying in the neutral position? Seeing none. Senator Ibach, you're welcome to

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close. While she's coming up, there were 21 letters submitted: 21 proponents for it, zero opponents, and zero in the neutral capacity.

IBACH: That's impressive. Usually I'm not that lucky. Well, thank you, committee. And I would also say thank you to the testifiers and the experts that provided a little bit more of the, of the backup that we needed to really propel this bill. I apologize, Senator Hansen, I didn't bring any visuals. But I will be sure and Google them for you. As was mentioned, the, the funds for the cost share to the landowners, to your point-- the-- those funds are included in this, and, and most landowners will take advantage of the cost share, simply because the invasive species do take so much water from their irrigated acres, or acres that might be even dry land along those river beds or meadows. And so, those funds are included in here and get allocated as such. The Riparian Task Force, I, I was-- had the privilege of sitting with them back in September or October in Kearney, and they're exactly right. We're in jeopardy of losing any monetary help that we get from Wyoming and Colorado because, from their perspective, if we're not going to take care of our own issue, then why should they complement some of that funding with their, their funding? So, I think that that's in jeopardy and worth noting. I think that counties are very prudent with the funds. I don't think there's any waste. Mr. Meyer outlined the vast use of the need for this funding, which encompasses everything from tourism to ag production, and I think it's important to mention that, because these funds do go to a very broad need. The need for steady, predictable funding-- we've had that conversation several times in the last session, even-- that this provides a really steady, predictable funding for that fund. And Mr. Thorburn is exactly, exactly right; that's what this, this funding would provide. And then, as was mentioned-- Mr. Hansen mentioned that funds actually can't be used as general funds. I think he did. These, these funds are labeled as aid and have to be used as such. They can't be swept back into general funds, and so allocating what's already there in this fund before the end of June, I think, is very important too. So, with those comments, I would urge you to advance this on behalf of the landowners, on behalf of the water management entities and on behalf of Nebraska as a whole. So, thank you very much for listening, and for your thoughtful questions.

DeKAY: Thank you. Are there any questions for Senator Ibach? Senator Kauth.

KAUTH: Thank you, Chair DeKay. Senator Ibach, so the bill states that it must be mitigation, but it doesn't say what that mitigation must be. So if they found a different way-- I mean, to Senator Hansen's

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concerns about Roundup-- if there was a different way to do it, then it would be covered under this, correct?

IBACH: Yes.

KAUTH: OK.

IBACH: And there are several mechanisms used already. As, I think, Mr. Thorburn mentioned, a lot of times they'll remediate with equipment that takes those tubulars and, and maybe tries to take care of it in, in that-- it's hard to explain, because they take, like, a backhoe and they'll, they'll--

KAUTH: Just grind it up.

IBACH: Yeah. Some of those tubulars. But to your point, the-- even in the northeast weed districts, there's more than just phragmites, even though that's the most invasive. Your weight-- weed management gal last spring even called me and said thank you. Purple loosestrife is really, really prevalent up in your area. Probably yours, too, Senator Hansen. So-- I don't, I don't think that this is contained to any one locality. It really is statewide, and these funds will address that.

KAUTH: Thank you.

DeKAY: Thank you. Senator McKeon.

McKEON: I was just going to ask, does this go to the counties or to the-- each weed, weed--

IBACH: Goes to the weed districts.

McKEON: Districts. OK.

IBACH: Through the NRDs. I mean--

McKEON: With the watersheds.

IBACH: Yeah. Yeah. Thank you.

DeKAY: Any other questions? Seeing none, thank you. That ends our hearing on LB145. And, with that end-- that ends our hearings for today.