

Transcript Prepared by Clerk of the Legislature Transcribers Office
Agriculture Committee December 2, 2022
Rough Draft

HALLORAN: Good morning, everybody. Welcome to the Agriculture Committee and I'm Senator Steve Halloran. I'm from Hastings, Nebraska, and represent the 33rd Legislative District. I serve as Chair of this committee. The committee will take up the legislative resolutions in the order posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the legislative resolutions, and then later this afternoon on the Occupational Regulation Review. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the reserved chairs, which I don't think that's necessarily going to be necessary, but if you plan on testifying, please come up to the front row on either side so that you're prepared to come to the chair to testify. Introducers will make additional statements followed by those who may wish to comment on the subject matter. Closing remarks are reserved for the introducing senator only. If you're planning to testify, please pick up-- Rodney gave me a, a copy of it so I could show you all but please pick up a green sign-in sheet. It was on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the committee clerk. This will help us make a more accurate public record. If you have handouts, please make sure you have 12 copies and give them to the committee chair when you come-- excuse me, committee clerk when you come up-- you can give them to me, too, if you like, but give them to the committee clerk. If you do not have copies, the committee clerk will make sufficient copies for you. When you come up to testify, please speak clearly into the microphone. Tell us your name and please spell your first and last name to ensure that we have an accurate record. I will be using the light system for all testifiers. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining and the red light indicates you have ended your time. Questions from the committee may follow, and the questions from the committee will give you more time very likely, if they have questions. No display of support or opposition to legislative resolutions or, vocal or otherwise are allowed in the public hearings. Committee members with us today will introduce themselves, starting to my left, Vice Chair.

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

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HALLORAN: To my far right.

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

HALLORAN: Thank you, Senator. To my right is committee research analyst, Rick Leonard, and to my far left is committee clerk, Rodney Krogh. So we will begin with Senator Blood. You are on board.

BLOOD: Thank you, Senator Halloran. And good afternoon, Chairman Halloran. I guess it's morning. Good morning, Chairman Halloran and members of the Ag community. This is really loud today. Have you noticed that?

HALLORAN: That seems to be.

BLOOD: OK. So my name is Senator Carol Blood, spelled C-a-r-o-l, B as in boy, l-o-o-d, as in dog, and I represent District 3, which is the western half of Bellevue and eastern Papillion, Nebraska. I appreciate the opportunity to bring this legislative resolution forward. We're here today as Nebraska has seen a drastic decline in our bee population and also our insect pollinator population as a whole. An estimated \$15 billion nationally of ag production, production is pollinated by bees every year. Bees are critical to the food production industry. And as you know, bees are often shipped to other regions and states to pollinate crops and are an essential component of crop diversity, especially in regards to fruits and vegetables. So the intent of LR277 is to bring attention to better proposed practices. Some today will be cited by experts in maintaining and increasing the bee population while providing reasoning for increased state funding for programs encouraging such goals. Over the last eight years, the bee population nationwide has decreased by 40 percent and bee colonies specific to the state of Nebraska have declined by 22 percent. In 2022-- declined by 22 percent in 2022. I had six months off, I don't know how to do this anymore. So in 2021, we saw an increase in renovated bee colonies overall. However, the decline in population is alarming in our state and has serious repercussions for Nebraska's ag industry and consumers as a whole. Bees are also seen as the canary in the coal mine of sorts, and their decline often is an early indicator of a more vast biodiversity decline. What should be considered today is the possibility of maybe provoking ELAP-like policy assistance for bee population loss in the state, as was allowed under the 2014 farm bill or other protective programming. You should know that the Nebraska Farmers Service right now really have no way

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that they can allocate or track when it comes to the bee colonies. So even though we do have some funding already available to our beekeepers, there's a disconnect between the funding and who gets to use the funding. So I hope that you consider that when we talk further. The reasons for this population decline can be attributed to several factors. Farmers and ag producer, producers often use pesticides and coated seeds, such as in soybean fields to ward off pests and increase their yield. While this is a necessary function of farming, Nebraska has seen exceeding levels of pesticide and chemical levels in its waterways, air and soil, leading to the bee population being exposed. For example, these pesticides or neonicotinoids have seen dangerous levels in our soybean fields where bees pollinate. Even if exposed, they do not always die from such chemicals but they bring back the exposure to their hives where it spreads and affects the bees ability to navigate for foraging and pollination. The recent AltEn ethanol plant disaster, disaster where waste seed corn was used off label to generate ethanol is really a prime example of this. The university's bee population around the plant Mead, Nebraska saw a devastating population decline. It's a fact that when you watch how bees react to their surroundings, they will paint you a picture of the surrounding environment, be it good or bad. The aim of LR277 is to discuss better practices that perhaps could be implemented by our ag producers. For example, prairie strips would provide bees more flora to forage and pollinate while mitigating fertilizer runoff and land erosion, thus stabilizing, stabilizing the bee population. The University of Nebraska has a wonderful resource in its Arboretum program that can assist in such an initiative. We need to ask ourselves that there are ways we can support private and public partnerships to stabilize bee populations. Can we encourage private plots and register pollinators in residential areas to help stabilize the bee populations? Could Nebraska partner with organizations like Great Plains Master Beekeeping through the Nebraska Center for Rural Affairs that educates beekeepers and encourages better practices? Providing grants and public funding to research done by local universities can provide better data for ag producers to have better practices in regards to using pesticides more responsibly. This funding can provide light on spe-- species distribution of bees and analyze which habitats are effective in increasing bee populations. Another aspect to examine is the lack of funding for state assistance with the Apiary Fund that is designed to step in when bee populations are suffering and protect the state's honey industry. I do note that part of the reason for a decline of funding for the program is due to the reduced number of licensed beekeepers from 1992 to 2002 by

two-thirds. The regulation around what constitutes a beehive has been removed along with the mandatory inspection of beekeeping sites by the Department of Ag. In fact, the department has no full-time inspectors and relies on the state entomology program. The committee should reassess the Apiary Fund and its duties with the current condition, with the critical condition of the state's bees. Lastly, Nebraska can do a better job in holding organizations accountable and under proper regulation when it comes to the improper use or storage of neonicotinoid coated seeds that do not comply with labeling. Improper storing and disposing of the coated seeds leads to highly contaminated waterways and soil. It is worthy to note these seeds are not regulated under federal insecticide jurisdiction, meaning that the state of Nebraska needs to step up on this. However, reviewing existing regulations, it may clearly be that there are a long list of misunderstandings when it comes to this particular issue. For example, if you review the NDEE Waste Management Regulations under Administrative Code, specifically Title 128, Chapter 25, and Title 132, Chapter 1, it would appear that when it comes to Nebraska's hazardous waste regulations, they are to take timely action when it comes to any substantial present or potential hazard to human health or animal health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. So it's essential for Nebraska's bee population to stabilize to protect our food production and our ag economy. As we work to keep young farmers in our more rural communities and look towards the increased interest in organic farming practices, this becomes an even more pressing, pressing issue. Our ag and urban constituents depend on bees being our pollinators in maintaining our biodiversity within the state. I appreciate your time today. I'm happy to answer any questions you may have. However, I encourage you to bypass any questions for me and save them for the experts behind me who are going to be testifying because they have a much more comprehensive knowledge of this issue. But what I wanted to do today in my, my introduction is kind of get you thinking about the different ways that we can address this. There are ways we can do it with funding, without funding. Some thing is that we have voids, that we have people that are just not filling that void. So I definitely think it's worth further discussion and I hope that you get some great ideas hearing the experts behind me.

HALLORAN: OK. Thank you, Senator, very much. Any questions from our limited but quality committee? (LAUGHTER)

BLOOD: Only the cool kids came.

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HALLORAN: That's it. Any questions? OK, thank you, Senator Blood.

BLOOD: Thank you, Senator.

HALLORAN: You obviously will stick around for close.

BLOOD: Yes.

HALLORAN: All right. Who else wishes to testify on behalf of the subject matter? Good morning.

JUDY WU-SMART: Good morning. My name is Dr. Judy Wu-Smart. J-u-d-y W-u-S-m-a-r-t. I'm an associate professor and extension specialist at the University of Nebraska-Lincoln, and I want to first thank Senator Blood and the committee for this opportunity to testify today. I'm acting on my own personal capacity as an expert and not as a representative of the university. The UNL Bee Lab often receives calls to investigate bee kills or suspected disease outbreaks, but have little to no resources to help impacted beekeepers resolve their issues. In 2017, Senator Brewer introduced a bill, LR171, to establish buffer zones for commercial hives. And through that process, the staff prepared a really thorough report on the history and status of the Apiary program in Nebraska, which I encourage the committee to review for the specifics. For this testimony, I'd like to provide current information building off that report and emphasizing the changes since that review was conducted. There's no good way to estimate the value of pollination services provided by honey bees in-- to Nebraska agriculture. However, we do have estimates on honey production. And as of 2015, the number of honey producing colonies have decreased from 70-- from 57,000 to 39,000 colonies, which is a loss of roughly 32 percent of our pollinator workforce. In the early 2000s, when the Apiary program was eliminated, there was roughly 126 beekeeping operations producing 2.8 pounds-- 2.8 million pounds of honey from roughly 40,000 colonies. The needed serve-- the limited need for services and financial constraints led to the removal of the apicultural position in NDA, but since then there has been a 248 percent increase in the apiculture industry and there are now more than 438 beekeeping operations in the state of Nebraska. However, despite the increased number of operations, there are fewer colonies producing less honey, highlighting the fact that today's beekeepers are facing many more challenges and struggling to keep their hives alive, resulting in fewer colonies or livestock, if you will, in each of these operations. It's clear that the apiculture industry in Nebraska has significantly changed over the past decade, and it's time

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to reevaluate the need for a functional apiary program that is able to meet the increased demands for beekeeper services and to support the increasing demands for the pollination services that their bees provide to farmers across Nebraska. Developing a mandatory apiary registry and a statewide managed pollinator protection plan, also known as MP3s, would be critical for addressing consistently high beekeeper losses, beekeeper-reported losses and concerns over high chemical loads found in bee colonies across the state as these insects are bio-indicators of our surrounding environment. MP3s are encouraged at the national level to develop effective means of increasing communication between stakeholders and mitigating bee declines. Each state customizes guidance and recommendations based on available infrastructure, target audience and state specific needs. Currently, there are more than 39 states that are-- that have or develop, are developing an MP3. Nebraska is not one of these states. In the 2017 report I've previously mentioned, three forms of revenue were identified as means to support an apiary program in Nebraska. Most of these revenues are avenues all falling to beekeepers who are already struggling. In states that have successfully implemented MP3s, other pathways have been used, such as developing special vehicle license plates to generate public awareness and funds or allocating portions of the pesticide application training fees toward pollinator stewardship programs. Given the significant changes in apiculture and stressors bees face in Nebraska, I strongly encourage the committee to consider how continued losses of pollinators in our state will impact farmers abilities to grow crops and ranchers abilities to care for livestock when many of the foods that we produce depend on the pollination provided by both managed and wild bees. The hearing today provides a critical platform to discuss these concerns and to begin the development of a statewide managed pollinator protection plan, which seeks to work with state agencies, farmers, beekeepers and other stakeholders to develop guidance that works for Nebraska. I want to thank you today for your work on LR277, and I appreciate your time and consideration.

HALLORAN: Well, thank you, Doctor. I want to thank you for being able to keep within the five minutes and saying an awfully lot. Do we have any questions from the committee? Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you for being a leader in the nation on apiary, and we're very fortunate to have you here in Nebraska. The report in 2017 to today, what has changed? Is it still static or have we gotten better or worse?

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JUDY WU-SMART: It's hard to say. We don't have a formal-- we don't have a mandatory registry so we don't have a good accurate estimate as to where the beekeeping, beekeepers are, the operations and their type of losses. So the data that I'm getting is generally from the National Agricultural Statistics Service, and they, they generally kind of call the beekeepers and ask them to participate in the surveys. Some do and some don't.

BRANDT: OK. So in your, in your testimony, we talk about colony. Is a colony a super or is a colony a group of supers?

JUDY WU-SMART: A colony would be one individual hive. And that hive consists of about 30 to 60,000 bees, but it would be a stack of boxes.

BRANDT: OK.

JUDY WU-SMART: So there could be one box or multiple, but it would be one contained unit.

BRANDT: And I guess the last question I've got is, we know honey is a byproduct of pollination. The numbers that you're using on the income side for justification is on honey, but the real value of, of bees is pollination--

JUDY WU-SMART: Correct.

BRANDT: --on our crops. If you're in agriculture, you know that.

JUDY WU-SMART: Yes.

BRANDT: Do you have an idea of what that number, the value to Nebraska agriculture is of pollination? Because I know, and I'm, I'm trying to just kind of throw this out here, in California on the, on the fruits, it's critical that they bring those supers in and pollinate those--

JUDY WU-SMART: Yes.

BRANDT: --high dollar, high dollar fruits. Maybe not so much in Nebraska.

JUDY WU-SMART: Yes. Yeah, with these state MP3s, that is part of the products that come out of that process, is an evaluation of the industry and the food systems that depend on pollination. How many of these are actually contracting beekeepers onto the property for pollination services and how many are just utilizing bees as kind of

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incidental pollination. So a managed pollinator protection plan does do the research to look at the state-specific cropping systems and which of these industries are most impacted by pollination losses and working from there looking at the estimated value of those.

BRANDT: But one last really quick question. We're dealing with the domestic honey bee industry here; what percent of the, of bees in Nebraska are wild versus domestic?

JUDY WU-SMART: Oh, there are a lot of wild bees. And we've got some great experts here to talk about the wild bee population, so I'm going to hold off on that.

BRANDT: OK.

JUDY WU-SMART: But honey bees are just one managed livestock species.

BRANDT: Thank you.

JUDY WU-SMART: Thank you.

HALLORAN: Well, there are a lot of threats to bees, chemical, obviously, is one that's been focused on a lot and it's a legitimate concern. Are there threats from other insects?

JUDY WU-SMART: Yes, there definitely are. Certainly we have to consider that any pollinator protection plan needs to consider the balance between pest control, disease management, the use of these and the need of these chemicals with conservation practices that promote better bee populations. So we do consider a lot of these economic considerations. There are examples of what we call integrated pest and pollinator management, which considers what types of chemicals are being used and whether or not there are pollinator friendly options to use as an alternative. And looking at timing and application rates to better improve protecting pollinators when they're out foraging and when they're active. And so those are the types of information that we could receive from kind of the study looking at what are these impacts and what are the practices that harm bees in Nebraska.

HALLORAN: OK, very good. Thank you, Doctor. Senator Jacobson.

JACOBSON: Yeah, thank you, Chairman Halloran, the-- and thank you, too, for your testimony. My, my wife is a master gardener and we-- she actually has a pollinator garden in our backyard and our neighbor is a beekeeper and I found that out the hard way, I might add. So I do have

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some basic understanding of what's happening there. Although I live in North Platte, we do have-- own some farm ground down in Clay County and, and I can tell you that I'm certainly looking at it from the agricultural aspect this year, in particular in our soybean crops. We had a Japanese beetle problem this year that was fairly intense. In fact, I think we did two separate applications to really control that population, which seems to have just seemingly moved in this year.

JUDY WU-SMART: Yes.

JACOBSON: And so there is that delicate balance between the agricultural production and obviously when the Japanese beetles are there and working, you need to spray and if you aren't spraying fairly timely you're going to lose the soybean crop and so, so that's certainly from an agricultural aspect concern there. But I truly do appreciate the honey bee concerns and we do have, we do work with a, with a honey bee operator who does keep hives just a couple of miles away. And in fact, we get honey every year. I think that's the rent, is we get some honey from, some honey from the operators. So, so I have a good basic understanding of how that works. I'm, I'm a little bit curious and maybe another speaker will address that, but I'm a little curious both with the domestic honey bee population and the distances that they would go from those hives. And then also the wild bee population and what role they're playing. And that seems to be a whole different animal in terms of how can we be sensitive to that from an agricultural chemical perspective because the honey bees seem like that might be a little easier to control, but the wild bee population may be more difficult. But I'm just curious how far, how far if you've got a beehive or a colony set up, how far are they going to go from that particular hive distance-wise?

JUDY WU-SMART: That's a really good question. Typically, a colony can forage anywhere between 1 to 2 miles from their, from their hive, and that, the foraging range is going to differ between species. But a lot of times in these agricultural settings, we are encouraging people to plant more habitat in those marginal areas. So those are another way that we can kind of boost the forage, because it isn't just pesticides that are a threat to bees, but it's the lack of nutrition and diverse nutrition. So with honey bees, it's typically 1 to 2 miles, but if there is not a lot of good forage around, they can fly anywhere to 5 to 6 miles.

JACOBSON: OK.

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JUDY WU-SMART: Yeah.

JACOBSON: That's, that's good to know. And I-- and again, as you start looking for solutions and how everybody kind of gets along, and obviously there are a number of issues in the ag side when we start looking at we've got those producers are wanting to grow specialty crops. White corn is an example. Well, they, and those who want to grow popcorn, well, if you've got so many growing, growing commercial yellow corn right next to them, you've got the problem with drift from, from pollination.

JUDY WU-SMART: Yeah.

JACOBSON: We've also got issues clearly of the dicamba drift is a, is a number, another concern among producers. And then we also have the Enogen corn and those growing Enogen corn, it spreads into white corn population and suddenly the white corn doesn't mill very well. And so there's a lot of sticky issues out there in terms of how can cooperators, producers work together. Some of it seems to be able to identify maybe where those hives are at and knowing what the producers around are doing and being potentially more sensitive to that piece of it. But I like the idea, too, that, as you're suggesting it, probably needs to be more habitat that keeps them closer to the, to the colony as well. But I'm glad you're raising the issue. It is an important issue. One last question, I guess, for you is I know we had a problem where we were really losing our bee population. I don't know how many years ago that's been, two or three years ago. Maybe it's longer than that. Seems like yesterday. That seems to have reversed itself at this point or what is the status there?

JUDY WU-SMART: So, you know, honey bees are livestock, but uniquely their livestock that can be split and divided to overcome the losses. So beekeepers-- the estimates that we get about colony numbers is a little bit inaccurate because beekeepers each spring will basically take their colony and halve it and so that they can kind of recover some of those losses. But the more you do that, and the colony can be halved multiple times, the smaller and the weaker those colonies get, making them more susceptible to these diseases and pests. So as a result of trying to bring numbers back, you know, we're also making them weaker. And so there, there's certainly a continuous challenge to keeping bees healthy, even though the numbers look steady. And the other thing we have to consider is sometimes these beekeepers, the commercial beekeepers, are managing large quantities of these bees. So the big drop of bees that we saw was really from four, three or four

major commercial beekeepers pulling out of our state. They really couldn't recover from financial losses of having 60 to 80 percent losses every year and recovering from that. So they run beekeeping operations in multiple states. And they just decided that, decided that Nebraska was not a state that could be sustained as a, as a location. So they pulled their apiary. And one of the, the biggest beekeeping operation in Nebraska is also the biggest beekeeping operation in the U.S. He's no longer operating here since 2019, I think, '18 or '19. But his, his operation removed about 12,000 hives. And as you can see, our numbers are not that large, so having a \$12,000, 12,000 hive colony operation move out of our state and nobody from the Department of Ag is really aware of this, that's a big, significant loss of our pollinator workforce. And I think we just need to have a better communication and program where we can really deal with these big, big losses of commercial beekeepers.

JACOBSON: If I could, just as a follow up, though, as it relates to the death loss that we were seeing. What's the status there? Did we ever identify what that primary death loss was caused by? And has that been resolved?

JUDY WU-SMART: You know, I don't-- I have not followed up with the beekeeper. But when we did speak a couple of years ago, his main concerns were chemical exposure and lack of forage. And that is, seems to be very consistent with the beekeepers that are currently operating bees in Nebraska is the concerns over nutrition, chemical exposure and, well, you know, when there are chemicals and poor nutrition, the system becomes weakened, just like in our bodies. If we're not eating well, we can become more susceptible to disease and, and, and other parasites. And that's what's happening with the bees. We do have some pest problems. We do have disease problems. It's not unique to our state, but you know, we are trying to make people aware of these concerns so we can try to deal with them before they get too far to deal with.

JACOBSON: And again, not to belabor the issue, but, but I mean, the chemicals have been around a long time and they're still here today.

JUDY WU-SMART: Yes.

JACOBSON: So I'm still trying to identify what was the cause of the, of that significant death loss that occurred and then seemingly has reversed itself or has it reversed itself? I mean, it's seemingly that

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we had a one period of time where there was concern that we were going to lose the entire bee population.

JUDY WU-SMART: Yes. Yes.

JACOBSON: And that seems to not be the case now. So we [INAUDIBLE] would like to have some color on just what happened, what caused it, and did we identify what caused it? And then why has it somewhat mitigated at this point?

JUDY WU-SMART: Well, the colony collapse disorder and a lot of the research behind that, when we saw a lot of social media coverage, has really been highlighting the fact that the bees' decline is due to a mixture of chemical-- or a mixture of stressors. And this is from by, you know, disease and pests, pressure as well as from chemical exposure and lack of forage. So it is a huge combination of, of problems that the bees are faced with. The report that I put in the testimony, there's a map there that shows this, the samples of, of bee samples that were taken between 2016 through 2019. They were analyzed for chemicals. And you can see our state is among the highest in terms of pesticide prevalence, diversity use and risk of exposure to bees based on the samples taken from the bee prop, beehives. So that might also be an indication that there are some issues related to the chemical use and chemical overloading in our state. But without really knowing where the bees are, where the operations are and, and what the practices that might be in this vicinity, we really can't tell or discern exactly what is causing this decline without really understanding all aspects from the crop, from the crop production side as well as on the urban practice side. So it's not just agriculture, but it's also our urban practices that we have to consider.

JACOBSON: Thank you.

HALLORAN: Thank you, Senator Jacobson, I want to introduce a newbie.

JUDY WU-SMART: Yeah.

HALLORAN: Little play on words there. Come on, lighten up. A newbie, not a new bee, he's, he's on the committee. Senator Cavanaugh joined us, so I'd like to introduce him. Introduce yourself, please.

J. CAVANAUGH: Thank you, Chairman Halloran. Until you commented, I didn't get the joke. (LAUGHTER)

HALLORAN: We'll work on delivery.

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J. CAVANAUGH: It might be more my fault. John Cavanaugh, District 9, member of the Agriculture Committee, [INAUDIBLE] midtown Omaha. So thank you for being here and thanks for this hearing. Could I ask a question as long as I'm talking?

HALLORAN: No, you're a newbie. No, yes, please.

J. CAVANAUGH: Oh, thank you for being here, Doctor Wu-Smart. So you said that one of the reasons, I just got the-- handed this. So the chart you're showing is that's basically the number of counties we have in the state of Nebraska and that top number basically looks like in 2015, maybe, we had close to 80,000 colonies. Is that, am I reading that right? And so now we're down to August of '20, April of '21, we're down to about 40,000. You said one of the biggest contributors was the large, large producers pulling out of the state. Where are they going?

JUDY WU-SMART: Other states, to be honest with you, the Dakotas. One of the, one of the things if you look back at the history of honey production, you know, our state used to be a really high honey production, production state within the top ten. But that was when a lot of canola seed and canola production was happening in our state. That still continues in the Dakotas. So a lot of these beekeepers are going to the Dakotas to overwinter-- oversummer their hives so that they can kind of rest their hives from the pollination route that they do and make some honey from there, because there really is not a good place to put bees here and make honey and keep them well-stocked so that they can continue that route again.

J. CAVANAUGH: So, so they move them and do they come back then?

JUDY WU-SMART: No.

J. CAVANAUGH: OK. So they move them, when you say oversummer them, what does that mean?

JUDY WU-SMART: Oh, so the normal migratory route for commercial beekeepers will oftentimes-- they get some revenue from honey production, which is where they sit the colonies and just kind of collect honey from that location. The other string of revenue is when they bring them to cropping systems, from cropping system to cropping system, like the senator mentioned, California is being the one-- almond production is one of those contributors. So they go through pollination contracts to get those cropping systems pollinated. And

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then they need to kind of, during when the pollination is done, they kind of need to place the bees somewhere. And so they'll bring them into another state, leave them for the rest of the summer so they can collect honey and then they'll either overwinter them in that location or bring them to another overwintering site. So these colonies do move around quite a lot. Our beekeepers in Nebraska had a mixture of commercial migratory beekeepers and stationary beekeepers. A lot of those migratory beekeepers have chosen not to come back to our state. That's what I'm saying. A lot of the stationary ones are still here but are still struggling to maintain their colonies.

J. CAVANAUGH: And what you're saying is the reason they're moving to the Dakotas is the types of crops that are planted there. Do they have a similar type of the chemical applications to those crops or they don't require that chemical application?

JUDY WU-SMART: It depends on the cropping system in the areas as well. A lot of the beekeepers are actually seeking out properties that they know are in CRP or Conservation Protection Reserve programs. So there are some or some of that information available for them to kind of strategically look at placement of these hives. And if you consider an apiary, an apiary is one area where you put hives down, you really only put 30, or 30, maybe 40 hives in one location. So one apiary. Those commercial beekeepers that were managing hives in our location, he had over 250 apiaries all across the state because you can't manage 12,000 bees in one place. And so it takes a lot of logistics and coordination and planning with different farm owners and properties. And so you can imagine those are all these apiaries that were providing incidental pollination to all those farmers around. So there, there's big concern that those-- Nebraska is becoming unsuitable for pollinators.

J. CAVANAUGH: And so with the, you said something maybe I missed. Do we not know where all of the hives are in the state? Is that what you said?

JUDY WU-SMART: We do not have a registry program. We have what is called bee check or drift watch. It's a program that is connected to the Drift Watch program. But that's a voluntary registry. So not all the beekeepers take the time to inform the state where their hives are.

J. CAVANAUGH: Are there states that have a mandatory registry?

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JUDY WU-SMART: Absolutely. A lot of the states that are able to implement MP3 programs and changes have apiary programs where they know where the hives are, they know the number of beekeepers. They know the types of beekeepers because there is a very big diversity of hobbyists, backyard beekeepers to your major commercial migratory beekeepers. So we really don't have a good idea or good sense of the type of beekeepers that we have here.

J. CAVANAUGH: Could you give an example of states or is there a list of states that have this mandatory registry?

JUDY WU-SMART: There are states and I can follow up and give you some, some of that. And there's also a list of states that have these MP3s in development or fully developed. Some of the links that are provided in the testimony also will, will lead you to that.

J. CAVANAUGH: OK. And then as far as those 250 locations that that one person pulled out of, is there, are we seeing a decrease in pollination of the farms around their crop? Are we seeing, is there any kind of measurable effect of pulling out those 250 locations?

JUDY WU-SMART: I would love to know that. I think there would be a need to coordinate with the state agencies and maybe even the county educators to see what those are. We have had a few group requests for pollination because their beekeepers no longer are there. But that's no, you know, documentation of, of an impact. I know that we've been increasingly getting calls and requests for placing bees on properties, but.

J. CAVANAUGH: And so people are calling in and requesting it of you at the extension?

JUDY WU-SMART: Yes.

J. CAVANAUGH: And what do you guys do when that happens?

JUDY WU-SMART: It depends on what we can do. Some of the partnerships that we have, research programs or education programs, were able to put bees on their property and they receive the pollination services from those bees. And we can utilize that as a research site or for education purposes. But we can't meet the demand for all the farmers that have requested it. So there, there oftentimes, we will lead them to the Beekeeping Association Clubs or some other local beekeepers that we know are in the area.

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J. CAVANAUGH: Thank you.

JUDY WU-SMART: Um-hum.

HALLORAN: Thank you, Senator Cavanaugh. Are there any further questions? Thank you, Doctor Wu-Smart.

JUDY WU-SMART: Thank you.

HALLORAN: I appreciate it.

JUDY WU-SMART: Thank you.

HALLORAN: OK, next testifier. Good morning.

STEPHANIE BARELMAN: Good morning. My name is Stephanie Barelman. It's spelled S-t-e-p-h-a-n-i-e, Barelman is spelled B as in boy, a-r-e-l-m-a-n. So today I'm here as the founder of the nonprofit group, the Bellevue Native Plant Society. I'm here representing my group, as well as representing the numerous friends, gardeners, teachers, colleagues and nonprofit champions I know and love who cannot be here today. These people hail from wide areas in the state and encompass people from the agricultural, education and horticultural industries. I am speaking today as an alarmed but hopeful citizen who has read and studied firsthand the countless academic papers on the threat of exotic, invasive plants, irresponsible pesticide use, loss of native plant habitat and also competition from non-native feral honey bees commonly used in agriculture that all contribute to the decline of native insect populations. The publications and studies are too many to name for the sake of time today, but come from entomology and biology departments at universities and museums nationwide. For my role in my nonprofit group and also for community education purposes, I've specifically researched the effects of neonicotinoid products on pollinators, particularly native bees and specialist insects. So I am hopeful that this committee will also seek and find this information as well. The further aims outlined in this resolution namely outlining better practices, determining actions to protect pollinators and providing leadership and guidance are all practices our group and other nonprofit groups and organizations such as Milkweed Matters, City Sprouts, the Nebraska Statewide Arboretum, among many, many others, are already utilizing to educate suburban and urban populations in our area. The public is thirsty for this kind of education and for environmental advocacy and change. We have incredible turnouts for

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these types of events that we host and attend, and the story is the same. I care about this. What can I do to help? That's what we hear from people who come to speak to us at these events. I am confident that we can find further allies at the state level. Compromises can be made that will benefit not only pollinator populations, but human populations as well. I will end my speech by saying that detours, while initially aggravating and uncomfortable, can be accepted and time is a truly better alternative route. So let's take a detour and go where is necessary. Thank you.

HALLORAN: OK. Thank you very much. Do we have any questions from the committee? OK, seeing none, I appreciate your testimony.

STEPHANIE BARELMAN: Thank you.

HALLORAN: Next testifier, please. Good morning.

JENNIFER WEISBROD: Good morning. My name is Jennifer Weisbrod, and I am the new Pesticide Safety Education Program coordinator for the state of Nebraska.

HALLORAN: Spell your name, please.

JENNIFER WEISBROD: Oh, yes, sorry. J-e-n-n-i-f-e-r W-e-i-s, b as in boy, r-o-d, as in dog. So, sorry. I am the Pesticide Safety Education Program coordinator for the state of Nebraska. I'm speaking in my own personal capacity as an expert and not on behalf of the University of Nebraska. Thank you to the committee and Carol Blood for allowing me the opportunity to be able to speak today about my knowledge and some information that I'm going to share. As the coordinator of the Pesticide Safety Program in Nebraska, I develop materials and coordinate pesticide training for farmers that wish to apply restricted use of pesticides. That's approximately 18,000 people in the state of Nebraska that have a private applicator license. I also develop materials and coordinate pesticide safety training for all commercial applicators, which can include lawn care companies, public health districts, pest companies for homes and more. And that's approximately 10,000 people. And then in addition, I didn't list this, but I also coordinate training for fumigation, which is the use of chemicals through irrigation pivots. And that is approximately 6,000 people. So we're looking at around 35,000 people that go through my program each year on pesticide safety. The mission of our program is not to promote pesticide use, but instead to reduce the use and toxicity of pesticides used and increase safer applications of

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pesticides to protect human health, the environment, and create a sustainable farming operations and life for our citizens in the state of Nebraska. Many of the calls I receive in my role regard exposures to pesticides of non-target organisms such as pollinators, trees and often humans. A personal story: a gentleman called me who was an applicator in Nebraska and after years of pesticide use, had developed something called Parkinson's, which is a neurological disorder. And research has shown implications that that may be an effect from constant exposure to certain types of herbicides. So some of my concerns are that Nebraska has relatively high agrochemical use. And this use, though important to agriculture, has led to water contamination and increased pesticide exposures, indicating there may be problematic practices that could also be impacting pollinators. So I'd like you to go ahead and flip to map one. This is a 2013 recorded pesticide exposure per 100,000 people, and the darker blue is between 39.7 and 54.6 people that have had an exposure to pesticide out of each 100,000 people. You can see that Nebraska is in the top ten in the nation for pesticide exposures. These are CDC reported. This does not include non-reported or improperly diagnosed exposures. If you flip to map two, I have another map and you can see once again, Nebraska is in the top ten in the nation for pesticide exposures. On a positive note, if you look at the very last one, number 2017, we did go down a little bit, but we are still very high in our levels of pesticide exposures. These are our farmers, these are our family members, and it's our community that are having CDC-reported pesticide exposures. In addition, if you refer to map number four for images of water sources known to have either atrazine, which is a residual herbicide or nitrate. This is from Nebraska Clearinghouse. I included this because they have data with hundreds and hundreds of chemicals available. I only picked the two that I knew most people would recognize. So nitrate is a common contaminant from nitrogen sources. And of course atrazine is commonly used in practices to prevent weeds. So both chemicals have negative, negative impacts, impacts on human health and atrazine is a known toxicant to fish and aquatic invertebrates, which means there could be side effects to non-aquatic invertebrates as well, though there has not been research to my knowledge indicating that. With known water contamination and pesticide exposure is high in our state, there is a need to identify concerns for exposures in pollinators which provide pollinators, pollination services as my colleague, Dr. Judy Wu-Smart mentioned, to many of our specialty crops. Nebraska is amazing in that we have over 200 different crops in our state. It's amazing how much food we grow here and we need these pollinators to be able to pollinate those

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crops. For a list of agrochemicals used in Nebraska from 1999, or 1992 to 2009, please refer to this secondary sheet that I gave you. Recent years of agrochemical data have not been organized for our state. You can pull it from the USGS website, but it's every state and every county, so it's a lot of data. So what I did instead was I organized a few of the key pesticides I want to highlight. The first one in that table is Imidacloprid. In 2000, which was the early years of neonicotinoids, there were approximately 3,977 kilograms used in our state in that year. If you skip ahead to 2010, we see 32,164 kilograms used in our state. And then, and I'll explain this in just a minute. We see 5,000-- am I over the 5 minutes? I'm so sorry. Did I go over? I wasn't paying attention. Sorry. I'll skip ahead. Either way, ultimately, in 2015, treated seeds were no longer included in the calculations of kilogram use of chemicals, and that data is not known and would be highly valuable. I also included glyphosate because it has been identified as potentially problematic to pollinators, indicating that it might impact their digestive system. And so then to summarize, because I'm reading quickly, with more knowledge comes more power. We've identified that there are concerns for human safety and for our water. So implementing a pollinator management plan would be a wonderful way to start examining the impacts on pollinators. I've worked with many of my colleagues who also have MP3s, and these plants have not negatively impacted agriculture. Instead, they work with producers, residents and businesses to create a collaborative environment for sustainable systems. Thank you for your time. Sorry, I went over the five-minute mark.

HALLORAN: OK. Help me pronounce your last name again.

JENNIFER WEISBROD: Weisbrod.

HALLORAN: Weisbrod. Thank you for your testimony. Any questions from the committee? Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you for the work that you do on this. I am a farmer, and until recently I had my permit. I just haven't had to renew it because my son is doing the application now. I'm very familiar with the pesticides and the needs, needs for them because our ag economy would crash. It's, it's amazing to me to look at this report how many different ones we've got in the state. Your first map shows pesticide exposures and that we're in the top ten?

JENNIFER WEISBROD: Yes.

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BRANDT: Well, part of that would be because Nebraska probably is one of the top ten in using pesticides. Would that be a correct statement?

JENNIFER WEISBROD: We're pretty comparable to all of the middle central United States states. So I would say if you compare us to Iowa, Kansas, Missouri, Oklahoma, Texas, actually Texas has probably doubled the amount of applicators and pesticides used as Nebraska. In terms of all pesticides, not just herbicides, which is, Nebraska is number one, probably in herbicide use, but not all pesticides.

BRANDT: OK.

JENNIFER WEISBROD: So I would say we're pretty comparable to the states that surround us in terms of use.

BRANDT: Do you have-- the chart that you handed out here goes up to 2009?

JENNIFER WEISBROD: Yes.

BRANDT: So I mean, we're 12 years in arrears on this. But even then, if you could follow up with me, I'd kind of like to see the total pounds at the end of the report.

JENNIFER WEISBROD: Yes.

BRANDT: I would be curious myself to see how many hundreds of thousands of pounds or millions of pounds of pesticide--

JENNIFER WEISBROD: Yeah.

BRANDT: --that we use in this state that, I would assume the pesticide is the insecticides, the herbicides, all manners of pesticides is what's included in this report. Would that be correct?

JENNIFER WEISBROD: Yes. So there is that data available on USGS, but it's like 100 pages long, which is why I didn't print it.

BRANDT: That's fine if, if it's too much trouble. Thank you.

JENNIFER WEISBROD: No, I will absolutely get that data to you, though.

HALLORAN: Any additional questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman, and thank you for your testimony. So could you kind of just go back through the numbers you were listing

off? So they're, are they on this report, or this report, the ones that you were kind of pointing out that.

JENNIFER WEISBROD: These ones are more recent. So the data on this ends at 2009 and I didn't want to print the 100 page document for you guys to skim through, so I just summarized a couple highlighted years. So if you notice in 2014, I do want to highlight this, Clothianidin had 135,000 pounds applied and then in 2015, there were none applied. And this is likely because of the fact that treated seeds are exempt articles and are no longer counted as pesticide used, even though they are pesticides.

J. CAVANAUGH: So can you tell me what Clothianidin is?

JENNIFER WEISBROD: Yes, of course. I'm sorry. It's a neonicotinoid, which was what some of our colleagues have mentioned as a concern with our pollinators.

J. CAVANAUGH: And what you're saying is that in these previous years, it was maybe being counted as treated seeds where they started treating seeds and therefore stopped counting.

JENNIFER WEISBROD: Right. So some of that was treated seed. Treated seed does, it can leach off of the seeds. It can run into our soil, into our water. It can be pulled up into plants as they develop. But because of the fact that they are considered a treated article, they are no longer under FIFRA, which is the Federal Insecticide, Fungicide, Rodenticide Act. And so they are no longer considered under that as a pesticide, which is why they are no longer being tracked. However, the chemicals are still there at the same level. They're just not regulated the same--

J. CAVANAUGH: OK.

JENNIFER WEISBROD: --unfortunately.

J. CAVANAUGH: And so you went through these and I kind of wanted you to go back through them a little bit slower, but I mean, and I don't know what-- I can't pronounce many of these. The second one, Thiametholax--

JENNIFER WEISBROD: Thiamethoxam.

J. CAVANAUGH: OK, so it goes from 20 to 9,000 to 40 down to 500.

JENNIFER WEISBROD: Yep. In 2015, right after they changed from treated seed and to not being considered a pesticide.

J. CAVANAUGH: OK. So if the takeaway from this chart should be that all of these numbers drop although glyphosate [SIC]-- I'm really bad at pronouncing these, I'm sorry.

JENNIFER WEISBROD: You're okay.

BRANDT: Glyphosate.

J. CAVANAUGH: Glyphosate.

JENNIFER WEISBROD: Yeah, he's a farmer.

J. CAVANAUGH: Senator Brandt has probably had to say that word more than once. That one does continue to go up. Is that not a seed, not a--

JENNIFER WEISBROD: So I'll explain that a little better. I ran out of time. So I'm so sorry about that.

J. CAVANAUGH: No, I'm trying to give you time to explain.

JENNIFER WEISBROD: So in this chart, what I am showing is that treated seed is no longer being calculated and counted as a pesticide. So we don't actually have data identifying how much is being applied in our state, which means that we're missing a huge amount of data in terms of herbicide pepper, not herbicide, sorry, insecticide use, specifically neonicotinoids. And I should have highlighted this on the chart, on the chart, but glyphosate is actually an herbicide. Herbicides would not be used as a treated seed because you want your seed to grow if you're treating it. Herbicides would be something you would apply to the soil to prevent the development of weeds. And I highlight glyphosate because of two reasons. It increases dramatically, as you can see, from 1 million to 9 million within 20 years-- pounds, or sorry, kilograms. But also there has been research indicating it has negative impacts on pollinators. And so that's also a concern to be considering.

J. CAVANAUGH: So we're not tracking treated seeds so we're not getting the whole picture. Is there a method by which we could record that data?

JENNIFER WEISBROD: I believe there would have to be some regulatory changes and it would be, it would probably require a deep dive into the treated article laws.

J. CAVANAUGH: And that's a state law, though.

JENNIFER WEISBROD: That's a national one.

J. CAVANAUGH: OK. But we were recording this at the state level, right?

JENNIFER WEISBROD: Yes. Well, the USGS records it for every state.

J. CAVANAUGH: OK.

JENNIFER WEISBROD: So you can get it for any state. But they're all going to see that same drop in insecticides because most insecticides now are put onto the seed before planting and not by the farmers. Or if they're applied, they're applied toward the end of the season once there's a serious pest problem.

J. CAVANAUGH: So every state's chart will look similar to this is what you're saying.

JENNIFER WEISBROD: Yes. You will see a drop on all neonicotinoids. And it's not because they're not being used less, they're just being used differently.

J. CAVANAUGH: In a way that slips through the regulatory structure apparently.

JENNIFER WEISBROD: Yes, it does.

J. CAVANAUGH: Can I continue to ask another line of questioning?

HALLORAN: We've got all morning.

J. CAVANAUGH: Thank you, Chairman. So I wrote down here you mentioned problematic practices.

JENNIFER WEISBROD: Yes.

J. CAVANAUGH: What does that mean?

JENNIFER WEISBROD: So problematic practices would be not understanding some of the things that applicators could do to avoid harming

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pollinators. So something I believe would be important to include is within our category manuals for specific types of applicators. We would potentially include material on how they can best avoid applying in a way that would harm pollinators. But other examples of problematic practices would be improper tank mixing of multiple different pesticides into a single tank. Chemicals obviously interact in many, many different ways. So a common practice in every state, not just Nebraska, is to mix multiple chemicals together. But that can potentially be a problematic practice in that we don't know the end results of those mixes on nontargets. We saw, we often know the end results on the pest we're trying to control, but we don't always know the end results on nontargets because that is not part of the registration and review process at this point.

J. CAVANAUGH: So when somebody does that, they're not in violation of their, their permit. If Senator Brandt is doing that, he's not breaking the rules.

JENNIFER WEISBROD: As long as it's not listed on the label. If it's listed on the label, it is legal that if it says you cannot mix these two products, but the amount of energy the EPA would have to put in to evaluate all of the risks associated with mixing many different chemicals would be billions of dollars. And right now, our researchers primarily focus on, on those mixes and how they impact pest control but they don't look at how those impact nontargets like humans and pollinators.

J. CAVANAUGH: So from a state perspective, what can we do to address those problematic practices?

JENNIFER WEISBROD: That is a really big question. And it's something--

J. CAVANAUGH: The Chairman said we have all morning. (LAUGHTER)

JENNIFER WEISBROD: That's a really big question. I think it would take a lot of effort from a lot of people to try and change that mindset, but also encouraging and funding researchers like Dr. Judy Wu-Smart, who can examine how those mixes that we're already researching, how they work on pests, examining how they impact our pollinators and our human health.

J. CAVANAUGH: But you're talking about, that would change the label for the federal, at the federal level, which then would change the practices here, right?

JENNIFER WEISBROD: That would require the EPA to change things.

J. CAVANAUGH: Is there anything that the people sitting at this table could potentially consider doing in the next session, either legislatively or ask regulatory?

JENNIFER WEISBROD: I would say one of the best things that we could try to establish is more risk assessments for pollinators on tank mixes. So if there are common tank mixes, identifying those tank mixes and then pushing for the EPA to change the registration process to include nontarget risk assessments for non-labeled tank mixes.

J. CAVANAUGH: I'm sorry.

JENNIFER WEISBROD: It's a lot of words.

J. CAVANAUGH: Nontarget risk assessment for non-labeled tank mixes.

JENNIFER WEISBROD: Yes.

J. CAVANAUGH: OK.

JENNIFER WEISBROD: Does that, I think--

J. CAVANAUGH: I can't follow that.

JENNIFER WEISBROD: I think Senator Brandt maybe understood.

BRANDT: I will-- I'll explain--

J. CAVANAUGH: He'll explain it to me later.

JENNIFER WEISBROD: Sorry. It's a very deep topic here, so.

J. CAVANAUGH: I'm here to learn.

HALLORAN: Welcome to our world.

J. CAVANAUGH: And I love it.

HALLORAN: Senator Brandt.

BRANDT: Real quick. When we look at the clothianidin, the last year you have is 2015 and what changed is, and then we started applying it as a seed coating.

JENNIFER WEISBROD: Yes.

BRANDT: And as a businessman, as a farmer, it's much more effective. We use a lot less of this now. You've got 80,000 corn seeds in a bag that'll plant 3 to 4 acres and we've just coated the seed with neonics. We have, we understand what the problem to the bees are. They're planted every six inches apart in the field as opposed to when we used-- furadan isn't the same thing, but we used to put this nasty stuff in our planter boxes and it physically would make me sick, I don't know about you guys, and we would blanket this stuff out in the field. So I want to be very careful here that we aren't going after a product that is used and researched at length by our universities and the EPA and released that helps agriculture in Nebraska because there will be unintended consequences if we go back to the, to the old way of doing things. And that's really devastating. I mean, I want to apply exact amounts of product, no more than that and I think everybody in agriculture wants to do that. Would you agree with that?

JENNIFER WEISBROD: Yes. So what I will say is treated seed is a thousand times better than the previous methods. It doesn't remove the risk, but it is a much better method both for you as an applicator, but also for the environment. There's far less risk of drift or movement off site, so I will absolutely say that treated seed is a better option.

BRANDT: OK. Thank you.

JENNIFER WEISBROD: Does that make sense?

BRANDT: I appreciate that.

JENNIFER WEISBROD: OK.

HALLORAN: You saved my asking that question. Senator Jacobson.

JACOBSON: Thank you, Mr. Chairman. And I just want to follow up on that thought as well. And I would just tell you, the question I probably have is, is how the treated seed is being applied. Obviously, seeds been planted under the ground and how that's having an impact on the pollinators themselves. Again, I would agree that in the old days we were putting on all kinds of treatments that were soil applied, new planter boxes and everything to get in the seed to keep, you know, cut worm, any number of pesticides that are, that are going to be there, are pests that are going to be there on the, on that seedling. The other thing is we really seem to have gone away-- I know I still see

atrazine being identified a lot, but I don't know, unless it's some mix and some [INAUDIBLE] I'm just, anymore most everything is, is no longer soil applied, but it's really being applied, surface applied and in much lower quantities. And so it seems to me that agriculture has really made great strides in terms of how we handle pesticides, the quantities that we use, how we apply it. Tank mixes, I think, for example, when it comes to the fall of the year, if we have to spray for rootworm beetle, we're likely going to include with that a fungicide. And it's going to be a tank mix because we can fly it on one time, we're not going to fly it on twice. And so, you know, I think we want to be very careful about going after tank mixes because of the efficiency of one application applying two products. And unless we can prove that there is interaction problems, I-- we want to be a little careful how quickly we go down that path as well. And then the other thing too, just since it's mentioned and you brought it up in terms of nitrates, I know I live-- my farms are in the Upper Big Blue NRD. We are being monitored there for nitrogen. We're having to be careful when we apply it. We're having to, to lock that nitrogen when any [INAUDIBLE] fall applied. We've gone away from any fall application at all. Everything is multiple liquid application. And given the price of fertilizer, given the price of of glyphosate, all of these products, I can assure you that producers are, are not overapplying if they can keep from doing so. And so, I just want to be careful and make sure we're on the record that, that I think agriculture has been pretty responsible in what they're trying to do. There is that trade-off that there will be applications that will be required to save an incredibly valuable crop in soybeans and corn in the state. And so we're going to have to also balance those, you know, cost benefits as well. But I am curious as to, specifically, how the soil, the treated seed is impacting the pollinators.

JENNIFER WEISBROD: Sure. So as the plants grow, sometimes they will have residues still present within the flower, within the pollen, within the nectar and so obviously our bees rely on pollen and nectar as a food source. So then they take that back to the hive and they will store it within wax. Many pesticides are lipophilic, which means that they bind to waxy or fatty things. And so those residues at very small amounts are not harmful, but they accumulate over time and can cause significant side effects. Sometimes delays in development of food, which means that you have less adult bees in the hive, which means that you have less bees that are able to go collect food, which means there's no food for the baby bees, so it becomes a cyclical--

JACOBSON: So to be clear, on a corn plant, for example, a seed, corn seed that's treated that once it reached flowering stage that we still have those soil-applied products or coats, seed coated still in and still present in the plant and that's what's being picked up and taken back to the hive.

JENNIFER WEISBROD: Potentially. Yes. Those pollen seeds-- or those pollen, the pollen can also transfer to other plants with wind drift onto plants the pollinators would be visiting. Corn is not really a popular pollinator plant, but those pollen pieces can land on other plants and be picked up by bees in that situation as well. So they can still have residues present. And I wanted to address the insecticide/fungicide mix. There is some research identifying that actually a specific insecticide and a specific fungicide do cause harm to pollinators when they are tank mixed. I don't have the research on this, but I'm happy to look it up and get it to you.

JACOBSON: I'd be, I'd be, yeah, I'd love to have that if you have that research on this.

JENNIFER WEISBROD: Absolutely. Yes.

JACOBSON: Thank you.

JENNIFER WEISBROD: Am I able to pick up, like, contact information to share?

_____ : I can provide that.

JENNIFER WEISBROD: Thank you. Sorry.

JACOBSON: Thank you.

JENNIFER WEISBROD: Yeah.

HALLORAN: So you used two interesting words in your last comment to Senator Jacobsen's question. You said "can" and you said "possibly".

JENNIFER WEISBROD: I never, when it comes to research, research is always specific to that encounter in that situation. I don't know all of the exact environmental factors of that research study off the top of my head. I just know that the research did indicate there was potential for harm, meaning that in that research they saw significant enough details to identify that pollinators were harmed in that specific research.

HALLORAN: Right. I think in this specifically, you use the word "possibly" in terms of seed coating on corn seed, then over the lifespan of the corn plant transmitting into the plant and then potentially harming pollinators.

JENNIFER WEISBROD: So there is research showing that pesticide residues on treated seed can end up within plant tissue, within flowers, within pollen and within nectar. That is on most plants, you can find some data indicating that those residues are still present.

HALLORAN: OK. One last question for me at least is, and this can seem like a terribly obvious question with an obvious answer, but on, on the maps that you show you, the maps indicate pesticide exposure and reported pesticide exposure. Can you define pesticide exposure?

JENNIFER WEISBROD: So this would be any situation in which a person was exposed to a pesticide and then went to a doctor, was diagnosed with an exposure, and then that was reported to the CDC. So anybody who had an exposure didn't report it or was improperly diagnosed would not be included in this list. So this is only specifically CDC reported. Does that clarify?

HALLORAN: Yes, it does. OK. Any further questions? Thank you so much for your testimony.

JENNIFER WEISBROD: Thank you.

HALLORAN: Next testifier, please. Good morning.

JENNIFER HOPWOOD: Good morning. My name is Jennifer Hopwood, J-e-n-n-i-f-e-r H-o-p-w-o-o-d. I am with the Xerces Society for Invertebrate Conservation. I am a senior pollinator conservation specialist. I have been working with Xerces, which is a nonprofit organization, science-based organization on pollinator conservation issues for 13 years. In particular, I work with stakeholders like producers, ranchers, farmers, departments of transportation to install pollinator habitat to help manage and basically to support creation of pollinator habitat. You've already heard today about the importance of managed honey bees, and I want to highlight the importance of wild pollinators in Nebraska as well. We have at least 20 species of bumblebees, hundreds of species of solitary bees, prairie-dependent species like the regal fritillary, the iconic monarch butterfly. We have more species of pollinators in the state than birds, mammals, amphibians and reptiles put together. These species are central to

human well-being, to agricultural production, to the health of native plant communities that contribute to crop pollination in addition to honey bees as well, supporting the role of honey bees. They contribute to fruit and vegetable pollination and improve soybean yields. Importantly, here in Nebraska, they play an important role on rangelands pollinating wildflowers that contribute to forage quality for cattle. Cattle depend on minerals and nutrients that they can get through wildflowers they cannot get through grasses. Pollinators also play a really, really critical role in our wildlife food chains, providing food for birds and other wildlife. So protecting Nebraska's natural resources means protecting our pollinators that are wild as well. You've already heard that across the globe insects are in decline, in particular many groups of pollinators. Here in Nebraska, this includes species like the southern plains bumblebee, which relies on our grasslands. It also includes monarch butterfly, which has seen 85 percent in the eastern monarch population declines over the last 25 years. These factors that lead to the declines of wild pollinators are very similar to the impacts that honey bees face: habitat change and loss, pesticide use, disease, parasites, the spread of invasive species, particular plants and also the effects of climate change. And as dependent as we are on wild pollinators here in Nebraska, we really don't know enough. We need to know more about them, what they need. Resources are not widely available to fund basic surveys and studies and experienced taxonomists are rarely available to identify the huge diversity of insects in our state. We need better information on the status of a wide range of pollinator species to help us understand not only their populations, but what's also driving their numbers up and down. That will allow us to develop better science-based and thoughtful win-win solutions to sustain pollinators and wildlife habitat, which helps sustain clean water, crop production, resilient rangeland and so much more. Solutions could include specific habitat elements to support key pollinators, such as including key plants that support declining pollinators or targeting regions of the state where there are pollinators in decline. It could also include a better understanding of pesticide risk and strategies for successfully producing crops in a way that reduces impacts to pollinators. Solutions can include guidance for managing grazing, grazing on rangelands that leads to both resilience and drought-- times of drought as well-- for ranchers as well as for pollinators. These types of solutions can build on conservation work that's already underway in the state. There are a number of partners throughout the state that have been working on pollinator conservation issues. Just briefly, for example, Xerces Society collaborates-- I have a colleague in the

audience who is a partner biologist with the USDA NRCS, Natural Resources Conservation Service. We also partner with the USDA Natural Agri-- National Agroforestry Center, University of Nebraska-Lincoln, Wildlife Conservation like Pheasants Forever. These have allowed us to get habitat on the ground. I want to just spend a quick minute talking about neonicotinoids since that's been brought up today. There are numerous scientific studies that demonstrate the impacts of neonicotinoids on wild pollinators in particular. They have different exposure pathways than do honey bees that can be exposed through soil, through consuming vegetation, and small quantities of neonicotinoids can impact them in different ways than honey bees. In the case of solitary bees, they don't have a hive to back them up. So an individual bee that, exposed to a small quantity, it dies. It doesn't have the ability to reproduce so there's no colony to buffer those exposure levels. Also, species of wild pollinators do differ in their impacts to neonicotinoids. So the way that honey bees impact is not-- are impacted not necessarily the way a solitary bee or a monarch butterfly might respond by consuming that neonicotinoid. That can lead to changes in reproduction. It can reduce their ability to find food or it can kill them outright, whereas it might not kill out a honey bee outright. There's also issues of synergistic toxicity, which has been mentioned, as well as direct toxicity. So there are herbicides and fungicides that can, can work in conjunction. Thank you. So to sum up, this resolution would be helpful in identifying knowledge gaps and helping to ensure healthy pollinator populations, wild and managed in the state of Nebraska is important for all of us. Thank you so much for your time.

HALLORAN: OK. Thanks for your testimony. Any questions from the committee? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Halloran. Thanks for being here. Nice to see you. OK, so, well I'm going to, I guess I'll start at the end. The synergistic toxicity. What is that?

JENNIFER HOPWOOD: Yeah, that just means that if you have two products that can work-- and it doesn't have to be in a product necessarily, but they amplify the effects. So in the case of some neonicotinoids, I think we talked about clothianidin already. If there's a disease present in, let's say a bumble bee, if you have clothianidin exposure, that can amplify the effect of that parasite causing more significant harms to that bumblebee than it might have had if it only was exposed to either the parasite or to clothianidin. So that's synergistic, but it also can work the same way with two or more chemicals. Not every

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single chemical works synergistically, but the previous speaker highlighted a certain fungicide that can interact with a certain neonicotinoid to create larger toxic effects than if they would have been exposed individually.

J. CAVANAUGH: So for the first example, that's a case where the bee has been exposed to something else and in the environment, and then it has a disproportionate impact as a result of some sort of chemical. Is there-- in those-- I remember seeing something earlier about where we limit the times and applications. Is that like what you're talking about, there is-- we would say there's a time when bees are more susceptible, or are pollinators more susceptible to this sort of synergistic effect of this certain chemical, or how would you address that or is that even addressable?

JENNIFER HOPWOOD: Yeah, that's a great question and it came up earlier. I think somebody asked about flight distances for solitary bees. So for wild pollinators, it is a little bit-- some of the things that are available on pesticide labels currently to protect honey bees don't apply to wild pollinators. So you cannot move colonies of wild pollinators out of the fields in the same way or cover them up in the same way as you might a honey bee colony to protect them from pesticide exposure. They're there foraging all the time, which is an advantage. And in the case of pesticide protection does require it-- make it a little bit more tricky. So thinking about timing can be important. You can apply it at certain times of the day when they're less active. So early in the morning, later in the evening, if that's allowed on the label to reduce the exposure overall, thinking about what you applied them with to go back to the tank mixture is also important. It can also-- you can apply them in targeted manners to help reduce exposure as well. It's been mentioned already that seed treatments help reduce exposure and to some degree that's very, very, very important, but it's also opened up other avenues of exposure because seed treatments are put into the environment prophylactically before there's been a pest demonstrated. They can accumulate in the soil, they can move into waterways, and that carries them offsite and makes it a little bit harder to track the impacts to wild pollinators in that situation. So that's a complicated answer.

J. CAVANAUGH: Well, and it sounds like a lot of the things you're talking about there are, again, at the federal level, right?

JENNIFER HOPWOOD: In some cases, I think I would like to highlight that there are, there's some best practices that could be implemented

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and recommended at the state level. Recognizing that there are, for example, giving a framework and strategies, working within certain crops to identify thresholds at which you need to apply certain products. So providing producers with that guidance would be hugely helpful so that they know when they need to apply the products, if they need to apply the product, and also, for example, with seed treatments, they're not always necessary for soybeans in Nebraska. They're, there isn't often, the seed treatment itself is not often impacting the particular pest that is the hugest issue in Nebraska. So there is some guidance. I don't know that that necessarily needs to come from the Legislature, but it could come in the form of supporting extension, which provides that critical guidance to producers.

J. CAVANAUGH: And we were talking earlier about creating this registry. And you're talking a lot about more--

JENNIFER HOPWOOD: I am.

J. CAVANAUGH: --wild pollinators.

JENNIFER HOPWOOD: Yep.

J. CAVANAUGH: Do you have any, I guess, frame of reference on what-- how the registry would help or affect or-- I mean, would it give us a false sense of confidence that we know more than we do?

JENNIFER HOPWOOD: I think that that registry would really be important for managed honey bees, and I don't think that it would inform what's happening with our wild pollinators in the way that you're looking for. But I don't think that takes away the importance for wild-- for managed honey bees. That's a really important aspect.

J. CAVANAUGH: OK. Thank you.

JENNIFER HOPWOOD: Yeah, I think you'll hear from my next colleague about the value of monitoring for wild pollinators and how we can gain a lot of information to answer the questions that you're looking for through that.

J. CAVANAUGH: I'll ask that.

HALLORAN: Quick question. I haven't heard anyone talk about the impact of, of urban sprawl--

JENNIFER HOPWOOD: OK. Yeah, that's a great question.

HALLORAN: --on bees or wild pollinators.

JENNIFER HOPWOOD: Well, for wild pollinators--

HALLORAN: And if I may make a quick comment, very unscientifically based--

JENNIFER HOPWOOD: Yeah.

HALLORAN: --but I have read articles on it. So, and I think I googled it one time. So it's got to be right that, that there's probably per acre. But to me, there's a little question. On a per acre basis on lawns, there's more fertilizers and chemical application than there is per acre for-- and I understand the vast number of acres in agriculture. I get that. But concentration-wise on lawns, it's, it's significantly higher.

JENNIFER HOPWOOD: I think my, the colleague that you heard from previously would be better answered-- better able to answer the amount of product that is, appears in urban environments versus rural. But I don't think that any one sector is responsible for bearing the brunt of pollinator conservation. It really needs to come from wherever we can. I think pollinator habitat can occur in urban habitats, in cities and suburban habitats. It can be shelter belts on farms, it can be field borders in cornfields, it can be Sandhill ranches, it can be everywhere. And it's important that it is everywhere. So thanks for drawing the attention of urban and suburban habitat. I think that's important. Certainly lawn provides absolutely no habitat for anything other than Japanese beetles and other pests of lawn. So actually increasing habitat diversity in cities and in suburbs is really important and that can be in small ways installing rain gardens, really helpful to capture runoff water anyway. And for our healthy water systems, it can be using drought tolerant plants so that you don't need to water, [INAUDIBLE] and so forth. It can be cities focusing on the use of native plants in particular. So those plants are going to be more resilient as temperatures change and fluctuate and those are better able to support wild pollinators.

HALLORAN: OK.

JENNIFER HOPWOOD: Yeah, but absolutely conversion of habitat.

HALLORAN: Thank you very much.

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JACOBSON: I just have one quick question on, you, you mentioned soybeans and putting on seed treatments that aren't necessary.

JENNIFER HOPWOOD: Yeah.

JACOBSON: I'm curious if you got something specifically you had in mind there when you say that?

JENNIFER HOPWOOD: Yeah, there's an extension publication that I can provide, if that would be helpful.

JACOBSON: What was the treatment specifically for, do you know?

JENNIFER HOPWOOD: The seed treatment is, it's usually one of the neonicotinoid and it's usually applied at the seed. But usually soybean aphid, which is one of the main pests of soybean, is not impacted by that neonicotinoid treatment. By the time that the soybean reaches its level of growth at which the aphid is impacting it, the levels decreased in the plant to, to a state in which the, the aphid isn't impactful.

JACOBSON: So you're really not really referring to this sudden death syndrome treatment center down at--

JENNIFER HOPWOOD: So in this case, I'm not referring to colony collapse. Is that what you're speaking of?

JACOBSON: I'm not, I'm looking really in soybean plants if there is a treatment to really help guard against sudden death syndromes later--

JENNIFER HOPWOOD: No, no.

JACOBSON: --in soybeans life.

JENNIFER HOPWOOD: No, I'm not talking about that. Thanks for--

JACOBSON: OK.

JENNIFER HOPWOOD: --that clarification.

HALLORAN: OK. Thank you, Senator Jacobson.

J. CAVANAUGH: I have one more question.

HALLORAN: OK.

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It's a short one. I promise. For wild pollinators, are any of them fire dependent or would like increasing prescribed fire on grazing land affect--

JENNIFER HOPWOOD: Yeah, that's a great question, especially with the movement of eastern redcedar taking over rangeland. Fire can play a really important role of that. So fire can benefit pollinators in quite a, quite a lot of ways, removing some of that brush and eastern redcedar that's a threat to rangelands. So basically what's good for the rangelands, diverse, healthy rangelands is really important to pollinators.

J. CAVANAUGH: Thank you.

JENNIFER HOPWOOD: Yeah.

HALLORAN: OK. Thanks for your testimony.

JENNIFER HOPWOOD: Thanks so much.

HALLORAN: Next testifier, please. Good morning.

KATIE LAMKE: Good morning. My name is Katie Lamke, K-a-t-i-e L-a-m-k-e, and I'm an Endangered Species Conservation Biologist with the Xerces Society for Invertebrate Conservation. The mission of the Xerces Society is to protect invertebrates and their habitats. And so to do this, we engage in education, research, conservation planning, community science, restoration, and advocacy work. One of my roles at the Xerces Society is to lead the Nebraska Bumblebee Atlas, which is a statewide community science project that engages hundreds of volunteers to track and conserve our state's native bumblebees. Across North America there are roughly 3,600 species of wild bees, 50 of which are bumblebees. And historically, we know that there are 20 species of bumblebees in Nebraska, but we're unsure of how many wild bee species exist here. There's a guess that it's between 300 and 400, but nobody really knows. Because bumblebees are some of our most recognizable pollinators, we have and continue to grow a substantial understanding of these organisms. There's been a global assessment run by the International Union on the Conservation of Nature, showing that nearly one-quarter of North America's bumblebees are facing the threat of extinction. However, relative to other well-studied organisms like mammals or birds, our understanding of bees is severely lacking. So in 2019, in collaboration with the University of Nebraska-Lincoln, we received funding from the Nebraska Environmental Trust to launch the

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Nebraska Bumblebee Atlas and more recently with funding from the Nebraska Game and Parks Commission. And community science, sometimes called citizen science, simply means that anybody can participate in the effort and help us collect data on bumblebees. So after receiving training, community scientists spread out across the state, conduct their surveys, report back their findings that myself and other experts verify. And with this survey information, we gain data on species distribution, floral usage across time and space, population shifts, and we gain insight to habitat associations and nesting resources management practices. And I'm proud to report that the Atlas is now the state's largest bumblebee collection event in the state's history, thanks to the help of 140-plus volunteers who have observed more than 6,000 bumblebee species. And we've added 88 new county records, meaning one of our volunteers observed a bumblebee in a county for the first time ever. So we're improving our understanding of bumblebees in Nebraska rapidly. But despite being the largest sampling effort, we have only been able to detect 13 out of our state's 20 historically known species. So if you're familiar with the Nebraska Natural Legacy Project or our state's Wildlife Action Plan, you'll know about the Species of Greatest Conservation Need list or SGCNs. This list contains countless birds, mammals, fish, plants, insects, amphibians, all that need protection because they're facing a threat of extinction. The list is split into two tiers. You have your tier-one species, which are species that are nationally or globally at risk of extinction and occur in Nebraska. And you have your tier-two species, which are not yet considered at risk globally or nationally, but are imperiled or rare in the state. And while our state's diversity of bees is likely larger than the mammals, fish, reptiles and amphibians all combined, bees occupy the least amount of space on that SGCN list right now. There are only four bees on that list, and they are all bumblebees. There are three tier-one species, the southern plains bumble bee, the western bumble bee and Suckley's cuckoo bumblebee. And there is one tier-two species, which is the variable cuckoo bumblebee. The Atlas has only been able to detect one of these four species despite it being the largest sampling effort in the state. The other remaining three species have not been observed in Nebraska since 1999 and 2001. Going to run out of time here. So the Atlas is basically demonstrating that some of our most recognizable pollinators are facing decline. Right? These bees that we know about and we've researched are facing decline and that's likely the case with many of our other pollinators that we just don't know about yet. So we need to find a way to figure out which species exist in Nebraska, what habitats they require, what plants they need, how they

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nest, and just learn more about the basic life cycle of these organisms. So the best thing that we can do right now to invest in a secure future for our pollinators is to invest in a native bee monitoring framework. This will provide valuable information immediately upon launch and continue to provide essential information about the status and trends of these species. Ideally, it would be an adaptive framework that uses the information as we continue to monitor. And so I have a few things here to recommend at the end, but thank you for your time.

HALLORAN: All right. Thanks for your testimony. Any questions from the committee? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Halloran. What would you recommend?

KATIE LAMKE: Well, three things. So one is, if this is to pass, part of the discussion should be developing a statewide bee inventory that would-- you know, it could be modeled after the Atlas but to cover all these pieces, it would have to be slightly different. But one of the things that would need to be involved would be a position for a state bee taxonomist to identify all the species that come in, but also to digitize all of the specimens sitting in our collection. And you know, the UNL Museum up in Chadron, there's many specimens that we just don't know about yet because they're not in a database for us. So having that information would allow us to understand the status and trends of bees from the past and current. I would also consider developing a statewide pollinator health task force. This would be a group of people from conservation organizations and state agencies that are involved in pollinator conservation that would be able to bring the research together and recommend what to do to-- recommend to their state Legislature what they can be doing to benefit pollinators. And then the last thing would just be to consider investing in an effort to determine priority conservation areas using the information that we do have on bees. This would help practitioners learn where to most effectively target their efforts now while we continue to learn about species.

J. CAVANAUGH: Thanks for the recommendations and thanks for your testimony. So just so I'm understanding it, so we have, I guess, two different approaches, how we would deal with domesticated pollinators and wild pollinators, right?

KATIE LAMKE: Yes.

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J. CAVANAUGH: And your suggestions are more how we would address issues or how to care for our wild pollinators, is that right?

KATIE LAMKE: Yes.

J. CAVANAUGH: And it sounds like that maybe is a lot more cumbersome, more labor intensive to get that information and make those decisions. Is that--

KATIE LAMKE: If you compare it to like setting up a national or a state registry.

J. CAVANAUGH: Registry, yeah.

KATIE LAMKE: Yeah, it could be, but I think the two in tandem would work very well together to support bees as a whole. You know, we need both of them for agriculture and the lovely places in Nebraska.

J. CAVANAUGH: And so the question I kind of asked Ms. Hopwood was about whether if we did just the domesticated registry, would that give us some sort of false sense of security? And you're saying this, this would be the other thing we'd need to do so that we get the full picture.

KATIE LAMKE: Yeah. The registry would not provide much insight to wild bee populations at all.

J. CAVANAUGH: And for the first suggestion, the full-time taxonomist, would that be somebody through the extension or how, where would that person be, how much would it cost?

KATIE LAMKE: Yeah, right now there isn't one. You know, there, a lot of bee taxonomists are either aging out or there's young ones that are working off of guides that were developed in the 1960s. And so there's a lot of information, information regarding specimens that were collected in Nebraska, say, in 1906, you know, somebody on horseback. And those data pieces are crucial part to this puzzle if we want to learn what's happening to the bees and even create a list of what species we have in the state here. And so having that person who is trained and skilled in this is going to be a key part to learning about the species in Nebraska, because it's not like birding where you can sort of look at it by sight, right? These organisms are very small, often only a few millimeters. They require a collection and looking at them under a microscope.

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J. CAVANAUGH: But who, where would that person be employed if we did do that? How would that work?

KATIE LAMKE: Through the university, through the state agency. I think there's a few places that you could put a taxonomist.

J. CAVANAUGH: OK. Thank you.

KATIE LAMKE: Yeah.

HALLORAN: Thank you, Senator Cavanaugh. Any further questions? Seeing none, thank you, Katie, for your testimony.

KATIE LAMKE: Thank you.

HALLORAN: Next testifier, please. All right. Next closer, please. You are the closer, Senator Blood.

BLOOD: I will close. Well, first of all, friends, since your newbie came in late, I'm going to clarify something for him. One of the things that I did talk about that we maybe want to address is an ELAP-like policy for bee population loss in the state. There is a lot of voids and disconnects that we talked about today. We don't necessarily need a lot of new programming as much as to tighten up what we have that we're not utilizing properly. And you kind of pointed that out when it came to some of the federal programs. I knew that we would get off into the weeds when it comes to insecticides and pesticides. And I just want to bring everybody kind of back to what the purpose of today was. It wasn't to say that our farmers aren't responsible. As you know, we also have farmland in Clay County, Senator Jacobson, it's to talk about how we get in front of a problem. My freshman year, I had a legislative resolution in reference to utilizing native plants, much like Kansas has done, to help filter chemicals in our waterways, to not only protect our farmers, but to protect our children because we have a high rate of childhood cancer in Nebraska, as you know. And I was needing a hearing on that. Now, this last month, we see an article in the Nebraska Examiner saying that nitrates are high in our waterways and children are dying from cancer and Nebraska has not done anything. We consistently avoid issues because we're worried about the optics. Ag drives our economy and we will never stop supporting the ag economy in Nebraska. But at the same token, we're going to have to find this balance of how we protect ag and then how we protect our biodiverse, how we protect what the other things that sustain ag that we don't ever think about. You

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know, you heard green Bellevue come in and that was a nice surprise. I didn't know they were coming in today. You know, they have literally planted pollinator gardens in the city of Bellevue. And I agree with you, Senator Halloran, our yard is now a no more-- no mow yard in a, in a middle-class urban area. We have only native plants planted in our front yard and most of our backyard. And then that's when you have to start arguing with code enforcement to explain that pollinator plants are still legal, that not everybody has to have a green and pristine lawn because the green and pristine lawns are indeed killing pollinators, not just bees, but our butterflies and other insects. So we just-- why I'm here today is to ask you, what can we get in front of for once as a, as opposed to why do we have to wait until there's a huge environmental crisis or children have to die or people have to develop issues such as Alzheimer's and dementia and other things that we know are connected to chemicals? Why can't we ever be a leader in anything? And so I just, I really want you to mull over some things we talked about. We talked about simple things, like having parcels of land where we plant pollinator plants, native plants, because they are more resistant to these types of chemicals and are great for pollinators. There are things we can do with no funds, with very little funds, with public/private partnerships. But what does that look like? And the reason I come to the Ag Committee is because if we're going to protect ag, we need to get in front of this problem. We're not trying to shut down your ability to utilize coated seeds or to utilize chemicals. We're asking you to consider how we can protect our pollinators, be they honey bees, be they other types of bees, be they butterflies. What can we do better? I really don't feel that it's ever been properly addressed. And so I close saying that I appreciate your time. I know you only wanted to go until noon today. I'm guessing it's way past noon. If you want, I'll go get you guys lunch. But, but if anybody wants to work with me on this, I'd love to get something yet into the next session, Senator John Cavanaugh, because I think there are some things that we can tighten up and make better that have nothing to do with funds. But eventually we're going to have to figure out how, how to protect the bees, because, as you know, we are losing people to other states because of it, which may not seem like a huge thing to you, but I think that that's a red flag. And you're all a bunch of smart people that most of you have ag backgrounds. I think you know that sometimes when we let things fester, in the long run, it's going to be the next generation that pays for it. And I'm just not willing to let that happen and I hope that you aren't either. So with that, I do appreciate your time.

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HALLORAN: Thank you, Senator Blood. And thank you all for being here today and testifying. Appreciate it.

BLOOD: Thank you.

HALLORAN: Good afternoon, everybody. Welcome. Welcome to the Agriculture Committee. I'm Senator Steve Halloran. I'm from Hastings, Nebraska, and represent the 33rd Legislative District. I serve as Chair of this committee. The committee will take up the legislative resolutions in the order posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the legislative resolution and the occupational regulation review this afternoon-- later this afternoon. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the reserved chairs when you are ready to testify. These are in the front two rows, either side of the front two rows. Introducers will make initial statements followed by those who wish to comment on the subject matter. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sheet, which most of you are familiar with. That is at the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print and it is important to complete the form in its entirety. When it is your turn to testify, give the signing-- sign-in sheet to the committee clerk. This will help us make a more accurate public record. If you have handouts, please make sure you have 12 copies and give them to the-- to our committee clerk when you come up to testify. They will distribute to the committee. If you do not have enough copies, our committee clerk will see to it to help you get sufficient copies. When you come up to the test-- to testify, please speak clearly 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 the light system for all testifiers. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute and remaining-- remaining and the red light indicates the time has ended. Questions from the committee may follow. No displays of support or opposition to a legislative resolution, vocal or otherwise, are allowed in a public hearing. Committee members with us today will introduce themselves starting to my far left.

J. CAVANAUGH: Senator John Cavanaugh, Omaha, Nebraska, District 9, midtown Omaha.

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

HALLORAN: To my far right.

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

HALLORAN: To my immediate right is committee research analyst, Rick Leonard, and to my far left is the committee clerk, Rod Krogh. So before we start with the LR328, I have some carryover business from the, from the hearing this morning for LR277. There were some written submissions and testimony. I will list those off and those will be on the record following LR277 this morning. So we had written submissions from Judith Wilson, Tyler Moore and Courtney Burson. With that, we will turn it over to Senator Aguilar for LR328. Welcome, Senator.

AGUILAR: Thank you, Senator Halloran and members of the Ag Committee. I'm Senator Ray Aguilar, R-a-y A-g-u-i-l-a-r. I represent Legislative District 35. I'm here today to introduce LR328, an interim study to determine whether rules and regulations guiding the inspection and permitting of mobile food units are being applied consistently between jurisdictions, and if not, how to streamline rules and regulations to better promote business success. Ten years ago, there were less than 12,000 mobile food units operating in the United States. Today, today, there are more than 30,000. In 2021, these small businesses employed 38,000 people and created \$2.7 billion in annual revenue. These national trends are present here in Nebraska, but the extent of industry growth has been hard to measure. No single agency or department keeps track. The best we can do is estimate. In many other states, legislatures have responded to the growing popularity of mobile food businesses by modernizing laws governing the industry. Utah and Maryland both passed regulatory reform in 2017. Arizona, Rhode Island and Washington followed in 2018. Then Colorado and Virginia passed laws in 2019, and finally, Florida in 2020. All of these states have eliminated redundancy and simplified regulations. Many now allow food trucks to operate under a single permitting system and disallow localities from requiring additional permits or fees. It's time for us to decide what modernization should look like in Nebraska. Today, each of the 529 municipalities have the ability to develop their own unique rules that mobile food units must follow. In addition, all 93 counties are able to enact some form of regulation. The Nebraska Department of Agriculture covers 15 inspection areas, each with a different inspector that lends his or her own

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interpretation of the rules. The autonomous counties of Douglas, Hall and Lancaster have tremendous latitude within their borders all on-- on all categories of regulation and use this opportunity to enact their own rigorous standards. I'd like to point out at that point that I had met with the Hall County Health Department and they expressed to me their concerns was strictly for the health of the public, which is their charge. And that's all they do-- they don't do anything extra-- is they apply the rules as they are applied to on brick-and-mortar food establishments. This regular-- regulatory free-for-all can make it incredibly difficult for an entrepreneur to succeed and leads to significant frustrations on the part of many stakeholders involved. Inconsistent application of rules results in confusion for inspectors in neighboring jurisdictions, unclear expectation trouble agency staff that are stretched thin by job vacancies. Overlapping requirements increase administrative costs to state and local governments. Today, we will hear from a variety of individuals playing a key role in our state's mobile food industries. Our goal is to facilitate a conversation around the challenges these industry faces and the policy options that will address them. We hope the perspectives shared by these key stakeholders and feedback from this committee can lead us toward a consensus as we prepare for the upcoming legislative session. Thank you. I'll take any questions at this time from committee.

HALLORAN: Thank you, Senator Aguilar. Any questions from the committee? OK. Very good. Appreciate your opening.

AGUILAR: All right. I very possibly may not be around to close. I have to leave early today, but--

HALLORAN: OK.

AGUILAR: --thank you for your time.

HALLORAN: All right. Thank you, Senator Aguilar. All right. First testifier.

JOHN HLADIK: Good afternoon. Chairman Halloran and members of the committee, my name is John Hladik. It's J-o-h-n H-l-a-d-i-k and I'm testifying on behalf of the Center for Rural Affairs. And over the past several months, we've collaborated with Senator Aguilar and stakeholders across the state to research the questions included in LR328, and the results of that research are included in the handout in front of you now. And I'll do my best to summarize with this comments. Several of you know this issue just as well as I do from previous,

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from previous hearings and previous bills. But I personally came away from this research very surprised by the sheer number of permits that are required in order to operate a mobile food unit. As the senator mentioned, each of the state's 529 municipalities can create their own requirements. Even individual counties can regulate certain aspects. And then those three autonomous health departments have incredible leeway. And because of this, they differ substantially from the Nebraska Department of Agriculture and then also from each other. We know that mobile food units must obtain an annual health inspection permit, and four organizations have the ability to issue this annual health permit. There's the NDA and then there's those three autonomous counties in Douglas, Hall and Lancaster County. And significantly, there's no reciprocity among the state and those autonomous county health departments or between the autonomous county health departments individually. So if a mobile food unit wants to operate in Douglas, Hall or Lancaster, it's going to need to pay for and be inspected by each of those different health departments and the cost of complying with this can really add up. For example, Douglas County requires commissaries, but others do not. Douglas requires equipment to be commercial grade, others do not. Lancaster has specific training for food handlers, others do not. And Lancaster requires that certain equipment complies with the National Fire Protection Association recommendations and others do not. Now, turning to local permits and regulations, we know that those municipalities have a lot of latitude. And I just want to highlight a few examples. Beatrice requires operators to sign a document releasing the city from any liability and carry \$1 million of insurance coverage with a certificate listing the city as an additional insured entity. Bellevue requires a \$300 peddler's permit and a background check. Kearney requires a \$500 itinerant vendor permit and payment of a 1 percent occupation tax. Scottsbluff doesn't have any permit requirements, but the mobile food unit must be inspected by that city's fire marshal. And I want to spend the last portion of my comments focusing on regulatory reform, just a few options that might help us achieve our goals of consumer safety, business certainty and administrative efficiency. We don't know if any of these are the right answer. I think the purpose today is to talk about it and to find out what might be something that works for all stakeholders. So I'm hoping that some behind me will be able to weigh in on this too. The easiest and most straight-- maybe not easiest-- the most straightforward approach is to ensure some type of reciprocity. Each mobile food unit must comply with the minimum standards set out in the Nebraska food code in order to attain that health inspection permit. And while a permit from Douglas, Hall or

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Lancaster allows the mobile food unit to operate in the other 90 counties managed by NDA, the reverse is not true. So again, operators must obtain new annual permits each year they would like to conduct business in any of those three autonomous counties. And you'll see a table in that report as well of what some of those expenses look like just to actually pay for the permit, let alone the equipment you might need to invest in. Inspectors in one zone can and do evaluate the same requirements differently from another. Full reciprocity among the NDA, Douglas, Hall and Lancaster would reduce uncertainty and limit owner expense and remove redundancy. But even reciprocity between just those three autonomous jurisdictions, excluding the territory covered by NDA, would really be a big improvement for us now. We could also establish guidelines for a single state permit. In 2018, Arizona passed a law that created a single statewide permitting process. I know some aren't enthusiastic about this option, but it is on the table and Arizona seems to be doing well with it. The Legislature could also choose to limit the types of restrictions that are imposed. You could disallow background checks for examples or cap the cost of that municipal permit. And restricting the use of peddler or solicitor ordinances will also help make sure our regulations are clear and thoughtful. And finally, we can just establish regulatory guidance unique to mobile food units. Operators report being held to different standards even when members from the same authority are conducting the inspection and that's because of differences in interpretation. The legislation and guidance used by NDA to regulate mobile food units is written for brick-and-mortar restaurants and it doesn't consider the unique attributes of mobile food units. Even something as simple as developing a pre-opening checklist would be really helpful. And with that, thank you for your time and answer any questions if you have them.

HALLORAN: OK. Thank you, John. Any questions from any of the committee? Yes, Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you, Mr. Hladik, for testifying today. It's kind of a conundrum and this is it: we want local control. We've got local control. And so you have 500 jurisdictions out there that can do 500 different rules. That's kind of the problem here is that it's, it's not consistent unless your food truck doesn't ever leave that jurisdiction and then that-- you're-- always have the same set of rules. So what exactly are you asking for?

JOHN HLADIK: Well, I'll be candid. I think if, if we, us stakeholders and the committee, can leave the session with some legislation to

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improve this, it will be a great championship because it is a conundrum, just like you said. I think from my standpoint, creating some business certainty while protecting health interests is going to be our top priority. Right now, there's just too much uncertainty for those businesses. So I do think that reciprocity between the independent health districts might be a smart move. And I do think there is a way probably to limit the scope and type of regulations put in place by these municipalities. Some of them are doing it with the best of intentions. You can't be an expert in everything when you work for the city of Beatrice or the city of Kearney. But all of a sudden, you have to create an ordinance for food trucks. In Norfolk, we're seeing right now they did their best to create one and there's a couple of oversights that they wish they could probably get back. And so there's a world where we can create some type of model or some type of guidance or some type of floor and ceiling about what that regulation can include and put that forward just so at least food truck owners, these entrepreneurs have an idea of what to prepare for and what they could be dealing with.

BRANDT: But the key word here is "mobile." So, I mean, your brick-and-mortar restaurant is in downtown Beatrice. It's not going anywhere. That Amigos food truck could go to Beatrice, Auburn, Fairbury, five, six just-- different jurisdictions. The street width-- in, in Beatrice might be 24 feet. In Fairbury, it might be 20 feet. So there is a need for some local control over where these things can operate, where's a safe place for the public to park? I mean, those considerations really shouldn't be state considerations, should they?

JOHN HLADIK: I agree with that completely. I think that what I do not think that we should get involved with is quibbling over, you know, let's mandate this needs to be a certain distance from a restaurant. I think the more time that we all spend on that, we're probably going to lose. How can we think about this in broader, more general terms in a way that does protect that local interest, which is part of the reason why we need to modernize these regulations, right? We're using regulations that were just for brick and mortar. So some of the food safety portions of these regulations make a lot of sense. We need to keep those certainly, but all-- the whole other panoply of regulations we're using for mobile food units is for something quite different than what you described. So what does that modernization look like? How can we make sure the community does have some latitude? Because communities do have quirks. People do have different preferences, but, but there have got to be limits on, on what that could be. I mean, we

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can all imagine some wild idea that a community could have that wouldn't be appropriate and maybe there's a place for that here.

BRANDT: All right, thank you.

JOHN HLADIK: Thank you for the question.

HALLORAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Halloran, and thank you, Mr. Hladik, for being here and for your presentation. There's a lot of information here to look through. So for clarification so that-- there's the four places where you can get a health inspection. And so if you get a health inspection in Douglas County, then can you operate in Douglas County? And then-- so what's the difference between the health inspection and these particular permit fees and those things?

JOHN HLADIK: Yeah, and I will be followed by, by some other experts here. But basically you need to start off with your initial permit from the state of Nebraska and then you go down to your annual health inspection permit, which you have to get every year from that jurisdiction that you want to do business in. So it could be if it's-- 90 of the 93 counties would be NDA and then those other three would be these others. But then the city of Omaha, which may be testifying today, they have their own permit in addition to what the Douglas County health inspection permit might be like. And the city of Omaha permit might talk a little bit about where you can be located, things like that, whereas the health inspection permit would talk about, you know, best practices, how do you make sure that your food doesn't combust, etcetera.

J. CAVANAUGH: So-- and this list of the different jurisdictions, that's those four health districts then?

JOHN HLADIK: Yeah, yeah, that's right. And then within NDA, they have, I believe, 15 different zones with different inspectors. And I know right now it's been a little bit tough to keep inspectors on staff and make sure that's all staffed. Yeah, that our-- that's the map that you're looking at. And so you have even, you know, beyond those three autonomous, then you have these different zones within NDA which has created some issues.

J. CAVANAUGH: And in terms of business certainty, I mean there-- obviously that, that seems like-- consistency across those four jurisdictions seems easier than addressing what I think Senator Brandt

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was talking about is that-- all of the different municipalities having those requirements. Are you looking-- I guess I don't know. You're, you're looking for anything is what it sounds like. But are you looking for consistency across those as well, that-- those specifics of what Omaha might ask for or Beatrice might ask for?

JOHN HLADIK: Yeah.

J. CAVANAUGH: Be consistent or just clarity?

JOHN HLADIK: It's a really good question. And, and I think that, you know, we need to make this better. I don't have all the answers for how we make it better. To me, getting at least some reciprocity between those three primary autonomous health districts is a great step in the right direction. We could definitely work on more municipal reciprocity. I think that might be-- it just becomes more and more complicated, I think, the more detailed you get on some of those pieces, if that makes sense. And so I have an appetite for that. I'm interested in it. I think that would be the best-case scenario. But what can we do as a committee now do to modernize regulations that frankly should have been modernized several years ago due to the increased popularity?

J. CAVANAUGH: Thank you.

HALLORAN: Any other questions? Senator Jacobson.

JACOBSON: Yeah, I just have one. I-- it kind of goes back to Senator Brandt's original question in terms of, you know, what's, what's the proposal? You know, I think, you know, we're, we're hearing about the problem and the inconsistencies, but I think we'd also like to hear what your ideas are for solutions. You know, the first thing that comes to mind when I start looking at food trucks or any kind of food service is food safety. You know, we're in a unique situation. I've got a commercial bank in North Platte. We decided several years ago to build a, a barbecue grill. It got to be a little out of control. It ended up being tandem axle, a couple thousand pounds and now we've got five of them. And so one of the things we did preemptively was we required anybody that's going to be involved with handling food had to get food handler permits. We require-- we have every year someone come out from the state, do food safety training, make this under-- help us understand the food safety zone, how we handle food, how we, how we cook it, different things we do that way. I think everyone, first and foremost, the public needs to know that when they go to a food truck

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or any restaurant, that the food is safe to eat and that there are consistent-- not only consistent rules, but there are consistent inspection requirements to ensure that that happens. You know, from that point on, I tend to agree with, with Senator Brandt that, that it's kind of hard to make a one size fits all throughout all the jurisdictions because of all the plethora of, of issues that he raised in terms of, of sites and where they're being held and so on, what they do there. And ultimately for any of us in business, you know, it seems to me we've got to make a decision if we want to be in that business and are we able to comply with the rules that are going to be laid out there. I appreciate the need for consistency, but, but I also appreciate the need for local control. I think what you've suggested in the major areas where-- these, these contiguous areas where they've got separate rules, it'd be nice to have reciprocity there, certainly in the metro areas. But, you know, it gets a little more difficult when you move on throughout-- into the rural areas. So I'd really be interested more in what specific issues you're looking at behind-- beyond the issue that we've got to have consistent and quality food safety and food inspection.

JOHN HLADIK: Thank you, Senator, and I agree with you about that 100 percent. And to be, to be frank, you know, my goal today wasn't to walk in with all the answers. It was to have that conversation with all of you. And let's all think about this, be thinking about what we hear from the testifiers, be thinking about some of the research we included in that report. And then hopefully by the time January rolls around, there's something that a lot of us are really comfortable with or at least can get started and then we can find out what that answer is going to be. And, and I really look forward to working with all of you on that.

HALLORAN: I agree with the issues about the plethora of local control and local zoning issues and that's a, that's a conundrum, as you say. Another conundrum I have is being in the restaurant business myself, I'm required to have restrooms--

JOHN HLADIK: Um-hum.

HALLORAN: --right, so people can use those restrooms and wash up and before or after their meal, whatever the case may be. And so-- and I'm also required to pay property taxes because it's brick and mortar. And the conundrum-- part of the conundrum for me is, is that those kinds of requirements aren't level across the playing field. And so consequently, we could have-- and I'm all for them. They-- a lot of

them do a great job, but they could park in the parking lot outside my restaurant and set up their, their, you know, food truck and sell their, their service to the public. And they got parking from that public parking lot or wherever they might have parked and some of the customers may come into my restaurant to use my restrooms. I mean, I mean, I'm just--

JOHN HLADIK: No, of course, yeah.

HALLORAN: And so the easy answer for me is, is to absolve all restaurant owners from property tax. I don't think, I don't think that's going to fly. I don't think that's going to fly. And I'm not looking to tax, I'm not looking to tax anybody any more than they're already taxed. But, but it's not-- it's a disadvantage. Now, they may pay personal property tax on their equipment. So I understand, I understand they're getting, getting hit that way. And I'm not looking for equity and, and trying to make someone pay as many taxes as I do. But that's kind of a, that's kind of an issue for me. I've got a lot of requirements as a fixed brick-and-mortar restaurant that these facilities, these-- you know, these mobile units don't necessarily have.

JOHN HLADIK: I understand that.

HALLORAN: And food safety, I can't emphasize it any better than these folks already have. I inspect restaurants for the franchise I'm a part of and it's quite intensive. And you learn a lot when you go into a restaurant, any restaurant in the back of the house and, and search for what needs to be looked at carefully for food safety. So I don't know. You know, you-- outside of Douglas County and Lancaster County that has its own department of health, you get out into our parts of the country and it's-- I mean, I understand the Department of Agriculture, but they're, they're not around to inspect very often, if at all. So to me, that's an overriding issue, that-- aside from what this resolution is, that we need to look at food safety for, for our parts of the country. But I appreciate the effort and I appreciate your comments and, and your input on this. And we'll work with Senator Aguilar and, and I'm sure other guests that are going to speak will have-- will clarify some of this for us as well.

JOHN HLADIK: Thank you very much, Senator, and thanks for the time today.

HALLORAN: OK. Thank you very much. All right. Next testifier, please. Good afternoon.

RAUL ARCOS HAWKINS: Good afternoon, Senator. Good afternoon, committee. My name is Raul Arcos Hawkins, Raul, R-a-u-l, Arcos, A-r-c-o-s, from Grand Island. I'm in Hall County. I am a business development specialist with the Center for Rural Affairs. Part of my job I'm tasked to help entrepreneurs start businesses and one of the businesses is the restaurant industry. We do offer a restaurant academy that goes through on how to start a business, specifically in the foodservice industry from the beginning to end. And one of the handouts that I brought in is something that we hand out to all of our participants in that class. And it's basically the standards on a brick and mortar on-- essentially a checklist of what they need to do in order to start a brick-and-mortar business such as a restaurant. But that's the same sheet that we hand out to a mobile food unit who wants to start one. So essentially that checklist, if you look-- you know, if you quickly look at it, some of that information does not fit to that mobile food unit. So I think when I was listening to the testimony, part of the reason why for me it's important, as I've traveled with the restaurant academy across the state and listening to some of the participants in those classes, it's having the consistency or a standard on what the regulations should be from the health department on how to start the business itself. I am not-- one of my-- I don't-- we always-- with all of our academies, we offer a certification. So every time-- and I can't tell you how many people, how many people have participated in the restaurant academy. I'm pretty sure there have been over 100, but each one of those participants go through the academy to get certified with a food handler's permit. So they walked out with a food handler's permit in order to get started as a first base on how to start a food service industry. We always tell them that first and foremost, to build a relationship with their health inspector because that is key in understanding the food service industry. I myself spent 17 years in foodservice, ten years of which I spent in management. So to me, always upholding health code standards was priority and that's the first thing that we always mention to our participants. And among some of the stories that I bring, one of them specifically is Tacos Los Harmanos who has a brick-and-mortar business in Grand Island, did start traveling across the state and now has a location or will have a location pretty soon in the Lincoln area there over on North 70th Street. So what happened to them? They visited Lexington. In-- among some of the documents that I sent out, Lexington does have their own

regulations on what they need for a vendor's permit depending on, on how long they're going to stay there, if they're going to be there all year around. They did consult their local health inspector. They were told they were OK to go visit Lexington with the same health permit. Unfortunately, when they arrived, they were only there for about an hour before the health inspectors showed up and asked them to-- that they needed one, that they needed another one, but also the city because they didn't know that they needed a vendor's permit in order to be there. But they were on, on private property from another business that invited them to park in the parking lot. Most of the business-- most of the food trucks that are across the state that I've-- I encountered or that have participated in our restaurant academy that we've helped start up usually have to ask permission from another business if they're parking in that parking lot or will have to pay rent to that business to either use the electricity or any water that they have to. Most of them, even particularly one that we just started, will be paying \$800 a month rent to the business that's going to be parked next to it. We had another one that came from Columbus that unfortunately was from Platte County that went into Hall County to a festival. They did not have the permit within the Hall County and were asked-- they were going to get fined, but I believe they had-- they only paid the permit fee in order to stay serving that day. But then they didn't even make enough money to cover their expenses from traveling from Columbus to Hall County. So there is another one in Columbus-- I mean, Norfolk. Norfolk enacted some ordinance because they wanted to make sure that all the food trucks were on either concrete or asphalt. Well, they only said that it was a vendor so that affected the fireworks stands and all the fireworks stands. Then the next-- following year, they had to amend the city ordinance. One of our participants and a client of ours had to take out a loan to put cement under the food truck. And then once they added seating to follow the food code, they needed to put a canopy, plus restrooms, water and soap and paper towels. So those are some of the inconsistencies that we see.

HALLORAN: I'm sure there'll be some questions so you can extend your presentation. Are there questions from the committee? Maybe I shouldn't have been so sure about that.

JACOBSON: Oh, John.

J. CAVANAUGH: I've got.

HALLORAN: John, John, Senator Cavanaugh.

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J. CAVANAUGH: Thank you, Chairman. Thank you for your presentation. So this-- I'm curious about something that's different than health standards, but when a food truck gets a permit in a particular town, I assume they've got some kind of relationship with that city about paying the sales tax.

RAUL ARCOS HAWKINS: Yes.

J. CAVANAUGH: How does that work when you go just for a short stay from Columbus to Hall County or something like that?

RAUL ARCOS HAWKINS: So whenever we-- when we do the, the restaurant academy, when we specifically talk about the mobile units, we always say you have to go to the city, obviously. If you're going to be-- if that city requires a vendor's permit, from that vendor's permit, they will draw the sales tax. Some cities will have-- and I can't remember which one. There's one that for mobile units, they'll say it's \$50 a year on sales tax, no matter how much they-- because it's-- if it's stationary or, or it leaves and I can't remember which one it is, but like in Hall County, I have been working with one that pays their occupational tax, which is 1.5 percent, to the city, plus their state sales tax. So it just depends. I know that, like I said, some smaller rural communities only have a flat rate fee for those sales tax if it's an occupational. And it just depends on, on-- again, on the county or the city that they're in.

J. CAVANAUGH: But that's something that's going to be different by community--

RAUL ARCOS HAWKINS: Yes.

J. CAVANAUGH: --regardless of any changes we would make here. And so I guess we're talking about the cumbersomeness of the going-- like in that example, go-- they didn't quite check the boxes when--

RAUL ARCOS HAWKINS: Yeah.

J. CAVANAUGH: --they moved into Hall County. But you always have to have a conversation when you move into a new jurisdiction--

RAUL ARCOS HAWKINS: Yes.

J. CAVANAUGH: --regardless. Is there some way to just make sure that when you have that tax conversation, you maybe also are having a conversation about what the requirements are?

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RAUL ARCOS HAWKINS: And I think a lot of it, like I said, part of my job is to also train these entrepreneurs-- up and coming entrepreneurs to ensure that they understand what are-- what the implications of becoming a business owner. And some of them will-- like I said, we'll go through what are the permits that they're going to have to go through and what are the sales tax you're going to have to pay? We also always, you know, tell them specifically where they're going to have to go to get those specific permits. Unfortunately, some of the ones that, that I've mentioned did not attend that class because with the restaurant academy that we have, we just started about three and a half years ago. So unfortunately, you know, some of these examples that I brought in were already in business before we could go and kind of give them some of the information that we've had. That sheet that I gave you with stand-- that's what I would like to see as a standard for a mobile unit to say, hey, this is what we need or this is the-- like, you know, the three-sink compartment, having the water and all that. Because again, that goes back to following the, the food, the food code, the-- and ensuring that we are staying within the standard. But if you look at that sheet, there's a lot of stuff that doesn't fall in within the mobile units because that checklist was made specifically for a brick and mortar. So every mobile unit looks a little bit different because there is no standard on any jurisdiction to what it's supposed to look like.

J. CAVANAUGH: Thank you.

HALLORAN: OK. Thank you, Senator Cavanaugh. Any further questions from the committee? Seeing none, I appreciate your testimony.

RAUL ARCOS HAWKINS: Thank you.

HALLORAN: Next testifier, please. Good afternoon.

TERESA ANDERSON: Good afternoon, Chairman Halloran and Senators. My name is Teresa Anderson-- yet another Grand Island testimony-- 1137 South Locust. I serve as the health director for Central District Health Department, which serves Hall, Hamilton and Merrick Counties. And I thank you for this opportunity to present information on LR328. I do want to acknowledge that we have met with the Center for Rural Affairs and with Senator Aguilar prior to this hearing. We are grateful for their willingness to engage as well as their appreciation for food safety. I also want the committee to know that we work closely with food trucks in our districts and we genuinely want all food establishments, including food trucks, to be successful in

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serving safe foods to their customers. I'm here to speak on behalf of Friends of Public Health, and as such, I represent the three local health departments who ensure safe food for public consumption. These three departments responsible for food safety, as you've already heard, are Central District and Lincoln/Lancaster and Douglas County. Food safety is one of our most challenging issues in public health. In our three districts, food inspectors are either registered or they're registry eligible to become registered environmental health specialists. They regularly go through a standardization process to assure that they are consistent in their inspections regardless of where these inspections occur. Outside of these three jurisdictions, NDA has the responsibility for food permits and inspections. Every new establishment pays a one-time permit for the NDA. The work of our inspectors is guided by the FDA and by the Nebraska food code. The food code is a comprehensive code utilized for all types of food establishments, including food trucks. Just as some parts of the code do not and apply to every restaurant or convenience store, some parts of the code do not apply to every food truck. Standards universally applied regardless of facility type include such things as a handwashing sink, hot and cold running water, three sinks-- one for washing, one for rinsing, one for sanitizing food utensils-- and the ability to hold and maintain safe food temperatures. We believe that a separate food code for food trucks is not only unnecessary, but likely would cause confusion and result in restricting the kinds of foods that food trucks can offer. Frankly, the food code is not the problem. Inspecting food trucks on a regular basis is essential in keeping our communities safe. Each of our three health departments have, have established food permit fees designed to support the cost of inspections. There is an inherent risk of foodborne illness outbreaks from food prepared and served at restaurants and cafes, at grocery stores, at C stores, and, yes, at food trucks. Here are two weather-related examples specific to food trucks. When temperatures in Nebraska drop below freezing for days, the water pipes in the food trucks can freeze. Our inspectors make frequent visits to ensure that food trucks have running water as central to their operations. Summer heat is another issue. It may be 100 degrees outdoors, but the temperature inside the food truck can reach 120 degrees. Our inspectors are out there to verify that the refrigerators maintain safe temperatures that prevent bacteria from growing in food that can cause illness. Our goal is to make sure that the food that you eat will not make you sick. Before a food truck becomes operational, our inspectors work closely with the owners to review the applicable Nebraska food codes. This happens prior to the inspection and

permitting of the unit. This not only ensures safe food for customers, but it sets the trucks up to operate successfully. Excuse me. The last thing any of us want to see is a headline reading dozens were sickened after visiting a State Fair food truck. We have not seen this and we work diligently to prevent this or any similar headlines. Our three health departments routinely inspect food trucks that cross jurisdictional borders to verify that they are permitted and that they are following food code. The most common issues with crossing borders is a lack of running water or no hot water, improper waste disposal and the ability to maintain food temperatures in Nebraska weather. In Hall County, as the Nebraska State Fair approaches each year, we inspect each vendor to assure it meets the food code standards, regardless of whether it has an NDA permit. This often requires repeat visits for additional education during the fair. But we want to make sure they're set up safely. It is hard to measure what these inspections prevent, but we do know that in all the years the State Fair has been held in Grand Island, we have not had, knock on wood, one born-- foodborne illness outbreak. We believe our diligence with food trucks and mobile units is working. The public expects that every time they eat out, the food will be safe. Preventing foodborne illness is critical to the food industry. If standards for food trucks are lowered, it could impact all food establishments negatively. The Friends of Public Health and local health departments that conduct food inspection stand ready to collaborate with you on issues related to food safety and would like you to be-- would like us to be involved in future discussions on food safety in Nebraska. And thank you and I'll, I'll try to answer questions.

HALLORAN: Thank you, Ms. Anderson. Any questions? Senator Brandt.

BRANDT: Yep. Thank you, Chairman Halloran. Thank you, Ms. Anderson, for your testimony. You're a little unique in that you have the State Fair, but that's sort of a perfect example. Do the Hall County inspectors-- when they go inspect the food trucks for the State Fair, they're enforcing the state of Nebraska health codes. Therefore, the NDA does not-- you're, you're one in the same at that point.

TERESA ANDERSON: Exactly.

BRANDT: OK, so--

TERESA ANDERSON: We're doing-- we actually have a contract with NDA to do the inspections in Hall County.

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BRANDT: OK, so there-- I assume you're expecting then brick and mortar-- you're inspecting all--

TERESA ANDERSON: Yeah.

BRANDT: --food establishments so the state of Nebraska, therefore, does not have to fulfill that need because you're fulfilling it.

TERESA ANDERSON: Right.

BRANDT: So there really is no overlap, as was presented with some of the first testifiers, on the food safety side anyway.

TERESA ANDERSON: Huh-uh. When we permit them, when we inspect them and get the permit funds, we send a portion of that fund to NDA and then we keep the rest locally to cover the cost of the inspections.

BRANDT: Do you think the system is, is efficient and effective right now or is there something you would change?

TERESA ANDERSON: It's effective for us in Hall County and that's about all I can speak to. But we know that-- we, we work really hard to keep up with the food trucks. We have between 80 and 91 mobile food units and some of them are more stationary food units, as some of them are starting to do is set up in one spot. But we follow, we look for the food trucks and they don't always come to us so sometimes we need to go looking for them, but we want to assure that they have those basics that keep our community safe.

BRANDT: Is there a difference between a, a food truck that's stationary and, and one that's mobile? What comes to mind are ice cream trucks. Ice cream trucks are constantly traveling and--

TERESA ANDERSON: Um-hum.

BRANDT: --and going through the city. Is there any difference there?

TERESA ANDERSON: If they have a mobile permit, for instance, in this instance of an ice cream truck, they would come to the health department and we would inspect them there. And then as they're traveling through the community, we may periodically stop and make sure that they have-- their, their sinks are in place. The water is running and it's hot water. We may do that, but there probably isn't much difference other than that. Some days we have all the food trucks-- we have a food truck day and have all the food trucks come in

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and we inspect them there to make sure the basics are in place. But then we can always make a second, third, fourth inspection to wherever they're set up to assure that they're still following food code.

BRANDT: All right, thank you.

HALLORAN: OK. Any further questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman, and thank you, Ms. Anderson. So I was kind of reading along with you and listening. So you're-- you obviously wouldn't want us to lower the standard for food trucks. But what about just a-- more specific standards that apply to food trucks and their specific differences? I mean, you, you do address in your statement there are different concerns pertaining to food trucks with the temperature and the water, the pipes freezing and those things and the heat.

TERESA ANDERSON: Um-hum.

J. CAVANAUGH: So there are other concerns that are different from a brick-and-mortar store, right?

TERESA ANDERSON: There are, but the Nebraska food code should address all of those. And our inspectors, not only in Hall County, but in Douglas and Lancaster County are all standardized. So they've all been trained. They understand that we have the registration process for them, that we're, we're fairly convinced that we're all following the same standards, that we're not applying one set of standards in one instance and not in another. But we are--

J. CAVANAUGH: In Hall County or across--

TERESA ANDERSON: All across the, the three health departments because as we-- as the food inspector is talking to the vendor, then they're identifying within the food code, which are the areas the vendor needs to be compliant with. And some of them don't apply. For instance, Senator Halloran mentioned restrooms. They don't have restrooms. We don't have to worry about the sinks in the restrooms and those kinds of things, but we, we do enforce the handwashing piece.

J. CAVANAUGH: I hope so.

TERESA ANDERSON: [LAUGHTER]

J. CAVANAUGH: Thank you.

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HALLORAN: OK. Thanks, Senator Cavanaugh. Any further questions? You're good or you got a question?

JACOBSON: I'm good.

HALLORAN: OK. All right. Thank you, Ms. Anderson.

TERESA ANDERSON: Thank you.

HALLORAN: The next testifier, please. Good afternoon.

NICOLE FOX: Good afternoon. Nicole Fox, N-i-c-o-l-e F-o-x, and I'm here today representing the Platte Institute. I appreciate the opportunity to be a part of the discussion today regarding the regulation of food trucks. As some of you may recall, the Platte Institute has been interested in proposals brought before this committee, both in 2019 and 2021. Both proposals were brought forward with the intent of reducing the red tape that's associated with the widely varying and expensive permitting and inspection processes across the state. Because food trucks are good for the economy, it's important that the state's regulatory framework does not hinder the opportunities that this business model provides. Food trucks provide aspiring entrepreneurs a low-cost alternative to a traditional brick-and-mortar restaurant while offering consumers more choices not just in urban areas, but also in rural communities. Many restaurants are currently struggling to find food work-- to find workers. Some are trying to survive by limiting their days or hours of service, but unfortunately, some have had to close their doors. Food trucks allow one to be able to own and operate a business, yet not have to deal with the struggle of a workforce shortage. On the other hand, despite the workforce shortage, some food trucks were so profitable over the course of the pandemic that they have opened brick-and-mortar restaurants. Additionally, noting the popularity of food trucks, some restaurant owners have added a food truck to their business model instead of opening another brick and mortar to reach more customers. Food trucks have been shown to provide complementary business partnerships. In Nebraska, many partner with local bars, local craft brewers and farm wineries. These businesses have patrons that want dining options and partnering with a food truck helps them to serve their patrons without having to invest and establish their own full-sized foodservice operation. The presence of food trucks may draw new customers to their businesses. The presence of food trucks increases foot traffic in areas that they serve. Consumers purchasing from food trucks often check out nearby businesses or may notice a

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restaurant in the area and decide to come back and dine there the next time that they are in the area. And in some parts of the country, food trucks have helped to revitalize dying communities and neighborhoods. Even in thriving cities and towns, the variety and creative spirit brought about by food trucks leads to the opening of new restaurants. Despite these important contributions to local communities, food truck entrepreneurs face some significant barriers in terms of red tape and protectionism. According to the U.S. Chamber of Commerce Foundation 2018 Food Truck Nation Study, starting and maintaining a food truck for one year required an entrepreneur to complete 45 separate mandated procedures over the course of 37 business days. And they spent over \$28,000 on permits, licenses and legal compliance. These costs are significant and likely have risen since this study has been released. Additional barriers include the time required to research the permitting requirements in different jurisdictions, limits to when and where food trucks are allowed to operate, significant cost to assure trucks meet the wide variety of health and safety standards various communities require, and for some communities, the time involved to go through and do a background check. For new entrepreneurs, these barriers can be extremely overwhelming and possibly deter them from starting a business. Most business owners, both large and small, agree that an element of predictability and certainty is important. Food truck owners need to be able to plan for time and costs associated with their operation. In some Nebraska communities, particularly those smaller ones, the fees associated with being able to operate are not worth the return on investment. The Platte Institute hopes the committee recognizes the value of creating a path for permitting, inspecting and operating where food trucks can operate freely across all jurisdictions in Nebraska and not have to navigate the complexity of widely varying local regulations. A better framework for food trucks would establish a reciprocity system so food truck owners do not have to obtain a business license in each city in which they operate, prohibit cities from establishing protectionist boundaries in which food trucks are denied the opportunity to operate, require that counties honor health and fire safety permits issued in other counties, and require that fees charged not exceed the actual administrative and inspection costs. In 2017 and 2018, Utah passed two bills which ultimately accomplished what we envision for Nebraska, and we encourage the introduction of a similar proposal in January. And one thing I'd like to add is that in addition to some of the states that Senator Aguilar mentioned, Georgia most recently here in 2022, passed a similar bill to what Utah did. So with that, I conclude my testimony and I'm happy to answer any questions.

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HALLORAN: OK. Thank you, Ms. Fox Any questions?

JACOBSON: I guess I'd come back to the original question that we've asked others and that is what is the Platte Institute's opinion on what that standard legislation should look like?

NICOLE FOX: Well, and I think I outlined it in my testimony, is just some sort of streamlining so that there isn't so much, you know, having to fill out paperwork and pay multiple fees, you know, you know, over and over. I mean, because I think that especially in rural communities, it's, it's a lot more of an issue because, you know, if I am a food truck operator say, in Omaha or Lincoln, most likely, I may have a very large clientele and I don't have to be maybe as mobile. And I think, you know, that's been mentioned that some food trucks are more mobile than others. But if I'm in a more rural setting, I may have-- I might be forced to-- just to be able to stay in business, to go to different-- whether it's different counties or municipalities within a county, I think it's a little bit more it's a little more difficult. But also, I mean, kind of going back to Omaha, I will say, you know, there's Douglas County and there's Sarpy County. So you, you know, you cross Harrison Street going north or south and there might be two different sets of, of standards, but, you know-- so I think it's just something that we want to-- you know, we want-- I mean, I understand the desire for local control, but if it's impacting, you know, economic opportunities, is there something that we can look at to at least lessen the red tape? There might not be one magic answer, but if we can streamline it somehow so that people aren't having to get, you know, multiple-- like-- because some of these people are spending thousands and thousands of dollars just, you know, on health inspections or-- you know, so is there some way we can streamline it? Because, you know, I have a food background and, you know, food temperatures and things like that, I mean, there are some consistencies. So do we have to be having, again, these multiple inspections? Can they have, you know, an annual inspection? And if they, you know, pass it, it's good. I mean, do they have to-- if they operate somewhere else tomorrow in a different county or city, do they have to get another health inspection?

JACOBSON: Well, I guess-- again, I'm-- I don't want to belabor the point, but I, I think we're searching for specific recommendations--

NICOLE FOX: Um-hum.

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JACOBSON: --because I think everybody is saying we want standardization, but nobody seems to define what that is. I mean, it sounds to me like the-- the metro areas, you know, Lincoln, Omaha, Grand Island have-- and to some extent, I guess, Beatrice-- have standards. North Platte evidently has none at all. I can tell you that, that we have NEBRASKAland Days every year in North Platte. I know the food inspectors are busy from-- that are out there checking every-- all the vendors. They'll come to various events, a chili feed. They'll show up. We've had our grill at different events and, and they're there and the food inspector will check up and make sure that we're following the proper procedures. And so it seems to me we've got a food safety issue and we've got an issue of permitting and costs of permitting and limitations on where you can be, what you can do, concrete, no concrete, all of those things. So I think what we're grasping with is so what's, what's the plan?

NICOLE FOX: Yeah.

JACOBSON: You know, what's the recommendation?

NICOLE FOX: Well, and I think it might be just getting people around the table to discuss about-- you know, discuss maybe some of the discrepancies because-- and unfortunately, we had invited a food truck operator to come today because he operates in both Lincoln and in Omaha and he can very much tell you the differences. And I can't remember, you know, which one was which, but there are some significant differences between just those two counties alone and it affects the equipment that he has to have on his truck. So, you know, even just basic conversations about why there is such discrepancy and is there kind of-- you know, what, what is, you know, the-- can we come to an agreement on-- you know, like a compromise as to what, what is the absolute--

JACOBSON: Well, and--

NICOLE FOX: --for safety, you know?

JACOBSON: --and I guess I go back and say that it seems to me we've got the food safety issue, which the inspectors are charged with, with maintaining, and then we've got all these other fees and other permitting requirements.

NICOLE FOX: Yep.

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JACOBSON: I guess what I'm looking for is for the association, whoever that might be, of the food truck vendors, etcetera, that want this changed to get together and bring to us what you're specifically asking for to be changed. Otherwise, I'm kind of back to Ms. Anderson's comments that if it ain't broke, why fix it? Tell us what's specifically broken. That's what I'd like to see.

NICOLE FOX: Well, and I agree. I think if we had-- you know, I think-- yeah, we do have to-- I think it's just we have to sit around the table and talk about those things. But we're just here to-- I'm here to talk about the economic benefits that-- as we see them to the state--

JACOBSON: And I agree.

NICOLE FOX: --so.

JACOBSON: I agree with your comment. Thank you.

HALLORAN: OK. Thank you, Senator Jacobson. Any further questions? And this is, this is an interim hearing--

NICOLE FOX: Um-hum.

HALLORAN: --right? I have all the confidence in the world that sometime in this next session, we're going to see--

JACOBSON: We're going to see that.

HALLORAN: --we're going to see that, so. But I look-- I appreciate everybody's input as we go here. So thank you very much. Next testifier.

BRANDON PATOCKA: Brandon Patocka, B-r-a-n-d-o-n P-a-t-o-c-k-a. I'm with the city of Omaha.

HALLORAN: Would you say it again? I'm sorry.

BRANDON PATOCKA: Brandon Patocka.

HALLORAN: OK.

BRANDON PATOCKA: I'm just here to kind of give you guys a little information as far as the city's regulations. There's a pamphlet there with just a quick breakdown of the municipal code and what is required to operate in the city. I can try to answer any questions that you may

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have as far as the rules and regulations in our city. Basically, it's pretty simple. You have to go to Douglas County Health Department first, get your inspection. As soon as you have your inspection done, we require a full copy of the sticker they issue. We used to-- before I started, they used to just get a picture of, like, the inspection report. Sometimes those trucks would be scheduled for inspection, not get it and they'd have to chase them down. So now we actually get the sticker. Once they're fully inspected, they issue a sticker. You need a copy of Nebraska state sales tax, showing you're paying state income tax, and then a copy of the insurance. So if it's a drivable food truck, the insurance for that truck, if it's a pull-line trailer, we require the insurance for both the vehicle pulling and the trailer itself and that's just laid out in code. Those are the first three big things that we require. It was mentioned earlier about occupational tax. The city does require food trucks to pay the occupational tax that the restaurants pay now. So that's on the equivalent kind of basis there. The rules and regulations is that we, our parking division, we maintain all of the public right-of-way, so where they can and can't sell, parking at meters, the cost associated with that. You can't be within 50 feet of a restaurant, you can't be within 200 feet of a parade or special event unless you're part of that parade or special event, just those types of daily occurrences are laid out in that pamphlet and the full code is online under the city municipal code. I can try to answer any questions you guys might have. I'm just here to kind of give you a little bit of our background and how the city does it.

HALLORAN: So again, forgive me, you said, but I didn't catch it. You're with the city--

BRANDON PATOCKA: City of Omaha parking mobility division, yep.

HALLORAN: OK, OK. Very good. All right, thanks, Brandon. Any questions? Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you for your testimony. So what we've gleaned so far is Lincoln and Omaha are the gold standard on this. OK. So obviously, it is a problem to have the truck go from Omaha to Beatrice. But now if the food truck comes from Beatrice to Omaha, is there a lot more hoops that they have to jump through to get your stamp of approval?

BRANDON PATOCKA: And that's kind of the, the tricky part is we don't have a way of knowing when these trucks are coming in. So unless it's,

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like, a big event that's, like, a city-sponsored event or a parade or special event that we are closing down parts of the street for, we require those parade or special event organizers to give us a list of the trucks that are vending inside those so we can make sure they have their city permit. Now, there's, like, Taste of Omaha, which is a big, huge-- close down the riverfront. There's trucks and restaurants that come from all over. That's handled by the public-- or sorry, by the planning department. They do a temporary use permit for those trucks that are coming in. So there may be a truck coming from Grand Island or somewhere else that we don't even know about that's in that jurisdiction. And we don't have, like, a daily permit we'd give them by our-- from our division.

BRANDT: The temporary use permit would exempt them, right, from your permit?

BRANDON PATOCKA: So the temporary use permit is required to be inside that event. It's a separate permit because planning permits everything that's on, like, private property. So if it's in the right-of-way, there would be no temporary use permits. They would be needing the city of Omaha mobile vendor permit in order to vend anywhere on the public right-of-way, like city streets, neighborhood streets, inside of a block party or a special event on a daily basis or in-- our permanent-- there's two different permits. So \$100 is, like, a citywide permit. If you're in the downtown BID more than four days a week, there's an extra \$100 that's tacked onto that that goes back to the BID.

BRANDT: So what's the fine if I don't have the permit?

BRANDON PATOCKA: So it used to be a \$16 citation for vending without a mobile food vendor permit. And then about two years ago, they did a code change and it's \$48 for vending without a mobile food vendor permit.

BRANDT: So I could pay \$100 and get the permit or \$48 and not get the permit?

BRANDON PATOCKA: And I've been told that-- a number of times they'd rather pay a citation until I--

BRANDT: OK.

BRANDON PATOCKA: Yeah.

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BRANDT: That's good enough for me. Thank you.

HALLORAN: OK, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here and this pamphlet. So is there any transferability within the city? You've got to pay \$200 if you're going to ever-- even sell for one day within the downtown BID?

BRANDON PATOCKA: That's the thing; nobody really comes to us for one-day permits. So, like, it's normally people that are in the town vending all the time. We have no way of knowing, like, who's going to be in. There's no, like, direct communication with, like, the big event organizers. Like, for example, they had a full list of trucks. Unless we get that list, we don't have, like, a full running list. I keep a running list of, like, all of my trucks.

J. CAVANAUGH: But if you're an Omaha one, so like-- I don't know. I can't remember the one. It's up in Benson all the time, the, the Cajun truck there. It's in the parking lot--

BRANDON PATOCKA: You got me thinking. Taste of New Orleans?

J. CAVANAUGH: Yeah, Taste of New Orleans..

BRANDON PATOCKA: So, yeah, they have a city permit to vend in the city all year round.

J. CAVANAUGH: OK and is that the \$100 or the \$200--

BRANDON PATOCKA: So if they're vending in the majority of downtown, they have to stipulate that when they sign their application whether or not they're going to be down there. So if they say I'm not in downtown four or more days a week, they paid \$100. We give them their permit.

J. CAVANAUGH: OK.

BRANDON PATOCKA: And then we require the license plate number on-- they used to do a lot of tracking to see if there were citations. We've only had two citations issued in the five years I've been doing the mobile food vendor permits. Most of the food vendors are doing it right: paying the meters, parking where they're supposed to, not parking face in the wrong direction. The-- a lot of it's for safety. So we want the food trucks to be on the right side of the road with

the people standing on the sidewalk; if they're in a neighborhood we recommend-- some trucks have windows on the reverse side. We will give them, like, an exemption if there's an event going on where they can turn their truck the other way. But if they just pull up in a neighborhood or pull up on a-- other side of the street, they can get a citation for parking facing the wrong direction. So it's pretty much not a huge occurrence. But yeah, there can be times when citations are issued. They come in and talk to us and say, hey, I didn't know that I couldn't do this and we'll give them, you know, a warning and then waive the citation. But we don't have a lot of repeat offenders. They're pretty much--

J. CAVANAUGH: And when you say educate people, I mean, is there a class or is it just--

BRANDON PATOCKA: So we have a website on our parkomaha.com where you can go on there, find all the mobile food vendor information. And then we've been working with Douglas County over the past couple of years to give them access to our website. So they added our information to their Douglas County website now and vice versa on ours. We just recently added links to Douglas County so you know that, hey, if I'm getting a mobile food vendor permit in Omaha, I need to have my Douglas County. And then sometimes we'll have Douglas County, you know, tell people, like, hey, go to Omaha and get your permit to make sure if you're vending here.

J. CAVANAUGH: And this conversation we've had about reciprocity--

BRANDON PATOCKA: Sure.

J. CAVANAUGH: --I mean, I know there's a lot of interlocal agreements and things like that. Has there ever been a conversation between Omaha and Lincoln or--

BRANDON PATOCKA: Not that I know of. I know that Ralston created their own permit as well. So, like, Ralston is just a literal one-mile, one-mile city inside Omaha. They have their own permit you have to get to vend in Ralston So, like, you could drive right through Ralston and go out the other side; but if you're going to stop there and vend, you have to get their permit. They pretty much copy and pasted most of our city ordinance. It's pretty close and then kind of set it off in their own little jurisdictions and then inside the-- Ralston themselves, there are different boundaries they have and--

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J. CAVANAUGH: And if-- but if you have an Omaha permit, that doesn't get you--

BRANDON PATOCKA: That does not get you into Ralston.

J. CAVANAUGH: You have to pay them a separate fee--

BRANDON PATOCKA: A separate fee.

J. CAVANAUGH: --a separate Ralston one. And so it seems like there should be maybe a conversation between those two cities, at least.

BRANDON PATOCKA: Yes, exactly.

J. CAVANAUGH: Thanks.

HALLORAN: OK. Thank you, Senator Cavanaugh. There's an old expression: it's easier to beg forgiveness than ask permission. Have you heard that before?

BRANDON PATOCKA: Maybe.

HALLORAN: It's easier to beg forgiveness than ask permission. And I'm not encouraging people not to get permits. Don't misunderstand me. But knowing the nature of human nature, I guess the question I have real quick is do you have a mobile food vendor patrol?

BRANDON PATOCKA: We don't. So our, our on-street enforcement officers, they're the ones that patrol the downtown. So if there's an event going on or they see a food truck, they will go by. We issued the permit. We tried to do a digital based on license plate, but it got to be if the LPR wasn't reading right, we actually still do stickers. We give them a sticker. They put it on the back of their truck. They will look at that permit. If it's for 2022, they'll know, OK, they're good. If it's not marked for 2022, they'll call me. Hey, is this food truck good to go? Yeah, he's good. His permit, you know, expired last week and his hasn't come in yet.

HALLORAN: OK.

BRANDON PATOCKA: Yeah.

HALLORAN: But as far from outside of those large events where it's, it's very commonly expected that you'll see mobile food vendors there, but there are all around town--

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BRANDON PATOCKA: They're all around Omaha.

HALLORAN: --right?

BRANDON PATOCKA: That's correct.

HALLORAN: Tip-- I mean, not unusual to see them on a lot of different streets, right? And-- but there's-- and I'm not suggesting that you create a patrol.

BRANDON PATOCKA: Exactly.

HALLORAN: But, you know, the police, the police have enough issues to deal with, I assume. But I'm just curious. You really have no idea how many people are doing it without permits.

BRANDON PATOCKA: So we kind of do because Douglas County gives us a list of all of their inspected trucks and then we combine that against who comes in. So this year, we're at about 73 mobile food vendors in Omaha. I've averaged, like, 40 to 60 over the five years I've been doing it. But I know there's well over 100 trucks in the city that have Douglas County inspections to vend. So there is that discrepancy of--

HALLORAN: Sure.

BRANDON PATOCKA: I sent letters to all of them based on the address on file in Douglas County. If they come in and see me, it's greatly appreciated. But I can only send so many letters and so many emails and make phone calls and I'm only one person, yeah.

HALLORAN: Really. The focus of most of my question here is I'm looking for a job in two years because I'm termed out.

BRANDON PATOCKA: Retired?

HALLORAN: [LAUGHTER]

BRANDON PATOCKA: Come apply for the city. We'll add-- put your name in.

HALLORAN: All right. Any, any further questions? If not, thank you for your testimony. Next testifier, please. Any further testifiers? If not, I think Senator Aguilar said he had to leave so he will not be able to close. To close out LR328, we had two individuals submit

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online presentations. So it was Meagan Forbes representing the Institute for Justice and Breanna Wirth representing the Nebraska Department of Agriculture. That ends the hearing on LR328. We'll take a five-minute break before we get--

JACOBSON: Oh, bless you.

HALLORAN: --enter into grain dealers. It's not often I get blessed so thank you, Senator Jacobson.

[BREAK]

HALLORAN: Well, if anybody couldn't guess before, they, they know now. I can't tell time. Five minutes stretched to about 10 or 15, but that's okay. We will proceed with the final piece on the agenda, the occupational regulation review for grain dealers. We will start off with our committee analyst, Rick Leonard, to give us an overview.

RICK LEONARD: Thank you, Senator Halloran, members of the committee. My name is Rick Leonard, R-i-c-k L-e-o-n-a-r-d. I'm the research analyst for the Agriculture Committee. The purpose of this hearing is to review the grain dealer regulations under the Nebraska Grain Dealer Act for purposes of the Occupational Board Reform Act, which I'll refer by the acronym OBRA. The act assigns a responsibility to the standing committees of the Legislature to periodically evaluate those occupational regulations that fall within our subject jurisdiction for consistency with the policy articulated by OBRA. OBRA Section 84-948 requires committees to submit a report on the, the occupation regulations reviewed. I've handed out a copy of that section and then you'll see that that section specifies the information contained in the report. Also in front of you, I have also provided a staff-prepared draft report that fulfills the elements identified in the statute, except that I have left blank the committee recommendation section, which will be completed after this hearing. A copy of this report was emailed to you and your staff about four weeks ago and has been distributed to the Public Service Commission, ag policy organizations, and commodity trade groups and other grain industry participants, along with notification of today's hearing. The hearing would be an opportunity to receive any public comment, if any, regarding grain dealer regulations as they relate to OBRA policy. I would just briefly walk through the report and I can go to great deal-- greater detail if there are questions. Page 1 of the report provides a description of the-- what we define-- why we call it grain dealing. Also beginning on page 1 is a description of the statutory

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requirements that apply to individuals or business entities to do business as a grain dealer. Nebraska is one of the 31 states to require licensure to lawfully engage in grain dealing in this state. The requirements of licensure are set out on-- beginning on-- set out on page 2. Pages 3 and 4 are data provided by the Public Service Commission that provide a five-year summary of the license activity, enforcement actions during that period and some discussion of the costs to implement the act. In the Appendix is an overview of state regulation of grain dealers and grain warehouses by the National Agricultural Law Center. I included that in the report because it provides, I think, a pretty succinct reference to the different elements of regulation and the number of states that apply that regulation in some form. On pages 5 and 6 is a comparison of Nebraska's grain dealer regulations to those of surrounding states. Beginning on the bottom of page 6 is analysis of the Grain Dealer Act in relation to OBRA policy. This section includes the Public Service Commission's statement regarding the efficacy of the grain dealer licensing. And I anticipate the Public Service Commission will follow me and be available for any additional discussion on, on the value of the regulation. I anticipate, I anticipate the PSC will elaborate and evaluate grain dealer licensings. A stated policy objective of OBRA is that occupational regulations be the least restrictive regulations in relation to the public need. This report identifies a public need. There is a listing of those in section-- that I handed out to you. The public need is to protect consumers against potential damages from failure by providers to complete a contract fully and up to standards and identifies the least restrictive regulation corresponding to that need is to require bonding. Although the act does require licensure, licensure in this case functions primarily as a registration to enable the PSC and the public to identify those grain dealers meeting financial security and, and business-- minimal net worth to conduct business as a dealer. The section of the report concludes with a series of questions to help in the assessment of the existing grain dealer regulation for consistency with OBRA. The responses are draft staff assessments only, mine, and may be added to reflect the input from the committee and the public. The report points out that the scope of grain dealing subject to licensure has evolved and narrowed considerably over time. The current Grain Dealer Act was first enacted in 1985, setting out grain dealer regulations as a separate licensing-- licensure from grain warehousing. Beginning in 1985, licensure as a grain dealer is only required when the dealer is a first purchaser of grain from a producer of that grain. Additionally, we only require bonding to indemnified cash transactions. Producers--

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producer risk for sales under deferred payment terms are not covered. They at one time were. We have expressly excluded the risk associated with purchases from dealers by end users or other downstream users. In other words, outside of indemnifying grain producers for losses when selling to a dealer, all other dealer activity is subject to whatever private sector mechanisms are available to assess and avoid risk. I would conclude with an observation, which is discussed in the report. The Occupational Board Reform Act expressly excludes business licensure. In essence, the act regulates the commercial activity of grain dealing but does not directly regulate the individuals. The act does not require any personal qualifications, education, certification or experience for an individual to qualify to-- for licensure to engage in grain dealing, to be employed by grain-dealing entity. According to the PSC, the, the chart on page 3 indicates only one grain dealer is a sole proprietor. Essentially as the grain-dealing sector has evolved, it is somewhat questionable whether the occupational regulations under the Grain Dealer Act are occupational regulations for purposes of OBRA. In other words, that-- I'm not quite sure that this, this regulation is, is subject to OBRA, OBRA oversight and potentially is one that the committee could take up as scheduled for periodic review. Finally, since this hearing today opened up discussion of the grain laws, you-- Senator, you-- Chairman Halloran, you had invited the Public Service Commission, while we're on the topic, to present any recommendations for update to the grain laws generally. It's my understanding the C-- PSC has undertaken internal discussions and has had consultations with the industry. I'm anticipating that the PSC, in addition to its comments on the report and the grain dealer regulations, may present some potential updates to the grain laws during its testimony. Thank you. I would respond to any questions.

HALLORAN: OK. Thank you, Mr. Leonard. I don't get a chance to call you that very often, but it's appropriate. Questions from the committee? OK. Seeing none, thank you, Rick. So we'll welcome up the Public Service Commission. You're all being a little timid here. I'm not sure--

DAN WATERMEIER: We're discussing that possibility that I'd have talked to. My legal counsel is telling me, let them go first. I'll go against my legal counsel, which usually never pays very good.

HALLORAN: Good afternoon, Commissioner Watermeier.

DAN WATERMEIER: Senator Halloran, Chairman of the Ag Committee, and Ag Committee, thank you for having me today. My name is Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, and I represent the Public Service Commission as the chairman, current chairman. And I am here to provide brief comments regarding the occupational regulation review in grain dealers licenses. Thank you again for having us today. Since 19-- as Commissioner Leonard [SIC] had mentioned, since 1985, the commission has regulated grain dealers under the Nebraska Grain Dealer Act. Currently, there are 117 active grain dealer licenses, totaling about \$12,000 in licensing fees collected annually. Our staff work to ensure the protection of grain producers through the grain dealer licensing process and by conducting regular inspections. It is important that we maintain the licensing processes so producers have the avenue to seek payment for their grain crops should issues arise. We appreciate the committee taking the time to review our license process and I'm happy to answer questions about that. But I will move on to statutory issues in which we have discovered and talked about internally. So unless there's a specific question about licensure, I'll move on to the statutory conversations that we've had.

HALLORAN: That's fine.

DAN WATERMEIER: Now, our grain division director is here as well, Ms. Terri Fritz. And if there are technical questions, I may ask her to come up and follow up after me as well. And I'm good right now. I'm still, still improvising. But so we'll get into the statutory things now. I will comment, too, that we had or Ms. Fritz had two different meetings with the industry, stakeholders and the public. We never really had as much public input as we really hoped to and-- but we're not necessarily the public defender, but we are in between that and we hope that you keep that in mind, too, that a lot of the public really never had input into our two meetings as well. Regarding possible legislative items, we held the meetings at the commission and interviewed parties to gather their input on certain statutory sections of interest to both the Grain Warehouse and Grain Dealers Acts. I bring the following topics to your attention that were discussed: synchronized-- synching up the definition of grain under 88-526 and 75-902, as well as amending the definitions in each act to include reference to organic and non-GMO grains. This would bring harmony for the terms across both acts. Explore increasing licensing fees under 75-903 and 88-529. Grain dealers could be increased from one-- just \$100 to no more than \$500 and warehouses to no more than 50 percent of the federal licensing rate. These fees currently go to the General Fund and we are willing to explore whether a cash fund would

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be preferable. However, even under the increased licensing fees, this would not eliminate the need for still General Funds as well. Security requirements for both grain dealers and warehouses under 88-528 and 88-530 were discussed and the conversation flavored [SIC] an increase. One possibility to be-- could set a maximum security at \$1 million. The group also discussed the elimination of accepting CBA-reviewed financial statements and instead of, only accepting CBA-audited financial statements. And that's basically whether it's-- most of the co-ops are always dealing with an audited statement. They all need a CPA statement with their, their license, but it does cost them more to have it audited and it's presented to their, their typical boards. The next issue was background checks required for applicants seeking grain dealer and warehouse licenses under 75-903.03 and 88-528.01. The current statutes do not require additional background check reports to be submitted for a primary party that submitted a background check report on a prior application. We do think it's important that any primary party be subject to a background check no matter if the background check report has been filed on a proper previous application. We discussed contract enforceability issues-- contract. There is interest in exploring an amendment under 88-523 to require the terms of oral contracts to be put into written within a specific time, like 30 days from the date of the oral contract when entered into for the parties. We'd also be interested in exploring possible language that would void any contracts that a non-licensed warehouse, warehouse or dealer would enter into with a party. Finally, we would suggest language cleanup that would change any statutory references from "warehouseman" to "warehouse operator." This term would be in line with language used by the USDA and we would also recommend amending 88-539 to update the reference to the supervisor of warehouses to the correct job title in the hiring process. And that's kind of a summary of what we discussed internally and what we actually discussed a little bit in those two public meetings that we had. So thank you for having me today.

HALLORAN: All right. Thank you, Commissioner. Any questions for the Commissioner? Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you, Commissioner Watermeier, for testifying today. What's the maximum bond requirement right now? Is it a half a million?

DAN WATERMEIER: It's \$35,000. It's based on an amount of work that they've done the year-- previous year. So it's \$35,000 to only-- let's see, I wrote it down here-- \$300,000, I think. That's the maximum.

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BRANDT: So how much of a loss does that cover?

DAN WATERMEIER: Well, I mean, you know as well as I do as a grain producer with one load of soybeans, could be worth \$15,000 to \$20,000 for one truck and they're only bonded at \$35,000.

BRANDT: Yeah, the dealer is, right?

DAN WATERMEIER: Right.

BRANDT: So if we have one of our larger cooperatives in the state that has 60 locations, hundreds of millions of bushels of grain on the books, one truckload out of all those locations is what's covered. Is that correct?

DAN WATERMEIER: It's based-- no, it's based off the volume the year before. So the, the warehouses are treated a little bit differently. Their minimums are two-- \$20,000 with a maximum of \$500,000 as far as the bond.

BRANDT: Per occurrence or per total occurrence.

DAN WATERMEIER: I'm not sure whether that would be a total of a producer's one instance. I believe it probably would be a total of their claim--

BRANDT: OK.

DAN WATERMEIER: --in that period of time. But there's also another-- a fee that we charge them as far as \$0.02 a bushel if they're doing an audited review as well because it does cost us a little more time when we inspect these numbers.

BRANDT: I'm aware of that.

DAN WATERMEIER: OK.

BRANDT: And I was going to ask Rick this and I don't know-- and this is just a small thing. On page 1 here, it says the license fee is \$100. On, on another part of this document, it says it's \$150 to get a license in Nebraska and maybe somebody else can answer that when they come up here. So if, if I'm dealing grain in the state of Nebraska and I do not have that license, what's my fine? Or is it just cease and desist?

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DAN WATERMEIER: We have to send them to the AG's Office. We send those off all the time. We find people that are operating without a license and our only avenue-- we have no civil-- criminal penalties that we can do so we have to send them off to the local AG and/or the county prosecutors in each county. And we all know that they're varied and a lot of times they go unchecked.

BRANDT: So what are they charging them with?

DAN WATERMEIER: What are they?

BRANDT: Yeah. What's the--

DAN WATERMEIER: Well, they--

BRANDT: --what's the AG or the, or the county attorney charging them with?

DAN WATERMEIER: Well, you know, I don't know that-- what their typical action has been, but they would be breaking the law in the fact that they need to have a license in Nebraska to operate and they need to be bonded to a certain degree.

BRANDT: So is that something you want to put into this revised statute that says if, if you're found in violation of this, this is a Class IV?

DAN WATERMEIER: We don't have the authority to do a criminal or even a civil penalty so we'd still have to turn them over to the local county attorneys.

BRANDT: All right. Thank you.

DAN WATERMEIER: Yes. Thank you, Senator.

HALLORAN: OK. Thank you, Senator Brandt. Senator Jacobson.

JACOBSON: I guess I'd just make a couple of comments on you're referencing reviewed statements going to audited statements. And I guess from my perspective as a banker, I've, I've-- we've found that what the standards are now for reviews are significantly higher than what they used to be.

DAN WATERMEIER: Um-hum.

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JACOBSON: And I'm-- and obviously, if you're just looking at, looking at numbers in terms of earnings and that kind of thing, review seems to be-- hit the mark for us and it takes quite a bit to get to a audit requirement. However, the bigger issue that I have really industrywide is, is the, the concerns, as you referenced and was mentioned before. When you look at the price of grain today and you look at the dollars we're dealing with, all of these numbers seem to be just extraordinarily low.

DAN WATERMEIER: Um-hum.

JACOBSON: And as a banker, I get incredibly nervous about what's going on right now, where we know that we've got producers that are going to be managing taxes, hauling grain to dealers, hold my check until January. Well, I hope the check clears in January. Also, we look at what's happening with some of these feedlots. This has not been a good time for feedyard operators and I get nervous about that same thing. I'm going to deliver all this wet corn and get me my check in January. And, you know, that is a real concern of mine in terms of what we're doing from a diligence standpoint, in terms of making certain that those grain inventories are there from the PSC or whoever is going to be out there monitoring this because an annual audit isn't going to get it. It's going to take that ongoing inspection of grain, particularly when those inventories are high.

DAN WATERMEIER: Um-hum.

JACOBSON: And obviously, I've learned long ago when it comes to warehouse receipts, they're not hardly worth the paper they're written on when there's a shortage. It just-- it's, it's one, one for all, all for one. I mean, we-- basically, there's that priority as to who gets paid and when they get paid. And so you could be holding a warehouse receipt, I could have one pledge for collateral and it doesn't mean anything, so-- or very little if the, if the, if the grain elevator would, would, would fail. So I am concerned about the low levels. And if I were to see anything, I'd rather see the licensing go up and I'd like to see the frequency of inspections significantly higher to make sure that we disincen people--

DAN WATERMEIER: Um-hum.

JACOBSON: --from fudging. You know, one thing in the banking industry, we have our tellers balance every day and they have their own drawers. We know that they're the only one in the drawer. Now, could you

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imagine if you didn't require that every day? How short would you be? And I've always argued as a banker that if we have a teller who's stolen from that drawer or there's a theft that occurs there, that's on us, not on them, because we've left the temptation--

DAN WATERMEIER: Um-hum.

JACOBSON: --for them to do it. What's, what's expected is what's inspected. And one of the concerns I have is that the inspection levels need to be significantly higher in order to make sure that the temptation to commit fraud doesn't occur, because the numbers today are real.

DAN WATERMEIER: You bring up a good point as well and I think Mr. Leonard had mentioned that, too, that the end users aren't even required to be licensed.

JACOBSON: Right.

DAN WATERMEIER: So you mentioned about delivering a lot of grain to a-- and wet hands to a feedlot. That's not covered in their license. If they're the end user and the ethanol plants-- and I think two-thirds of the corn through Nebraska goes through an ethanol plant one way or another. So we're-- there's a piece of that puzzle that's bypassed. I don't remember the history to that. I'm sure Rocky can explain that when he comes up in his testimony, where that came from, you know, but that's a big point.

JACOBSON: Well, from my perspective, we generally always try to sell either directly to someone who we know have deep pockets or we're working through a major firm.

DAN WATERMEIER: Um-hum.

JACOBSON: And I'm going to give up the \$0.02 that they're going to take to eliminate that risk be-- for that very reason. And when you look at what's shaping up right now in terms of where the industries are at, particularly where the feeding industry has been right now-- and I'm not accusing anyone, I believe, but, but I just get nervous because certainly environment is there for a major wreck and, and we-- and I really hope we can avoid that.

DAN WATERMEIER: I appreciate the comments. I do. I might just ad lib a little bit to that, which is always dangerous, but when these high commodity prices come, this is when the bad actors always show up.

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JACOBSON: Yep.

DAN WATERMEIER: The daily position limits are fudged and things can happen, good or bad. And also this idea-- and I used to be an organic producer as well-- when you start throwing \$30 corn and organic levels in there and you don't have those covered as well, there was a lot of-- we get a lot of calls once in a while that will say-- not a lot, I shouldn't say that. We've gotten calls from organic people that have said, I just sold it. But the gentleman didn't know if they were licensed or not because there was a confusion about whether they needed to be. So cleaning up that language about having the organic in there is important because there's a perception out there that they don't need to be licensed.

HALLORAN: I think it's pretty common that people that are required to get a license for something break the law. I mean, licenses are like-- at some level, licenses and permits are like padlocks. They keep honest people honest, right? I've never been a fan of deferred payment.

JACOBSON: No.

HALLORAN: I would never do that to my banker. I would never do that to my bottom line. I mean, I've got a, I've got a descriptive term for people-- descriptive term of their intellect of being willing to give up possession of something long before they get paid for it. And I won't describe that here on the record, but at some level, it's let the buyer beware. It's caveat emptor. I mean, you could do so much. You can do so much. You can monitor every bushel and you can't afford to do that, it's impractical, somebody's going to slip through the cracks if they want to slip through the cracks. But it surprises me that you can't-- that we can't build in code, to Senator Brandt's comment, about making it a felony to, you know, disrespect the law in regard to grain dealers' licenses.

DAN WATERMEIER: Let me follow up with my legal counsel today; and if I am incorrect in that, I'll get back to you. But to comment on both what your comm-- statements were is that I can take my chairman hat off and just give you the farmer Dan's explanation here too. I never gave up the title of my grain either. It's just not going to happen. And if you think about the hedging processes that we all do as producers, you know, I sell the grain, might buy it back on the board, those people want my margin call the next morning.

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HALLORAN: That's true.

DAN WATERMEIER: So this just doesn't happen. You know, it's just unheard of to, to allow it to happen, but it's a mentality. The grain doesn't come with a title like a car does. You give up title and people don't know it. And we are trying our best to educate the public. I'm not sure that's actually our role, but we are reaching out as best we can to educate the public that you need to deal with people that are licensed, consider who you're dealing with. And especially in the organic world, because five grain-- five loads of organic corn could break somebody.

HALLORAN: Just-- I hope no one's suggesting branding law for corn.

DAN WATERMEIER: How would you title it when it's going to shrink or gain the very next day? So how would you put title on it?

HALLORAN: Any other questions? Senator Brandt.

BRANDT: Real quick, sort of as a follow-up, under enforcement activity-- and I was on the, on the Dorchester Farmers Co-op Board for nine years, one of the largest co-ops in the state of Nebraska. And we always had this discussion, usually when one of these little grain operations gets caught, goes under, isn't covered. And you look at all the ones that-- you know, Roberts Seed, Organic Producers of Nebraska, Pipeline Foods, Banghart Properties, Mercaris Corporation, none of those are cooperatives.

DAN WATERMEIER: That's right.

BRANDT: And that's kind of to his point; the big, big, strong grain dealers out there, quite often, our co-op has a bid of \$7 on corn. Guy down the road here that has a feedlot is \$7.10 and they can't haul it there fast enough. And then, then those producers are deferring because of, you know, as we know, tax avoidance is not tax evasion, until January 1. And, and December 31, all of a sudden that feedlot is wheels up and then PSC says, well, that guy wasn't bonded and, and these guys and the bankers are going, well, what are you guys doing? I mean, is a function of the PSC to protect this kind of behavior or not?

DAN WATERMEIER: Yes, because we would be engaged-- is there was something-- a producer, a licensed producer or a warehouse that went under, we would get involved in, in, in disputing-- distributing the bonded amount, you know, through the insurance company through the

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bonding agent. So yes, we would be there to do that. Our role is to make sure we have licensed dealers in the state and warehouses if they choose to be.

BRANDT: OK. All right. Thank you.

JACOBSON: I would just make one more comment. And I, and I guess it follows up, Mr. Chairman, on your comment about, you know, the issue of it seems to me that when you get a license, you've gotten that stamp of approval, OK? In other words, I'm licensed. OK, well, they must be, they must be fine. And the sad part of it is, is that it costs you \$100 for the license and you got a bond of \$35,000.

DAN WATERMEIER: Yeah.

JACOBSON: What did, what did I really get there--

DAN WATERMEIER: Um-hum.

JACOBSON: --you know? And that's, that's one of my concerns is that it seems to me that if you're going to be able to say I'm licensed and bonded, that that number needs to be meaningful--

DAN WATERMEIER: Yeah. I would agree.

JACOBSON: --particularly on the bonding side.

DAN WATERMEIER: I'll do a personal comment. I would agree. I mean, there's a lot of conversation and the few-- one of the lists that you had off there, Senator Brandt, you talked about the licensed agencies that were trying to deal in Nebraska but stopped. They went under in Iowa and they actually had an indemnity program in Iowa that's going to cover some of those producers. And I believe they're even going to cross state lines with their indemnity program, but that costs. And I believe before I got in the-- it costs somebody as far as a checkoff amount or some sort of a dollar or percent issue, there's going to be a fee. Before I got in the Legislature, I know there was a big conversation about increasing the bonded and security rates and it was pushed back. There was pushback from the public groups because it was going to cost them a little bit.

HALLORAN: OK. Any further questions? Thank you, Senator. That was-- for the record, that was Senator Jacobson.

DAN WATERMEIER: What did I say? I'm sorry.

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HALLORAN: No, no, no. I try to say what, what senator is asking the question before--

JACOBSON: And that's my fault.

DAN WATERMEIER: Oh.

HALLORAN: --for the transcribers so that they know who's making the comments--

DAN WATERMEIER: OK.

HALLORAN: --so.

DAN WATERMEIER: Well, we had a-- I appreciate your openness in your office, too, and we'll follow up with whatever questions you might have from this hearing. And we'll certainly be available for follow-up, whatever it takes.

HALLORAN: All right.

DAN WATERMEIER: All right. Thanks for having me.

HALLORAN: Thank you, Commissioner. All right. I think I hear a theme song for Rocky coming up here. Good afternoon.

ROCKY WEBER: That's an old song and I'm an old man. Mr. Chairman, members of the Ag Committee, my name is Rocky Weber. I'm the president and general counsel of the Nebraska Cooperative Council. I appreciate the opportunity to appear here today and just make a few comments with regard to some of the issues that have been raised by Mr. Leonard in his report, as well as by Chairman Watermeier in his testimony today. And I want to thank the Public Service Commission. They did have meetings with interested parties. We went over and spoke to them at some length about some of the issues that they raised and they talked about here today and had a very open and honest conversation about some of these issues. And so I look forward to relaying where our cooperatives stand on some of this stuff. Just, just so you have some context, 22 of our members have Nebraska grain dealer licenses. Twelve of our members have Nebraska grain warehouse licenses. Of the other ten, they would have federal warehouse licenses. Until 2005, if you were licensed as a state or federal grain warehouse, you were not required to have a dealer's license. In 2005, with the advent of direct-ship buying and selling of grain, where a grain elevator will buy grain from a producer and have the producer directly ship that to

a feedlot or an ethanol plant on the account of, in this case, the cooperative, that's called direct shipping. When that started to become a practice, the Public Service Commission looked at that and the Ag Committee at that time took up LB439 and said, OK, if you're going to be into direct ship practice as a warehouse, then you have to add a grain dealer license to that so that these direct-ship bushels are also covered by the grain dealer indemnity and security and things of that nature. That's the only reason today that the grain warehouses have to have an independent grain dealer's license. And I would submit to you, as we talk about security and some of these issues, if you look at Mr. Leonard's report, those problems that have occurred at the Public Service Commission as to take enforcement action on for unlicensed activity or violations of the Grain Dealer Act have been independent grain dealers not associated with grain warehouses. And when you look at that from a security issue-- so you take our cooperatives, for instance. Our cooperatives today in Nebraska hold 72 percent of the licensed capacity for Nebraska grain warehouses. A little over 380 million bushels out of the 507 million bushels that are licensed by the Public Service Commission are, are held by the cooperatives. Senator Brandt mentioned Farmers Cooperative in Dorchester. They alone have over \$92 million of licensed storage as, as a warehouse. When you have that grain dealer license as well, and you operate also as a grain dealer, anybody that is stiffed or gets left short and does not get paid for their grain has, in addition to the grain dealer bond, has the assets of that company and that grain warehouse to go after as well. Not only the grain assets, but the physical assets: property, plant, equipment, accounts receivable, everything. You have a lot of wherewithal standing behind those businesses. On the grain dealer side-- and I, and I'll be corrected, I'm sure, if I'm wrong here, but I think it's only a \$10,000 minimum net worth is required to obtain a grain dealer's license. And I think if you look at where the problems have been with enforcement, it's when people do not have sufficient capital. Particularly in times of rising prices and volatile prices and they get caught on the wrong side of pricing between buying and selling, that's when they come up short. And they don't have the wherewithal, the net worth or working capital or maybe lending or a financial institution to stand behind them to come up with the capital. So I think as you look at security issues and bonding indemnity and things of that nature, I would certainly hope that we take into consideration the risk imposed by somebody with a low net worth that doesn't have all the other assets standing with them. And maybe those, those requirements need to be changed, but as far as raising bonding requirements, which are

expensive, and doing other things to, to lump everybody that's got the grain warehouses and stuff in with that, that raises prices for, for our membership and raises their costs and the ability to do business as well. And I'm not sure that, that we pose a problem. The other thing I will say about the cooperatives as far as the security issue is all of them go through full-scope audits once a year. It's required in their governance documents and their bylaws and those, those are required to be published. And, and you can get on any cooperative's website and view their financial statements and income statement and balance sheets and net worth and members' equity and all of those things and you know who you're doing business with to make a choice. As far as the grain definition is concerned or changing that definition to include organics and GMOs, things of that nature, our group has no issue with, with that. We haven't seen language, but generally speaking, we have no issue with that. And really, I talked to several of our members about fees. If the fees haven't been raised in a significant amount of time, if there's a reasonable increase in fees, I don't think you're going to see a huge objection from our group either. We understand that costs have gone up. The costs to the Public Service Commission have gone up and so we do understand that. We would want them to be reasonable, of course, in scope. I've already talked about the security issue. The background checks, I think the proposal is if you move from one licensee to another licensee as an employee, you should get a background check again. Our people had no problem with that kind of a change if that would come in some legislation as well. When we get to talking about-- I'm sorry, my time is up. I'd like to-- just have a few points, is that all right?

HALLORAN: You're fine.

ROCKY WEBER: OK. When we get to contract enforceability, however, we do have a few issues with what has kind of been discussed in that regard. The first thing that was discussed is the ability of a producer to void a contract if their-- if they find out that their grain dealer is unlicensed or is violating the dealers act in some way. We think that's a dangerous slippery slope that may allow people to get out of contracts when maybe there's just an administrative reason a license has lapsed, somebody didn't get something in on time or something like that. And we would hate to be put in a position where the other party to the contract can walk on that contract for that reason. You know, normally in the, in the grain business, you're doing proper business if you're back to back on contracts. So every time you're buying bushels, you are selling bushels. And so you've got obligations to continue to meet and I would hate to be put in a

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position-- and our members would-- where people could void contracts on them. We think that's kind of dangerous. The other thing is the Uniform Commercial Code provides a remedy and it's called anticipatory breach of contract. And farmers are merchants and so we talk about-- I'm going to talk about the oral contract here too. Farmers are deemed to be merchants of grain in the state of Nebraska. The Nebraska Supreme Court decided that in the 1980s. As merchants and between merchants, the Uniform Commercial Code provides that you can make an oral contract to buy or sell goods as long as it's confirmed in some form of writing after-- within several days of that contract. So standard course of conduct is if somebody makes a contract with one of our grain dealers or grain warehouses, a written contract will go out right away saying, here's the terms of our contract. If we don't hear from you within ten days, we'll deem this to be an actual contract. If you object, you better let us know right away. If there's a spot sale, you've got a scale ticket and a price and those kinds of things confirming that deal. If you talk to a grain merchandiser and the grain merchandiser texts you and says, I just want to confirm you just sold 25,000 bushel at \$7 a bushel and you'll bring it in by the end of the month, that text is enough under the Uniform Commercial Code to confirm the written contract between merchants. So the law already works in this area. And with regard to this enforceability issue, if I as a producer have reason to believe that the person buying my grain cannot perform on that contract, that's called an anticipatory breach of contract. I have a duty at that point to cancel that contract and go resell that grain at the market price and that sets my damages. If my market price is higher than what my contract, I get to keep the difference. If my market price is less, that's my damage claim against that grain dealer or against that grain warehouse. And so I think I've covered almost all of the points that Chairman Watermeier covered in terms of talking about some of these issues and where we would have issues and where we would not have issues with some of the changes. The one other thing I will mention is that we did go and petition the Public Service Commission in April of this year to change their maximum storage rates for the storage and handling of grain in the state of Nebraska. Those rates had not been changed since 2015. We went in and asked for an increase, had a public hearing. The commission did, in August, order an increase of those rates and we appreciated that. In doing that, we discovered that none of the states around us have that process for setting a maximum rate and the federally licensed warehouses in Nebraska have no maximum storage rate or anything. The market sets what they can charge producers to store grain. We believe that if, if any grain warehouse or grain dealer laws

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are going to be changed, we should also look at including within that legislation, language that would remove that as a requirement of the Public Service Commission, allow the market to set those rates. The only requirement which came up at our meeting with the Public Service Commission was that licensees would still be required to post their rates 30 days before they would change and make sure everybody had notice of that, as well as the commission having notice of that, which we would have no problem with that. And with that, I'll conclude my testimony and take any questions that I might be able to answer.

HALLORAN: OK. Thank you, Rocky. Questions? Senator Brandt.

BRANDT: Thank you, Chairman Halloran. Thank you, Mr. Weber, for your testimony today. Let me get this right. So all I need to do to be a grain dealer in the state is have a \$10,000 net worth, which is basically a 2011 Ford F-250 pickup, and \$100 to get my license and pass the background check.

ROCKY WEBER: And you're also going to have to get some bonding, either the \$35,000 minimum or up to \$300,000 based on your volume.

BRANDT: What's that \$35,000 bond going to cost me?

ROCKY WEBER: I don't know. I did ask, I did ask a couple of co-ops yesterday. I got two very different answers on what their grain dealer bond costs. So, I don't know, one guy's paying too much and the other guy isn't paying enough, but one told me it was \$4,000 for the \$300,000 bond.

BRANDT: So it's probably 10 percent of that. I mean, it's probably four--

ROCKY WEBER: Yeah.

BRANDT: Do you-- it seems to me those are extraordinarily low minimums to achieve this grain dealer's license. Would you be in favor of, of raising this or does the co-op have an opinion on this?

ROCKY WEBER: Raising those minimums would not impact any of our grain dealer licensees that belong to the Nebraska Cooperative Council. All of our members that are licensed as grain dealers have significant net worth, working capital, assets and the ability to stand behind their contracts. So it would have to go up significantly, Senator, before we would object to that.

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BRANDT: And while I recognize that, when there is a-- an independent or a feedlot goes under, all grain dealers in the state at that moment are painted with the same brush. And I would think if you're in that industry, that you would want a high quality of, of other representatives.

ROCKY WEBER: And I guess what I would say is, is my idea is if you are an independent grain dealer without the assets and wherewithal of the warehouse standing with you in your company, then I think those minimums need to be higher, absolutely. But if you've got the other assets of the grain warehouse and all those other-- the wherewithal standing behind you and an audited financial statement and everything else that the Public Service Commission can readily check and the public can readily check and make sure that they're-- know who they're dealing with, then I think, you know, leave us alone about that. But, but if they don't-- you know, I think that \$10,000 is ridiculous. That's not even-- I don't think-- my, my dad's 300-bushel straight truck that he used to haul grain in on, I don't think I could even do that for \$10,000.

BRANDT: So, I mean, what would you raise that number to if-- in your opinion, what would be a good number?

ROCKY WEBER: I think--

BRANDT: I'm just asking you what--

ROCKY WEBER: Yeah.

BRANDT: --your opinion is.

ROCKY WEBER: I think good-- here's the deal: the price of grain is good right now, right, but there's times when it isn't. And we will, we will cycle back to where the price of grain will be less than it is now. I think those numbers need to reflect what the price of grain is a little bit and be able to move on a, on a basis so that whatever your minimum requirement is in your bonding requirement reflects the risk that those you're doing business takes on, takes on when doing business with you.

BRANDT: All right. Thank you.

HALLORAN: Senator Jacobson.

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JACOBSON: Well, to follow up on that last note, I mean, I, I concur with really everything you've said here. I-- my, my thinking is not that I've got concerns about the co-ops, quite frankly. They're probably in the strongest position of any dealer out there and warehouse out there. You know, my concern really is looking at those people that are calling themselves dealers, getting the stamp of approval being a dealer and really having a \$10,000 net worth and \$35,000 in bonding requirement and, and it's nothing. And part of it really gets back to-- you're exactly right. To me, how much exposure are you going to have at any one time? I mean, if I'm someone out there, I'm thinking today, I mean, you got feedyards in Kansas and western Kansas and areas that are so short of corn right now. I've heard \$2.50, \$3 over the December board here a month ago for corn. Well, you're going to, you're going to-- people that own a semi, they're going to go get a grain dealer's license and get the bond and start hauling their own corn, OK? And they're going to take it from the producer and haul it down to the feedyard to get the, to get the premium, OK? They're either going to do it themselves or they're going to, or they're going to, going to work through that process. And, and my concern is at what point-- do you have a point of exposure where they can't cover it, you know? And, and I think that when we look at, at the co-ops as a whole, I mean, I realize you're obviously going to have potentially some obligation against your physical plant. But my biggest concern, obviously, with major operations like the major co-ops is outdoor storage and grain going out of condition. And fortunately, the ethanol plants have kind of bailed us out. I'm driving the semi in-- behind the one that came from the co-op that was picking up the, the pile on the ground and you still got a lot of chunks you got to get pushed through the grates to be able to get that truck in there and get your truck unloaded. But, but, but that, that is-- I mean, seriously, it is an out and, and you can-- you've got enough bushels to average it out, make it work. My biggest concern along the way is if I were going to add anything, it would be more frequency, higher frequency of surprise audits to confirm that the books are correct during-- between the year-end audits or reviews or whatever you're doing.

ROCKY WEBER: Right.

JACOBSON: Because at the end of the day, that's where our risk is at, is, is, as you said, if you're out there buying grain and offsetting it with a hedge, everything works. When you buy grain and you don't get it offset and you look at the volatile swings in the market--

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ROCKY WEBER: Right.

JACOBSON: --that's when you start seeing people upside down, even the bigger guys. And so it's making certain that we're just doing the things we need to do; making sure grain is in condition, making sure the grain is there.

ROCKY WEBER: Right.

JACOBSON: To me, that's when we run, that's where we run afoul is when those things happen. The largest of the co-ops in the state, I look across-- I look at Aurora Co-op, I look at CPI. I go to, go to the, you know, the whole list of them. All of our major co-ops are, are in really good position. I'm impressed with that and I have no concern selling to them. I'm even, Senator Halloran, willing to let them have my grain for ten days before the end of the year, just, just for whatever that's worth. So, so I'd point that out.

HALLORAN: That's fine.

ROCKY WEBER: You know, one thing I would add, too, on the enforcement, I believe there's language in the statute that, that makes some violations of the Grain Dealer Act, if you're not licensed, a Class III felony. And I don't know why there's problems with county attorneys going after unlicensed dealers or out-of-state dealers that have come in and left Nebraska producers holding the bag. If there's some way to make that more of a mandatory enforcement type mechanism, maybe that would be valuable as well. Because, again, I think in the records, that's where we see the risk and the problem being-- and Kansas, by the way, has no grain dealer act whatsoever.

HALLORAN: Wow. OK. Any further-- thank you, Senator Jacobson. Any further questions? OK. Well, thank you, Rocky--

ROCKY WEBER: Thank you.

HALLORAN: --very much. Very thorough. Are-- OK, is there any other testimony, like from the legal counsel or anything? No? OK. All right, then that will conclude our occupational regulation review for grain dealers. Thank you all for being here.