

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 11, 2022

**LATHROP:** You ready? OK. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 and I Chair the Judiciary Committee. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. If you plan to testify today, you'll find yellow testifier sheets on the table inside the doors. Fill out a testifier sheet only if you are actually testifying before the committee and please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying in person on a bill and would like to submit a position letter for the official record, all committees have a deadline of 12:00 noon Central Time the last workday before a hearing. Please note there is a change this year in position letters to be included in the official record must be submitted by way of the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). This will be the only method for submission of letters for the record, other than testifying in person. Letters and comments submitted by way of email or hand-delivered to senators will no longer be included as part of the hearing record, although they may be a viable option for you in communicating your views with an individual senator. Keep in mind you may submit a letter for the record on, on the website or testify at the hearing, but not both. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last names and spell them for the record. If you have copies of your testimony, bring up at least ten copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a light system today and before I say how many minutes we get, how many people are here to testify on the first bill? One, two, three, four, five, six, seven.

\_\_\_\_\_ : What bill is that?

**LATHROP:** The first bill is Murman's bill to change provisions relating to conservation or preservation easements. I need to know how many people are testifying. So if everybody wants to testify and God bless you for coming, we'll have a two-minute light system on the first bill, which means you'll have a minute with the green light, a minute

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with the yellow light, and then with after two minutes, the red light will come on and you'll need to stop at that point. OK? So if you brought preprepared things to say which is fine and we encourage it, you might want to edit and kind of figure out what you want to say in two minutes. When the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, although some senators may use them to take notes or stay in contact with staff. I'd like to ask everyone to check their cell phones and make sure they're in the silent mode. And as a reminder, verbal outbursts or applause are not permitted in the hearing room. Since we've gone paperless in the Judiciary Committee, you will see senators on laptops and they do that so that they can follow along, read emails on the bill, and, and read the bill itself. You may notice committee members coming and going, that has nothing to do with the importance of the bill under consideration, but senators may have other bills to introduce in different committees. And with that, we'll have the members introduce themselves beginning with Senator DeBoer.

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

**BRANDT:** Good afternoon, I'm Senator Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**PANSING BROOKS:** Welcome everybody. I'm Patty Pansing Brooks. I represent District 28, right here in the heart of Lincoln.

**McKINNEY:** Good afternoon, Terrell McKinney, District 11, north Omaha.

**GEIST:** Hello, my name is Suzanne Geist. I, I represent District 25, which is the southeast corner of Lincoln and Lancaster County.

**LATHROP:** Assisting the committee today are Isela Gutierrez, our trusty administrative assistant, today, committee clerk; and Neal Erickson, one of our two legal counsel. And our pages today are Bobby Busk and Logan Brtek. And with that, we will begin our first hearing with LB1135 and Senator Murman. Just as a matter because we do have a number of people who are going to testify. We have sort of an on-deck row of chairs up here. So after Senator Murman introduces this bill, we'll take proponent testimony, those people that are in favor of it. And if you can try to populate the front row so that we can, we're not waiting for somebody to crawl over a row and make their way up here

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and we can kind of keep the hearings moving along today. Senator Murman, welcome to the Judiciary Committee.

**MURMAN:** Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Dave Murman. That is spelled D-a-v-e M-u-r-m-a-n. I represent District 38, which includes the counties of Clay, Nuckolls, Webster, Franklin, Harlan, Furnas, Red Willow, and part of Phelps County. I come before you today to introduce LB1135, which addresses conservation or preservation easements. A little over a year ago, the President signed Executive Order 14008 entitled "Tackling the Climate Crisis at Home and Abroad." Part of that Executive Order included a provision that has come to be known as the 30x30 plan to put 30 percent of the land and water in the United States under permanent protection by the year 2030. This aggressive plan has been purportedly offered to address climate change to pull carbon dioxide from the atmosphere and storing it in the trees, shrubs, grasses, soil, coral reefs and seagrasses, thus stabilizing the climate. Last May, the President released a short report rebranding 30x30 as "America the Beautiful." An evident issue with this plan is that approximately 12 percent of the country's land area is currently under environmental protection. To achieve the President's 30x30 goal, he'll need to acquire environmental protection for a combined land area that would be twice the size of Texas in eight years. The federal government has stated that they will rely on voluntary programs to accomplish this goal, but that appears to be unrealistic. With regard to Nebraska, 97 percent of the state consists of privately owned property. The obvious question is how will that 30 percent goal affect Nebraska land that is privately owned? This issue has caused a lot of concern with existing landowners, including many in my district. The acquisition of Nebraska land by the federal government could also shift more of the property tax burden to fix bridges, repair roads, and fund schools to current landowners and cause additional budgetary problems for our local governments. Moreover, setting aside so much land for conservation would devastate food production and Nebraska's economy. Since launch of the 30x30 proposal, many Nebraskans have expressed their desire to oppose this proposed federal land grab, grab. In fact, 67 of Nebraska's 93 counties, or 72 percent, have passed resolutions opposing the federal government's 30x30 proposal. You can find these resolutions on the Nebraska Department of Agriculture's website. Conservation easements are contracts used to surrender a portion of property rights to a land trust or to the federal government for conservation purposes. Once established, conservation easements may also be transferred from a nonprofit to federal agencies. Under Nebraska law, conservation

easements are permanent unless the contract specifies otherwise. In other words, the default term of such easements is perpetual. Once a private landowner has entered into such a contract, the property rights will not be reunited unless there is an expiration date set for the contract. Once you've entered into a conservation-- or permanent easement, you have forever surrendered control of your land to the land trust or federal government. Future generations will not have the flexibility to develop or manage the land differently, even after 100 or more years have passed. Certain land use, such as livestock production, may be banned. Given the significant consequences of conservation easements, Nebraska Law authorizes county governments to review them and to either approve or deny them. County boards can block an easement if it conflicts with the county's comprehensive land-use plan. When it comes to conservation easements, local control is very important. With these concerns in, in mind, LB1135 makes the following specific changes to protect private property rights and thwart federal efforts that would hurt Nebraska agriculture. On page 2, Section 1: The register of deeds would need approval from the appropriate governing body before recording a conservation or preservation easement. Then on page 2, 2 through 4, Section 2: The appropriate governing body shall first receive comments from the local planning commission. This bill gives the planning commission 90 rather than 60 days to provide comments. If comments from the local planning commissions are not received within 90 days, the proposed acquisition shall be deemed, deemed denied by the local planning commission. Currently, if comments are not received within 60 days, the proposed acquisition is deemed approved. New sections are added to address notice of approval or denial by the appropriate governing body and a process to protest a denial of a conservation or preservation easement by the governing board. And on Section 3, pages 4 and 5, language is modified to make it easier for a conservation easement to be released. And Section 4 on page 5: The duration of an easement, conservation or preservation, may not exceed 99 years. Currently, these easements may be perpetual. Within six months of the end of the easement, the landowner may extend the duration of the easement and the instrument extending the easement must first be approved by the appropriate governing body. Now in Section 5, page 6: If the property subject to the easement is condemned for public use, the easement shall terminate. It's a-- it's an opportunity to revisit the easement. If it still makes sense, they can create another easement. On Section 6, pages 6 through 11: Conservation or preservation easement property is not exempt from property taxes. And finally on Section 7, pages 11 through 13: The Tax Equalization and Review Commission may hear and determine appeals of final decisions of the County Board of

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Equalization denying a conservation or preservation easement. Contrary to some reports, conservation easements are not going away. They're here to stay. Farmers and ranchers are the original conservationists and the land value and its wildlife as much-- or they value wildlife and land as much as anyone. While some will say that easements must be perpetual, they don't. Anyone can grant a conservation easement for up to 99 years. If after 99 years it, it still makes sense to the next generation, they can be renewed for another 99 years. But after 99 years or whatever term is agreed upon, there is a higher and better use-- if there is a higher and better use for the land, the current honors-- owners should not be restricted. Forever is a long time and we shouldn't bind future generations to decisions which may have second-- may have seemed right at the time, but no longer makes sense. The changes proposed in LB1135 are necessary and reasonable to protect Nebraska agriculture and related food production from the proposed and published plans of the federal government. Chairman Lathrop and committee members, thank you for your consideration of LB1135, and I'd be happy to answer questions.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Murman, for bringing this bill. In your opening, you stated that 12 percent of Nebraska ground was ready in, in perpetual easements. Is, is that correct?

**MURMAN:** Yes, it is in easements.

**BRANDT:** But I mean, are you defining an easement as CRP ground or are you defining an easement as a perpetual easement?

**MURMAN:** I can't for sure answer that question. Maybe some behind me can.

**BRANDT:** OK. If, and I don't know if you can answer this or not, if land is in a perpetual easement, is it still subject to eminent domain? And let's use this example, if the city of Omaha were surrounded by perpetual easement and would restrict the growth of a city, would that still be subject to eminent domain for growth?

**MURMAN:** I can-- I can't for sure answer that question, but I would say it could still be-- have a, an easement on it. Another easement on it for perpetual-- for eminent domain.

**BRANDT:** All right. Thank you.

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**MURMAN:** Maybe somebody behind me can more--

**BRANDT:** All right.

**MURMAN:** --clearly clarify that.

**LATHROP:** OK. Thank you, Senator Murman. I don't see any other questions. We will take proponent testimony. One of the difficult jobs I have is enforcing the red light and that's the, that's the crummy job about being Chair of the Judiciary Committee or any committee here. The lights are on the table. If you are going to testify on this bill or against it, you will have one minute on the green light, one minute on the yellow light, you'll-- the red light comes on and we ask you to stop at that point. Good afternoon.

**ELAINE MENZEL:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. I just saw you last night, but here I am again. I-- and not that I'm-- well, OK, first of all, I'd better spell my name. Although Senator Geist tells me she knows how it's spelled, I'll-- it's E-l-a-i-n-e M-e-n-z-e-l, here on behalf of the Nebraska Association of County Officials in support of LB1135. My impression is that you'll likely hear some of the additional testifiers talk about some of the land valuations and issues about some of our concerns that would be included. And my understanding is you have also potentially received some correspondence from county boards suggesting those positions. The page is passing out what we would suggest would be hopefully a technical per se amendment, and that is essentially that it be county boards rather than county boards of equalization for purposes of reviewing these types of decisions because it's land-use planning rather than valuation issues, so. And I did-- this did not go through Bill Drafters, so please forgive the--

**LATHROP:** We [INAUDIBLE].

**ELAINE MENZEL:** --an artfulness of it. But with that said, I also happen to have failed to have struck the provisions related to TERC review on page-- well, at the end of the, the, the [INAUDIBLE]. With that, I appreciate-- I-- and if there's any questions, I'll attempt to answer them.

**LATHROP:** I don't see any questions.

**ELAINE MENZEL:** Thank you.

**LATHROP:** Thank you for being here. Good afternoon.

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**WAYNE JOHNSON:** Good afternoon, Senator, committee. My name is Wayne Johnson, W-a-y-n-e. I live in Clay Center, Nebraska. I currently serve as the chairman of the Clay County Board of Supervisors. I'm here this afternoon along with two of my fellow board members to support Senator Murman's legislative bill known as LB1135. I've given you all a packet that I have prepared, came out of our assessor's office. My hope is that you'll give some insight to it when you look through it. I don't have time to go through all of it right now. I do carry a notion, notice of motion showing unani-- unanimous support for our board-- from our Board of Supervisors in Clay County for Senator Murman's bill, LB1135. You may know out in Clay County we have a, a thing called the Meat Animal Research Center, it's about 36,000 acres, which was taken out of that-- out of our prime farm ground about 50, maybe 60 years ago. That is a real handicap for our, for our tax base right now and all the U.S. Fish and Wildlife areas and the Rainwater Basin account for about another 7,000, 7,000 acres. With this, we look at somewhere around another \$700,000 loss in revenue for our county. The last two documents in your file there show from the-- it has the MIPS, Inc. logo on it. It shows what the tax base happens to one that goes into a perpetual conservation easement. That property went from \$5,500 an acre to \$1,400 an acre. The loss revenue was from \$3,552 down to \$1,015. That's a dramatic loss for us. I believe, like Senator Murman said, we can't hold future generations to these long, perpetual conservation easements. I believe a 20- or 30-year time frame would be much better. That's about a generation. As we all know, many things change with the next generation. Also, we as-- our county supervisors have no chance to look at some of these.

**LATHROP:** OK.

**WAYNE JOHNSON:** Thank you.

**LATHROP:** Yeah, no, thank you. Let me make sure there's no questions before you get away--

**WAYNE JOHNSON:** Yes, sir.

**LATHROP:** --Mr. Johnson. Senator Brandt.

**WAYNE JOHNSON:** Yes, sir.

**BRANDT:** Thank you, Chairman Lathrop. So if I understand you, MARC is paying land taxes to the county now?

**WAYNE JOHNSON:** No, sir, they do not.

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**BRANDT:** They're a federal--that's all federal land.

**WAYNE JOHNSON:** Yes, sir.

**BRANDT:** They don't pay any land taxes, do they?

**WAYNE JOHNSON:** You're correct, sir.

**BRANDT:** So you-- and that's what you've identified in this document, is that correct, the Meat Animal Research Center?

**WAYNE JOHNSON:** Yes, sir.

**BRANDT:** So I guess I'm a little confused.

**WAYNE JOHNSON:** I was just making a point illustrating, Senator, that we, we have dealt with this handicap over the loss of about \$3 million a year if those are all farm acres. We deal with that with the more perpetual conservation easements that come into play with all the Rainwater Basin that has, that has held through U.S. Fish and Wildlife for their waterfowl production areas. We just keep having eroded, eroded tax base and we'd like to have more say in what goes on in the future.

**BRANDT:** So does this also include part of the-- I realize that was part of the old naval ammunition plant.

**WAYNE JOHNSON:** Yes, sir.

**BRANDT:** Outside of MARC, is the naval ammunition plant still federal or state property or is that private property?

**WAYNE JOHNSON:** There's a little strip up on Highway 6 that goes in about a quarter mile that has been sold off to private individuals.

**BRANDT:** OK.

**WAYNE JOHNSON:** That is not included in that 36,000.

**BRANDT:** So then that, that is taxed at--

**WAYNE JOHNSON:** Yes, sir.

**BRANDT:** --or assessed at full value. OK. All right. Thank you for explaining that to me.

**WAYNE JOHNSON:** Yep. Thank you.



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

**WAYNE JOHNSON:** Thank you.

**LATHROP:** Have a good weekend. Next proponent. Good afternoon.

**RUTH SORENSEN:** Good afternoon. It's hot under there. Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Ruth Sorensen, R-u-t-h S-o-r-e-n-s-e-n. I am the Property Tax Administrator for the state of Nebraska, and I work with the Department of Revenue Property Assessment Division. I'm testifying as a proponent of LB1135. Senator Murman did a great opening and he's taken away some of my steam so I'm shortening my testimony here. In June 2021, Governor Ricketts issued Executive Order 21-08 to stop the 30x30 plan. And as the senator indicated to protect Nebraska's land and water. The Department of Revenue Property Assessment Division in that Order was required to do two things. Number one, we had to host a minimum of three workshops across the state to help county officials understand the tax consequences of these easements and to advise counties of their rights in reviewing conservation easements pursuant to the existing Nebraska statute 76-2,112 and that statute's been in existence since 1981. The second thing we were to do is we are to work to identify the existing conservation easements across the state and maintain an inventory of these easements to assist the county assessors in accurately determining land values for the purpose of assessment and taxation. Throughout the summer of 2021, the Governor hosted a series of town halls across the state to bring awareness of the threat of the 30x30 plan. Beginning in 2021, I and my teammates hosted a series of workshops that we attended, a total of five, to inform Nebraskans of the importance of the conservation easements and to fully understand the tax consequences. The federal government doesn't pay the taxes on real property it holds. In 2020, the Department of Interior made payments averaging approximately \$2.50 per acre in lieu of taxes. Our property taxes pay much more per acre. LB1135 addresses a number of the questions and concerns that were raised by county officials at these various workshops. And I see many time's up. Governor [SIC] Murman covered those concerns and thank you for the opportunity to testify.

**LATHROP:** OK.

**RUTH SORENSEN:** And I'll take questions.

**LATHROP:** Did you just get Dave Murman a, a, a promotion?

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**RUTH SORENSEN:** Oh, did I?

**LATHROP:** No, I think you called him Governor Murman.

**RUTH SORENSEN:** Oh, Governor-- Senator Murman. Yesterday, wasn't it like Senator [INAUDIBLE]?

**LATHROP:** He's still a senator, I think.

**RUTH SORENSEN:** He's still a senator. Sorry.

**LATHROP:** All right. I don't see any questions.

**RUTH SORENSEN:** That was my next comment on here was Governor. Sorry about that.

**LATHROP:** No, thanks for being here and we appreciate hearing from you. Thank you. I don't see any questions.

**RUTH SORENSEN:** No questions? I can-- if I may, just one. Eminent domain is addressed on page 6 of the bill.

**LATHROP:** OK.

**BRANDT:** I got, I got one quick question.

**RUTH SORENSEN:** Oh, OK.

**LATHROP:** All right, Senator Brandt.

**BRANDT:** Senator Murman, in his opening, said 12 percent of the ground in the state was under a-- I would assume a permanent easement. Is that correct?

**RUTH SORENSEN:** Well, that is federal data. I don't have it for the state of Nebraska.

**BRANDT:** But even the, the federal, you know, you're saying that the federal ground's only paying \$2.50 an acre. This doesn't affect federal ground, does it?

**RUTH SORENSEN:** They pay in lieu of tax.

**BRANDT:** Right, I know, but what--

**RUTH SORENSEN:** So.

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**BRANDT:** --my point is that if it's already-- Meat Animal Research Center, it's a federal grassland. This bill won't affect federal lands. Is that correct?

**RUTH SORENSEN:** It won't affect federal lands. It doesn't affect the city's political subdivision lands.

**BRANDT:** All right.

**RUTH SORENSEN:** Those are exempt as government subdivisions.

**BRANDT:** Great. Thank you for that clarification.

**RUTH SORENSEN:** Sure.

**LATHROP:** OK. Thanks for being here.

**RUTH SORENSEN:** Sure.

**LATHROP:** Next proponent.

**TANYA STORER:** Good afternoon.

**LATHROP:** Good afternoon. Welcome.

**TANYA STORER:** These hearings are tough to be after lunch for you more than--

**LATHROP:** Oh, no--

**TANYA STORER:** --anybody, I'm sure.

**LATHROP:** --it's exciting stuff, we stay awake.

**TANYA STORER:** Oh. I appreciate the opportunity to come before you, Chairman Lathrop and committee members. My name is Tanya Storer, T-a-n-y-a S-t-o-r-e-r. I'm a rancher and a commissioner from Cherry County, Nebraska. And just want to highlight a few points that may not be covered elsewhere today. You're going to hear a lot of testimony today that broadly refers to conservation easements. And just for clarification so there's no confusion, Senator Murman's bill is not asking to eliminate conservation easements, but rather to eliminate the perpetuity clause. Perpetual conservation easements create a negative servitude, which places the holder of the deeded property in a subservient position to the easement holder. Negative servitude has long been in conflict with common law, and the Uniform Conservation Easement Act, which was established back in 1981, was written

specifically to allow for perpetual conservation easements. Perpetual conservation easements create one other caveat, which is very oppositional to a private property rights system, and that would be the right of third-party enforcement. You're going to hear today that conservation easements in perpetuity will protect family farms and ranches. While that is true for the first generation, it is the second generation that will not be able to receive any financial contribution for their conservation practices and will be obligated to uphold the terms of that easement in perpetuity. Perpetuity says to our youth, we don't trust you. It takes the freedom and the decision-making away from the living and it buries the with the dead. Perpetuity strips all future generations of the freedom to make their own decisions on land-use management. You're going to hear selling conservation easements is, is a property right. And under current law, that is true. However, it is the only right that once exercised forever extinguishes those rights, they can only be sold by individuals never purchased. It's a one-way street. Easements in perpetuity are essentially a conservation plan written today to be enforced forever and true conservation must allow for adaptability. Finally, conservation easements in perpetuity not only strip our future generation of their property rights, but strips counties and states of their ability to weigh in on future land-use decisions as well, essentially creating a federal zoning regime. I ask you to please support future generations by eliminating the perpetuity clause and support LB1135.

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

**TANYA STORER:** Thank you so much.

**LATHROP:** And all the way from Cherry County. Good afternoon and welcome.

**TRENT LOOS:** Thank you. Thank you, Senator. My name is Trent Loos, T-r-e-n-t L-o-o-s, and I came all the way from Hazard, Nebraska, to be here with you, which is not as far as Cherry County. I read Executive Order 14008 the first week that it came out. It's 57 pages long, that entire Executive Order. I've been very fortunate in the past 12 months to speak to audiences in 41 states about 30x30. LB1135 is absolutely essential for one reason. After reading the 57-page Executive Order, after reading "America the Beautiful," there is nothing in either one of these ordinances that tell us, which answers your question, Senator Brandt, about how the federal government plans to execute this plan. The other part that you need to know is that currently 28.4 percent of the United States land mass is owned by the federal government.

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Another 3.5 percent is owned by state governments. Collectively, the federal and the state governments own 33 percent of the United States land mass. If in fact, the 30 percent number was a vital number, why are they talking about Executive Order 14008 to come and take my land to put it in a conservation easement? In addition to that, it's a national number of 12 percent currently in a conservation easement. If you do the math on 33 plus 12 plus 30, cowboy arithmetic says that 75 percent of the United States land mass would be in the control of the federal government, somebody other than the individuals who live closest and take care of the land. To Senator Murman's greatest point, this is a matter of national security. We have people that do not live on the land and take care of the land who are trying to determine how we care for this land. It will erode. And I have friends in Kansas this week who sent me notes that they are taking stimulus money in the state of Kansas from the USDA, CCC money and paying prices for grazing leases that are beyond what the local ranchers can actually pay. And the greatest, I just want to repeat and support, the reason this is vitally important is because the federal government is not telling us how they're going to do this. We need the state to implement their job and protect the citizens and landowners in the state of Nebraska.

**LATHROP:** OK. Thank you for your testimony. I don't see questions today.

**TRENT LOOS:** Thank you.

**LATHROP:** Thanks for being here.

**TRENT LOOS:** Thank you.

**LATHROP:** Good afternoon and welcome.

**DALE SCHROEDER:** Good afternoon and thank you. Appreciate the opportunity, Chairman and Judiciary Committee members. My name is Dale Schroeder, D-a-l-e S-c-h-r-o-e-d-e-r, and I'm here representing Keith County and am a commissioner in Keith County District 1, which is about the eastern third and since the redistricting, it might be most of the county by now. But Keith County commissioners stand in support of LB1135, which protects the land rights in Nebraska and Keith County. This bill allows provisions in the creation, approval, or denial recording or enforcing easements that dramatically impact valuations on properties within our counties. When the Board of Equalization works with the equality of valuations and has to remove or lower market values of lands because of the status of the conservation easement, the tax burden reverts to remaining property

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owners. Our Legislature, excuse me, struggles with property taxes already and this places an undue shift in these taxes into-- onto remaining property owners. These regulations are protected by the federal status and need to be under the authority of local control by approval, denial, or review. Our state relies on agriculture and if we continue to allow the removal of the lands by preservation or conservation easements in perpetuity out of production, we will also reduce the income as provided by this major industry in Nebraska. Keith County stands in support of LB1135 to have the abilities to review, deny, or approve perpetuity with conservation easements. Please vote yes in support of LB1135. Thank you.

**LATHROP:** OK. Senator Brandt.

**BRANDT:** Thank you.

**DALE SCHROEDER:** Yes.

**BRANDT:** Thank you, Chairman Lathrop. So, Commissioner Schroeder, thank you for your testimony.

**DALE SCHROEDER:** Sure.

**BRANDT:** I'm looking for clarification.

**DALE SCHROEDER:** OK.

**BRANDT:** Today in Keith County, can anybody enter into one of these agreements just on their own and that's it or does it have to get approval from the County Board of Commissioners?

**DALE SCHROEDER:** The county board-- it has to go through planning and zoning and then [INAUDIBLE]-- yes, I think we're good. Yeah, yeah, yeah, they can come to a new hearing.

**BRANDT:** So ultimately, the county board would approve or disapprove--

**DALE SCHROEDER:** Yes.

**BRANDT:** --disapprove the easement. So you guys have the power today to stop an easement from happening. Is that correct?

**DALE SCHROEDER:** Yeah.

**BRANDT:** OK. Thank you.

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**DALE SCHROEDER:** I believe that's correct. I'm not 100 percent certain of that, but I think so.

**BRANDT:** All right.

**DALE SCHROEDER:** I have not dealt with that yet.

**BRANDT:** OK.

**DALE SCHROEDER:** First year--

**BRANDT:** So it doesn't--

**DALE SCHROEDER:** --year one.

**BRANDT:** --it doesn't happen that often.

**DALE SCHROEDER:** Yeah, no.

**BRANDT:** OK.

**DALE SCHROEDER:** Thank you.

**LATHROP:** You're a new commissioner.

**DALE SCHROEDER:** Yes.

**LATHROP:** All right.

**DALE SCHROEDER:** Very.

**LATHROP:** Welcome to the Judiciary Committee.

**DALE SCHROEDER:** Those people were a hard act to follow. Thank you.

**LATHROP:** All right. Next proponent.

**KATHY WILMOT:** Kathy Wilmot, K-a-t-h-y W-i-l-m-o-t, here as a proponent, we've kind of covered some of the things I was going to talk about. It's the green mafia in my mind that really wants these conservation easements, and my concern is that they're permanent in many cases, and nothing else in our life is permanent. They are promised that you can still own the land. You can live on it. You can be there, but you're going to have to probably come get permission to put new buildings on or "refurb" some buildings that are already there. You may have to have permission to put on fences, just all kinds of things. So you have your property, you don't have the ability

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to make any of your own decisions. You can't decide in many cases if I want to plant a different crop. And that's where the rub comes in. My three great-grandparents came here and they homesteaded in the Furnas County area and, you know, if they would have been bound by one of these easements, my life would be quite different than it is now. But instead, I had a great-grandfather who decided he wanted to irrigate back in 1929, he built his own irrigation system because none existed. And he was able to save a lot of farmers and give them seed corn and things during the great drought that we had in here. And, again, had that land been locked up, he could not have made those adjustments. I now own some of that land. I'm very proud to, and I'm going to ask you who you think would take the best care of that land. Some bureaucrat living clear off hundreds of miles away that has no idea what we face out here or what the conditions may be 20, 30 years from now. So my plea is save our land here, save our ability to be the breadbasket for Nebraska, for the rest of the country. We provide so much, and all it takes, quite frankly, is a few kooks that don't understand what's going on to totally flip that. So we need to limit what-- how long an easement can be, not saying they're bad all the way around, limit them, and give us the ability to let our county supervisors make the best decisions locally.

**LATHROP:** OK.

**KATHY WILMOT:** Thank you.

**LATHROP:** I don't see questions. Thanks for being--

**KATHY WILMOT:** And that's not my testimony at all.

**LATHROP:** Well, that happens. Happens to me too. Next testifier. Again, if you're going to testify, if you want to come up into the front row, we have a little on-deck circle there. Good afternoon.

**DEBBIE BORG:** Good afternoon. My name is Debbie Borg, D-e-b-b-i-e B-o-r-g. My husband and I are the fifth-generation multifamily farmers. We grow corn, soybeans, alfalfa, and wheat. We feed cattle, grow chickens. But most importantly, we have raised the next generation of farmers for our operation. Our three adult kids are all engaged and working on the family farm. The Biden administration has openly said that the conservation easements are one of the tools that they plan to use to advance the permanent conservation of 30 percent of our land and water, mostly in the name of fighting what they call the climate crisis. Steve Koonin, a top science advisor to the Obama administration, dispels many popular myths about climate change in his



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book "Unsettled." I quote him today to emphasize how the current administration's reference to this crisis is not helpful. Koonin says, despite a dramatic rise in greenhouse gas emissions, global temperatures actually decreased from 1940 to 1970. And more, the models currently used to predict the future aren't able to accurately describe the climate of the past, suggesting they are deeply flawed, end quote. The climate is changing, but it has been forever. The blizzard of 1949 in today's terms would be called an episodic extreme climate event, rather than something that human beings have always faced, a challenging but survivable weather event. Why? Because farmers and landowners are ingenious and resilient. We must keep property in private hands: families, farmers, ranchers, stewards of the land, landowners who care deeply about their soil and water. Property rights are fundamental to freedom. Let us not lose our property in the name of a climate crisis that Dr. Koonin, and others, such as renowned environmentalist Michael Shellenberger, emphasizes does not exist. LB135-- LB1135 will provide an avenue to make sure there is strength for local control, private landowners, and oversight. Thank you very much.

**LATHROP:** Thank you. Your timing was perfect, Ms. Borg, and I don't see any questions.

**DEBBIE BORG:** Thank you.

**LATHROP:** Thanks for your testimony. Next proponent. Anyone else here to speak in support of LB1135? Seeing none, we will take opponent testimony at this time. And again if you are an opponent and intend to testify if you can come up to the front row. That'll help keep the hearing moving.

**DAVID SANDS:** Good afternoon, Mr. Chairman, members of the committee. My name is David Sands, D-a-v-i-d S-a-n-d-s. I'm executive director of the Nebraska Land Trust. We're an organization that works with farmers and ranchers who want to voluntarily conserve their land as working agriculture. So last summer, I paid a visit to the daughter of a couple who placed a conservation easement on their Pine Ridge ranch in 2020, before the couple sadly passed away in 2021. As we quietly sat on her deck watching the sunset over towering buttes above the White River, she suddenly turned to me and said thank you. When I asked for what, she explained that thanks to perpetual protection, no one would ever have to look at homes along one of Nebraska's premier trout streams, where the family allows public fishing. Over 50 years, her parents had grown their 3,000-acre ranch piece by piece, and they never, ever wanted to see this legacy undone by fragmentation into

small parcels that would destroy the ranch forever and along with key habitat for bighorn sheep and elk. It was also her parents' lifelong dream to own the ranch debt free. The purchase of their easement made this a reality. In addition, easement proceeds allowed them to buy hay during a severe drought rather than reducing their herd, avoiding a long-term economic blow to their operation. If LB1135 had been in place, this family would have been denied the right to make a deeply personal and financial decision that benefited their family, the ranch, the public, and wildlife. The end of perpetual easements will also have financial implications as donated easements are eligible for a federal income tax deduction, but only if they're perpetual. All of this adds up to government intrusion into property rights and the right of a landowner to determine the future of their land is a cornerstone. When people develop land, that too is forever. Keeping land in agriculture is the flip side of that same property right. Given the benefits that perpetual conservation easements can provide to the public and families, we, we ask that this bill be indefinitely postponed. Thank you.

**LATHROP:** OK. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Sands, for your testimony. Some of the previous testi-- testifiers have said that a lot of these easements, it's a one-time payment to the family and future generations receive nothing. Is that true? I guess maybe with your organization, do you give annual payments on this or is it a one-time payment and then it's, it's one and done?

**DAVID SANDS:** It is a one-time payment. But for this family in the Pine Ridge that I just mentioned, the fact that they could have that ranch debt free, that's going to affect all the future generations of that family. So there are benefits to succeeding generations. And in fact, that couple's granddaughter ranches-- is the one who runs the ranch today. And she was very much in favor of the conservation easement because she knew what a burden debt is on the property. And that debt was probably more, much more likely to end ranching on that property than anything else.

**BRANDT:** And then, typically, your conservation easement, rural Nebraska has to go through local planning and zoning and be approved by the local county commissioners. Is that correct?

**DAVID SANDS:** Correct. When the Nebraska easement statute was passed, the Legislature wisely allowed counties to weigh in if the easement somehow was contrary to land-use planning, like a comprehensive plan.

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But they limited it to three very specific reasons. This bill inserts also before those three specific reasons, which would virtually allow counties to deny conservation easements for any reason whatsoever. And in our view, that would lead to unequal application of the law from county to county, which isn't good public policy. And we also think it would intrude on the property rights of those counties that don't want the, the easements. And I should mention that there are some counties that are fine with easements. We do a lot of work in the Pine Ridge, very northwest corner of Nebraska. We've never gotten anything but a unanimous vote from the Planning Commission and the county board in Sioux County, arguably one of the most conservative counties in the state. And that's because they understand that people are coming off the front range looking for small parcels, and the front range is only four hours away. That's four and a half million people four hours away, and they want to divide ranches into small parcels and make them into ranchettes. People in the Pine Ridge do not want to see that happen.

**BRANDT:** All right. Thank you.

**DAVID SANDS:** You're welcome.

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

**DAVID SANDS:** Thank you.

**LATHROP:** Next opponent.

**DON BLANKENAU:** Good afternoon, Mr. Chairman, members of the committee. My name is Don Blankenau, D-o-n B-l-a-n-k-e-n-a-u. I'm a lawyer in private practice and I also teach water law at Creighton University School of Law. I'm appearing here today on behalf of the Nebraska Association of Resources Districts in opposition to LB1135. The Department of Revenue's interpretation and what is being attempted by this bill with respect to water is wrong as a matter of law. No Nebraska court nor any court in any jurisdiction has ever held that moving a water right from one location to another creates a conservation easement. Under Nebraska law, all landowners have a qualified right to access and use groundwater under their land. That qualified right is subject to landowner receiving a permit to construct a well and certified acres to use groundwater from their natural resources district or NRD. The certification of acres is essentially a license to access and use the groundwater, and they are thereafter subject to additional limitations. Landowners will

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routinely relinquish their certified irrigated acres from one tract to another in exchange for an authorization to irrigate elsewhere. This bill would require them to seek county approval whenever they moved water around their own properties. This would also be true of the Department of Water Resources, another state agency that routinely moves that water around. Under the terms of this bill, NRDs would be forced to track these water rights for that snapback provision, where they would revert to their original location. That, I think, would place into question all land sales and throw into question the value that you wouldn't pay for land. Does it have a water right or not? You may never know. All of this, no matter how well-intentioned, it's just bad policy premised on a misunderstanding of Nebraska water law. And it needlessly interferes with the voluntary transactions and on farm management practices and, frankly, does nothing to fend off federal interference. Accordingly, we would ask that you not advance this bill.

**LATHROP:** OK. You said you're speaking on behalf of the NRDs?

**DON BLANKENAU:** Correct.

**LATHROP:** OK. Thank you.

**PANSING BROOKS:** I have a question.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. I just wanted to understand what you're talking about in your-- I'm not sure you got through all of it.

**DON BLANKENAU:** I did not go through and I kind of give you the condensed version.

**PANSING BROOKS:** Yeah, so I'm trying to understand the, the water right discussion and, and what you were saying about moving the water and the qualified right if you could--

**DON BLANKENAU:** Yes, thank you, Senator. The Department of Revenue in November issued a-- an FAQ, where they indicated that moving water from one location to another would create a conservation easement. Simply moving that from one location to another, the original location would be considered subject to a conservation easement. That's never been done or characterized that way by any court in Nebraska or elsewhere, and it's, it's in that context primarily that I appear here today.

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**PANSING BROOKS:** OK. And so you're feeling like this new bill would quite-- affect that quite a bit as well?

**DON BLANKENAU:** Yeah, this new bill essentially animates that interpretation that was made by the Department of Revenue.

**PANSING BROOKS:** OK, in a detrimental way.

**DON BLANKENAU:** It is detrimental, yes. So if you can imagine if you're a farmer and you decide to irrigate, move, move your irrigation from one field to another, that original field would be determined to have a conservation easement. Now if you sold that land, it would eventually revert back and have that water right snap back. But if you sold the other tract where you moved your water right to, presumably it's irrigated, well, suddenly it's not any longer. It would lose that ability to irrigate in the future. I think that places into question all land transactions going forward.

**PANSING BROOKS:** OK, thank you very much.

**LATHROP:** I get it.

**DON BLANKENAU:** All right.

**LATHROP:** Thanks for being here.

**DON BLANKENAU:** Thank you.

**LATHROP:** Appreciate it. Next opponent.

**DAYLE WILLIAMSON:** I'm Dayle Williamson, D-a-y-l-e W-i-l-l-i-a-m-s-o-n. I have farmland in Fillmore County and I have a conservation easement, and that conservation easement is filed with the Register of Deeds in Fillmore County and it's worked out really well. I decided that I had some wetlands that we were trying to farm for years and kept losing the, the crops on that. So I thought, hey, I'm going to put this in grass. I found out that the Rainwater Basin would help me out. I now have excellent native grass. I have an excellent fence around it. I'm using it in an environmental way. It's much better for me and it works well. I made that decision. I don't-- I, I like the Fillmore County commissioners board of governors, but I don't see-- I didn't have to deal with them to do that, and I don't see why I should in the future if I want to do this again. And I, I hadn't followed the water issue. I worked on water issues for years, but just what I've heard from Mr. Blankenau, wow, this bill needs to be killed immediately because that

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would really cause problems, it's very poor thought that put into this legislation and I encourage you to knock it out. Thank you.

**LATHROP:** All right. We're-- appreciate your testimony.

**DAYLE WILLIAMSON:** Thanks.

**LATHROP:** I don't see any questions. Thanks for being here, Mr. Williamson. Next opponent.

**LOGAN BRTEK:** Can I get your yellow sheet?

**LARRY RUTH:** Yes, you may.

**LATHROP:** Good afternoon and welcome.

**LARRY RUTH:** Senator Lathrop and members of the Judiciary Committee, nice to be back. I want to put a little bit different--

**LATHROP:** Start with your name and spell it for us.

**LARRY RUTH:** My name is Larry Ruth, spelled L-a-r-r-y R-u-t-h. We're going to put a little bit of a face to what these conservation easements are. I'm testifying on behalf of Lower Platte South Natural Resources District. I'm a former chair and a board-- current board member. What I'm handing out to you now is my testimony, which I'm going to not read, mercifully. But on the back page of that testimony is a map and I would like to let you look at that map to see what we have by way of conservation easements. For you folks who drive down from Omaha in the morning and you swing by Waverly Exit, it's on Highway 6, intersects with Interstate 80. There's a NEBCO is the name right there. There's a-- if you go south a couple of miles, there's the first conservation easement that was filed under the Conservation Easement and Preservation Act [SIC], introduced by Senator Warner, who lived incidentally right down Highway 6, actually who lived right about there. That's one of the reasons we have such an interest in this. This is a multiuse conservation easement. Going right around the corner there, where it says Dial-Salt Creek. That's another kind of easement we have that's on the Saline Wetlands. That's for protection of the wetland areas for migratory birds and for some endangered species. That's where the history of Lincoln is. That's why we're here is because the Salt-- the Saline Wetlands is there. And going on and down around, you'll see clear on the left-hand side, a series of, of conservation easements which are on a branch of the, of the tributary of the Salt Creek, which is for a, a corridor, a corridor, a riparian corridor so we can build that into a area for hiking, biking trails.

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And those are a couple of the reasons that we support conservation easements for all the reasons that are actually good from an agricultural standpoint. I just want to give you that additional perspective. Thank you very much. If you have any questions, be happy to answer them.

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

**LARRY RUTH:** OK.

**LATHROP:** Have a great weekend.

**LARRY RUTH:** Yeah.

**LATHROP:** Thanks for being here.

**JOHN DENTON:** Good afternoon.

**LATHROP:** Good afternoon.

**JOHN DENTON:** My name is John Denton, J-o-h-n D-e-n-t-o-n. I am testifying in opposition to LB1135 on behalf of Ducks Unlimited, Incorporated. DU has over 15,000 members in Nebraska and 685,000 members nationwide. I am the Nebraska manager of conservation programs based out of Grand Island. Conservation easements have been the backbone of DU's conservation work in Nebraska. In a, in a landscape where over 95 percent of the land is privately owned, these agreements have been critical to providing wildlife habitat. These voluntary, incentive-based agreements allow landowners to monetize the agricultural, environmental, and habitat values of their land and benefit rural economies by keeping private lands and agricultural production even. Conservation easements are popular as landowners most often approach us unsolicited requesting to participate. Restricting conservation easements infringes on the private property rights of landowners to make decisions about their land. Regarding perpetuity, permanent decisions are made all the time, such as development, drainage, placing power lines, gas lines, access, and transportation easements. LB1135 would be taking a property right from those who want to make a decision to conserve their land, while those with other interests are still allowed to make different permanent decisions. DU's land trust is Wetlands America Trust, which holds our conservation easements. On these easements, we keep the land at its current state. Cropland is kept as cropland and rangelands as rangeland, and these properties are taxed as such. Landowners' property taxes have even gone up in some counties after the easement is granted. Additionally, many such property valuations have increased

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considerably upon resale because of the enhanced recreational value we provide when we protect and restore wetlands on those properties and when they resell, they sell for higher many times. LB1135 would severely limit the ability of farmers and ranchers to make decisions about the future of their property. And I want to thank you for your consideration of this.

**LATHROP:** OK. Thank you, Mr. Denton. Senator Brandt.

**BRANDT:** Thank you. Thank you, Chairman Lathrop. Thank you, Mr. Denton, for your testimony. A lot of this bill hinges on limiting the easement to 99 years. Are the easements that you guys give perpetual or is there a time limit?

**JOHN DENTON:** They are perpetual, and a lot of times they are donated to us, and there is a federal, federal tax deduction that only comes whenever an easement is perpetual.

**BRANDT:** Would a 99-year easement be a burden?

**JOHN DENTON:** It wouldn't allow that to happen. So that means that the easement-- those that wanted to donate an easement would not, it wouldn't happen.

**BRANDT:** OK.

**JOHN DENTON:** Because it wouldn't give a deduction.

**BRANDT:** And then I guess in your testimony, you said it was a lot of farmers and ranchers. I guess being a farmer, a lot of what I see are people that aren't farmers and ranchers putting this land into easements. I mean, is that what you're seeing?

**JOHN DENTON:** Well, the landowners themselves may not, but they lease their properties for ranching and farming still. So it's still farmed and ranched--

**BRANDT:** OK.

**JOHN DENTON:** --along the Platte River. And then some we actually have that are sold to farmers in the Rainwater Basin.

**BRANDT:** All right. Thank you.

**JOHN DENTON:** Yep.

**LATHROP:** Senator Pansing Brooks.



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**PANSING BROOKS:** Thank you. Excuse me. Thank you for being here, Mr. Denton. I'm interested-- being a lawyer, we go to law school and learn that, that property is purchased and fee simple, and that means that you own it for perpetuity, basically. And so I'm trying to understand, number one, have you-- has Ducks Unlimited done a study across the nation about how this is being handled elsewhere?

**JOHN DENTON:** I'm certain that we have nationwide. I mean, because we have-- there are other areas in the country where as easement program is even more than in Nebraska. I mean, here we have about 36 total easements that are held by our organization for about 11,000 acres. And there are some places like the low country of South Carolina, where there's over 100,000, I believe. So it's a-- depending on where you are in the country, it's different and I'm certain it's a-- it's kind of-- it depends on their state laws, right? I mean--

**PANSING BROOKS:** Yeah.

**JOHN DENTON:** --too.

**PANSING BROOKS:** It's, it's interesting hearing this-- these arguments because we've heard a lot about the Sandhills and how people want to protect that land and make it pristine and keep those-- keep it available for people in future generations to see. And now all of a sudden, we're hearing, oh, no, we shouldn't be able to protect those lands. So I'm, I'm-- and some of the same people that are saying to protect the Sandhills are now saying, oh, no, these easements are bad. And it seems to me-- I still am trying to wrap my head around it. If the-- if, if somebody owns property and they want to, to protect the pristine nature of that property, that they should be able to do it. And I guess, I don't know, I'm still trying to understand all that's going on, but this seems like opposite sides all of a sudden switching.

**JOHN DENTON:** Right, and it's-- I mean, every landowner to their own, some want to do this and then others want to preserve it in their own way. That's their decision.

**PANSING BROOKS:** Yeah, and if they decide they want to put a high-rise on there, that's their option. I mean--

**JOHN DENTON:** Right.

**PANSING BROOKS:** Thank you.

**LATHROP:** I see no other questions. Thanks for being here--

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**JOHN DENTON:** Thank you.

**LATHROP:** --Mr. Denton.

**SCOTT SMATHERS:** Chairman Lathrop, members of the committee, my name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s, and I am the executive director of the Nebraska Sportsmen's Foundation, a 501(c)(3) statewide membership organization that works on supporting the traditional components of conservation issues for the state of Nebraska. We're here today to oppose LB1135. Obviously, we're all having truncated testimonies today. Couple things. By no means is our membership base in any way looking to harm our number one economic driver in our state of Nebraska with ag production or to force landowners to do anything. Less than 1 percent of our total state in the state of Nebraska is underneath an agricultural conservation land easement. That's 176,066 acres out of the entire state of Nebraska. Roughly, 5,000 acres are added each year. In full transparency, my organization also holds a seat on the Nebraska Land Trust as a board member. When we were approached by Mr. Sands to join that board, we did extensive research to make sure we were not going to put our current membership base in a conflict situation. Fifty-four percent of our membership base are ag producers or cash-rent leasers for agriculture. We firmly believe in the right for a tool of conservation easements. I find it ironic that this bill derives from a fear factor of the federal government overreach with 30x30, which you're right we have zero background or knowledge or existence of how it's going to work to create a bill on the state level for overreach to give a-- tell a property owner that they no longer have their own personal right to do what they want. Currently, there is a system in place that allows for the counties to decide and approve or deny easements when a landowner decides to enter into voluntarily. And I also heard the comment about next generation not having the right. Well, I'm sorry, maybe I'm old school and the gray hair says that, but where I come from, first in time, first in line. If I bought the ground, I decide what happens to it, not my children. With that said, I'll close my testimony and answer any questions.

**LATHROP:** I don't see any questions, but--

**SCOTT SMATHERS:** Thank you.

**LATHROP:** --thanks for being here. Next opponent. Good afternoon and welcome.

**JOCELYN GOLDEN:** Good afternoon. My name is Jocelyn Golden, J-o--

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**LATHROP:** I'm sorry, there was some noise.

**JOCELYN GOLDEN:** Sorry, yeah, that was my fault. My name is Jocelyn, Jocelyn Golden, J-o-c-e-l-y-n G-o-l-d-e-n. I'm an assistant city attorney with the City of Lincoln Law Department, and I'm here to testify in opposition to LB1135. I'm grateful for the opportunity to address the committee on this bill proposed by Senator Murman. I would like to take my time in front of the committee here today to address the benefits conservation easements provide-- provide to the city of Lincoln and its residents, which are likely the same benefits enjoyed by other municipalities, NRDs, and counties throughout the state who utilize conservation easements. The city of Lincoln enjoys positive working relationships with the Lower Platte South NRD and other public, private partners and private landowners on a number of conservation easement projects. These easements are voluntary agreements with landowners that seek to limit the type and amount of development or activity on their property in the future. The city uses conservation easements for a variety of purposes, including mitigation of flooding and drought, as well as protection of wildlife, natural resources, and open green space in neighborhoods. I work closely with the city of Lincoln's Transportation and Utilities Department, specifically the Watershed Management Division, which has successfully used conservation easements for more than 20 years, including flood control and storm mitigation for the benefit of the city of Lincoln and its residents. The city's utilization of conservation easements results in credits for preservation of open space through FEMA's Community Rating System program. This program, as utilized by the city, gives all flood insurance policy owners within the city of Lincoln a 25 percent reduction in their flood insurance premiums. Conservation easements also preserve floodplain areas for open space, which is one of the most cost-effective areas for the city to reduce its flood risk, which economically benefits property owners and reduces flood risk damages and risks costs to the property owners. LB1135 limits the right of private property owners to voluntarily determine the future of their property. The language in the bill prohibits conservation easements from being perpetual and limits the duration to only 99 years, which is particularly problematic and concerning. The prohibition on perpetual conservation easements may disqualify the city from receiving the aforementioned credits for preserving open space, which--

**LATHROP:** Miss Golden.

**JOCELYN GOLDEN:** Yes.

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**LATHROP:** We have to have you--

**JOCELYN GOLDEN:** Oh--

**LATHROP:** --wrap up the last thought.

**JOCELYN GOLDEN:** --sorry-- which could cause an increase in premiums. And I'd accept any questions.

**LATHROP:** OK. Any questions? Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for coming, Miss Golden. So had-- has-- Lincoln has had these easements prior to this new political idea about 30x30. Isn't that correct?

**JOCELYN GOLDEN:** That's correct. We've had-- we've been utilizing them for more than 20 years through both the Parks Department and the Lincoln Transportation and Utilities Department.

**PANSING BROOKS:** Right, and, and Union Plaza. Part of that is, is, is a flood protection initiative as well. So I, I, I just wanted to clarify that it's not all about 30x30 and becoming political. This is about protecting our communities as far as I understand.

**JOCELYN GOLDEN:** That's correct. Most of the conservation easements that are utilized by the city of Lincoln are for flood purposes, and that's protecting homeowners, property owners throughout the city of Lincoln. And to restrict that from not being perpetual easements could potentially cost property owners within the city of Lincoln.

**LATHROP:** OK.

**PANSING BROOKS:** Thank you.

**LATHROP:** I don't see any other questions. Thanks for being here. Next opponent. Good afternoon and welcome.

**DEAN FEDDE:** Good afternoon. My name's Dean Fedde, D-e-a-n F-e-d-d-e. My brother, Wayne, and I own a family farm located south of Gretna in Sarpy County. As you probably know, Sarpy County continues to be the fastest growing county in Nebraska. Farmland and agriculture are rapidly disappearing as urban sprawl is spreading throughout the county. For a county comprised of 158,000 total acres, less than one half of those total acres remain in agriculture as over 10,000 acres have been lost to development in the past decade. In the southwest corner of Sarpy, a unique area of our state still exists with ancient

history, rolling fields of grain, and a diverse habitat which supports the abundance of wildlife in the region. If in the past year you traveled Highway 31 from Platteview Road to Louisville, you have shared a passage with over 300,000 fellow motorists. You have traveled on a winding road across the scenic countryside, skirted the banks of the Platte River, and passed by Schramm Park, a park dedicated to nature in an area chosen by the Audubon Society as 1 of only 25 important bird areas in our state. You have also traveled past our family farm. It is a farm with a balance of 84 tillable acres, 74 woodland acres, and a one-acre farmstead featuring a home built in 1876. Ancient history has been discovered here with excavations by the Nebraska Historical Society. Through generations of dedication, a foundation of conservation has been built with windbreaks, terraced hillsides, cover cropping, and the establishment of field borders comprised of clover, native prairie grass, and wildflowers. The woodlands are a mix of walnut, hickory, osage orange, century old burr oaks, and a complement of other trees. Wildlife flourishes with a multitude of insects, reptiles, birds, and animals. There is a stream that flows under the foot bridges of Schramm Park that is constantly fed from the natural springs of our farm. In 2010, my brother and I accepted a permanent conservation easement from the Nebraska Land Trust to conserve this land as a working farm and to protect this environment for the benefit of future generations. If you have read the email, which I sent to each of you earlier this week, you know the consequences a permanent conservation easement has had for my family and the impact that easement will continue to have on the region of Schramm Park. However, our farm is only one of the many which sustain the region. We hope you will support the choice and the opportunity that permanent conservation easements can hold for the farms and ranches of Nebraska.

**LATHROP:** OK. I don't see any questions, Mr. Fedde. Thanks for being here.

**DEAN FEDDE:** You bet. Thank you.

**LATHROP:** Just going to remind everybody, when that light turns on, we ask that you wrap up your final thought and stop so we can hear everybody that came from all over the state to speak today.

**JAREL VINDUSKA:** Senator, Senator Lathrop and members of Judiciary, my name is Jarel Vinduska, it's J-a-r-e-l V-i-n-d-u-s-k-a. I'm here opposing LB1135, mainly on a property rights issue, but I'd like to clarify a few things. This bill has way too much wrong with it to cover in two minutes, but I'll try to hit a few points then maybe you

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can clarify a few things. My family has a farm in Sarpy County, south of Gretna, down by Schramm State Park, and 123 acres of it already has a conservation easement with the Nebraska Land Trust. We bought that 123-- we added that 123 to the farm and it already had the easement on it by the previous owners, their names was Bill and John Walls [PHONETIC]. And they were-- they lived out of state and they wanted to sell the land, but they had grown up there as kids and helped their uncle farm. And so they had a lot of sentimental value of it. And they were nature lovers and they, they wanted to preserve the riparian woodland along the river, and they wanted the, the farmland to stay as farmland. So they put this easement on it and we bought it. We weren't under any obligation to buy it. I mean, the free enterprise system, if the easement was a problem for us, we didn't have to buy it. But, but basically the easement, all we have to do is sustainably manage the timber and keep it as cropland. And so that's what we wanted anyway. So the way I look at it, why should those Walls brothers' property rights, what they wished for the land, and then us as the new buyers, what we wished for the land, what's wrong with it being in perpetuity? And actually, we talk about 99 years and it never ends up 99 years anyway, because like if we were to sell it to somebody else, if this law was in effect when they sold it to us, we would have to go through the red tape and involve government to hopefully get it approved again. And maybe we'd have a county board that wasn't so conservation-minded and, and we would lost what we had bought it for to gain. Looks like I'm done. Two minutes goes fast.

**LATHROP:** OK. It is-- it does go fast when you get on a roll, too, doesn't it? That happens to me on the floor when I speak.

**JAREL VINDUSKA:** I could, I could keep going for another-- I could go another 15, 20 minutes easily. But anyway, if you got any questions.

**LATHROP:** Sure. If it makes you feel any better, we get cut off when we're given speeches on the floor in the same way. I don't see any questions today, but thanks for coming down.

**JAREL VINDUSKA:** OK. Thank you.

**LATHROP:** We appreciate hearing from you.

**AL DAVIS:** Try to be fast, Senator.

**LATHROP:** You'll have to be. Welcome. Good to see you.

**AL DAVIS:** My name is Al Davis, A-l D-a-v-i-s, and I am here as the registered lobbyist for the 3,000 members of the Nebraska Sierra Club

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to speak in opposition to LB1135. In another hearing, a bill is being heard which strips local mayors and city councils of their ability to make decisions for their own community. We've seen bills voiding the authority of local health departments, bills which attempt to eliminate certain classes of elected officials, and bills restricting the ability of local governments to impose taxation coming out of this Legislature. We've also seen bills which prohibit businesses from requiring basic health procedures for their employees. With LB1135, we have another bill which attempts to restrict the rights of farmers and ranchers who wish to protect their land for future generations and for the protection of wildlife. All these bills are arising from senators who champion local control and business rights on the mike whenever the opportunity arises. LB1135 is one of the most egregious invasions of personal property rights to surface in this Legislature and is certainly an example of the state knowing what is best for a farmer or rancher, trumping his own ability to look out for the future of his property by restricting the ability, his ability to participate in specific environmental protection programs, and also giving his county officials the authority to meddle in a farmer's private affairs. Conservation easements have been a wonderful tool for farm and ranch families to bring in some extra income, while also offering the benefits of improving the sustainability of their farm or ranch. They often are associated with restoring farm or ranch land to its natural condition for the benefit of wildlife, and they have been a tool used to help beginning farmers and ranchers who lack the capital needed to enter the business. LB1135 imposes multiple bureaucratic and costly impediments to the easement process to slow and/or stop a farmer or rancher from implementing an easement. Further, the bill permits a planning committee to take no action on a request which would nullify the easement without a reportable cause. And anyone who has appeared at a TERC hearing knows that the process requires the assistance of an attorney so appealing the local board's decision will be costly. The elimination of perpetual easements also is troubling for the Sierra Club. Some granting entities require the use of perpetual easements as a condition for funding, so eliminating them will reduce the available options for a landowner to protect his land as he sees best and the state and local government's interest in eliminating perpetual easements is nebulous at best. Cumbersome and exclusionary rules imposed by LB1135 are a poison pill designed to eliminate conservation easements in Nebraska, and we encourage you to IPP the bill. Thank you.

**LATHROP:** OK. Any questions for former Senator Davis? I see none. Thanks for being here.

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**AL DAVIS:** Thank you.

**LATHROP:** Appreciate hearing from you. Any other opponent testimony?  
Good afternoon and welcome.

**KIMBERLY STUHR:** Hi, my name is Kimberly Stuhr. My last name is spelled S-t-u-h-r, and I'm on-- here on behalf of Friends of the Niobrara. As most of you probably know, in 1991, Congress designated 76 miles of the Niobrara River to be a national wild and scenic river. This is because it is an extraordinary example of a Great Plains river with outstanding natural, cultural, and recreational values. Last year, over 33,000 people floated the river. This generates obvious economic benefits to Valentine, Nebraska and surrounding communities. We are very lucky to have such a treasure and a special place for Nebraskans to visit and enjoy. Perpetual conservation and agricultural easements are truly the only way to protect unique and beautiful resources like the Niobrara. In many ways, you could say that, that they would protect the history and legacy of our state. I emphasize perpetual because if a place is worth preserving, it's worth preserving. Why in 25-- oh, my gosh-- in 25 or 99 years would that be any different? I can only imagine the pressure in 99 years that might be there to line the river with cabins and houses. If a ranch family wants to voluntarily keep doing exactly what they are doing now and simultaneously safeguard the health of the river and viewscape for floaters, could there even be a better win-win scenario? I wanted to talk, and I'll just mention the topic right now, but I wanted to talk about how in eastern Nebraska, specifically Sarpy County, their plan is to have everything developed, according to the comprehensive plans, everything developed in the coming years, and Sarpy County has some of the best soils in the world. And I feel that conservation easements are an important tool to keeping farm ground as farm ground close to the city because it would be, it would be short sighted of us to think that farm ground in the future in Nebraska is simply soil-- or corn and soybean row crop production. People want locally produced food and where better to do that than close to, to the city where the people who want it are? Finally, I cannot think of a more important responsibility that our generation has than to preserve working ranches and farms for sustenance and protect places like the Niobrara River for our children and grandchildren to witness and experience the beauty and history of Nebraska.

**LATHROP:** OK. I don't see any questions. Thanks for your testimony.

**KATIE TORPY:** Good afternoon.



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**LATHROP:** Good afternoon and welcome.

**KATIE TORPY:** Thank you. Senator, Senator Lathrop and the respective members of the committee, my name is Katie Torpy, K-a-t-i-e T-o-r-p-y. I'm representing The Nature Conservancy today. And on behalf of them, I am offering testimony in opposition to LB1135. Nature unites people like little else. Many of us are hikers, hunters, or angle-- anglers. Some of us simply enjoy the birds in their yards. Everyone else-- every one of us relies on healthy land and water. And where many other issues divide, divide us, a commitment to conservation overwhelmingly transcends our differences. Recent polling affirms this. More than four in five Nebraskans say more needs to be done to protect land, water, and wildlife habitat in the state as you can see with the materials that are being distributed. Why then with such consensus that more needs to be done to protect our environment, is this body considering weakening one of the tools that best accomplishes this? It is not for lack of public support. More than 9 in 10 Nebraskans favor utilizing easements to support farmers and ranchers as you will see on the testimony being passed out. Utilizing easements as a conservation, utilizing easements as a conservation tool is supported across all major segments of the Nebraska electorate. Some of the support for easements is grounded in the importance Nebraskans ascribe to conserving working farms and ranches. Conservation and agricultural land easements protect our ag economy by assuring that land will always be available. By preventing subdivision, easements keep ranches at a size that is economically viable for ranching. As one landowner put it, you can't make a living off of small parcels. Please don't diminish a landowner's right to conserve their land in perpetuity. We urge you to oppose LB1135.

**LATHROP:** OK. Any questions for Ms. Torpy? I see none. Thank you for being here.

**KATIE TORPY:** Thank you.

**LATHROP:** Good afternoon.

**KRISTAL STONER:** Good afternoon, Senator Lathrop and members of the committee. I'm Kristal Stoner, it's spelled K-r-i-s-t-a-l S-t-o-n-e-r, and I'm the executive director for Audubon Nebraska. And on behalf of the 10,000 members of Audubon Nebraska, a state office of the National Audubon Society, I'm providing testimony in opposition to LB1135. The National Audubon Society is a conservation organization focused on birds and their conservation. And as a conservation organization, we certainly see the value in easements. It's a voluntary option that

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for-- that our most valuable habitats has proven to be a very practical and efficient conservation tool, and easements are a smart investment and the benefits stretch beyond just those individual landowners that choose them. Easements can be designed to ensure that grasslands remain intact and do it in a manner that serves both cattle and birds. It can also provide-- conserve wetlands that filter our drinking water and support waterfowl, waterfowl migrations and then waterfowl hunters. Easements can protect our water quality, quality by providing buffers along rivers and floodplains that trap contaminants and prevent sprawl. An important point I want to make is that the scope of conservation impact in Nebraska is something very important to consider. Easements are not that widespread in Nebraska. Currently, less than 1 percent or specifically 0.35 percent of Nebraska is under a conservation or an agricultural land easement. So in my opinion, you know, the best aspect of a conservation easement is really that it remains in the hands of private landowners. They have full ownership and management. It isn't cheap to manage habitat and nor are the taxes. So when landowners are stewarding their natural resources and desire to do so for the long term, it seems practical to me to use an easement so the landowners can continue to pay taxes, can continue to manage the land and are compensated for this long-term commitment. So Nebraska has such beauty in our landscapes. And with that, I'll just close and say respectfully request that you don't advance this bill. Thank you.

**LATHROP:** OK. Well, we appreciate your testimony, Miss Stoner, and thanks for being here. For the sake of the next senator that's going to introduce the next bill, how many people are left to testify? Looks like two. Could you-- somebody let Senator Cavanaugh know. All right, thank you and welcome.

**VERN JANTZEN:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I own and operate our family farm outside of Plymouth in Jefferson County. I am the vice president of the Nebraska Farmers Union, our state's second largest general farm organization and our grassroots-driven organization has been representing our state's family farmers and ranchers for 109 years. And so I appear before you today in strong opposition to LB1135. Our organization is a strong advocate of the many voluntary programs and tools used to protect our fragile soil and water resources for future generations, including conservation easements. In fact, last year our delegates added language to our state policy strengthening our organization support for traditional, voluntary conservation programs. Let's remember that easements are voluntary. Landowners use easements to protect and

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preserve environmentally fragile areas of their ranches or farms or from commercial development. Oftentimes, these landowners are protecting family farms and ranches that have been in the family for generations. When less than one half of one percent of all agricultural land in our state are in easements, it is difficult to accept the idea that this important but seldom used tool is being overused or over abused. I am concerned that some of the proposed changes in LB1135 will limit the effectiveness of and the use of conservation and agricultural land easements. As a landowner, I should be able to use a voluntary tool if I think it is necessary to protect the future of my multigenerational family farm. Isn't that what conservation and stewardship is all about? When our organization asks ourselves whether landowners' control over their farm and ranch land is increased or decreased if LB1135 passes, it is our judgment that LB1135 reduces landowner control over their land. Thank you for the opportunity. Any questions?

**LATHROP:** Mr. Jantzen, I don't see any questions, but thanks for--

**VERN JANTZEN:** Thank you.

**LATHROP:** --coming in today. Next opponent. Anyone else here to speak in opposition? Anyone here to speak in the neutral capacity? Good afternoon and welcome.

**KYLE KINYOUN:** Yeah, thank you. Here I got another copy for you. [INAUDIBLE]. My name is Kyle Kinyoun, K-y-l-e K-i-n-y-o-u-n. I'm from Clay County. I'd like to thank the Judiciary Committee for giving me time to voice my concerns. I'd like to also thank Senator Murman for introducing LB1135. I have not been paid or solicited to be here today, and I'm not here for any personal financial gain. I'd love to testify in favor of this bill, but I, I cannot because the 99 years is just too long. Placing an end date on a conservation easement would allow landowners and the holder of the easement to take a step back and reassess the conservation plan. If the intended goals are being achieved then the easement could be renewed for another period of time. If not, the conditions of the easement could be modified to meet current conditions or the easement could be discontinued altogether. Creating a long-term or permanent easement does not guarantee maintenance and care will be done. Many factors come into play with this, including the health and physical ability of the landowner. If the property is sold to a different party, they may not be as conscientious about doing the maintenance of the control. I tell you, I'm going to stop there since it's on. Hopefully, you'll take the time to read it. And I think what this kind of comes down to, in my

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opinion, and I'm not a lawyer, we all have individual rights, our individual rights are with us until we die. Now does a land right give me the ability to make a decision forever for future generations? And if it does, I think that we should do something about it. Thank you for your time. I would answer any questions.

**LATHROP:** Can I ask this one? It sounds like you're opposed to or you're in favor of LB1135?

**KYLE KINYOUN:** I'm in, I'm in neutral because I am, I'm for a, a, an end to them. But 99 years is way too long.

**LATHROP:** Oh, OK.

**KYLE KINYOUN:** So I'm, I am neutral for that reason. I think if you read my thing, I think there should be 10 to 20 years because then that gives it the time to step back and reassess.

**LATHROP:** OK, I just wanted to be clear so that we understood your position. Pardon me.

**KYLE KINYOUN:** Thanks.

**LATHROP:** I don't see any questions. Thanks for being here, though. Anyone else here in the neutral capacity? Senator Murman, you may close. We do have-- pardon me-- position letters: 22 as proponents, 11 as opponents, and 2 in the neutral capacity.

**PANSING BROOKS:** Was he the last opponent, the other man? He was the last opponent.

**LATHROP:** He was neutral.

**PANSING BROOKS:** I know that you hadn't called neutral.

**LATHROP:** Yeah, I had.

**PANSING BROOKS:** OK. OK.

**LATHROP:** Yeah.

**PANSING BROOKS:** OK.

**LATHROP:** Senator Murman.

**MURMAN:** OK, thank you for the consideration of this bill, and I really thank all the testifiers that came from such a distance of proponents

and opponents of the bill. Plans expressed by the federal government to set aside vast amounts of land for conservation are concerning. According to current Secretary of Commerce Gina Raimondo, 30 percent isn't the end, 30 percent is the beginning. It's setting a very strong foundation, and we hope will build the momentum for longer-term conservation. While conservation is good, I don't think anybody is disputing that, so is our number one industry agriculture. We need to protect both. Nebraska farmers and ranchers and landowners are responsible citizens who are good stewards of the lands entrusted to them. In most cases, it's their livelihood and the liveli-- livelihood for their future generations. LB1135 leaves conservation still in place. I think there was some confusion of that by some of the testifiers. The bill just makes a few modifications to ensure some local control and safeguard of Nebraska agriculture and allow future, future generations to decide for themselves what's in their best interest. To me, a perpetual easement is a tool for taking away personal property rights of future generations. So it's all about personal property rights for this, this generation, because you can't take it away from future generations like one of the-- the neutral testifier said. You know, you can only control the land for as long as you live. If you want to keep it in a certain condition, you're going to have to convince either your future generations of that or the person that buys the land of the same thing. That's, that's what property rights are. I'm just thankful that, you know, the city of Lincoln, this Capitol has only been here for just a little over 100 years, not that much over 100 years. I'm glad it wasn't, wasn't my forefathers, but I'm glad some of our forefathers, in their wisdom, didn't decide to have a perpetual easement on this ground, this Capitol, this whole city wouldn't even be here or the city of Omaha, for that matter, if that an easement there. And, you know, when they're-- you know that there is the federal tax break taken away when you take away perpetual easements, but that is when that's done, the present landowner doesn't have that incentive to sell an easement just for their own personal gain. And, and in that way, possibly sacrifice their future generations that may want to have a higher use of the land. Who knows in, in 100 years or even 50 years, but we're, we're just limited to 100-- 99 years. So I just want to prevent the land control from being forever. So thanks a lot for listening.

**LATHROP:** OK. Very good. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for bringing this bill. I think it's, it's really interesting. Aren't oil and gas leases entered into that affect the next generation?

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**MURMAN:** Well, we talked about eminent domain. Is that what you're referring to? Eminent domain does--

**PANSING BROOKS:** No.

**MURMAN:** --take precedence over an easement.

**PANSING BROOKS:** I'm just talking about somebody signed the lease, an oil and gas lease, that would affect a future generation wouldn't it?

**MURMAN:** Well, anything we do, you know, with the land or anything we own, can affect future generations.

**PANSING BROOKS:** OK.

**MURMAN:** But we want to do it wisely. And I think farmers and landowners, you know, do do that wisely in Nebraska.

**PANSING BROOKS:** So it really should be up to the farmers about what they want to do with their land. Right?

**MURMAN:** Sure, each generation should be able to decide what they want to do with their land.

**PANSING BROOKS:** OK, but with a oil and gas lease, you aren't letting the next genera-- generation decide that.

**MURMAN:** Well, if you do oil and gas leases responsibly you are.

**PANSING BROOKS:** Yeah, or if you do the--

**MURMAN:** You know, because, sure, we gain from those leases.

**PANSING BROOKS:** --conservation easements wisely. Right?

**MURMAN:** Pardon me.

**PANSING BROOKS:** And if you do the conservation easements wisely. I mean--

**MURMAN:** Sure. And we want to do them wisely. You know, nothing in this bill prevents easements from happening.

**PANSING BROOKS:** Have you seen conservation easements-- can you show us where they were done improperly and were improperly used and--

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**MURMAN:** I think out-- as a farmer in rural Nebraska, we see quite often how the federal, especially the federal government, has mismanaged land.

**PANSING BROOKS:** OK. But is that according to the, to the farmer themselves? They're, they're, they're giving it over to the federal government, and the federal government is then mismanaging. Is that what you're worrying about?

**MURMAN:** Well, especially the federal government, yes. I'm, I'm thinking of instances where the federal government definitely mismanaged land. And I think that's according to pretty-- you know, not just farmers saying that, it's across the board.

**PANSING BROOKS:** But and we also heard about an instance of somebody who was able to take care of and, and have their land paid for. So that's a value to that group, and they can then pass it down to their children. So that seems like-- the, the problem is if, if we leave it up to the government to come in and say, and the county commissions, and I think it's-- I think generally it's, it's good. But if the county commissions come in and say, no, we want more tax dollars, you can't do what you want with your property. What about that? I mean, what if they're just being unreasonable because they want the tax dollars and they don't care what the farmer wants with his prop-- his or her property?

**MURMAN:** Yeah, well, actually, the bill does not take away-- the county, the county commissioners do have the ultimate say now as to whether easements are sold or not. So it doesn't take away that right of the-- it changes it somewhat because if the, the county government doesn't approve, doesn't approve it or doesn't, doesn't approve it, then it's taken as denied. And right now they have to approve it before it goes into effect.

**PANSING BROOKS:** That's what I was talking about, yeah.

**MURMAN:** So it's just the opposite.

**PANSING BROOKS:** OK. Thank you.

**MURMAN:** Still requires county approval.

**LATHROP:** OK. Thanks, Senator Murman.

**MURMAN:** Yep, thank you.

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**LATHROP:** That will close our hearing on LB1135. My thanks and the committee's thanks to everyone that came in and testified today. Senator Cavanaugh, if you can wait a minute, we'll see--

**DeBOER:** John, you know how to clear a room.

**J. CAVANAUGH:** That's how popular I am.

**LATHROP:** Senator Cavanaugh, welcome. You can open on LB1026.

**J. CAVANAUGH:** Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here today to introduce LB1026, the Unlawful Restrictive Covenant Modification Act. It creates a process to make it easier for landowners to remove unlawful and discriminatory restrictive covenants from their deeds. It used to be commonplace in this country to include racially restrictive covenants and contracts for the sale of lands, deeds, and home ownership association agreements. These covenants oftenly [SIC] explicitly place a restriction on the sale or transfer of land on the basis of race, usually prohibiting sales to black people. Together with the practices of redlining, these covenants contributed to generational housing segregation. Discriminatory restrictive covenants are illegal both under Nebraska law, law and federal law. The landmark U.S. Supreme Court decision of Shelley v. Kraemer in 1948 declared that a court enforcing a racial restrictive covenant violates the Fourteenth Amendment's equal protection clause. The Fair Housing Act of 1968 explicitly outlawed racially restrictive covenants and redlining. The Nebraska Fair Housing Act prohibits any specification limiting the transfer, rental, or lease of any housing because of race, creed, religion, color, national origin, sex, disability, family status, or ancestry. Despite these prohibitions, many deeds still contain these discriminatory covenants. I have heard anecdotal stories where restrictive covenants were still given effect. In one case, an individual sought to purchase a property, and when they applied for a mortgage, the bank questioned whether they could purchase the property due to the restrictive covenant. Landowners can request that a covenant be removed, but, but removing the covenant could be complicated and expensive. LB1026 seeks to make the process easier and at a fixed cost. Modification would be recorded by the county register of deeds at a cost of no more than \$10. The goal here is to make this as easy and inexpensive as possible. Arguably considering that these covenants are illegal and unenforceable, \$10 may be too high of a price. But I recognize that the county is incurring some expense in



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fulfilling these requests and has a right to charge a reasonable fee to cover the costs. This bill essentially creates a mechanism to clear up property titles for a fixed cost. Some will argue the specific set fee is unnecessary, but I would ask you to consider the fact that the mechanisms of our state have been used in the pursuit of racial discrimination. Our counties were complicit and a tool of discrimination. So this bill-- what this bill does, is seek to take a small step toward correcting this historic discrimination. I want to thank the committee for your time and I ask for your support of LB1026, and I'd be happy to take any questions.

**LATHROP:** OK. I don't see any questions, Senator Cavanaugh. You're going to stay to close?

**J. CAVANAUGH:** I will stick around.

**LATHROP:** OK, very good. We will take proponent testimony. And once again, if you are here to testify in favor, you can come up to the front chairs and--

**PANSING BROOKS:** How many? Do you want to know how many?

**LATHROP:** How many people are going to testify on this bill, by the way, so we can let Senator Matt Hansen know? OK. Two or three. All right. Welcome.

**DEBORAH SCOTT:** Good morning or afternoon, I guess. Senator Lathrop and members of the Judiciary Committee, my name is Deborah Scott, D-e-b-o-r-a-h S-c-o-t-t. I'm here today representing the Nebraska Land Title Association. Our membership consists of hundreds of land title professionals who work and serve every county across our state. We provide title insurance to new owners for transactions, conveying real estate, and we ensure the lenders that provide financing for those purchases. We insure loans for farming, for funding development of towns and cities, and we insure loans obtained by people who simply want to improve their privately and for their own personal enjoyment. We handle thousands of transactions every year. Our function is to provide certainty in the ownership of real estate, thereby allowing owners to leverage their real estate and build wealth. We protect private rights of ownership. Our title insurance products are required for all loans backed by Fannie Mae, Freddie Mac, HUD, FHA, SBA, and other government agencies. Title insurance isn't like other lines of casualty insurance that offer monetary compensation or reimbursement for loss or damage resulting from a future event like a car accident or a summer storm. Title insurance guarantees an insured owner that

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they're the only ones with rights to their property and a loan policy ensures the bank that they have good security interest in the land owned by their borrower. We're able to make those assurances by first conducting a thorough review of the public records and disclosing the existence of other claims, rights, restrictions, or liens, which can then-- which we can then resolve before title passes. In performing our examinations, we frequently uncover abhorrent restrictions contained in deeds recorded in the early 1900s to mid-1900s. Often, those same deeds granted easement rights for driveways, utilities. They also imposed use restrictions, set back requirements, and other matters that may still affect real estate. The deeds from the early 1900s with the abhorrent restrictions, which are no longer enforceable under state or federal civil rights laws, have made their way to the social spotlight. There's a movement across the country to examine the public records, find the offensive restrictions, and remove them from the record. Different states' legislatures are addressing the cleansing of the public records in different ways. Some legislative bills go as far as removing the conveyance documents altogether. That's unwise. If we don't have the ability to review all of the records, we lose our ability to ensure transaction. And with that, the dream of home ownership for anyone who can qualify for a loan is also lost. The Nebraska Land Title Association asserts no position on the wisdom of whitewashing our public records, but acknowledge the continuing conversation. We support LB1026 as a reasonable method of addressing the concerns of many while allowing continued access to all of the public records that affect title to real estate. I'd entertain questions, if any.

**LATHROP:** All right. Senator Geist.

**GEIST:** Yes, just a quick question. Do you run into this very often?

**DEBORAH SCOTT:** Interestingly enough, more often in probably Senator McKinney's district in Omaha.

**GEIST:** Oh, really. OK.

**DEBORAH SCOTT:** Interestingly enough, where we see these kinds of racial restrictions are now occupied more by black and brown people than white people. So it's not like there's a continued offense of those and in fact, you know, under state and federal law, they're not enforceable anymore.

**GEIST:** Right.

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**DEBORAH SCOTT:** And to the earlier testimony from the introducing senator, anyone who would look, the banker, anyone who would look and say, gosh, are you able to take out that loan is just plain ignorant on the law.

**GEIST:** Um-hum.

**DEBORAH SCOTT:** Simply put.

**GEIST:** OK.

**DEBORAH SCOTT:** So.

**GEIST:** Thank you.

**DEBORAH SCOTT:** You're welcome.

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

**DEBORAH SCOTT:** Thank you.

**LATHROP:** Welcome.

**KORBY GILBERTSON:** Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as registered lobbyist on behalf of the HBAL/MOBA Coalition and the Realtors Association of Nebraska. HBAL/MOBA is-- are the Home Builders of Lincoln and Omaha that formed a little group together. They-- I had the same exact response when I read this bill that Senator Geist did. I thought, oh, this can't be that big of an issue. I thought immediately they just wanted to have this be a bill that they monitored, but both groups overwhelmingly said, we need to have a better system on getting rid of these. And so I won't explain everything the previous testifier did. But they both think that this would be a great change to the law to take care of these covenants. So with that, I'd be happy to try to answer any questions.

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

**KORBY GILBERTSON:** OK, thank you.

**LATHROP:** Thanks for being here today. Have a great weekend. Next proponent. Anyone here in opposition?

**ELAINE MENZEL:** Chairman Lathrop and members of the Judiciary Committee for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l,

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here on-- here today on behalf of the Nebraska Association of County Officials in opposition to LB1026. And we certainly recognize the issues that Senator Cavanaugh has brought to your attention as meritorious. And with my comments as to our current opposition, we vow to work with him to try to address those concerns. The-- one of those concerns is the filing fee. At this time, it would be \$10 as proposed in the legislation. But current provisions for filing register of deeds documents are \$10. And then, as I understand, the second page is an additional amount. And then the other aspect of opposition that was raised during our legislative discussion was that it would be putting county attorneys in essentially a quasi-judicial position. So with that, if there is any, any questions, I would attempt to answer them.

**LATHROP:** Senator McKinney.

**ELAINE MENZEL:** Yes, Senator.

**McKINNEY:** Thank you.

**ELAINE MENZEL:** Oh, I'm sorry.

**McKINNEY:** Thank you. I was curious. Prior to today's hearing, did you reach out to Senator Cavanaugh and speak with his office about your opposition?

**ELAINE MENZEL:** I did not, personally. However, someone from our office did this morning.

**McKINNEY:** This morning. So--

**ELAINE MENZEL:** Yes, and I was not a party to that conversation, so I can't relay to you specifics as to how that went. But--

**McKINNEY:** I, I ask that because I was just curious of whether, you know, I think the last day to introduce bills was sometime in January or kind of close to the middle of February. And I feel like there was some time where you guys possibly could have reached out with your opposition and Senator Cavanaugh possibly could have did some type of amendments to his-- introduce legislation to fix your concerns. And I, I, I kind of-- even if it was my bill or anybody else's bill, when somebody comes in the day of a hearing and say, we oppose, I, I really don't like that, especially when you have-- I can see if you had a week after introduction, that's more understandable. But when you have like a month, it's problematic.

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**ELAINE MENZEL:** I, I appreciate your comments, Senator. I will just tell you we do the best we can in terms of talking with senators, and it's our hope to work with them. And as I stated, we would-- glad to work with Senator Cavanaugh and hope to do so, as well as any of the senators who--

**McKINNEY:** So--

**ELAINE MENZEL:** --we have concerns with.

**McKINNEY:** --if he, if he fixes the filing fee question that you may have and whether county attorneys are in a judicial realm of things, you would be OK with the bill?

**ELAINE MENZEL:** Yes, that would address our concerns.

**McKINNEY:** All right. Thank you.

**LATHROP:** OK. I see no other questions for you today.

**ELAINE MENZEL:** Thank you.

**LATHROP:** Thanks for being here. Anyone else here in opposition? Anyone here in the neutral capacity? Seeing none, Senator Cavanaugh, you may close. We do have two letters, position letters, both proponents, and they'll be noted for the record.

**J. CAVANAUGH:** Thank you, Chairman Lathrop, and thank you, Judiciary Committee for your time. I'll try and be brief. I just wanted to point out, so while we were here, a concerned citizen who has the time to watch the Legislature emailed me a copy of a title of a land that they are-- have an interest in that has a restrictive covenant in Omaha that specifically says that it shall not be conveyed to any person or persons of any other race other than those of the Caucasian race, nor shall any other person or persons other than those of the Caucasian race use or occupy any of the buildings and the lots thereafter described. So this is still on-- that's on a title of the land in-- situated in, in north Omaha. I don't know if it's in the part of north Omaha that Senator McKinney represents or someone else. But to the first testifier's point that these covenants exist on a lot of properties and they exist particularly in areas where historically white individuals were trying to prevent African-American individuals from moving into, so in areas that are on the border and we have had conversations in the last year and a half or so about our historic approach to race in this country. And some people have, I think, taken an approach of pretending that we don't have a historic problem. And I

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brought this bill because I think there is a problem that it still persists and exists, and it is a demonstration of the levers of power and the establishment of racism in our government functions. And so I, I actually I did, I reached out to NACO before I dropped this bill, I actually just looked it up. I sent it to them on January 6 or 7 and dropped the bill on January 14. So I gave them a week to give me comments before I even submitted the bill. The comment I did get was the \$10 fee was too low. And my response to them was it was purposefully lower than the actual cost of administration. And it has to do with the fact that the levers of government were used for discrimination and that this is not only an opportunity for someone to clear up their own title and we should make an easy process for that and we should make it economical, but that they should not bear an excess burden of cost when they seek to do that. And so that's the reason for the, the cost that is lower than what the county would say is the administration. The, the objection to the quasi-judicial aspect of it, I guess I don't understand what that objection is. I'm happy to look at that and make sure that the mechanism is actually functioning. And so I would certainly proceed forward with a correction in that. But this is something that is, I think, important for us to do. I think it's an opportunity for us as a Legislature and then for our, our local governments to take a small amount of corrective action to clear up the, the documented history of racism and our government being used as a tool of racism in this country. So that's why I brought the bill and I think it's important to advance and I'd be happy to take any questions.

**LATHROP:** I don't see any. Oh, Senator McKinney.

**McKINNEY:** I was, I was just going to say thank you. You know, we, we hear conversations about redlining and whether it existed or not, and which you just clearly showed, there are things still in place to this day that point to the issue of redlining and the injustices of the past. So thank you for bringing this bill.

**J. CAVANAUGH:** Thanks for the comment. And, yes, this, and this is, I think, important and I would encourage everybody, I think the union still has the exhibit about redlining in Omaha and I would certainly encourage anyone to go check that out. And this was exactly a tool that was historically used and we can still see in our city, in Omaha, in particular, there is a physical remnant of these actions and redlining in Omaha, and I think that this is an opportunity to go back and correct some of that.

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**LATHROP:** OK, very good. Thanks for bringing LB1026 to us. That will close our hearing on LB1026 and bring us to Senator Matt Hansen and LB1038. Welcome, Senator Hansen.

**M. HANSEN:** Good afternoon. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here to-- today to introduce LB1038, which would amend the Uniform Residential Landlord and Tenant Act to define ordinary wear and tear and provides that a rental agreement cannot include a predetermined amount to be paid to clean the apartment be automatically deducted from a security deposit to clean the apartment. It also clarifies and provides damages for violations of the act. My office has been calling this our carpet cleaning bill, as this is the most common examples we have seen in leases, but would apply to any and all predetermined damages. On carpet cleaning specifically, it is common to see lease agreements that state something along-- that follows: quote, resident agrees the landlord will have the carpet professionally cleaned when the resident has vacated the president-- premises. A lease charge of \$75 will be deducted from the security deposit upon vacating the premises. That quote is a real example from a real lease here in Nebraska shared with my office. I want to highlight for the committee that this type of charge is currently not authorized in statute and is in fact unlawful if it's automatically deducted from the security deposit. Unfortunately, in practice, it is still common across leases in Nebraska today. Whether it is charged directly to the resident or taken from the security deposit, current law under section 76-1421 states that the tenant's duties to maintain the unit do not include regular maintenance or anything that is deemed ordinary wear and tear. The tenant's duty is to return the unit in the same condition, understanding that there may be some damage resulting in ordinary wear and tear. While the term "ordinary wear and tear" is not currently specified in-- specified or defined in law, it does include damage that could be con-- saw as by normal use. Therefore, the tenant's only responsible for damages beyond the standard under 76-1421, which is important because a landlord can only charge against a security deposit damages done in violation of that section or with noncompliance of the agreed-upon term. Thus, for a landlord to charge an automatic fee to a security deposit for carpet cleaning that is charged even when there is no damage to the carpet, that means it's beyond ordinary wear and tear. To kind of put it another way, the idea behind a security deposit is that if a tenant does everything right to maintain their unit, they're entitled to the full return of their security deposit. If a landlord charges a standard fee to all tenants

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and all tenants' security deposits, regardless of the care those tenants provide, it violates the terms and the concept of the security deposit. As we all know, while residential leases are contracts, they're not typically individually negotiated and the-- and tenants are often presented with kind of a take-it-or-leave-it situation, especially in a difficult housing market or on a strict budget. Even if a tenant knows that this cause [SIC] in the lease is inappropriate, they're not usually in a position to have it removed from a lease contract. That puts tenants at a disadvantage respective to landlords. I believe we'll have some testifiers today who can elaborate on this issue and what they've seen in Nebraska and I'm happy to answer any questions. Before I close, I did have somebody just before the hearing clarify my goal is not to say that, you know, if carpets are damaged, you can't charge actual damages. Of course you can, that's the point of the security deposit. But the goal is to say a predetermined amount, kind of regardless of if there is any damage or what degree it is, shouldn't be applied. So with that, I'm happy to take any questions.

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

**M. HANSEN:** Thank you.

**LATHROP:** Thanks, Senator Hansen. We will take proponent testimony. So if you're here in favor of the bill, you may come forward. Good afternoon.

**MARA WILSON:** Good afternoon. My name is Mara Wilson, M-a-r-a W-i-l-s-o-n. I'm testifying and speaking in favor of LB1038 in my capacity as a citizen of Nebraska, a former tenant, and a volunteer through the Tenant Assistance Project. I support LB1038 because this legislation provides clarity to landlord-tenant law and encourages equity. First, providing a statutory definition of "ordinary wear and tear" is a common step-- commonsense step to reduce confusion for tenants and landlords. For too long, for "ordinary wear and tear" has been interpreted differently through different perspectives and different people, circumstances, locations, and eras. The inclusion of a definition for "ordinary wear and tear" should be heralded by all involved in landlord-tenant issues, including those landlords and property managers who deal fairly and in good faith with their tenants. Second, explicitly prohibiting lease provisions, which allow for automatic security deposit deductions, is a crucial clarification of Nebraska law. Current law allows landlords to duct-- to deduct from the security deposit only amount of actual damages to the rental units, excepting ordinary wear and tear. Automatically deducting from



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a tenant's security deposit charges to repaint or have carpet cleaned flies in the face of our existing laws. These charges wrongfully put the burden of business expenses onto the tenant. The tenant is not responsible for a landlord's choice to repaint or have carpets cleaned when only ordinary wear and tear can be found. Prohibiting automatic carpet cleaning fees and similar automatic deductions not only clarifies the law, it encourages fairness and equity. With the passage of LB1038, landlords who are already following the law will be on equal footing with landlords who are currently unlawfully deducting these automatic fees from their tenants' security deposits. Landlords who embody good faith and fair dealing will not be discouraged by this clarification. Landlords who deal fairly and in good faith with their tenants will not see their revenue reduced by this clarification. Landlords who have honest relationships with their tenants will only be buoyed by this clarification because it will bring parity with those landlords who currently abuse security deposits and addition-- as an additional source of revenue. I implore the Judiciary Committee to carefully consider LB1038 and support its passage for the clarity it provides and the fairness it espouses.

**LATHROP:** OK. I do not see any questions. That was pretty straightforward. Thank you for being here. Good afternoon.

**RYAN SULLIVAN:** Chairman Lathrop, members of committee, my name is Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I'm testifying today in my personal capacity, not as a representative for the university. As many of you know, I've run the housing justice program at the college of law and I've also cofounded the Tenant Assistance Project that operates in Lancaster and Douglas counties. In these roles, I-- in these roles, I've confronted on a number of occasions the issue that Senator Hansen's bill aims to remedy. As Senator Hansen stated, these, these fees are already unlawful under the law. They're unlawful because it's unlawful under the act to make a tenant responsible for general maintenance or for damage that is-- that results from ordinary wear and tear. Now we've seen these fees in many forms. The most common one, as the senator pointed out, is the, the carpet cleaning fee. The one we've seen really arise more recently in leases is a repainting fee. So I've, I've-- in fact, even today, I saw two leases that required the tenant to pay one-seventh of the cost to repaint the entire apartment as just an automatic fee, whether there was any damage to the apartment at all, essentially paying the landlord's depreciation for the painting. This is in addition to if there is damage. So if there was a ding or a scratch, they charge them for that damage and then they also charge them one-seventh. I saw a lease last week that charged the cost to paint the entire apartment, the full

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cost, if they didn't renew their one-year lease. So if they didn't stay for two or more years, they had to pay to repaint the entire apartment just as an automatic charge. And it comes out of their deposit, so they can't even really dispute it well-- without filing an action to be able to defend that. Now I've heard it-- at court, I've heard landlords and even some trial judges say, well, they agreed to pay that fee. It's in the lease. They agreed to it. And that's problematic because it's unlawful to even include that term in the lease agreement. So the act provides that it's unlawful to include terms in a lease agreement that requires the tenant to waive rights and remedies that they have under the act. Well, the act already provides that you can't make them responsible for general maintenance or damages that's beyond wear and tear and the act provides that you can only deduct from the deposit fees that are lawful under the act. So it's already, it's already unlawful and it's hard to overcome that argument sometimes, even with a trial court judge, because they look at the lease and say, well, the tenant agreed to pay. [RECORDER MALFUNCTION]-- dollars is the lowest I've seen. I've seen as high as \$375 for automatic fees. That's just for carpet and cleaning. The paints can be up to-- you can imagine \$1,000, maybe, to paint an entire apartment. Now this, this tactic likely started with one landlord, saw it as a profit center. Other landlords had to jump onto it because they had to compete and that's what we're seeing a lot in the rental industry where landlords are, are doing this type of conduct because they have to stay competitive with others that are already doing it, so--

**LATHROP:** OK.

**RYAN SULLIVAN:** --I'm out of time. I'll answer questions if you have them.

**LATHROP:** I do not see any. Thanks for being here, though.

**RYAN SULLIVAN:** Yep, thank you.

**LATHROP:** Any other proponents?

**SCOTT MERTZ:** Thank you.

**LATHROP:** Good afternoon.

**SCOTT MERTZ:** Good afternoon. Thank you, Senator Lathrop, Judiciary Committee. My name is Scott Mertz, S-c-o-t-t M-e-r-t-z. I'm the director of Legal Aid of Nebraska's Housing Justice Project and I have extensive experience representing low-income tenants in Nebraska for

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nearly 13 years. Thank you for the opportunity to testify in support of LB1038 and I want to extend a thank you to Senator Hansen for introducing this bill and inviting Legal Aid of Nebraska to testify today. At Legal Aid Nebraska, we are the only statewide provider of free legal services to low-income Nebraskans and we know our clients' needs and threats to their housing. The majority of our clients that we represent are low-income renters and low-income renters rely on every single dollar for their housing stability. A security deposit, that's often the equivalent of one month's rent and for the rent burdened, a single month's rent is going to be in excess of 30 percent of your monthly income. So the return of a security deposit is a necessity when it comes time for the renter to move and find substitute housing. It's a, it's a necessity that they have that deposit. And far too often, we see, as has been testified already, these exact provisions in our clients' leases, provisions that circumvent the actual purpose of security deposit laws and actually make the deposit just another source of automatic income for the landlords. And also without these provisions in the leases, we also see tenants come to Legal Aid of Nebraska seeking the return of their deposit and we see tenants-- they have done nothing wrong. They have photographic evidence that they have turned over their property in the exact same condition, if not better than they have taken it, but still, portions of the deposits are retained for automatic cleaning fees and the various fees that were testified to already. Nothing in this bill mitigates the responsibility of a tenant. A tenant remains responsible for their neglect, carelessness, or any abuse of the property. If a tenant stains the carpet, the cost of cleaning that stain is going to be charged to the tenant. If a tenant damages a unit, the amount covered by the-- beyond the amount covered by the deposit, the landlord can still recoup those costs. Nothing changes regarding the tenant's responsibility to keep and maintain the rented property, but this provides needed clarification that a security deposit is not another source of income. The security deposit is just, as one would assume, security for anticipated neglect or careless acts by, by the tenant and nothing more. So I, I thank you for the opportunity today and I'll be happy to answer any questions.

**LATHROP:** OK. I don't see any questions for you today--

**SCOTT MERTZ:** Thank you.

**LATHROP:** --but thanks for being here. Anyone else here in support of LB1038? Seeing none, we'll take opposition testimony at this time. Good afternoon.

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**LYNN FISHER:** Good afternoon. Thanks for having me back since last year.

**LATHROP:** You were a frequent flier last year.

**LYNN FISHER:** Yeah, thank you very much. Lynn Fisher, L-y-n-n F-i-s-h-e-r. I'm representing the Statewide Property Owners Association and the Real Estate Owners and Managers Association here in Lincoln. I'm also a realtor and here in opposition to this bill. We actually are, are not opposed to defining normal wear and tear. I think that's not a bad thing to put that in here, so that portion we would be OK with. What-- I'll just make this personal. I spent this afternoon going through my deposit refund packets and determining charges for people who have moved out. And I'm happy to say that as, as we do all the time, we give back almost all of our deposits, if possible, short of carpet cleaning. And we do have a clause in our lease that says it will automatically charge for a carpet cleaning. And the reason that we do that-- and it's certainly not an attempt on our part or most landlords to make this an extra profit center or to, to take people's money unfairly-- is when we give somebody an apartment, we have that, that carpet professionally steam-cleaned so that they have a very nice, clean, ready-to-go place and-- that they can, that they can come in and know that it's been professionally cleaned. And an exchange in our lease, we-- they agree that when they move out, that they don't need to clean the carpet. They can vacuum it. Of course, we want them to vacuum it, but we want then to be able to hire, at a discount, wholesale rate, carpet cleaning services by our provider who does it for less than they, they can get it done themselves and have that carpet cleaned for the next tenant. And that's a very fair thing. It's just, it's just, you know, common practice here with our company and with other, other landlords around. So I dispute, though, that the, that the whole point of doing that is some kind of a ploy to make extra money. We're just trying to treat everyone fairly and, and offer a good product for our, for our tenants. One thing that-- and I, I'm not going to-- I know we're short on time here, so I'm just going to say that if, if this was to pass, I think this could be used as kind of a trap for landlords like ourselves who have this clause in our, in our lease. We're very supportive of the, of the volunteer attorneys that go down to eviction court and help tenants navigate that unfortunate situation when that happens. So Legal Aid and, and the, the attorneys need to have some tools and they do. The law provides them lots of tools to help a tenant overcome mis-- misuse by certain landlords. And it is a very small minority, but there are landlords that unfortunately do the kinds of things that have been described and we would never think of

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trying to take advantage of, of anyone and I think most, most landlords won't. So I'll be happy to answer questions.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you, Senator Lathrop. Quick questions: how do you know that a tenant can't get a cheaper price than what you get?

**LYNN FISHER:** Well, it's the quality of the work that has to be considered. So we use a professional steam cleaning company and there are many of them out there and I, I would, you know, I would--

**McKINNEY:** So what if--

**LYNN FISHER:** I would challenge any--

**McKINNEY:** Hypothetical, what if I know somebody that owes a professional steam cleaning company and they agree to come clean the carpet for me free of charge? Wouldn't that be cheaper than what you would be getting?

**LYNN FISHER:** If, if I could be assured and, and you could provide proof that it was done in, in a professional manner to the degree and quality that we need, then I would, I would be happy to waive the fee.

**McKINNEY:** How much is the average fee for cleaning one, one apartment?

**LYNN FISHER:** For a one-bedroom, it's about \$75. For a two-bedroom, it's about \$95.

**McKINNEY:** So why don't-- wouldn't it be a better practice to say to the tenant, once they go through the leasing process, to say, hey, we're going to add an extra \$1 or \$2 to your rent to cover the carpet cleaning costs?

**LYNN FISHER:** Yeah.

**McKINNEY:** Wouldn't that, wouldn't that be better?

**LYNN FISHER:** Well, that, that would be the result of this law passing. We would have to raise our rent. And unfortunately, I think in today's climate, we're trying to find ways of not making housing less affordable, but this bill would do that exactly.

**McKINNEY:** But it, it would raise it by a dollar or two. How long is your average lease, 12 months?

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**LYNN FISHER:** Yes.

**McKINNEY:** So \$75 for 12 months, that-- I don't, I don't have a calculator.

**LYNN FISHER:** It's just it's just another incremental bit that--

**McKINNEY:** It is.

**LYNN FISHER:** --everything that passes, we have to keep staying ahead of property taxes and other expenses.

**McKINNEY:** Also, why not suggest to the potential tenant or the tenant to say, hey, you have two options. Opt in and elect-- and pay the \$75 at the end of your lease or once your lease is up, you have to pay for the carpet to be cleaned. Why not do that instead of saying--

**LYNN FISHER:** Frankly, I think most, most tenants like the simplicity of what we offer. And in a lot of cases-- and we don't, we don't have a predescribed or predetermined amount for cleaning in general, just for carpet cleaning, but there are leases that have a certain amount that's pre-agreed to and, and I think some tenants at least like to, to have that.

**McKINNEY:** And you might be a reasonable property owner, but there are others that take advantage of this type of situation--

**LYNN FISHER:** I don't disagree.

**McKINNEY:** --which is why Senator Hansen brought the bill.

**LYNN FISHER:** Yeah, there are situations certainly that need to be addressed and I think the current law does provide for remedies for tenants who have been misabused-- or misused and abused by, by a very small minority of landlords and we would like not to be burdened for the cost of a small minority misbehaving.

**McKINNEY:** All right, thank you.

**LYNN FISHER:** Thank you.

**LATHROP:** OK. Thanks, Mr. Fisher.

**KORBY GILBERTSON:** Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as the registered lobbyist on behalf of the Nebraska Realtors Association in very soft

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opposition to this legislation. The realtors understand what Senator Hansen is after and we do not oppose the goal of this bill. However, we are concerned with some of the language in the bill that it might be interpreted differently than his intent. Under Section 76-1421, the requirements for a tenant to maintain a dwelling unit and part of that is that you have to keep it clean and safe as the condition of the premises permit. And upon termination, you have to return it in current conditions. The concern with this legislation, if there is a prohibition on having any predetermined amount for cleaning to be held by the landlord, then the concern is the landlord might be left holding the bag if they have to return everything and then try to recoup any damages. So if they can't put a cleaning fee, even if it would say-- you can say there's going to be a predetermined amount for cleaning that's held, but all of it has to be returned if it's not needed, that's one thing, but this would prohibit the language altogether and that's the concern.

**LATHROP:** OK. The con-- oh, did you have a question, Senator?

**McKINNEY:** Yes.

**LATHROP:** Senator McKinney.

**McKINNEY:** Are you concerned with, as you kind of stated, with covering the cost of rental fees once a lease is up, making sure that you could recoup what you--

**KORBY GILBERTSON:** I think that's, that's a concern on top of this. I mean, I-- that's a separate concern. But I think limited just to this legislation, it is whether or not if you have a tenant at the end of their lease period, there's-- would be no way to recoup the costs of, say, carpet that-- we heard stories of carpet that looked like it had never been vacuumed once and so that-- they don't know, when the lease is up, whether or not they can just clean it or have to replace it, and then they're left trying to find the tenant, follow up with that. So those are the kinds of situations they're concerned about. Like I said, we're not opposed at all to what Senator Hansen is trying to accomplish here. We think it's very meaningful, but we're just concerned with the strictness of the language, that it might cause some unintended consequences.

**McKINNEY:** All right.

**LATHROP:** OK. I see no other questions, thanks--

**KORBY GILBERTSON:** OK.

**LATHROP:** --for being here.

**KORBY GILBERTSON:** Thank you.

**LATHROP:** Next opponent. Anyone else that are in opposition?

**PIERCE CARPENTER:** I didn't have anything to take notes on so I put it on my phone. I'm reading it off of there.

**LATHROP:** People do it all the time.

**PIERCE CARPENTER:** OK.

**LATHROP:** Why don't we have to sit and give us their name to start with and then we'll hear what you have to say.

**PIERCE CARPENTER:** My name is Pierce Carpenter. I'm from Omaha. I have been a landlord for-- I'm in my 36th year.

**LATHROP:** Can you spell your name for us, sir?

**PIERCE CARPENTER:** P-i-e-r-c-e C-a-r-p-e-n-t-e-r.

**LATHROP:** OK, perfect. Thank you.

**PIERCE CARPENTER:** OK, I think this is a great case for government overreach. And, you know, I-- I mean, Matt Hansen, you've never rented a property, have you or sublease? You are not a landlord. This is not his business. You know, like most of the landlord bills that come down here, the people that testify are lawyers and people that are in the business of helping tenants. You have very few tenants that come down, if any, and this is another case where it's just government overreach. We don't, we don't need this law. I mean, if this was a bakery we were talking about, nobody here would put a law in that says a baker can't contract for delivering of services with fixed price and, and slip that-- you know, nobody-- everything is-- this is all clear already. It's in the lease. It's out there in the open. The tenant agrees to it. To have this law is just gross overkill. It is unneeded. Look-- I don't know, has anybody bought tires? Anybody bought tires? When you go down to buy tires, you see the ad and it says \$80 a tire. When you get done out there, you've spent \$115, \$130 a tire and I mean it-- once again, it's all down on paper. That's how business is done. Matt Hansen's bill is huge government overreach. We don't need it. Invariably, when you have a situation where you have things in the lease that really nominally most people wouldn't think would be illegal and now they're illegal, what that ends up is ends up beating



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the landlord out of money that he thinks he might be able to get. Anyways, this is not something that is fair to the landlord. We don't need this. You know, I had another thing-- comment about the carpet cleaners. I own a Rug Doctor and that's what I use. I can't remember the units, but Rug Doctor has like 400 pounds of suction and an X amount of water. If you go to Stanley Steamer, they have 1,200 pounds of suction with, you know, three or four times as much water. So when you're talking about a quality carpet cleaning, you know, you might know somebody that has a Rug Doctor like me, but unless you know somebody at Stanley Steamer-- and I don't even know if there's anybody who can compete with them for quality. But unless you know somebody like that, you're not going to get the same quality and I'm sure that's what the gentleman from Lincoln was referring to. And I know a lady who has the same opinion and uses Stanley Steamer, so--

**LATHROP:** OK.

**PIERCE CARPENTER:** --any questions?

**LATHROP:** Senator McKinney.

**PIERCE CARPENTER:** Yes, sir.

**McKINNEY:** Shouldn't we also be concerned about landlords taking advantage of tenants?

**PIERCE CARPENTER:** You know, I, I have a lot of things that I'm worried about. I'm not that concerned about that, but what, what it--

**McKINNEY:** So--

**PIERCE CARPENTER:** --what I would like to point out is if you restrict that one landlord in this one way here, do you really think that he's going to not find some way to beat that tenant out of money one way or the other? And if he's unethical and he's doing things that are unethical to beat the tenant out of money, I mean you just-- you're not going to beat a guy like that. I just--

**McKINNEY:** So you're not concerned-- so you want us to be concerned about government overreach on landlords, but you're not concerned about landlords taking advantage of tenants?

**PIERCE CARPENTER:** Well, I think tenants have a lot of tools in their toolbox already. Just last year, it's my understanding Senator Hansen pushed through a bill, which I'm sure you were for and Patty Pansing Brooks, to give 18 days of free rent to evicted people, 18 days, over

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half a month of free rent. We just gave it to them. And it's like, you know, where does it end, Senator McKinney? I mean, you, you have loaded the deck that-- when you come down here, everyone is against the landlord. I mean, it's shameful--

**McKINNEY:** So--

**PIERCE CARPENTER:** --shameful.

**McKINNEY:** So are you concerned about covering costs from tenants?

**PIERCE CARPENTER:** That's a joke. When a tenant moves out, the average cost is like \$2,000 and I usually pay most of their deposit back.

**McKINNEY:** So are you concerned with making sure tenants are able to pay rent monthly?

**PIERCE CARPENTER:** I am concerned about that, yes.

**McKINNEY:** Were you also in Urban Affairs trying to advocate for the rental assistance, emergency rental assistance?

**PIERCE CARPENTER:** I-- you know, I mean, that's not--

**McKINNEY:** No.

**PIERCE CARPENTER:** --[INAUDIBLE]. I'm, I'm on the other side of the fence.

**McKINNEY:** See, that's my thing, is you want us to be neutral and I am neutral because I, I understand both sides.

**PIERCE CARPENTER:** I, I disagree with that.

**McKINNEY:** You may disagree and I-- that, that is what it is, but you, you want us to be over here on-- just for the, the landowners or the property management groups, but when anything is brought up with the tenants-- you don't even care about, you admit it. You just said I don't care about the tenants, I only care about the landlords.

**PIERCE CARPENTER:** OK. I said there were bigger fish to fry. OK, do I care about that? Sure. I don't want anybody to rip somebody off. I mean, who in this room would oppose that statement? Nobody. But, you know, do you want to get down into these tiny little details and, and throw a bunch of sand into the gears and, and make everything so much more complicated? No. I-- it's not that I don't want you to be here or

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there. I don't want you to be anywhere. I don't want you in our business at all.

**McKINNEY:** I see.

**PIERCE CARPENTER:** Leave us alone. This is a good way to leave us alone. Vote this bill down. It is not needed, please. Is that--

**McKINNEY:** No, thank you.

**PIERCE CARPENTER:** OK.

**LATHROP:** I don't see any other questions. Anyone else here in opposition? Anyone else-- or anyone here to speak in the neutral capacity? Seeing none, Senator Hansen, you may close. On LB1038, we have position letters from proponents numbering 21, no opponents, and no neutral position letters.

**M. HANSEN:** Thank you, Chairman Lathrop, and thank you, members of the committee. We've had some suggestions on kind of some tighten up some language. The Apartment Association of Nebraska reached out to us. I, at this point, don't have a vehicle of priority for this, so I wasn't going to bury the committee in amendments, but I do think there's probably some room to tailor that. I haven't had a chance to pitch that to the realtors, but I-- hopefully that will also appease their concerns. In terms of kind of like landlord-tenant law broadly, you know, landlords have the benefit of having some of the quickest court cases in the state. Talking about attorneys, you know, for many civil cases, you're talking, you know, months of months waiting. In a landlord-tenant case, I believe it's 14 days, you're guaranteed a hearing. Within ten days after that, you're guaranteed the sheriff will-- if you win, the sheriff will come out and help you. I mean, you're guaranteed some pretty quick and some pretty aggressive things from the government. In exchange, the tenant has some protections, one of which is not to have improper things deducted from the security deposit. I think there is a need for this. I do think there is, you know, some opportunity for there. I think maybe a tenant or a landlord predescribing some charges or kind of explaining what things are going to cost makes sense, but if a tenant never has the ability to recover, they can never clean their apartment well enough to the landlord's satisfaction. That's a choice the landlord is making, that's not actually damages the tenant has caused. And with that, I'll be happy to answer any questions on LB1038.

**LATHROP:** I see no questions at this point.

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**M. HANSEN:** Perfect.

**LATHROP:** You want to hang on just a second for Isela to get back?

**M. HANSEN:** Sure.

**LATHROP:** I should have taken a break and I'm trying to forge on and get people into their weekend and Isela abandoned her post so we'll wait a second-- out of necessity, I'm sure. You know what? Go ahead. Why don't we have you open?

**M. HANSEN:** Perfect. All right.

**LATHROP:** I'm sure we're recording so we're okay.

**M. HANSEN:** Good. All right. Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB1222. This bill makes a series of changes to the Mobile Home Landlord and Tenant Act to protect mobile homeowners. This bill is a product of direct reports from mobile homeowners about the problems they've faced with their mobile home parks. We've heard directly from mobile homeowners throughout the state whose housing situation has become untenable because of the power those landowners have over the mobile home lot renters. So for background, mobile home ownership provides many with a lower-cost entryway into home ownership. The problem is, while mobile homeowners own their home, they typically do not own the land underneath their home and because of that, the law affords them fewer rights than other homeowners. This makes them especially vulnerable. Mobile homeowners sometimes have been subjected to arbitrary, sudden, and costly changes to mobile home park rules. One example we've received is that a mobile homeowner was told they had to replace the door to their home because it no longer complies with park rule and they had to spend several hundred dollars to replace the door, only for the rule to be changed a year or two later. Rules changes like this routinely happen throughout mobile home parks in our state and often these changes are directed to the disadvantage of mobile homeowners of color. If a mobile homeowner cannot force-- cannot afford to come into compliance with a rule change, they can be subject to costly fines, sometimes daily fines of up to \$20. Inability to pay these fines can make mobile homeowners vulnerable to eviction, but eviction is more complicated for mobile homeowners than for other tenants. Relocating mobile homes can actually cost several thousand dollars, which is often cost prohibitive. So rather than relocate the

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mobile home, the owner may try and sell it. However, landlords can restrict the sale by refusing to provide prospective buyers as future tenants of the mobile home lot. This combination of costly regulation and sales restrictions can financially harm mobile own-- mobile homeowners until they fall behind on rent and are otherwise forced out of their home. If this happens and mobile homeowners are unable to sell their home, landowners can then claim the mobile home as abandoned personal property and sell it without providing proceeds of the sale to the owner. The Mobile Home Landlord and Tenant Act has not been significantly updated since it was originally adopted in 1984. The lack of attention it has received has resulted in systematic problems in mobile homeowners and landlords. While we revisited the Residential Landlord and Tenant Act last year, it is now time, as evidenced by the hardships faced by mobile homeowners, to turn our attention to the Mobile Home Landlord and Tenant Act. LB1222 works to fix these problems. I also have an amendment to the bill that makes several small changes to the original. Fair warning, it did come out as a white-copy amendment. Most of these changes are made to improve the notice required to be given to the mobile homeowner as a landowner goes through the process of obtaining a lien on a mobile home and then selling the mobile home to satisfy that lien. We also changed what a landowner does with the excess proceeds from the sale of a mobile home if the mobile homeowner cannot be located to align with the Uniform Disposition of Unclaimed Property Act. And two other changes to note: first, we did make some changes to clarify that a landowner can only initiate an eviction proceeding against a mobile homeowner under specified circumstances outlined in Section 10 of the bill. And then second, we removed language from the bill that specifies both parties can collect liquidated damages if damages are provided for in a rental agreement. Removing this language doesn't prohibit either party from collecting liquidated damages if they are provided in a rental agreement, but removing this language does ensure that provisions for liquidated damages and rental agreements have to meet the other legal requirements, ensuring that both parties have equal or near equal bargaining power. With that, that was a lot. I'm happy to close and answer any questions on our updates to the Mobile Home Landlord and Tenant Act.

**LATHROP:** Senator Geist.

**GEIST:** Yes. Do you have that amendment?

**M. HANSEN:** Yes, I can make sure we get a copy passed out. I think we also delivered it maybe to-- fair warning, it's like 30 pages.

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**GEIST:** OK. I shouldn't have asked.

**LATHROP:** You've been warned.

**GEIST:** Yeah.

**LATHROP:** OK. I don't see any other questions, Senator Hansen. Thank you.

**M. HANSEN:** Thank you.

**LATHROP:** We will take proponent testimony and if you intend to testify, if you want to come forward and, and take a seat in the front row. Good afternoon.

**KASEY OGLE:** Good afternoon. Hello, Chairperson Lathrop and members of the Judiciary Committee. My name is Kasey Ogle, K-a-s-e-y O-g-l-e, and I'm a staff attorney at Nebraska Appleseed for Collective Impact Lincoln. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. Collective Impact Lincoln is a partnership between Nebraska Appleseed and Civic Nebraska that works with residents of six Lincoln neighborhoods to build community, develop neighborhood leaders, and take action on policy that's responsive to their needs. I'm here today on behalf of Collective Impact Lincoln in support of LB1222. Collective Impact Lincoln advocates for better housing quality, more affordable housing, and fair rental practices for low-paid Lincolnnites. We support LB1222 because it protects mobile homeowners from predatory lot rental practices. As Senator Hansen outlined, this bill makes a number of changes to the Mobile Home Landlord and Tenant Act. It ensures that both litigants can obtain reasonable attorney fees if they have to go to court to vindicate their rights. It also places requirements to ensure that rule and regulation changes are reasonable when done within a mobile home park. It also protects the tenants' rights to an in-home or an in-park sale so if the mobile homeowner tries to sell the mobile home, it protects the instances in which they can do that and ensures that the lot owner can't unreasonably restrict that sale. It also limits terminations of tenancies to good cause and then provides a scheme for the treatment of abandoned mobile homes so that tenants can-- or mobile homeowners can receive some of the proceeds of the sale should the mobile home be considered abandoned and then later sold. As Senator Hansen also pointed out, right, mobile homeowners are uniquely vulnerable to exploitation from landowners because they own their home, but not the land on which they-- which-- on which the mobile home sits. Other renters generally have no ownership rights or

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no ownership interest, excuse me, in their housing situation and then other homeowners generally own both their home and the land on which it sits. But the Mobile Home Landlord and Tenant Act currently codifies an imbalance of power in the landowners' favor, but LB1222 helps to even the scale. And for these reasons, I would urge you to advance LB1222.

**LATHROP:** Very good.

**KASEY OGLE:** And I'd be happy to answer any questions.

**LATHROP:** I don't see any questions at this point. Thank you for your testimony.

**KASEY OGLE:** Thank you.

**LATHROP:** Good afternoon.

**ALAN DUGGER:** Good afternoon. My name is Alan Dugger, A-l-a-n D-u-g-g-e-r. I'm a student attorney for the Civil Clinic at Nebraska Law. I'm testifying and speaking in support of LB1222 in my personal capacity as a student of the law and housing advocate. LB1222 brings welcome, necessary changes that make the mobile home act fairer for tenants. I'll discuss a couple today. First, it protects the ability for tenants to sell their mobile home. Under the current act, a tenant must seek a lot owner's approval prior to selling the trailer that they own. The act incentivizes lot owners to refuse approval. If a tenant needing to move cannot sell their home or pay to transport it, they're forced to abandon their property eventually. Under current statute, the lot owner would then gain that property, possession of the mobile home for free. I can't think of another legal relationship where one party can control not only the sale of the property they do not own, but can then gain ownership of the property by simply impeding the sale. This isn't equitable or really even common sense. Again, the tenant owns the mobile home. They must be granted freedom to sell their property subject only, subject only to reasonable basis for objection. This is a clear flaw in the existing act and a flaw I think those interested in private property ownership rights should want to resolve. Second, LB1222 helps incentivize out-of-state investors, forcing tenants from their mobile homes. I think it's important to understand who exactly we're talking about when we discuss who tenants are under the mobile home act. Mobile home tenants are frequently older and often disabled people that simply want to live out their lives in a stable, affordable neighborhood. They're not renting a lot for a year and moving on. Not like an apartment. They

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are long-term tenants and neighbors. They are members of an enduring community. The law should reflect the very different socio-cultural terms of tenancy under the mobile home act and needs to approach evictions with extra care. We don't want out-of-state investors disrupting these neighborhoods by raising rents to coerce tenants out or issuing no-fault evictions. In creating a good cause eviction standard, LB1222 is a move towards a law that actually reflects the needs of the communities it governs. I see that as an unqualified good thing. Thank you.

**LATHROP:** Very good. I don't see questions this afternoon. Thanks for being here. Good afternoon.

**RYAN SULLIVAN:** Members of committee, Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n, testifying in my personal capacity and not on behalf of the university. As many of you know, I've been working with the Legislature the last several years in efforts to try to rehabilitate the Nebraska's Residential Landlord and Tenant Act and I appreciate this committee's support in making the many advancements in that area so far. The mobile home act is also a need of some attention, as this bill seeks to address, and I appreciate Senator Hansen for bringing this bill to identify and try to fix some of these inequities. What makes a mobile home situation so unique is that it's so difficult for a mobile home trailer owner to move. Although moving is going to be a significant thing for any of the people that I work with, tenants of apartments and houses, it's even more so for these individuals. You might assume, like I did, that you just put some wheels on it and you move it to a new lot, but that's just not how it works. The reality is these, these houses are really made to be mobile until, until they are placed on that spot and then they're pretty much permanent from that point. It's very, very rare that a mobile home is ever moved from, from that spot unless they're forced to or, or it's abandoned or there's a fire. Many of these homes-- I encourage you to take a drive through a mobile home park and just look at them and they are, they are-- there's nothing that looks mobile about them. They have porches installed, sometimes extravagant decks, carports attached, lots of customization, yard work, gardening, the whole thing. These are, these are homes, but as those before me testified, the only difference is they, they just don't own the land underneath it and so it creates this really unique situation. So they-- there's some additional rights that they need to be afforded. And right now, what we're seeing is, is out-of-state investors coming in and buying up these mobile home parks and driving up the rents and, and forcing these people that have been in there for, for 30-plus years. What we're also seeing is sort of a scam where they will-- a lot owner will sell a trailer to somebody and



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they put a \$5,000 down payment on it and then they start dinging them with these fines and penalties for violating these rules they don't even know about. They get behind, they go to eviction court, they lose the house. It's considered abandoned. That lot owner gets it back, sells it to another person, another \$5,000, does the same thing. There was one trailer that I helped three different people who were getting evicted from that trailer who had owned the trailer, but then they got deemed abandoned and they got kicked out of it. And so this, this lot owner recycled that trailer three times, \$5,000 a pop, and still owns it and is still re-- still rerenting. The law right now permits that to happen. So I encourage you to support it. Any questions?

**LATHROP:** OK. I don't see any questions--

**RYAN SULLIVAN:** All right.

**LATHROP:** --today. Thanks.

**RYAN SULLIVAN:** Thanks.

**LATHROP:** Good afternoon.

**SCOTT MERTZ:** Good afternoon. Thank you, Senator Lathrop. Thank you, Judiciary Committee. My name is Scott Mertz, S-c-o-t-t M-e-r-t-z, and I am the director of Legal Aid Nebraska's Housing Justice Project and I have extensive experience, nearly 13 years, helping low-income tenants across the state. I want to thank you for the opportunity to appear today in support of LB1222 and particularly want-- wish to thank Senator Hansen for both introducing this bill and inviting Legal Aid of Nebraska to testify. As I stated before, as the only statewide provider of free legal services, we hear from low-income renters all across the state. I wish to just take my time to highlight a very specific example that takes these, these problems of mobile home tenants out of the theoretical into the real life. Within the last year, Legal Aid of Nebraska had a client. This was a 74-year-old woman and she had resided in the exact same mobile home and mobile home park for over 30 years. This client had paid her rent on time during those 30 years and she abided by park rules. Nonetheless, that park sought to not renew her tenancy and terminate her on a month-to-month notice. Legal Aid of Nebraska had to go to the district court in order-- rather an attempt to delay the eviction process in county court simply so this woman would have the opportunity just to sell her mobile home. It was her property. She owned it, just so that she could have a little more time to possess it and sell it before she was removed from the park. Even after she agreed that she would move, the mobile home

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park repeatedly and unreasonably interfered with that sale, the sale of that mobile home. Prospective buyers would come. They would be denied the ability to purchase that mobile home by the trailer park. Again, this was a woman who paid for rent every month and continued to pay while this process was ongoing and, and the attempts to sell were interfered with. But her home was the majority of her wealth. It was worth \$37,000. Now, eventually, she was able to sell that mobile home and use the money to move out of state. But it should not have been so difficult, so arduous process for her to simply move out of a park that she was being terminated from and sell her own property. It mustn't be a necessity that one has to go to court in order just to buy a matter of weeks to sell your mobile home and the owners of the trailer park should not be able to arbitrarily decide certain owners cannot purchase that mobile home. These are inequities that would be directly addressed by LB1222. It restores fairness to mobile home parks in Nebraska. Landlords continue to be entitled to their rent. They're still allowed to change the rules and enforce those rules. They're still allowed to evict tenants when may have cause, but LB1222 will provide much needed clarity on what is required in order to remove a mobile home tenant or actually interfere with the sale of a mobile home whenever that is deemed a necessity by the mobile home park owner. So again, I didn't wish to be redundant with previous proponents, but at this time, I'd be happy to answer any questions.

**LATHROP:** OK. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Mertz, for your testimony. Can you clear something up for me in your example? She owns the trailer. She could have sold that trailer to be removed, right or wrong?

**SCOTT MERTZ:** Not necessarily. There was testimony about, again, the economic hardship of selling a mobile home, again, taking many thousands of dollars, but some mobile homes-- again, this one had been in the same spot for over 30 years. You just cannot practically move certain items after they are so old. I don't believe there are contractors who can even move, no matter what the cost, once a property just becomes so dilapidated or so old.

**BRANDT:** So then the problem with the transaction wasn't necessarily the mobile home, it was to obtain the lease that the mobile home sat on for the next tenant.

**SCOTT MERTZ:** Right. As the bill defines this as an in-park sale, I believe. The mobile home park has an interest in who they will be

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leasing to, but-- and they might have legitimate concerns with say that the credit score, the background of a prospective buyer-- but this bill does articulate what those concerns would be, how they would be articulated by the owner of the lot-- of the land, and if the owner of the mobile home has a legitimate prospective purchaser, one who should be able to fulfill the terms of the lease agreement and is able to purchase that mobile home, that that, that sale should go through.

**BRANDT:** Under current Nebraska law, can the trailer park-- or can they legally restrict the sale of that home?

**SCOTT MERTZ:** Yes.

**BRANDT:** OK.

**SCOTT MERTZ:** It's unfortunately just not well defined as to what is a reasonable interference with, with the--

**BRANDT:** All right, thank you.

**SCOTT MERTZ:** --sale.

**LATHROP:** OK. Thanks for being here.

**SCOTT MERTZ:** Thank you. Thank you.

**LATHROP:** Any other proponent testimony? Anyone here in opposition? Good afternoon. Welcome.

**DON HANSEN:** Welcome. I'm Don Hansen, D-o-n H-a-n-s-e-n. My family's been in the manufactured housing and mobile home business since 1967, so 55 years. I've basically done this all of my life and number one, I would like to state that we have owned multiple mobile home parks and we have had hundreds of very, very happy residents. Residents are very, very important to us and to the, to the owners throughout Nebraska. We are really have a very, very good association that does a wonderful job on taking care of people as they sell their homes, as they live in the communities, and so on, very, very good. But what surprises me on this bill here, there was no reach-out to our Nebraska Manufactured Housing Association whatsoever as far as we could work together. We're not against any changes in the Mobile Home Landlord and Tenant Act. We, we're open to whatever, but this bill is completely inappropriate. It's not taking into consideration how the industry has changed. We started in the 1960s again and this was the, the wall. It was a two-by-two wall. So stating they're not going to allow the home to be moved out, this two-by-two wall was originally

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designed to last 30 to 35 years. Those homes were over 50 years old. That's how much installation is in there. There's only two inches of insulation so it's anti-climate track because there's just not enough insulation there to, to keep the people's bills down. Also, those older mobile homes, those older trailers had aluminum wiring. So what happens when they cannot keep the home warm? They get little heaters. They get little heaters in there and what happens with the little heaters? Overloads the aluminum wiring that was pre 1976 and you have a fire. There was no egress windows so the people can't get out. This bill also, LB1222, says we can't take into consideration how many people are living in the home. So there could be 12-- we have a lot of immigrants that want to live in the homes. There could be 12 people living in a 500, 600-square-foot home. They're cold. The furnace doesn't work. They get the heaters and you have somebody who's going to die. When you normally have a fire in a mobile home, it's normally because it's older, it had the aluminum wiring, or it had the insulation like this. New ones all have the two-by-six exterior walls so they're very well insulated, very well built, and designed to last like a conventional home. So what this bill is suggesting, that we can't move out these older mobile homes. Specifically in one of the communities we have, we've moved out 90 out of a couple of hundred. So what's happened is we've increased and gotten better quality to this. There's been no repercussions. Nobody has sued us on-- the news hasn't been contacted. People have been satisfied with the way it was handled. You can move homes. We've moved homes for over 50 years. The homes can be moved and there's even communities that will pay the moving costs in order to get the home to move into the home because they want-- into their community because they want to fill the communities up. So that-- to answer that question-- so this is overreach on their part. They're trying to take care of the people because they say the balance of power as inappropriate. In our industry, we have very, very high-quality owners that care about people versus the other person to ask, what about the tenant? We are very concerned about residents because that's why we have good residents.

**LATHROP:** OK. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you for your testimony. So, so I have a 1975 aluminum-wired, stick-built home and you've gotten rid of 90 of these things.

**DON HANSEN:** You have what now?

**BRANDT:** I mean, I've got one of these older homes on your lot.

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**DON HANSEN:** Right.

**BRANDT:** You want it gone. What do you do?

**DON HANSEN:** Well--

**BRANDT:** Are you buying that home from me and selling me a new home at cost? What are you doing?

**DON HANSEN:** That's what we would look at. We would look at doing that, number one, because it's-- the key is not so much the home, it's the quality of the individual that's in that home. That is always the important thing to keep. You have a good resident, you want to keep a good resident. So yes, that's how we would approach it. How we've approached it for the most part is we do not allow those old aluminum-wired homes that are-- that's actually what they call that is pre-HUD. The federal government came into their code in June of 1976, so you went to this.

**BRANDT:** So are you taking the pre-HUD home and towing it right to the landfill or is there a salvager that you sell the home to? What-- I mean, what do you do? How do you, how do you incent me to get rid of my old home?

**DON HANSEN:** Well, how you incent it? You, you trade it in and you give them a trade in and then you replace it like that. But for the most part, how it's worked is we don't force people out. They just can't resell it.

**BRANDT:** So in your parks, you do still have some of these older homes.

**DON HANSEN:** Oh yeah, definitely, definitely. And, and we don't, we don't go after them and say, you've got to move this house by such and such a day. We want to improve the community constantly. If you don't improve, you're going to have again this type of thing and it's not, it's not what you want, it's not what they want either. It's not-- it's totally anti climate change.

**BRANDT:** OK, OK. Thank you.

**DON HANSEN:** Thank you.

**LATHROP:** I don't see any other questions. Thanks for being-- oh, I'm sorry. Did you have a question, Senator--

**McKINNEY:** Yes.

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**LATHROP:** --McKinney?

**McKINNEY:** I may have heard you wrong and I apologize if I did. I just-- just for clarity purposes, did you say immigrants put too many individuals in their homes?

**DON HANSEN:** Immigrants are what?

**McKINNEY:** Did you say they have too many individuals in their homes?

**DON HANSEN:** What we have experienced-- and this is through my church and so on too. We are very supportive of Afghans and Sudanese and so on. You know, a lot of those folks, when they come in, we're-- we support many families and we've been involved with Northwest High School specifically where there's 53 different languages spoken at Northwest High School in Omaha, Nebraska, with all the different immigrants. But what we've experienced with those folks is they're used to having multiple generations living in the home. There can easily be 12 people, working people living in 500 square feet. They're the ones-- they're trying to find the cheapest place to live. They could go into a pre-HUD home with the aluminum wiring, no insulation and that's where there's been some problems. So we are very concerned. We would not allow-- doesn't matter if they're immigrant, doesn't matter what color they are, we're not going to allow multiple people living in a two-bedroom home. There's only so many people that's going to be allowed because otherwise it's too unsafe. We're about safety.

**McKINNEY:** So what are you doing currently to assist those groups with finding more housing so they're not crowded in one home?

**DON HANSEN:** What do--

**McKINNEY:** What do you do-- what are you doing to help them out so those groups don't have, as you say, 12 people in one home?

**DON HANSEN:** Well, a lot of it has to do with financial, but we are always looking for places for them to rent. We support them through the rent. We-- I do more of the support on the furniture, on getting them furniture, everything. So I guess I'm not-- don't specifically-- I'm not finding them places to live. I'm supporting them in the place that they found to live. Our church is located off of Sorensen Parkway, kind of in north-central Omaha.

**McKINNEY:** So hypothetically, you get a, you get a group-- well, you get a family that comes from Sudan.

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**DON HANSEN:** Sure.

**McKINNEY:** And you've got a mother and a father and they have, let's say, four kids. One room is for the parents and the other room is a bunk-- they have bunk beds for the kids. Is that too many people?

**DON HANSEN:** No.

**McKINNEY:** So what number do you deem as too many?

**DON HANSEN:** I think there's a city ordinance-- we believe in following the ordinances of Omaha. Omaha city ordinances refer to how many people are allowed in a two-bedroom, a three-bedroom home. We believe in following those ordinances.

**McKINNEY:** And what does the ordinance say? What's the number?

**DON HANSEN:** I don't know. I'm sorry. I don't have that information for you today.

**McKINNEY:** All right.

**DON HANSEN:** I just-- I think 12 to 14 in a two bedroom, personally, that's too many. But as far as the ordinance, I could find that information out for you.

**McKINNEY:** All right, thank you.

**DON HANSEN:** No, thank you.

**LATHROP:** OK, thank you, Mr. Hansen.

**DON HANSEN:** Thank you.

**LATHROP:** Next opponent. Good afternoon.

**PAUL ELOFSON:** Good afternoon, Chairman, senators. My name is Paul Elofson, Paul, P-a-u-l, Elofson, E-l-o-f-s-o-n. I'm with the Fitzgerald Schorr Law Firm, but I've been asked by the Nebraska Manufactured Housing Association to speak today with regard to LB1222 in opposition. The housing association has been around since 1948. You've heard from Mr. Hansen, whose family has been in the business for many, many years. You're going to hear from Mr. Hipple, whose family's been in the mobile home business since about 1950. They do their best to honor their tenants. They want good tenants. We are concerned about LB1222 because many of the provisions honor the difficult, troublesome tenants. Let me give you some examples as to

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some of the issues. The legislation says that if you're going to make a rule change, you got-- first of all, current legislation says if you're going to make a rule change, you got to give 60 days' notice. This, this, this act now says you've got to give them 60 days' notice, but you can't enforce that rule for another three months. So a five-month window to change a rule, where the goal of the owners of the park in doing a rule is to facilitate and bring about a safe, clean, and healthy community. So the rules are not changed willy-nilly. There's reasons that are, that are done. Another issue is that there's language in this act that says a new rule adopted after the execution of the tenant's initial rental agreement that imposes a reoccurring financial obligation on a tenant is not enforceable against the tenant. Well, I know that there are some crafty lawyers out there and if, and if it's appropriate and there's an eviction going forward, they may take the position that a rent increase is a reoccurring financial obligation that cannot be enforced against a current tenant. So the bill is vague and, and has issues with it. Another issue is that with regard to the in-park sales that we're talking about, the legislation is burdensome. You've heard Mr. Hansen talk about that. There are goals of the owners of the park to upgrade the parks. And with regard to in-park sales, an issue with an old pre-HUD home where the-- when the landowner, the home-- the mobile home park owner wants to try and bring a better quality of home into the park, these-- this legislation will adversely impact that. There's now specified reasons for termination. It used to be, under the old law, five days' notice of nonpayment of rent. Last year, the act was amended to provide for seven days' notice. I believe that was LB320. And as of last year, you now want to take a 10 and then you've got to add the, the secured lender to give notice. That's-- if there's a lien against the home. Well, we don't know who the secured lenders are so we got to now have an eviction situation. And is it a defense to an eviction situation that notice was sent to a prior lender who had sold the loan and so we don't-- did not give notice to the actual current secured lender? Again, there are issues with the act. I see my light is red. The mobile--

**LATHROP:** I think we got, I think we get your point.

**PAUL ELOFSON:** All right. There are many issues.

**LATHROP:** I will say this about these kind of hearings and, and of course, everybody up here recognizes this. When somebody introduces a bill, somebody will bring it in and a hearing serves an important purpose because we do get to hear from-- it helps me as a bill introducer identify who's got a problem with the bill, it helps me



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identify what the problems are, and then it's up to the bill introducer to, to either try to advance the bill as is or to try to work with people. And so it is, it is a helpful-- it's helpful in the process to have you here and to share your concerns. And, and also so we know who you are. Not my bill, but certainly I would encourage people to try to get together on this one.

**PAUL ELOFSON:** We believe that there are many issues with the bill.

**LATHROP:** OK, fair enough. Next opponent.

**STEPHEN HIPPLE:** First of all, thank you for staying late.

**LATHROP:** It's Friday too.

**STEPHEN HIPPLE:** Yeah, I know it is Friday.

**LATHROP:** It's not, it's not late for a Wednesday, but it's late for a Friday.

**STEPHEN HIPPLE:** I want to go home too.

**LATHROP:** OK.

**STEPHEN HIPPLE:** My name Stephen Hipple. That's with a "ph," S-t-e-p-h-e-n H-i-p-p-l-e. I'm 73 years old. I've been in the, the mobile home business. I was born in Bryan Memorial Hospital and taken to a mobile home and-- five days later so that's how long I've been in this business and I want to keep my tenants. I don't, I don't want to lose any tenants. I want to be a 100 percent full all the time. But there are some issues with this bill that are troublesome. And now just to-- I'll give you two examples. This bill prevents the landlord from protecting the good tenant from the bad tenant. Now here's an example. We had a lady, an elderly lady that lived in the park and everybody in our manufactured housing community has their own private parking spot. And it's in the rules you can't park in somebody else's private parking spot. So you can come home. You want a place to park your car. Well, there was-- unfortunately, we let in a bad tenant who lived right next to her. He would park his car in her designated parking spot or if he wasn't there, he'd have company come over and they would park in her designated parking spot. So she asked him not to do that anymore and he unleashed on her and used language that I won't repeat in this room. So what did we have to do? We had to terminate his lease because he wouldn't stop. But this, this, this bill, the way it's written, I have to give the tenant 30 days' notice not to park his car in her designated parking spot. That's

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unreasonable. I should just be able to go over there and tell him, please move your car and he should say thank you. I won't do it anymore and I will-- and the problem is solved. But that problem would-- it-- this increases the time period that that tenant has to comply with that rule. Let me give you one more example. Last summer, we had a tenant come into the park who was very nice and three days-- we let him in. Three days later, he brings this great, big flatbed trailer filled with axles. He unloaded them in his yard, but not only did he unload them in his yard, he unloaded them in the neighbor's yard and he got his welder out and his saw and he started cutting them in half. And I went over there, I says, what are you doing? He says, well, I'm in business. I cut these axles in half and I get paid. Some of them need to be longer, some of them need to be shorter. And I says, well, first of all, you can't have a commercial business in the park. We're not licensed for that. Second of all, I said, you've got all your axles in the neighbor's yard. His response was I'll move them when the judge tells me I have to. And it took us two months to get him out, but we finally got him out. But this whole bill is filled with those type of, of wordage. Now let me give one more real quick--

**LATHROP:** You're, you're out of time.

**STEPHEN HIPPLE:** Oh.

**LATHROP:** So let's see if there's any questions. And I don't mean to cut you off.

**STEPHEN HIPPLE:** I know.

**LATHROP:** The problem I have as being in the Chair with that light is if I don't enforce it for everybody, then everybody else gets upset when I enforce on--

**STEPHEN HIPPLE:** Sure.

**LATHROP:** --some. That's the problem. Senator Brandt.

**BRANDT:** Yes, I, I--

**LATHROP:** Do you want to hear about some--

**BRANDT:** --don't have a hard case like the Chair. I'm a little more reasonable. I'm going to go back to what Attorney Elofson brought up. Can you clarify for me when you're evicting somebody, are you, are you telling them they got to take their house and move it off, off the lot

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or you own the house, you're getting rid of the person? How does that work in a mobile home park? Whose house is it?

**STEPHEN HIPPLE:** The-- I can't remember ever evicting anyone other than for nonpayment of rent. Now, we do--

**BRANDT:** You're, you're evicting them from a mobile home that you own or you're evicting--

**STEPHEN HIPPLE:** That they own. That they own. They have to move their home off the property.

**BRANDT:** Oh, so when you're talking about eviction, you're saying, take your house and leave.

**STEPHEN HIPPLE:** Yeah.

**BRANDT:** OK.

**STEPHEN HIPPLE:** If you--

**BRANDT:** Go ahead.

**STEPHEN HIPPLE:** I can give you an example where we told somebody they had to leave. We had a tenant that came in and she'd lived with us for several years and she was a-- she always paid her rent on time, never bothered anybody. Well, she got involved in the drug trade and she put-- this just happened a few-- we, we probably spent \$10,000 getting this person out. She put two cameras on the front of her mobile home, one going out to the street, one going down the street. She was backed up against an apartment complex. She had a camera in the-- pointing at the, at the parking lot in, in the apartment complex and she had another one in the front yard. The neighbors tipped me off. They said, this lady is doing something funny and we think she's selling drugs. The people would come in and park in the apartment lot. They'd come around. They'd be in her house for ten minutes and then they left. So she quit paying rent, then COVID hit, and we went through all that battle. You can evict people for nonpayment of rent. Well, finally COVID was-- that restriction was lifted and we got her out. The mobile home was gutted. There were-- there was no bathroom. There was no toilet and people were living in that, if you can believe that. So anyway, we finally got it-- purchased it on a sheriff's sale for-- I think I gave \$250 and then we came up with two 50-yard dumpsters and we chopped it all up and it's in a landfill. So that's how-- we seldom ever happen. That's only happened twice since I've been in the business and I've been in Bellevue since 1987.

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**BRANDT:** All right, thank you.

**STEPHEN HIPPLE:** You're welcome.

**LATHROP:** OK. Thanks for being here, Mr. Hipple. Anyone else here in opposition? Anyone here to speak in a neutral? Are you opposition or neutral?

**KEN LACKEY:** Neutral.

**LATHROP:** OK, neutral testimony.

**KEN LACKEY:** And I'll, I'll be quick.

**LATHROP:** All right.

**KEN LACKEY:** Good afternoon, Chairman, Lathrop and members of the Judiciary Committee. My name is Ken Lackey, K-e-n L-a-c-k-e-y, and I'm the legal counsel for the Nebraska Department of Motor Vehicles. I'm appearing before you today to offer testimony in neutral capacity to LB1222. There has been already some explanations about what the bill is going to do, but particularly with the DMV, there's going to be some notification requirements that have to be met in order for us to issue a title to the landlord when the mobile home is declared abandoned and that's what I'm here to talk about. One of the concerns we have is that we would like the bill to add county treasurers to that issuance process. Right now, it just has the Department of Motor Vehicles. Once that-- the counties are added, we believe that our fiscal note will then eliminate the need to have a full-time employee to process those applications for title. It also aligns with what we do currently with our title issuance process where the counties generally do issue the titles in these areas. So we feel it'd be much easier too for-- and convenient for these landlords here to have these titles processed by their local county treasurer rather than going to the Department of Motor Vehicles. I have reached out to Senator Hansen's office with these concerns. They've also provided me with a copy of the amendment that they did today and we'll review that. We haven't had an opportunity to do that yet, but I welcome his staff to, to contact me and we can certainly work some of these issues. But that's really all I have. I'll welcome any questions. We also have attached a technical letter with regard to those areas where that-- the county treasurer can be added to the bill.

**LATHROP:** OK, doesn't seem to provoke any questions, so.

**KEN LACKEY:** OK.

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**LATHROP:** Thanks for being here.

**KEN LACKEY:** Thank you.

**ELAINE MENZEL:** Chairman Lathrop and members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials and primarily for the reason that the individual that previously just testified on the title aspect, but also on another issue that we had worked that was nonsubstantive with Senator Hansen. Excuse me, I'm losing my train of thought, but that he had incorporated within the proposed amendment that you have before you. But just essentially to say that he has addressed those concerns that we had previously addressed and we have no concerns with the proposal as suggested by the Department of Motor Vehicles. So--

**LATHROP:** OK.

**ELAINE MENZEL:** --if there's any questions, I'd be glad to attempt to answer them.

**LATHROP:** I don't think there are any questions.

**ELAINE MENZEL:** Thank you.

**LATHROP:** Anyone else-- thank you for being here. Anyone else here in a neutral capacity? Seeing none, Senator Hansen, you may close. There are proponent letters. There are four, four proponent letter-- position letters from four proponents, no opponent, no neutral.

**M. HANSEN:** Thank you, Chairman Lathrop, and thank you, members of the committee. I'll try and be brief. Senator Lathrop, your comments to one of the testifiers, this is a kind of exactly as it is for me and sometimes you, you don't know how big of an issue you're working on until you have a hearing. For me, I didn't know what this was all going to entail. So introducing the bill, kind of figuring out the moving parts, we worked on some of the technical issues with NACO and the DMV already. Happy to kind of continue discussions going forward with any and all interested groups. I apologize, I didn't have the chance to reach out to some of the industry groups as much as I would have liked. I was the first senator planning to introduce this bill, so I didn't have as much lead-up time as I normally would have. Just in closing kind of the-- I think, Senator Brandt, some of your questions kind of really hit upon kind of some of the issues at hand is where you have, you know, a home that's titled by the DMV that is technically mobile, but not in many instances, or at least not in many

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instances is it cheap to move and then you're renting the land so you have to have the landowner's approval of who owns the thing on top of the land where you just pay to move it or this/that and the other thing. And when you see this web of moving parts, you can see how it would be very easy for somebody who's not very legally adept to be kind of overwhelmed and disadvantaged. I think there's probably some easy improvements, some-- we can work on in future sessions and with that, happy to take any questions.

**LATHROP:** I see no questions.

**M. HANSEN:** Thank you.

**LATHROP:** Thanks, Senator Hansen. That will close our hearing on LB1222 and our hearings for the day. Thanks, everyone.