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Agriculture Committee
January 30, 2007

[LB108 LB200 LB273 LB422]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 30, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB108, LB422, LB200, and LB273. Senators present: Philip Erdman, Chairperson; Annette Dubas, Vice Chairperson; Merton "Cap" Dierks; Russ Karpisek; Vickie McDonald; Don Preister; and Norman Wallman. Senators absent: Ernie Chambers. [LB108]

SENATOR ERDMAN: Good afternoon, ladies and gentlemen. Welcome to the Agriculture Committee of the Nebraska Legislature. I will introduce you the members of the committee even though I recognize some of them are not in attendance at this time. And we do have a full agenda this afternoon. I know a lot of you have opinions you would like to share with the committee on one of the four bills that we have, and we would like to make sure we handle our time efficiently and effectively to make sure that you have the opportunity to share that. I will introduce the members of the committee, both those who are here and those who are not. First of all, I'll start with Senator Wallman. Senator Wallman is from Cortland, Nebraska. Next to him will be Senator Vickie McDonald. Senator McDonald is from St. Paul. Senator Russ Karpisek is roaming around in here earlier and he is from Wilber, Nebraska. Next to him will be Senator Annette Dubas. She is the Vice Chair of our committee from Fullerton. She will actually be chairing the first bill before us this afternoon as I have another bill that I will have to introduce. And as you see members who may not be here, they may have other bills that they are introducing in different committees as well. Next to Senator Dubas is Rick Leonard, our research analyst for the committee. My name is Philip Erdman. I'm the Chair of the committee, from Bayard. Senator Cap Dierks will be to immediate right. He is from Ewing, Nebraska. To his right is Don Preister. Don is from Omaha. And to his right will be Senator Ernie Chambers. Our committee clerk is Linda Dicken and she will assist you in making sure that your name is spelled correctly in advance of your wonderful testimony that you are going to share with the committee. Probably two of the most important people that you will see this afternoon are our pages. We have two very qualified and talented individuals and we'll go ladies first. Erin Frank is from Bassett. She is an environmental studies major at the University of Nebraska-Lincoln, and Steve Sharf is from Lincoln as a political science major. And both of them have an interest in ag policy and that's why they are paging for our committee. I'll remind you that in this age of technology, cell phones are becoming somewhat of a curse but they are also a necessity and if you feel the need to have yours on, make sure that it doesn't ring. That will assist us in our deliberations, as well as making sure that the transcribers don't have to try to overhear the testimony through that. So if you can turn them to silent or vibrate, that would be great. Those of you that wish to testify, the process will be that we will ask you to come forward, and hopefully you'll have an opportunity to fill out a testifier's sheet prior to testifying. Those are positioned at each door. What we would like you to do is, before you testify, to fill that out, to hand that to Linda and then that way we can begin

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the entering of your name and information on the transcriber's record. And then before you begin your testimony, if you'll want for a nod from either myself or Vice Chair Dubas, then that way we can make sure that we're ready to go before you give your testimony. In the event that you are here to state your position and may not want to testify, there are also going to be sheets available that you can sign your name, your position on which ever bill it is, and those can be distributed through the audience to make sure that in the event that you don't feel comfortable coming up and testifying, and we hope that you'll have an opportunity if you do, that you'll be able to state your opinion and that will be added as an exhibit to our record. When you do come forward to testify, make sure that you state your name, as well, even though Linda will have a copy of your official testifier's sheet. State your name and spell that for the record, and if you've been here every committee hearing that we've had this year or not, we would still like you to do that. On every bill that you come forward, recognize that every bill is going to have a different transcriber record and so we're going to make sure that you do that on every bill, and that way we'll have that consistency throughout this process. If you have handout material, the pages, again as I mentioned, Erin and Steve, will be happy to distribute that for you. In the event that you don't have enough copies, they can make copies for you as well. The last thing, and as exciting as it can be to testify in front of a committee to show us how supportive or in opposition you are to a legislation, we ask that you try to refrain from any public display of approval or disapproval. We like to conduct the hearing in such a way that every one feels welcome, be able to share their opinions, and we want to make sure that we recognize the strongly held opinions that you may have on these bills before us. With that, we will await the testifier that will be first, and that will be Rick Leonard. Rick will actually open the hearing on LB108 for us as the committee representative, as our research analyst. As I mentioned earlier, I will be traveling to another committee immediately and I will ask Senator Dubas to chair LB108. In case you missed the order, we will go LB108, LB422, and then our tentative plan for the last two bills is to take them as one bill or in conjunction since they deal with a similar topic. If you would like to come forward and testify on those bills, and this is a just a precursor for those bills, if you would like to come forward we want you to testifier's sheet if you would like to be on the record for both bills. If you are only in favor of one bill, simply bring us one testifier's sheet that says you are in favor of LB200 or you're in favor of LB273 or you are opposed. If you have a position on both bills, we want you to be able to give your testimony at the same time so we don't have redundancy, and then we'll make sure that we afford that appropriately. But that's kind of how we would like to start off. As I mentioned, we'll go through a couple other bills, and before we start that I'll re-outline that for you, as well. With that, it's my honor to turn the committee over to Senator Dubas for LB108, and we will proceed accordingly.
[LB108]

SENATOR DUBAS: Thank you, Senator Erdman. [LB108]

RICK LEONARD: Ready? [LB108]

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SENATOR DUBAS: You bet. [LB108]

RICK LEONARD: (Exhibits 1 and 2) Thank you, Senator Dubas, Vice Chairman and Acting Chairman Dubas, and the members of the committee. My name is Rick Leonard; that's L-e-o-n-a-r-d. And as the Chairman mentioned, I am the research analyst for the committee. I'm here to introduce LB108 on behalf of the committee. I do have some handouts if the pages would please help me with that. While those are being handed around I'll get started. LB108 proposes a number of significant changes to Nebraska's law of division fences. The bill arises from an interim study resolution, LR207, introduced during the 2005 legislative session. Senator McDonald was a cointroducer of that interim study resolution. The committee at that time had two bills pending before it, LB706 and LB286. Both of these bills were motivated by the need to address elements of the existing law that have proven burdensome to counties and other vague and contradictory features of the law largely brought about by revisions to the fence law made by LB882 in 1994. The committee took no action on those bills, in favor of a more extensive review of the issues surrounding the fence law and the purposes it serves, and that was what we accomplished with LR207 which led to the introduction of LB934. LB934 was heard by this committee last year and advanced to General File. It was named a committee second priority bill. It failed on the floor due to lack of time. LB108 speaks to the narrowly focused issues that were the subject of the bills that were brought before us, but is probably more accurately characterized as a comprehensive modernization of the entirety of the law. This modernization is motivated in part by increasing judicial scrutiny of fence laws first enacted during early settlement to apply in an open range setting. It is the purpose of LB108 to update the law to more appropriately reflect evolving rural land uses and ownership patterns and those public interests in division fences that arise in a modern context. I'll go through the provisions of the bill. LB108 makes a number of revisions to the law of division fences found at Chapter 34, Article I. The primary changes are found in Sections 3 and 6 and in the sections outright repealed under Section 10 of the bill. The elements of the bill include the following: amendment to 34-102, amended by Section 3 of the bill, to redefine circumstances when the adjoining landowners are assigned shared liability for fence construction and maintenance and the proportional contribution each is liable for. Currently Section 34-102 assigns that duty to each landowner to make and maintain a just proportion of the fence between them unless neither landowner desires a fence. LB108 would make the following changes: clarifies that within areas zoned primarily for agricultural or horticultural use, the duties assigned adjoining landowners under this section applies when either or both of the properties are used for agricultural use. In areas zoned primarily for agricultural and horticultural use, is defined as it is currently in the greenbelt statutes. In all other areas of the state the law would apply only when both adjoining properties are utilized for agricultural use. The bill retains a provision, the existing law provision, that landowners have a liability for contribution of a just proportion, but specifies an equal share allocation only when both landowners utilize the

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fence for livestock enclosure. Retains the current law provision specification of this section does not compel construction of a division fence neither landowner desires. Section 34-112, pertaining to conforming changes made in 34-112, and that pertains to similar liability for repair of a damaged fence. Due to a response in this section to a request for a performance of such duty is made obsolete by Section 6 of this bill, and that section is eliminated. There is a conforming citation of the law of division fence in provision in Game and Parks statutes 37-1012. Existing causes of actions to allow landowners to recover one-half of the construction cost of a new fence and to recover costs of repair of a damaged fence contained and outright repealed Sections 34-103, and 34-113 are consolidated and replaced in new Section 6. Section 6 provides as follows: It provides that a landowner gives rise to a cause of action to compel an adjacent landowner to fulfill his statutory duties for contribution by serving written notice on the adjacent landowner, the notice is contained and request that the adjoining landowner fulfill his statutory fencing duties through actual physical construction or financial contribution. It clarifies that after giving notice the landowner may initiate or complete construction of repairs. If the adjacent landowner is unresponsive to the written notice, the landowner may commence an action within one year of giving written notice in the county court of the county where the fence is located. The action may be commenced by filing the forms for such purpose prescribed by the State Court Administrator. Upon receipt of the claim, the court is directed to first notify the parties of the availability of mediation. If the parties request mediation, then the bill provides that the court provide that the bill shall refer to them and return to the court in 90 days. Harmonizing changes to the Farm Mediation Act are made on Sections 1 and 2 to accommodate acceptance of referred fence disputes. If parties agree to mediation and mediation succeeds in a signed agreement, the court enters the agreement as the judgment. The parties may pay mediation costs directly to the mediation service. If mediation fails, if parties decline mediation, then the case proceeds according to normal civil procedure. There is a limited right of entry defined under Section 5 of the bill regarding the such right of entry is implicit under current law but not defined. Section 6 defines access as confined to that reasonably necessary to carry out activities contemplated in law and expressly provides that does not include an authorization for tree removal or other alteration of the property without consent of the adjacent landowner. And then the section outright repeals Section 34-101 and Sections 34-104 through Section 34-111 which currently provide for the appointment of fence review panels to hear and determine fence disputes. Current law assigns duties to county clerks to maintain and appoint fence viewers and to collect the cost of construction and repair of division fences ordered by fence viewers through special assessment. I would just turn your attention to the handouts that I gave you. The first handout is a comparison of the...an explanation of the changes in our fence law procedures that were brought about in 1994 and discussion of some of the effects that that has had and how LB108 would address those issues. The second part of the handout that are stapled together is kind of a summary of kind of the issues that are facing us with our fence law. That's discussed, and some of these are legally significant, in part because

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our fence laws were enacted many years ago during the open range era, and the original purposes and public services served by that may have long gone. There is much about LB108 that reflects the fence law in a way that is more compatible with modern public good that arises from division fences, and anyway that addresses some of the...mentions in here, addresses the items that are in the first part of the handout, including a procedural question. The final part of that is for your...I know you won't have time to read it but it is kind of a review of the fence laws, their origination in open range area, and how they've been changed over time, and substantially our fence laws remain all but unchanged since almost settlement, period, including retaining a compelled contribution portion of that. At one time it served an entirely different purpose in an open range era. There have been cases...in the interim study, we did have the assistance of Dave Aiken who is the ag law specialist for the ag economic division of IANR. We also had the participation of a Jeffrey Bush who was representing clients, including a case that caught our attention, Prucha v. Kahlandt, which actually went all the way to the Supreme Court. In that case his clients were challenging the constitutionality of that law, and he was relying on some court cases that have found constitutional defects with similar laws in other states. He helped...we had some...he participated in the drafting of the changes we made. We also participated with the county clerks, and the product before you is the product of that interim study resolution. The other handout was a letter from Jeffrey Bush, outlining his support for the bill. He mainly talks about the difficulty of the current enforcement mechanism through a special assessment, and mentions, as we studied in looking at the bill, we've got a lot of police power being applied to a private civil dispute, and that very fact makes our laws potentially more vulnerable to constitutional challenge. So anyway, if I could answer any questions, I'd be happy to. [LB108]

SENATOR DUBAS: Thank you, Mr. Leonard. Are there questions of Mr. Leonard? [LB108]

SENATOR DIERKS: Rick, lots of stuff happened since LB882, didn't it. The fence viewer provisions are gone with LB108, is that right? [LB108]

RICK LEONARD: Right. I could elaborate on that if you would like me to. [LB108]

SENATOR DIERKS: Yeah, why don't you. [LB108]

RICK LEONARD: Yeah. Recall when that bill was passed, there was some ambiguity then about the appointment of fence viewers and what would happen if one landowner didn't want to appoint fence viewers. We provided for a provision where the county clerks would maintain a fence viewer panel that...of six fence viewers...that whenever a case arose they could choose three of them to go hear the case. We also...what was very significant about it, the role of the fence viewers before that, they've always been an arbitration panel but basically you took your dispute to them, and the fence viewers

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then heard the parties and made the decision, okay, you are responsible for this part, you're responsible for this part, or this cost or that cost. Then there was...but enforcement of that was left to the private landowner through a direct civil action. The changes we made, though, changed the nature of the fence viewer decision. It became an order where the fence viewers could issue an order which they filed with the county clerk, and provided that if one of the landowner, defaulting landowner, didn't honor that order the other landowner could complete the work and collect reimbursement through the special assessment process. I would urge you to read that letter from Jeffrey Bush that he points out a number of weaknesses, both practical and potentially constitutionally with that approach. Although that approach...that was modeled after Iowa law; they have something very similar to that. This bill, we've done away with the fence viewer system altogether, and went back to providing a direct civil action. We're wanting to privatize the disputes--keep government out of this as much as possible. We're providing a forum...basically the government's involvement is providing the forum through the courts and defining the fence law shared liability in statute. Keep in mind that the bill is not necessarily prescriptive. It's not necessarily the ideal resolution. Basically it's a default way of resolving it if the parties can't agree on resolution amongst themselves. Probably 99 percent of the time landowners probably get along well and it never rises to that issue, to that level. [LB108]

SENATOR DIERKS: Does the points that the attorney, Mr. Bush, points out, are those incorporated in the LB108? [LB108]

RICK LEONARD: Right. Most of his points are directed at the fact that he likes the fact that we are doing away with the fence viewer system, particularly as it's constructed today and allowing for direct civil enforcement. He makes the point that that removes a lot of application of the police power to a private civil dispute, and we avoid a lot of both procedural practical problems, potential avenues of constitutional attack on our fence law that have been used in other states. [LB108]

SENATOR DIERKS: The fence viewer portion of it was probably a little archaic. It was time for some changes. [LB108]

RICK LEONARD: Right. Right. If you read through that history, you'll find that the compelled contribution statute was basically first enacted during settlement times when we were mostly cattle country and open range. At that time the law was...the herd laws were, if the cattle got on your property...the only way you could sue a neighbor for letting his cattle trespass on your property is if you, the landowner without the cattle, had the burden of keeping the cattle off. We have since long ago, since, oh, 1880s, reverted to a fence-in law wherein the liability lies with the cattle owner himself or the livestock owner, to restrain the animals, and he's liable for damages to the other property. The compelled contribution statute was kind of a compromise saying to that settler, the farmer settler, if you will, you have the burden to keep the cattle off. Your

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neighbor doesn't have the burden of keeping his cattle off or her cattle. But as a compromise, we will put this in place that allows you to compel your rancher/neighbor to help you pay for the fence. Since we've reverted to a fence-in law, the original purpose for that is not there. However, there has been case law that have upheld these compelled contribution statutes, and I think there's a number of very important modern public purposes served--property line demarcation, reducing litigation from trespass, adverse possession, separating conflicting land uses, clearly marking boundaries. In this bill we even have one additional thing which we thing ties the fence law to a very powerful modern purpose in that you mentioned recall in my opening there was some discussion about how the law applies to...depending on whether the land is in a zoned agricultural knot, basically we've said if you're in agricultural area, that's an area that counties have said or local planning authority say, we want to try to preserve this in agriculture. We're going to try to minimize conflicting land use intrusion to the extent we can. Basically, this bill will say if you are a conflicting land use, moving in, intruding into an agriculturally zoned area, be on notice that maybe one of the issues you might have to deal with is that you may have to be liable for constructing of fences. So we think there's an incremental but some additional reinforcement of the value of zoning. [LB108]

SENATOR DIERKS: Thanks, Rick. Thank you, Senator. [LB108]

SENATOR DUBAS: Any other questions? Senator McDonald. [LB108]

SENATOR McDONALD: So if, say, I had a piece of land and my neighbor had cattle and they kept getting out, and they were absentee landowners and maybe had a renter that rented the pasture and stuff, and there was a problem there. Then I assuming that I have to file a complaint with the county clerk's office? Is that how that's done? [LB108]

RICK LEONARD: In terms of...this is only dealing with your wanting to compel your neighbor to repair the fence. [LB108]

SENATOR McDONALD: Right. [LB108]

RICK LEONARD: Not sue him for his cattle getting on your property. [LB108]

SENATOR McDONALD: No. Right. [LB108]

RICK LEONARD: Right. Basically the law provides that we set out the statutory duties. If you and your neighbor can get together and talk about it and say I would like to get this fence repaired; I'll do this much; you do this much, or however, that's fine. You're welcome to do that. If your neighbor weren't willing to contribute or that type of negotiation failed, then this provides the default mechanism. Then we do provide for direct civil action that you would initiate. We tried to set it up very informally. We followed very closely the small claims court petition process for initiating in small claims

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court. [LB108]

SENATOR McDONALD: So I could fine a complain with the county clerk. [LB108]

RICK LEONARD: With the county court. [LB108]

SENATOR McDONALD: With the county court. And within a year, they have to... [LB108]

RICK LEONARD: No, the bill says that you provide written notice to your neighbor to say I would like you to help me fix this fence. You have up to a year if the neighbor doesn't respond to that... [LB108]

SENATOR McDONALD: Okay. [LB108]

RICK LEONARD: ...to initiate the claim. In the meantime, the law specifically provides, if my neighbor is not being cooperative, I could fix it myself in which case the complaint becomes a request for contribution or reimbursement for his share, the neighbor's share, that he should have been... [LB108]

SENATOR McDONALD: And so if I fixed it myself, I could bill them then? [LB108]

RICK LEONARD: Right. Right, and that's what you would say. That would be...I went and fixed this out, it cost me \$10,000, your share is half. I think you, by rights of my statutory obligation, you should owe me half for that or you are liable for half of this fence. And then once the fence is built, of course the only...before it's built the, you could ask for either contribution or performance; I want my neighbor to build his half of the fence. If you've obviously already done it, then the only...then the remedy becomes I want reimbursed for what should have been his. [LB108]

SENATOR McDONALD: Okay, thank you. [LB108]

SENATOR DUBAS: Any other questions? Senator Dierks. [LB108]

SENATOR DIERKS: I was just going to suggest that...out in our country we decide who fixes the fence by the owners getting together where the fence is in the middle...the middle of their fence. And each one takes the fence to their right. I mean there is one across the fence from you, and that's what you fix, and it works out well that way. And that's pretty uniformly done out in Wheeler County, so. [LB108]

RICK LEONARD: This bill wouldn't change that, that's current. That's been a common custom by how fence viewers do it. They adopt the local custom. Basically on a 50-50 split that's one way of doing it. We can meet in the middle and each of us take the right.

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I guess that's why there are so many people named Lefty out there. I don't know. But each one takes your half to the right. That's one way of doing it. You could say this year I'll maintain the fence this year and all even-numbered years you, and odd number of years, that's maybe potentially a way of doing it. Nothing dictates that it be resolved that way but nothing prevents it from being resolved that way. [LB108]

SENATOR DIERKS: Thank you. [LB108]

SENATOR DUBAS: Any other questions for Mr. Leonard? If not, thank you very much. We'll call for the proponents of this bill. [LB108]

SHERRY SCHWEITZER: (Exhibit 3) Good afternoon, members of the Agriculture Committee. My name is Sherry Schweitzer. That is S-c-h-w-e-i-t-z-e-r. I am the Seward County Clerk. I personally have performed three fence viewing disputes. I'm also cochairman of the county clerks legislative committee. Fences: What relationship does a county clerk have with fences? We make car titles, issue marriage licenses, pay the bills for the county, most of us manage elections and file land documents. So does it seem logical that we are in charge of fence disputes? The statutes say we are, and here's how the process works currently--or doesn't work. A landowner must send a written request to an adjacent landowner to ask him to fix his portion of the fence. If the neighbor does not comply, the complaining landowner must request in writing to the county clerk to commence a fence viewing. He gives me a deposit for the fence viewing costs and this initiates the process. By law I should have a fence viewing board already in place. This board is to be made up of three people who own agricultural land and three people who own agricultural land and own livestock. I'm to pick three people out of the six-member board to go and view the fence in dispute. Now, statutes don't say what part of the fence a person is to take care of, and I grew up on a farm but I didn't know myself. I had to ask my father who was a farmer, and he explained to me like this. A landowner stands on his property, faces the fence, and the fence to his right is his responsibility. Likewise the landowner on the other side of the fence does the same thing. Next, I must notify the landowners of the date and time when the fence viewing is going to take place. I and the fence viewers then go and view the fence. That is, we measure their fence so that we can mark the halfway point. I usually use red spray paint on a fence post, then with another color of spray paint we mark places that need fixing. Then we allow a time for each landowner to air their allegations. This time is usually spent by the landowners arguing about whose cows got out in whose pasture and whose fault it was and whose part of the fence they crossed. Then I assist the fence viewing board in writing down specifics about the fence repairs, and they decide who pays for the fence viewing. I type up an order, have them stop in my office to sign it, and send it out to the landowners. A time period is usually given to the landowners to fix it. Actually in both of my fence viewings the time to fix the fence had lapsed with no repairs being made. I even gave extensions, warned them that another person would be brought in to fix it at their cost. Even sent the fence viewers out a second time because

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one landowner said that the repairs were done; the other said they weren't. I've had to file the cost as a special assessment on the property because of lack of payment. And if a landowner does not like the final order of the viewers, he can then appeal it to district court within ten days. We then get called into court, along with our fence viewing board members. Senators, I must tell you this is not a fun thing to do. County clerks do a wide variety of things but this is really outside our realm. Fence viewing stories from county clerks involve taking the sheriff or county attorney with them because we were fearful in a hostile environment, having to hire a construction firm to tear out trees and brush, and receiving threats for administering the viewing. We are not professional mediators here. Our main concern here is that we don't think we are too busy or that we don't want to do it. It's just that we don't feel we are doing an adequate job. Fences are important to landowners, and even though we are assisting these fence viewing boards as best as we can, it's not working. It's about a subject of which we have little or no knowledge about, dealing with people who really don't want to be there and trying to make everyone happy. This bill allows the party to file an action in county court which would inform him of the mediation center. We think the Department of Agriculture's farm mediation center is the perfect fit. They have the professional mediators and work in the agricultural sector daily. The County Clerks Association believes all parties involved would be best served by moving this task to a more appropriate agency. [LB108]

SENATOR DUBAS: Thank you very much. Are there any questions? Senator Dierks. [LB108]

SENATOR DIERKS: Well, maybe. Your comments are after you read LB108. [LB108]

SHERRY SCHWEITZER: Right. [LB108]

SENATOR DIERKS: Well, I guess I thought maybe that the fence viewer thing was pretty much archaic and put out of place with LB108. [LB108]

SHERRY SCHWEITZER: It would. What I was explaining there is what we have currently in law. [LB108]

SENATOR DIERKS: Oh, I see. Okay. [LB108]

SHERRY SCHWEITZER: Right. No. [LB108]

SENATOR DIERKS: Okay, fine. Thank you. [LB108]

SENATOR DUBAS: Any other questions? Thank you, Ms. Schweitzer. Another proponent? [LB108]

MICHAEL KELSEY: Thank you, Senator Dubas and members of the Agriculture

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Committee. My name is Michael Kelsey; that's K-e-l-s-e-y. I serve as the executive vice president of the Nebraska Cattlemen and am here to provide testimony in support of LB108. I won't occupy too much of your time, knowing that your schedule is quite full today, but would indicate our support for the bill as we did support LB934 last year, primarily under two components. That is, it's an update to the current law which you already discussed extensively, and then in our opinion provides for an mechanism for private mediation, that being landowners can settle the dispute amongst themselves in due form. And if not, then it still does provide...hopefully this doesn't happen often...but it should provide or it does provide for litigation to resort to in those cases where a dispute cannot be settled. So, again, very briefly, we do support LB108 and we would encourage you to send it to and request that you send it on to General File. I would be happy to answer any questions. [LB108]

SENATOR DUBAS: Thank you, Mr. Kelsey. Any questions of Mr. Kelsey? Seeing none, thank you. [LB108]

JON EDWARDS: Good afternoon, Senators. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm with Nebraska Association of County Officials. We are here today in support of LB108 and would like to thank the committee in including the officials in the discussion and trying to resolve these issues surrounding fence disputes. I think Sherry explained our position very well. It seems like a practical way to try to resolve the current problems with a statutory scheme, and we would just ask that you all support and move the bill out to the floor. And with that. [LB108]

SENATOR DUBAS: Are there any questions? If not, thank you. [LB108]

JOHN K. HANSEN: Vice Chairman Dubas, for members of the committee my name is John K. Hansen, H-a-n-s-e-n. I'm president of Nebraska Farmers Union and appear before you today in support of LB108. We supported this same basic concept last time around. We think it's a reasonable way to proceed when the normal kind of relationship between neighbors isn't there and it breaks down. And there needs to be some kind of mechanism when your neighbor is unwilling to take care of their responsibilities, so this seems a reasonable way to do it. And I'm not sure how many of the fence bills I've testified on down through the years but it would be a lot of them. But it seems like to me that during the last hearing there was some discussion about the process which when I look at LB108 maybe it's in there but maybe I just can't find it, but it had to do with the situation where there's an adversarial relationship between two neighbors and things have obviously gone south and they're not talking or communicating well and there's a high level of hostility. And it seemed like to me that in the last hearing there was a discussion about a process going forward relative to before the fences could be put in, that whoever the person is that, the surveyor, and maybe there's a different, more technical name for the surveyor, but a surveyor had to come in and make certain of the parameters of the fence--each end and the center post, something like that. And so

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perhaps that's in here but if it's not I think that might be one thing that if there's going to be a dispute and a hostile situation between neighbors, if you put the fence in and you just kind of wander just a little bit into your neighbor's ground, that would probably cause additional hostility. I've had a neighbor like that in the past and so that's why I always wanted to make sure I kept up my end of the fence because if he put in the fence there's going to be about 10 feet every time he put in a fence. So it seems to be that there was discussion on that last time and I don't remember whether there were provisions in the last bill or not, but we are in support of this bill with that one possible suggestion. If that's contained already, great; if not, it might be something to look at. But having the parameters clearly framed would, I would think as long as the fence met those parameters, eliminate that future contention. With that I would be glad to answer any questions if there are any. [LB108]

SENATOR DUBAS: Thank you, Mr. Hansen. Thank you for your perspective. Are there any questions? [LB108]

JOHN K. HANSEN: Thank you. [LB108]

SENATOR DUBAS: Thank you. Are there any other proponents? Seeing none, opponents? Seeing none, is there anyone who would like to testify in the neutral? [LB108]

DAVID AIKEN: I'm David Aiken, A-i-k-e-n, an ag and water law specialist in the Department of Agricultural Economics at the University of Nebraska. And I'm here at the committee's request to offer some comments about LB108. And I think the testimony that you've received has been good and has really covered most of the issues so I'm going to try to keep my remarks really short and hope that you don't ask me about what LB108 does because I'll defer all those questions to Rick, so. As I was reviewing some of the recent lawsuits and some of the law journal articles dealing with this question, the point that's made over and over again and is actually the point I try to make to the students in class is that the fence viewer process is a mechanism by which you can force a neighbor to get them to pay for part of the fence. And a lot...the court decisions that said that the fence viewer or that the fence laws were unconstitutional, were where the courts felt that the person that had to pay part of the fence shouldn't have to pay for part of the fence. And these are the so-called compelled payment or shared payment requirements that Rick referred to in his testimony, and I guess this is certainly beyond the scope, I think, of what is included in LB108, but this is probably the underlying issue that the committee may want to consider. Some of the disputes that led to this amendment, to the fence viewing statutes, were between an agricultural producer and someone who is not an agricultural producer--I presume someone who was an acreage owner and the disputes had to do, in part, with cutting down trees before the fence went in and whether the acreage owner had to pay for his...it ended up being his half of the fence when he didn't want the fence and when he wanted the trees left the way they

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were, and so on and so forth. And it seems that these kinds of conflicts between neighbors, particularly where there are conflicting land uses, are inevitable, and it's a tough one. You know, nobody representing the acreage owners are here, not surprisingly, but that's certainly an interest and ought to be a concern. Rick mentioned the tie-in to the zoning statutes. I guess if I were an acreage owner, I would prefer to live in a county that was not zoned because if I am in a county that's not zoned, then I am relieved of my obligation to pay for half of the neighbor's fence, and that creates probably the reverse kind of incentive that you want but that's just something that I'll point out just for fun. The last thing would be that this proposal does do away with the mediator system...or excuse me, the fence viewer system where I pick one, you pick one, and then the two people that we pick, pick the third fence viewer. And taking that out was in response to the legitimate concerns raised by the county clerks and the county officials. Just two comments. The first comment is that in other states sometimes the county board or the equivalent to our county board in Nebraska are the official fence viewers. So in some counties they actually play a much larger role in resolving these disputes than is the case currently in Nebraska. And the second one is that if you want to get the county out of it but somebody likes the old fence viewer system, that you could go back and restore the language that was taken out in 1994 and just go back to where, you know, I pick one, you pick one, and so on. That may not be the greatest system in the world but it's another option that could be considered. Questions or comments? [LB108]

SENATOR DUBAS: Any questions for Mr. Aiken? Seeing none, thank you. [LB108]

DAVID AIKEN: Thank you. [LB108]

SENATOR DUBAS: Are there any other testifiers in the neutral position? Seeing none, that...would you like to close? Okay. Seeing none, we will close the hearing on LB108. LB422. [LB108]

SENATOR ERDMAN: (Exhibit 4) Good afternoon, members of the Agriculture Committee. My name is Phil Erdman. I represent the 47th Legislative District. I'm not a stranger to all of you. Madam Vice Chair, it's a privilege to introduce LB422. LB422 was brought to me at the request of the Secretary of State as part of the efforts of the current occupant of that office to focus the work time duties and staff of his office on core issues and matters, and to eliminate duties that are peripheral and no longer essential to be performed by the Secretary. Simply put, the primary purpose of LB422 is to remove the Secretary of State personally as a permanent member and chair of the Nebraska Brand Committee. Now, let me give you some background of how we've gotten to the point that we are with the Brand Committee. Early on when brands were recorded during the settlement period and approximately 1899, brand recording was transferred to the Secretary of State's Office. Prior to 1941, private stockmen groups and the largest of those which were the Nebraska Stockgrowers Association, provided those brand

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inspection services to their members and employed theft investigators. Those investigators were helpful to law enforcement but did not have the independent law enforcement authority. In 1941 the Legislature then created the Nebraska Brand Committee as a state agency vested with brand inspection and theft investigation authorities. The Secretary of State was designated a member and chair of the Brand Committee. LB136, in 1975, then transferred the brand registration function from the Secretary of State to the official organization called the Nebraska Brand Committee. LB136 created the position of brand recorder within the Nebraska Brand Committee. That provision currently at 54-194 provided for the Secretary of State's signature for certification of brand recording documents, adds a clarification that the Secretary of State performs that function only as the chair of the Nebraska Brand Committee. The bill before you changes the current makeup of the Brand Committee while still preserving a valuable balance that has been struck over the years in the makeup of the committee. The 3-1 allocation as it currently exists has at least three members that are cattlemen and at least one member is a livestock feeder. The legislation still provides for those types of balances. It doesn't require those numbers to be specific. I believe the language says at least three members must be cattlemen and at least one member must be a livestock feeder, and obviously any variation to get to five is addressed in that same example. The other part of this bill that I think is important in reflecting the intent of the Secretary of State and working with him and cattlemen and others on this legislation is that it provides that the Brand Committee will elect a chair and the vice chair from its members. The Secretary of State, as well as the...or his or her designee...as well as the Department of Ag director and his or her designee, will serve as ex officio members. But again the committee itself will elect the chair and vice chair of that committee. The Secretary of State is here to present his ideas as to why this is a good move. Again, the Secretary of State's Office will still be represented. The technical amendment that you have before you simply is designed to try to reflect if this change is adopted some of the things that need to be done based on the terms of the existing members and how to sync this change within that. And again, the Secretary of State will continue to serve in the capacity as chair until the successor is installed as provided by the bill. Finally, there is an emergency clause added so that the operative date of the bill, which is designed to be August 28, would be able to be in effect prior to the early September deadline which would be the actual implementation of the bill had the E clause not been offered. That is LB422. And it's kind of like drinking out of a fire hydrant, I recognize, but we will have some more testifiers, at least the Secretary of State, to be able to try to answer your questions to him on his perspective and why this is an important change to him. And I'll be available on close to answer any further questions that may come up. [LB422]

SENATOR DUBAS: Thank you, Senator Erdman. Any questions? I guess I just have one and I think maybe you just spoke to that, that they'll probably be other people, just the basic premise as to why we're looking at this restructure. Is it just to bring it more up-to-date or...? And if there are other people coming behind you, that's fine. [LB422]

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SENATOR ERDMAN: And why don't I do this, Senator Dubas? Why don't I allow the...I know there are probably two proponents. One is the Secretary and I believe that the Cattlemen, as well, may be testifying. In the event that your question is not answered, I'll make sure in my closing that I address that. [LB422]

SENATOR DUBAS: Okay, thank you very much. Any other questions? Thank you, Senator Erdman. Do we have proponents for LB422? [LB422]

JOHN GALE: Good afternoon, Madam Chair and members of the committee. I'm John Gale, Secretary of State for the state of Nebraska, currently serving as chairman of the Nebraska Brand Committee, and am here to testify in favor of the legislation as discussed by Senator Erdman. There are several things I'll just give as kind of a brief background. When I came on as Secretary of State in 2001, there were certain duties that were assigned to me by statute; certain things that I was required to do that I'll call my core duties, as chief election officer, chief protocol officer, chief records officer, and chief business services officer, and those are the core duties for which most of my staff is assigned and for which they're responsible. In addition, over the years, there have been a number of other positions that have accumulated by legislative direction. I currently serve on eight boards and commissions. I'm chairman of the Real Estate Commission; I'm chairman of the Brand Committee; I'm on the Pardons Board; I'm chairman of the Collection Agency review board; I'm chairman of the State Records Board. All of these are assignments that are not static; they're dynamic. And things keep growing and changing as our economy changes, as the complexity of our society changes. In the course of the six years in which I've been Secretary of State, things such as chief election officer have changed and become a centralized office now rather than really more of a supervisory office, and that's the result of the Help America Vote Act--federal legislation that, in effect, centralized election supervision amongst the 50 Secretaries of State as opposed to the 3,800 county officials. That significantly impacted my office. We have centralized Uniform Commercial Code so that all filings under the Uniform Commercial Code are done in my office rather in our 93 county offices. So there's been a constant dynamic of increased authority and responsibility for my core missions as well as the other duties that I have. I was asked to serve as the chairman of the State Quarter Design Committee, which was a two-year responsibility. I was asked to serve as a facilitator for the Learning Community Coordinating Council in Omaha which I spent all summer preparing to do, and the lawsuit of course precluded me from proceeding with that. So there is a constant request on the part of the Legislature for me to serve in various new capacities, and so I have to look at all my jobs, not in a static traditional way but rather how best can I do my job for the citizens of Nebraska, how best can I serve as a constitutional officer with a limited amount of time and a limited staff to accomplish the best I can accomplish to do the job you want me to do. And consequently a year ago I talked with Senator Kremer and Senator Erdman and Rick Leonard about this particular issue of the Brand Committee. I felt that I really didn't

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serve a particularly productive function as constitutional officer as chairman of the committee. Having lived in North Platte for 30 years and having dealt with many ranchers and farmers, I have the greatest respect and administration for our cattle industry and the significance of the cattle industry to our economy and to our international exports, but this particular committee deals mostly with brand conflicts, with lost animals, and with prosecution for stolen animals. They have a strong investigative team to do that, with 100 inspectors, three supervisors. They also have registration individuals. I found that my function was simply presiding and spending two days for each meeting, getting there and coming back, and simply presiding over issues that they were much more qualified to address than I am. And so out of respect and deference to the industry itself and to their needs, I felt that a representative of the industry replacing me, having me be ex officio, as Senator Erdman has recommended, along with the director of agriculture, seemed like a very admirable and a good consensus solution so that I'm still available on a consultation basis, as is the director of agriculture, but I don't need to attend every last meeting and be there simply to preside over a fairly simply agenda, really not in need of a constitutional officer. So I'll continue to be involved, certainly as chief protocol officer, I do a lot to promote the cattle industry with foreign dignitaries and foreign guests, and our diplomatic conferences. And I'll continue to serve in that role, obviously, in every way that I can. But in this particular capacity, just looking at how best I can serve, I think this bill is the best solution, so I'm fully supportive of the bill. Thank you. [LB422]

SENATOR DUBAS: Thank you, Mr. Secretary. Are there any other questions? [LB422]

JOHN GALE: Thank you, Madam Chair. [LB422]

SENATOR DUBAS: Thank you. [LB422]

JOHN GALE: Thank you. [LB422]

PETE McClymont: Madam Chair, members of the committee, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I am the vice president of legislative affairs for Nebraska Cattlemen and I'm here in support of LB422, and I'd like to thank Senator Erdman for bringing it forward and also Senator Hansen who is a cosponsor. As you've heard from the testimony from Senator Erdman and Secretary of State Gale, I won't be redundant in those comments. We would echo and support what they've already said. Obviously the brand bills have been in place since 1899 when the state took it over from the counties. And so from that standpoint the Secretary of State has been the constitutional officer. Brand is obviously very important to our members that have it and live in that part of the state, and so I don't think that's been affected by LB422 and the changes that have been made. In fact, to have another producer appointed by the Governor just gives more verification to the input that producers have and would like to have. So we like the fact that the producers are taking charge of that, but still also

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welcome and appreciate the fact that Secretary of State and the director of Agriculture could be ex officio members. And also the director of Agriculture is important because obviously it's part of that director's job, and so the information sharing and flow there would be important. So another thing, too, is for your understanding, Senator Hansen had to resign from the Brand Committee when he was elected to this body, and so for him to cosponsor this, I think is a great verification of this bill in that the intent of the Brand Committee in its responsibilities is not changed with this. So with that I'd like to thank Senator Erdman and your time here, and if there are any questions I'd be happy to answer, Madam Chair. [LB422]

SENATOR DUBAS: Any questions of Mr. McClymont? Senator McDonald. [LB422]

SENATOR McDONALD: So are they adding someone to take his place? I see that they are voting amongst themselves for a chairman and vice chair, but are they putting anybody else on the board? [LB422]

PETE McCLYMONT: Yes. Currently, there are four appointed members, Senator, and there will be a fifth person to take the place of the Secretary of State, and that person would be allowed to vote. So then amongst the five, they would vote for a chair and a vice chair. You are correct. [LB422]

SENATOR McDONALD: Thank you. [LB422]

PETE McCLYMONT: Thanks. [LB422]

SENATOR DUBAS: So there are going to be five voting members then. [LB422]

PETE McCLYMONT: Yes. Yes, Senator. [LB422]

SENATOR DUBAS: Any other questions? Seeing none, thank you. [LB422]

PETE McCLYMONT: Thank you. [LB422]

JOHN K. HANSEN: Vice Chairman Dubas, members of the committee, again for the record my name is John K. Hansen, H-a-n-s-e-n. I appear before you today as the president of Nebraska Farmers Union and our paid lobbyist. We are in support of this bill. It seems like a good and reasonable approach and it also seems good to increase the number of producers on the Brand Committee. And with all due respect to the Secretary of State, it would be good to have somebody who could run a branding iron a little more effectively than the Secretary of State. And so he was very gracious in stepping down and it's my understanding that there's some other bills floating around that might find some additional work for the Secretary to do relative to vote recounts and other things, so this would also help free up his time in that effort. So with that I'd be

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glad to close and answer any questions if I have any. [LB422]

SENATOR DUBAS: Any questions of Mr. Hansen? Seeing none, thank you. [LB422]

JOHN K. HANSEN: Thank you very much. [LB422]

SENATOR DUBAS: Further proponents for this bill? Seeing none, are there opponents? Seeing none, anyone interested in testifying in the neutral? Seeing none, Senator Erdman, would you like to close? [LB422]

SENATOR ERDMAN: I would, Madam Vice Chair. The bill is simply straightforward and it's been explained. Senator McDonald, I apologize, I didn't outline the makeup as it currently exists and then as it would under LB422. There is a value, I think, in increasing the number of producers and obviously maintaining the connection between the Secretary of State's Office and also adding a new connection with the director of Agriculture. One of the things that we as a committee have had the opportunity to do over the last five years since I've been a member is to have a lot of discussions about how we can utilize the role of the Brand Committee in issues such as animal ID and also how those discussions interact. The director of Agriculture is the agency that has those responsibilities, and this, I think, would be another opportunity for us to begin to build closer relationships, not that we don't already have them, but to add that insight into these discussions not specific with the brand, but to make sure that there's a formal connection. I think it also adds validity both to our brand law and to the opportunities that we have in agriculture in Nebraska to be able to work together. So the bill before you simply gives the Secretary of State the opportunity to remain on the Brand Committee as an ex officio member or to designate an individual, as does the director of Agriculture. And we increase the number of producers that would be appointed to the committee by one while maintaining the balance that has been struck over the years to make sure that there is an adequate number of representatives from both producers and those who would be considered feeders. And with that I would try to answer any other questions that haven't been addressed. [LB422]

SENATOR DUBAS: Senator Dierks. [LB422]

SENATOR DIERKS: Senator Erdman, there were no changes as far as what geographic area the board members come from. It just has to be cattle producers from the brand area, is that right? [LB422]

SENATOR ERDMAN: Right. The districts, if you will, or the area isn't addressed. It's just simply the number of members and the existing responsibilities and requirements are still in effect. [LB422]

SENATOR DIERKS: Thank you. [LB422]

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SENATOR DUBAS: A question that maybe isn't directly related to this, but what is the reasoning behind not having the entire state be in a brand inspection? [LB422]

SENATOR ERDMAN: Senator Dubas, that is a wonderful question that we have spent many an hours on this committee with bills from Senator Stuthman and others, and there are pros and cons. There are pros and cons within the industry, as you are aware. And so there's probably a great deal of discussion that we can have and we can probably provide you with a pro and con sheet that gives you the pros and cons, and folks on either side of that could argue whether or not it's even accurate. But it is a uniqueness in our state to have the brand area. And the reality is that the brand laws apply to all of Nebraska, regardless of whether you're in the area or not, and so it's just a unique part of where that line is drawn, and whether or not you can get in or out of that line is always a topic of conversation. [LB422]

SENATOR DUBAS: We'll have that talk sometime then. [LB422]

SENATOR ERDMAN: Absolutely. [LB422]

SENATOR DUBAS: Thank you very much. Any other questions of Senator Erdman? Seeing none, thank you. [LB422]

SENATOR ERDMAN: Thank you. [LB422]

SENATOR ERDMAN: Madam Vice Chair, exceptional job. We will now begin the deliberating on LB200 and LB273. Before we begin formal remarks, and I see both of the senators are here, can I see a show of hands of those who wish to testify, and I'm going to get a gauge of each bill, those that wish to testify in support of LB200? I see four. Those that wish to testify in opposition to LB200? I see seven. Okay, those that wish to testify in support of LB273? I see three. Those that wish to testify in opposition to LB273? Six. Very good. Here's how I would like to proceed, and as I outlined before the beginning of our committee hearings today we will be hearing both of these bills in conjunction. My thought is, is that if you're in favor of one or both of the bills, that you can share that testimony as a proponent in one sitting. If you're opposed to one or both of those bills, you can share that testimony in one sitting. We also have the introducers who are going to be here and they will introduce the bills as outlined in statute and their intent for bringing the legislation. So then we will go with Senator Kopplin first, then Senator Burling, and then we will go to proponent testimony. If you're going to testify on both bills, again make sure you have two testifier sheets so that it's reflected on both committee statements. That also makes sure that it's correct when we go back to make those final, that you're in favor or you're opposed to both bills. And then if there are those that wish to testify in a neutral capacity, we'll give you that opportunity at the end. It's about 2:30 p.m. right now. My hope is that by 4 o'clock we can complete this hearing

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on both of these bills. That gives us an hour and a half, and I had outlined earlier I would hope that we give you that sufficient time. In the event that we recognize that that's not going to happen, we will do our best to accommodate, but we want to make sure that you have that opportunity. The committee has also been invited to actually visit the tractor testing lab as well, today, and in respect to those that are going to facilitate that, that tour and that opportunity, we want to try to be respectful of their time, as well, and believe that we can do all of that if we can be optimistic and work together. So Senator Kopplin, if you'd like to come forward and introduce LB200. Senator Burling, if you would like to follow him. And again we'll ask you to state your name for the record and spell it, and we will proceed. [LB200 LB273]

SENATOR KOPPLIN: Senator Erdman and members of the Agriculture Committee, I'm Senator Gail, G-a-i-l, Kopplin, K-o-p-p-l-i-n, and I represent District 3. I'm before you today to introduce LB273 which would change the definition of tractor for tractor testing purposes by increasing the horsepower limitation from 40 horsepower to 60 horsepower. I don't claim to have any expertise on tractors. I introduced the bill at the request of my constituent, Dave Hardies, the sales manager at Omaha Tractor. Mr. Hardies is here today and you'll hear from him later. For Dave and for me this is an issue of economics. Dave and other Nebraska tractor dealers are losing business to our neighboring states in a growing sector of the tractor market--the under 60 horsepower compact utility tractors. Tractors less than 60 horsepower are primarily used for maintenance duties in the urban and suburban areas of our state. They are used by small businesses and acreage owners to push snow, mow grass, haul firewood, and many other maintenance and nonagriculture-type uses. Some manufacturers choose not to have these smaller tractors tested in Nebraska, thus making them unavailable for sale here but not across our borders. The tractor testing law was first passed in 1919 when manufacturers' claims about the performance of their products were perhaps less than completely truthful. Consumers were faced with an expensive purchasing decision based on unreliable or unverified information. That is why the Legislature required that all tractors sold in Nebraska had to be tested by the University of Nebraska. This is a good requirement and one we should keep, but the time has come to modify the law. Who is the law intended to protect? Farmers. It was never intended to protect all consumers. In fact, the original law probably never envisioned what nonfarmers would use these tractors for, and that's what we're talking about: nonfarm use. The tractor testing lab does a good job protecting the consumers the law is intended to protect--the agricultural users, the farmers of Nebraska. However, the current law isn't all-encompassing. If it was intended to cover everything and protect every potential consumer, the horsepower limitation in the law would be zero. So obviously the current law recognizes that these smaller utility tractors need not be tested. What I and the supporters of this proposal are asking is that we recognize that times have changed and that there is a larger nonagriculture market that Nebraska implement dealers are missing out on. That is the time to slightly increase the horsepower requirement to allow them to compete with our neighbors across the state line. I thank you for your time and

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would ask to defer any questions you might have on tractors to the other experts in the room. [LB273 LB200]

SENATOR ERDMAN: Thank you, Senator Kopplin. You can ask us to defer but we still may have a few. Are there any questions for Senator Kopplin? I don't see any, and I was getting the signals from the crowd as is my tendency, I'm seldom in doubt but I can be wrong, and so I have taken these in the wrong order. But I did so in such a way that I thought I was right, but we'll go ahead and let you go first, and consider that a gift from the Ag Committee to you today, Senator. [LB273 LB200]

SENATOR KOPPLIN: Thank you very much. [LB273 LB200]

SENATOR ERDMAN: You bet. Will you stick around for closing or...? [LB273 LB200]

SENATOR KOPPLIN: I need to return to my committee. [LB273 LB200]

SENATOR ERDMAN: Very well. [LB273 LB200]

SENATOR KOPPLIN: Thank you. [LB273 LB200]

SENATOR ERDMAN: Thank you, sir. Senator Burling, you're recognized to open on LB200. [LB200 LB273]

SENATOR BURLING: Thank you, Chairman Erdman and members of the Ag Committee. I'm Carroll Burling, B-u-r-l-i-n-g. I represent District 33 in the Legislature. I'm glad to hear that you've been invited to visit the tractor testing lab because I had an opportunity to do that when I was on the Ag Committee, and it's an impressive facility and so I hope you'll be able to avail yourself of that opportunity. I'm here today to introduce LB200, a nice round figure, and I won't repeat everything that Senator Kopplin said in his opening but I could say the very...give the very same opening he did for the same reasons that he is introducing his bill and I am introducing LB200. The only difference is my bill calls for raising the low end from 40 horsepower to 100 horsepower. The reason I'm doing that is because it was my impression that the bill was put into place years and years ago to give farmers who were going to buy tractors some reliable source of testing statistics to go by when they purchased tractors. At that time there weren't even 100-horsepower tractors even available, and so it was reasonable to set the standards where they did at that time. Since then, of course, most tractors on farms today under 100 horsepower are used mostly as utility tractors for such things as maybe livestock work or yard work and so forth, and the fact that our local Nebraska equipment dealers cannot sell tractors that haven't been tested at the testing station. This would open up an opportunity for them to get into the market for a few more tractors. And so for those reasons I'm offering this bill for your consideration and I would be happy to answer any questions. [LB200 LB273]

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SENATOR ERDMAN: Thank you, Senator Burling. Any questions for Senator Burling? I don't see any. Welcome back to the Ag Committee as you have served so many years. And will you be sticking around to close? [LB200 LB273]

SENATOR BURLING: Thank you very much. I plan on waiving closing. [LB200 LB273]

SENATOR ERDMAN: Very well. [LB200 LB273]

SENATOR BURLING: And I appreciate the interest that's coming behind me. [LB200 LB273]

SENATOR ERDMAN: As do we; as do we. [LB200 LB273]

SENATOR BURLING: Thank you very much. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator. We will now move to proponent testimony. Again, if you could come forward with your testifier sheet filled out. We would also like to make sure that when you do testify that you state for the record which bills you're in favor of so that it's clear, and make sure that's reflective in the testifier sheet that you hand Linda as well. And again, state your name and spell it for us. It's about 2:40 p.m. so we squeaked the senators in five minutes apiece and hopefully you'll be able to accomplish that same fete because we're pretty long-winded and like to talk and we want to make sure that we leave enough time for everybody. [LB200 LB273]

LARRY DINKEL: (Exhibit 5) Good afternoon, Senator Erdman and members of the Ag Committee. I am handing out the same thing that I have before me here. My name is Larry Dinkel, spelled D-i-n-k-e-l, co-owner of Dinkel Implement in Norfolk. We sell New Holland and Kubota tractors there. I am here today to testify in favor of LB200. The Nebraska tractor test information is very useful to us as dealers in selling our tractors. This test lab is no doubt recognized worldwide. And as far as I know, the only product in Nebraska requiring a sales permit is the farm tractors. Currently, Kubota has 60 tractors in 12 horsepower ranges under 100 horsepower. There are also several New Holland tractors unavailable for sale in Nebraska. The choice of New Holland not to buy a permit for them. Most Nebraska farmers today have easy Internet access and can easily find information about and purchase a tractor of their choice either in Nebraska or from other states. I'm quite sure the majority of farmers purchasing tractors that are 100 horsepower or less are mostly concerned about their local dealer's ability to take care of their after-sales needs. Most dealers will service their brand regardless of where the tractor was purchased. If the dealer was unable to sell this particular tractor because it didn't have a Nebraska sales permit, he might not have the proper parts and training to take care of this individual's tractor. If a Nebraska farmer buys a nonpermitted tractor out-of-state, he may have to take it out-of-state of Nebraska to get it serviced or to trade

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it. I wouldn't want to trade for a tractor that was still under this permit law. At that time, he loses, the Nebraska dealer loses the sale and the service business, and Nebraska very possibly loses tax revenue. The Nebraska test lab services need to be marketed for other products, such as construction equipment, 4-wheelers, and so on, that maybe needs qualified testing to help market it. An example, I opened today's World Herald, and there was a nice article in there with a picture and so on, showed the student testing a Ford V-10 engine. That's a product that's not used in a tractor, so it's outside the box of testing tractors. And my thought was maybe the UNL Business College could determine the test lab to be a very positive revenue producer by testing other products from either in Nebraska or around the world. I guess they are almost the only test station there is now that has the reputation to back it up. I'll take any questions if anybody has any. [LB200 LB273]

SENATOR ERDMAN: Thanks, Larry. Any questions for Mr. Dinkel? Senator Dierks. [LB200 LB273]

SENATOR DIERKS: Hi, Larry. Welcome to Lincoln. [LB200 LB273]

LARRY DINKEL: Good to see you. [LB200 LB273]

SENATOR DIERKS: The Kubota tractors, are those tractors tested in Nebraska or are they tested in Europe? [LB200 LB273]

LARRY DINKEL: I understand that there's been a couple of models tested in Nebraska. I do not know where they are tested. I do not know that. I think in the past at least, they've been tested in Japan to give us the information that we have available to present to the customers, yes. [LB200 LB273]

SENATOR DIERKS: Thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator Dierks. Further questions for Mr. Dinkel? [LB200 LB273]

LARRY DINKEL: Thank you. [LB200 LB273]

SENATOR ERDMAN: I don't see any. Thanks, Larry. Next testifier in support. [LB200 LB273]

DAVE HARDIES: Good afternoon, Senators. My name is Dave Hardies, H-a-r-d-i-e-s. I'm the Kubota salesman at Omaha Tractor Inc. I'm not the sales manager, as Senator Kopplin said, but I'm close. And I want to go on record as I support the Nebraska test station and the testing of agricultural tractors. I'm here to discuss three important reasons to increase the minimum horsepower that requires the OECD test and the

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permit to be retailed in Nebraska to at least 60 PTO horsepower. Tractors are getting larger; number one, tractors are getting larger. In 1969, when I started selling tractors, the largest tractors were only about 100 horsepower, and 40 horsepower tractors were still a common sight in the fields of rural America. In 1986, when the current minimum horsepower for testing was established, a John Deere 4850 at 192 PTO horsepower was the largest 2-wheel or front-wheel assist tractor in use. The largest Case was 182; the largest AGCO White was 180; and the largest Ford tractor was 171. Today, John Deere's largest is 275 PTO horsepower. Case is 255; AGCO, 240; and New Holland, 255. That is an average of a 75 horsepower increase in the last 21 years, or 41 percent. Even the compact tractors have gotten larger. In 1986, most were 30 horsepower or less. Only the John Deere 1050 and the Kubota 4150 were larger. Today, both the John Deere 4720 and the newly introduced Kubota L-5704 are 50 PTO horsepower and our competitors are at 46 or 47 horsepower. That amounts to, again, a 16 horsepower increase or 41 percent. Number two, most companies are introducing new models of tractors every year. In the last 15 months, Kubota has introduced 22 new models and only 8 of them are under 40 PTO horsepower. Kubota just tested the L-5030 in November of 2006 and it is already being replaced by new models that were just introduced that will be arriving on dealers' lots soon but not in the state of Nebraska. Nebraska is the only state that requires testing in order to retail them by a Nebraska retailer. Today's consumer has more resources available to them to aid in their buying decisions, so they aren't limited to their local dealer any more. All they have to do is to check the Internet to find a dealer in another state that can sell them what they want. I have a situation at this time that illustrates my point. There is a school in eastern Nebraska that has some smaller tractors that they had purchased from us in the past. They are now in need of a new 55-horsepower tractor to replace a unit that has broken down. They have asked me to help them find a dealer in Iowa to sell them the tractor that they want, and asked us to service that tractor for them after they purchase it. Number three, every time that a Nebraska consumer leaves Nebraska to purchase a product that isn't available in Nebraska, it costs the people of Nebraska money and jobs. The revenue that the sales generate in another state is lost to the state of Nebraska. If that revenue could be kept in Nebraska it would create more jobs as well as the income tax. Since nearly all of the tractors less than 60 horsepower or a little larger are being used for nonfarm use, that revenue is also subject to sales tax. I don't know how many sales are leaving our state because of this law, but if there were only 50 tractors per year that would amount to almost \$1.5 million a year. I'll let you do the math on the taxes lost to other states. To make matters worse, I think that 50 units is a conservative number. Thank you. [LB200 LB273]

SENATOR ERDMAN: Thanks, Dave. Just for the record, are you...you're in favor of LB273, and do you have a position on LB200? [LB200 LB273]

DAVE HARDIES: I would be kind of foolish not to support it because it would allow me to sell more tractors than LB273 would, but. [LB200 LB273]

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SENATOR ERDMAN: Okay. So you're in favor of both bills. And did you hand in a sheet that reflects that? [LB200 LB273]

DAVE HARDIES: Yes, I did. [LB200 LB273]

SENATOR ERDMAN: Okay. Very well. Any questions for Mr. Hardies? Senator Dierks. [LB200 LB273]

SENATOR DIERKS: Did you say that you were asked to find a 55-horsepower tractor in some other state? [LB200 LB273]

DAVE HARDIES: I was asked to help them get in contact with a dealer in Iowa so they could purchase a 55-horse tractor because they've decided which tractor they want and I can't sell it to them. [LB200 LB273]

SENATOR DIERKS: Well, I'm a little confused because I thought that we don't require testing under 60, is that right? [LB200 LB273]

DAVE HARDIES: At this time we don't require testing under 40. [LB200 LB273]

SENATOR DIERKS: Forty. Okay. [LB200 LB273]

DAVE HARDIES: LB273 would raise that number to 60. [LB200 LB273]

SENATOR DIERKS: Okay. Thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator Dierks. Senator Wallman. [LB200 LB273]

SENATOR WALLMAN: Do you think that the manufacturers think that's too high to test their tractors, or what do you think? [LB200 LB273]

DAVE HARDIES: It gets down to a numbers game, where, like Kubota, they introduced 22 tractors in the last 15 months, and they've only got time to test so many tractors and because they have so many tractors in this smaller category. Kubota is probably the largest manufacturer of small tractors out there. It's kind of what they specialize in. The largest tractor that they offer for sale is 103 PTO horsepower. Everything else is under 100 horsepower. I heard through the grapevine that they are scheduled to test five, possibly six tractors, this coming year. But where we actually at this point in time need to have 14 or 15 tractors tested, it's going to take them three years to get that accomplished. In that three years' time they'll probably introduce another 10 or 12 tractors to just compound the problem. [LB200 LB273]

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SENATOR WALLMAN: In my area, Oregon Trail, they merged with a dealer in Kansas for this simple reason, but it wasn't for the horsepower testing; it was for the sales tax. And maybe that's a bigger issue than the horsepower. [LB200 LB273]

DAVE HARDIES: Well, like I said in my testimony, most of the tractors that we sell there at Omaha Tractor are the compact tractors and small utility tractors. And at this time we can only sell tractors over 40 PTO horsepower in the state of Iowa or other states. We have been able to get Kubota to test some of the tractors here in Nebraska, but Kubota has stopped testing tractors in Japan because it's not a requirement for them to be OECD tested there, where...and Europe, for that matter either, it's my understanding. [LB200 LB273]

SENATOR WALLMAN: I appreciate your testimony. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator Wallman. Further questions? I don't see any. Thank you, Mr. Hardies. [LB200 LB273]

DAVE HARDIES: Thank you. [LB200 LB273]

SENATOR ERDMAN: Next testifier in support. [LB200 LB273]

STEVE KAYTON: Mr. Chairman, members of the Ag Committee, my name is Steve Kayton, K-a-y-t-o-n. I'm a dealer from Seward, Nebraska, plus I'm also on the board of directors of the Iowa-Nebraska Equipment Dealers Association. And I would like to say that I know many people think us equipment dealers were against the tractor lab, but that's not true. We would truly like to see the tractor lab stay open but we would just like to see some modifications in the bill. And being from Seward, we have a lot of hobby farmers, I guess, around the Lincoln area and you get closer to Omaha. And I guess when I say a hobby farmer, what I mean is somebody that has a regular job but has an acreage or horses or some cattle and they just do this part-time and they may only have 100 acres so they don't need a 150 horsepower tractor. They only need a 50, 60, 70 horsepower to pull a baler or a loader and things like that. And being so close to Lincoln and Omaha, you know, I've been looking for some foreign competition to come into my dealership so I can compete or find a new market for that. And most of them don't want to do it because they are not interested in the state of Nebraska because all we can sell is 40 horsepower. We can't sell anything over and above that. And I think if we could go to 100 horsepower or go to even 60 horsepower would be a great benefit, and would help us dealers out quite a bit. I just think that a modification on some of this would truly help the dealers in Nebraska. And with that I'll ask for any questions. [LB200 LB273]

SENATOR ERDMAN: Thank you, Steve. And again for the record, you're in favor of both bills. [LB200 LB273]

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STEVE KAYTON: I'm in favor of both bills [LB200 LB273]

SENATOR ERDMAN: Very well. Any questions for Mr. Kayton? Senator Dierks. [LB200 LB273]

SENATOR DIERKS: Hi, Steve. Welcome to Lincoln. [LB200 LB273]

STEVE KAYTON: Thank you. [LB200 LB273]

SENATOR DIERKS: So how many tractors...? Are you still with Case IH in Seward, too? [LB200 LB273]

STEVE KAYTON: Yes, I am. [LB200 LB273]

SENATOR DIERKS: How many tractors, model of tractors are there under the 60 horsepower that...compared to over the 60 horsepower that the manufacturer makes? [LB200 LB273]

STEVE KAYTON: Well, the manufacturer with Case IH, I think there's like four models. We have under 40 horsepower. And you talk over 40 horsepower, I don't know. I would say we're probably up to 20, 25 models. [LB200 LB273]

SENATOR DIERKS: Okay. And then if we went to 60 horsepower, what's the difference? [LB200 LB273]

STEVE KAYTON: We would probably pick up two models. But when you get to the hobby farmers, you know, 40 horsepower doesn't hold a lot. It does a lot with loader work or if he is hauling around bale or baler work, you really need to get up to 70, 80 horsepower probably to do some justice on that. And what the foreign manufacturers claim to me is that supposedly overseas a lot of those tests have gone by the wayside, and they claim to me that Nebraska is one of the only places left as far as requiring testing on tractors. [LB200 LB273]

SENATOR DIERKS: They don't even do the testing overseas now? [LB200 LB273]

STEVE KAYTON: That's what I've been told. [LB200 LB273]

SENATOR DIERKS: Nebraska is the only tractor testing available at this point. [LB200 LB273]

STEVE KAYTON: Yes. We're the only ones that require tractor testing to be able to sell a tractor. [LB200 LB273]

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SENATOR DIERKS: Well, I don't mean the requirements for the test, but just to have the testing station. It's the only testing station that does it. [LB200 LB273]

STEVE KAYTON: I can't answer that. But as far as we're...they claim we're the only one...the only places that really require testing anymore. [LB200 LB273]

SENATOR DIERKS: Yeah, Nebraska is, I know that. I just wondered if there are other...that's why I asked about the question about the Kubota, if they were being tested overseas or at our testing station here? [LB200 LB273]

STEVE KAYTON: Well, what I was told by Kubota, because I've talked to them, and they basically say, no, they don't have to be tested. They don't have to have it tested overseas anymore. [LB200 LB273]

SENATOR DIERKS: I see. Thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator Dierks. Senator Dubas. [LB200 LB273]

SENATOR DUBAS: Thank you. Is the main reason for them not wanting to go through the testing is it's just not economically feasible? They're not selling enough tractors to justify that expense? [LB200 LB273]

STEVE KAYTON: I think that has a lot to do with it. Then I think also the foreign maybe get a little bullheaded. They just don't want to...really don't think they have to do it and why should they have to do it when they can sell it in the other 49 states. They think, why should I have to sell in Nebraska? And the other thing is, they probably don't think our market maybe is quite big enough to justify. They can't sell enough tractors to justify the cost. [LB200 LB273]

SENATOR DUBAS: Do you think that this is a market that's growing in Nebraska though? [LB200 LB273]

STEVE KAYTON: It's definitely growing. And I think if we could get a horsepower increase, you know, I think it would definitely help. I know that a lot of it right now is going out-of-state. I mean, you get along the borders, if a farmer or a hobby farmer wants something they can go over to Iowa, Kansas, any of the other states, and buy a tractor and bring it over here. [LB200 LB273]

SENATOR DUBAS: Thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator Dubas. Senator Dierks. [LB200 LB273]

SENATOR DIERKS: I guess I forgot to ask before if someone could tell us what it costs,

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Case IH or John Deere, or whoever, what it costs to get a tractor tested. [LB200 LB273]

STEVE KAYTON: I can't answer that. I'm sure the tractor lab, when they're up, they can answer that. But the other thing I might comment, is if you're doing over 100 horsepower, they way I understand it, you have to go through a bunch of full tests. If it's under 100 horsepower it's just basically a dynamometer test for horsepower. And back when this bill first come about, a lot of dealers didn't have dynamometers so you didn't know what the horsepower is, but now basically all those dealers have it. And so I'm sure the tests under 100 horsepower is quite a bit less than over 100 horsepower as far as what it would cost. [LB200 LB273]

SENATOR DIERKS: But this is probably the biggest objection that the manufacturers have is the cost of testing? [LB200 LB273]

STEVE KAYTON: Yes. [LB200 LB273]

SENATOR DIERKS: Thanks, Steve. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator Dierks. Senator Karpisek. [LB200 LB273]

SENATOR KARPISEK: Thank you, Mr. Chair. Does Case IH not have...can you not sell anything now that's under 40? [LB200 LB273]

STEVE KAYTON: Yes. Under 40 horsepower I have no problem, and there's a few tractors over 40 horsepower they will not let us sell because they want to get them tested. [LB200 LB273]

SENATOR KARPISEK: They won't get them tested. [LB200 LB273]

STEVE KAYTON: Right. [LB200 LB273]

SENATOR KARPISEK: So like a 50 horse, they won't test it? [LB200 LB273]

STEVE KAYTON: Ah, I would have to go through and look through there but... [LB200 LB273]

SENATOR KARPISEK: No, I mean... [LB200 LB273]

STEVE KAYTON: ...but there's numerous ones that...what they do is try to pick out the most popular ones and they will go ahead and have them tested so we can sell them. But I guess where we run into the biggest problem is probably the foreign brands. They are the ones that seem to be totally against Nebraska and they don't want to bring any product in over 40 horsepower because they don't want to have it tested. [LB200

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SENATOR KARPISEK: I guess in my mind, then that's a good thing. Aren't we trying to keep local companies afloat and not foreign? Isn't that...? [LB200 LB273]

STEVE KAYTON: But basically the tractors by John Deere, Case IH, they are all basically built...I mean, most everything is coming from Japan. I mean, they are just built over here and John Deere and Case IH markets them. But I guess by doing the foreign stuff, the prices are usually more reasonable. It's more price competitive. They have also got some different models that the major manufacturers don't have to handle. [LB200 LB273]

SENATOR KARPISEK: I guess I just don't understand the...well, we just won't test those. If this is such a big and budding business, then why won't they get them tested? [LB200 LB273]

STEVE KAYTON: I can't answer that. I'm sure a lot of it has got to do with dollars and cents, you know. They just don't feel that they can justify it. [LB200 LB273]

SENATOR KARPISEK: But they can on the bigger ones. [LB200 LB273]

STEVE KAYTON: Well, most of these foreign manufacturers don't build much over 100 horsepower. They pretty much build 100 horsepower and below. [LB200 LB273]

SENATOR KARPISEK: So, again, it's back to the foreign dealer. [LB200 LB273]

STEVE KAYTON: Right. [LB200 LB273]

SENATOR KARPISEK: Okay, thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator Karpisek. And we're going to take a brief moment here so we can change the transcriber's tape. Anyone else have any questions? Okay, next testifier in support, please. And if I'm not mistaken, I had four that I counted earlier. Is there anyone else in support? Okay. [LB200 LB273]

MARK OTHMER: (Exhibit 6) Good afternoon. My name is Mark Othmer, last name O-t-h-m-e-r. I'm the Nebraska field director for the Iowa-Nebraska Equipment Dealers Association. I have before me and I'm passing out to everyone a letter that was compiled by Andy Goodman, the president of Iowa-Nebraska Equipment Dealers Association, and he asked that I read it into testimony for you. Dear Senator Erdman, The Organization for Economic Cooperation and Development was initiated in 1961 under the United Nations, and is the reference for the standardization and certification of certain agricultural commodities, including agricultural tractors. Participating countries

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are members of the OECD and the United Nations or the World Trade Organization. OECD tractor test codes cover several areas, including tractor performance (advertised horsepower, fuel economy, etcetera); protective structure certification; and sound measurements for operator comfort. These international test codes are recognized by the governments of member countries as either a required regulation or as an alternative means for meeting the regulation. OECD rules suggest that tractors be tested at an OECD certified test station in the country of origin. The University of Nebraska Tractor Test Lab is the only OECD-certified test station in the United States. Current Nebraska law, Section 2-2710, states "Any person selling a current tractor model for use in the State of Nebraska without a permit issued by the department for such a tractor model shall be required to repurchase any such tractor model sold in Nebraska for which a permit has not been issued." Any dealer, farmer, or any other resident of the state of Nebraska can be in violation of this law if they sell a new or used tractor that is a current model that does not have a permit issued by the Nebraska Department of Agriculture. The seller can be required at any time to repurchase the nonpermitted tractor. There is no penalty against a manufacturer whose tractor is sold in Nebraska without a permit. There is no penalty against a dealer, distributor, farmer, or manufacturer residing outside the state of Nebraska, who sells a nonpermitted tractor in Nebraska. Most farm tractors sold in the United States have been OECD tested, but not all of them have a permit allowing them to be sold by an individual or business domiciled in Nebraska. This does not stop these tractors from being sold into Nebraska. In the 1980s, the Iowa-Nebraska Equipment Dealers Association assisted and supported the University of Nebraska Tractor Test Lab in becoming an OECD certified test station, which included passage of Nebraska state legislation. We have continually supported the lab and will continue to do so. We believe that any current model farm tractor sold for use in the state of Nebraska should be required to be OECD tested by the manufacturer prior to retail delivery. We are also on record as being supportive of federal legislation to require OECD testing of farm tractors. In 1920, the year after the Nebraska tractor test law was passed by the Nebraska Legislature, the average horsepower of tractors tested was 20. Today most farmland in Nebraska is farmed with tractors in excess of 100 horsepower. Subsequent to legislation in 1986 that established a minimum horsepower requirement of 40 for a permit, there have been no negative results regarding tractors under 40 horsepower. We support legislation to raise the minimum horsepower required for a permit to sell a tractor in the state of Nebraska. We believe the positive effects of this legislation will be to allow tractors that can now be sold in other states, to be sold and serviced and supported by equipment dealers in the state of Nebraska. This will not undermine our commitment that all farm tractors be OECD tested and that Nebraska dealers will serve their local communities with integrity. It will also not undermine our commitment to existing Uniform Commercial Code regulations and consumer laws that protect the people of Nebraska. Respectfully submitted by Andrew Goodman. And for the record I would say that we are in support of both bills, LB200 and LB273. We would probably prefer LB200, I believe, which is the 100 horsepower. And the biggest reason for that, it's not just a numbers game; it is

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because of the fact that anything 100 horsepower or less only requires PTO tests which any dealer can certainly hook one of these tractors up to a dynamometer and prove stated horsepower claims. If there are any questions I would certainly entertain them at this point. [LB200 LB273]

SENATOR ERDMAN: Thank you, Mark. Any questions of Mr. Othmer? [LB200 LB273]

SENATOR McDONALD: Mark, what would you consider a farm tractor? [LB200 LB273]

MARK OTHMER: Well, I grew up on a farm so maybe I'll go through the history a little bit. I can remember the first new tractor that ended up on my farm when I was about six years old was a 45-horsepower Ford tractor. And, boy, that was something. The second one showed up on our farm about, new tractor, showed up about 1968; that was a 45-horsepower tractor. The next one that showed up on our farm was about 1973 and that was a 70-horsepower tractor. Unfortunately, that's when I left the farm but the next new tractor that showed up on our farm was a 100-horsepower tractor. And that one was bought, I think, in 1983 and my dad still has it 20 years plus. Today, as I've stated in the testimony, we were small-time farmers down in southeast Nebraska. The farms today have gotten so much larger; 150 horse is a small tractor today. It's a small tractor when it comes to real farming operations. But that's understanding that there are still small operations that use some smaller tractors. [LB200 LB273]

SENATOR McDONALD: Okay, thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator McDonald. Any further questions for Mark? I see none. Thank you, sir. [LB200 LB273]

MARK OTHMER: Thank you. [LB200 LB273]

SENATOR ERDMAN: We have a letter that will be distributed to the committee in support of LB200 from Steve Manzer who is the general manager of Manzer Equipment in Osmond. I have no one else wishing to testify in support unless someone has come in recently. We will now move to opponent testimony. Feel free to come forward. Again, we'll use the same procedure. If you are opposed to both bills make sure you fill out a testifier's sheet for both bills. It's now about 3:05 p.m., which leaves us about an hour for us to hear the opponent testimony. And before I commit to that, do we have anybody that wishes to testify in a neutral position? Okay, that will work out well then. And again, make sure when you state your name, state if you're representing an organization or if you're representing yourself or both, and we will proceed. [LB200 LB273]

ROGER HOY: (Exhibit 7) Senator Erdman, senators of the Committee on Agriculture, my name is Roger Hoy, H-o-y. I'm a professor of agricultural engineering in the Department of Biological Systems Engineering at the University of Nebraska. I presently

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serve as the director of the Nebraska Tractor Test Laboratory. The Board of Regents of the university has not taken a position on either of these bills, so the University of Nebraska neither supports nor is opposed to either bill. My testimony here today is my own, however it has been reviewed by and is supported by the faculty and professional staff of the Nebraska Tractor Test Laboratory. Before going on, I feel I'd like to just hit on a couple of points made by the proponents. Before coming to Nebraska I worked at John Deere, and there is no one here from John Deere today unfortunately but I think they would really object to the characterization that most of their tractors come from Asia or overseas. The majority of large farm tractors are made in Waterloo, Iowa, today, and they do extend down below 100 horsepower. The 6000 series does come from Germany. The compact utility tractors such as the 4000 are manufactured in Augusta, Georgia, as are many of the 5000 series tractors. So I'll just clear the record there. The Nebraska Tractor Test Laboratory has a long history dating back to 1920. The laboratory exists because of a Nebraska law passed in 1919 which in essence requires a representative model of the tractor to be tested and the manufacturer's representation is verified before the model could be sold in the state. This doesn't require the performance statistics that were alluded to earlier. We provide that as a service, as an output of our testing. The cost of tractor testing and the operation of the tractor test laboratory are paid for by the tractor manufacturers, and no taxpayer dollars are used to subsidize the operations of the lab. Performance testing today consists of several tests. The first one is a measurement of the tractor's power take-off performance. The PTO, for those of you who may not be aware, is a rotating shaft at the rear of the tractor that can transmit rotational power to implement, such as grain augers, rotary cutters, so on and so forth. We also measure the amount of tractive or pulling power that a tractor has that's pulled through the drawbar. We only apply this test to tractors of more than 100 PTO horsepower unless specifically requested by the manufacturer. This test measures the ability of the tractor to pull implements requiring significant tractive power such as those used in tillage. We measure the three-point hitch lift capacity. This test measures the ability of the tractor to mechanically lift agricultural implements and use the tractor's hydraulic system to raise and lower those implements. And we measure remote hydraulic performance. Tractors normally have one or more remote hydraulic ports that allow implements to receive hydraulic power from the tractor. The hydraulic power may be used to drive cylinders or turn motors. Additionally, we test tractors for sound, both sound that the operator is exposed to when operating the tractor, and the sound level to which a bystander is subjected to as the tractor travels past. The law originally applied to all tractors, but in the 1950s or early 1960s the law was changed to apply only to agricultural tractors and to exempt tractors less than 20 horsepower. The law was changed again in 1986. This change was made to recognize additional testing of tractor models by the manufacturers at OECD, or the Organization for Economic Cooperation and Development tractor test stations worldwide. The United States became a full participating member in the OECD tractor test scheme, and through reciprocity official OECD test reports from other OECD test stations were acceptable in lieu of the tests being completed here in Nebraska. The Association of Equipment Manufacturers, AEM,

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a North American-based international trade association representing tractor manufacturers has been designated by the U.S. Department of Commerce as the body responsible for OECD testing of tractors in the U.S. The Nebraska Tractor Test Laboratory, by way of a memorandum of understanding between AEM and the Board of the Regents of the University of Nebraska is designated as the official OECD test station for the United States. In 1989 the law was last changed to exempt tractors less than 40 horsepower. A procedural change occurred in 1998 following discussions initiated by Senator Dierks, then Chair of the Committee of Agriculture. For tractors less than 100 horsepower, a drawbar test would no longer be required to obtain a permit to sell in Nebraska, as these tractors were not commonly used primarily for heavy drawbar work. However, PTO performance, lift capacity, hydraulic flow and power, and sound levels were deemed very important to the farmer and would continue to be tested for tractors less than 100 horsepower. This change reduced the test time and the cost by approximately one-half to the manufacturers while providing protection to the farmer. Manufacturers still have the option of completing a full test for these tractors. This option is often exercised by some manufacturers, as it allows the tractor to receive an OECD test approval. Over the years other procedural changes have occurred through Nebraska Tractor Test Board actions to account for improvements in tractor technology and reduce the testing burden on manufacturers while maintaining protection for tractor buyers. Testing of only the most common transmission options sold in Nebraska is one such recent example. It's clear that while the purpose of the existing law is to protect buyers of agricultural tractors from fraudulent performance claims, the role of the Nebraska Tractor Test Lab has evolved over the years, not only to satisfy the law but also to support a program that provides accurate, unbiased information that is used by manufacturers to market their tractors and compare with their competitors and to help tractor users select a tractor model that meets their needs. The Nebraska tractor test law is therefore relevant to all consumers, not just those in Nebraska. Some have suggested that conditions today are more similar to those that existed in 1919 than at any other time in the intervening years, as the market is currently experiencing a proliferation of new tractor manufacturers, primarily from Asia, that have not yet demonstrated the high standards of performance farmers have come to expect from the established manufacturers. An argument that has been made by proponents of a higher power threshold for the law is that tractors below 60 or 100 horsepower are not actually agricultural tractors and should therefore not be subject to the tractor test law. In preparation for this testimony I have looked at various definitions for agricultural tractors found in test codes, governmental regulations, and consensus-based standards. These sources are most appropriate as the definitions developed are determined by experts from industry and government, consumers, and other interested parties using open and transparent processes. In the case of consensus-based standards, any interested party may participate in the standards development and approval process. American National Standards Institute/American Society of Agricultural and Biological Engineers Standard S390.4 provides detailed information of tractor definitions, including a general definition for agricultural tractors and subdefinitions for 12 specific types of tractors, representing

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all known uses. The basic definition of an agricultural tractor is: a traction machine intended primarily for off-road usage, designed and advertised primarily to supply power to agricultural implements. An agricultural tractor propels itself and provides a force in the direction of travel and may provide mechanical, hydraulic and/or electrical power to agricultural implements to enable them to function as intended...I'm sorry...to perform their intended functions. While you may have heard the term "utility tractor" used to describe tractors under 100 horsepower or tractors used for yard work or livestock, there is no definition for this term found in this standard or any other standard that I'm aware of, meaning there is no consensus for this term. Indeed, when I participated in the S390.4 standards development project, there was no request or discussion initiated regarding this term. There is, however, a definition for compact utility tractors, which limits these tractors to 40 horsepower--not the higher numbers you may have heard stated today. As this standard was most recently revised in 2005, it clearly represents the U.S. national state-of-the-art. OECD Code 2, which the Nebraska Tractor Test Laboratory uses for most performance testing, defines an agricultural tractor as: self-propelled wheeled vehicles having at least two axles or with tracks, designed to carry out the following operations, primarily for agricultural and forestry purposes--to pull trailers; to carry, pull, or propel agricultural and forestry tools or machinery, and, where necessary, supply power to operate them with the tractor in motion or stationary. This definition, while simpler than that found in ASABE is similar and also notes specifically stationary operations. OECD codes are reviewed formally on an annual basis, so this definition represents the current international state-of-the-art. Finally, OSHA, the Occupational Safety and Health Administration, defines an agricultural tractor as follows: Agricultural tractor means a two or four-wheel drive vehicle or track vehicle of more than 20 engine horsepower, designed to furnish the power to pull, carry, propel, or drive implements that are designed for agriculture. All self-propelled implements are excluded. This OSHA definition has been enforced since 1975, and since adoption no rule making or requested rule making has suggested that this definition is not correct or adequate. The OSHA standard containing this definition was most recently revised in 2006, so it can be assumed that this definition is also accurate and accepted. Quite clearly, tractors designed with three point hitches, drawbars, remote hydraulic ports, and power take-offs designed to agricultural standards meet the definition for agricultural tractors and are in fact agricultural tractors. These fittings enable the tractor to carry, pull, or propel agricultural implements, and therefore should be treated by the tractor test law as all other agricultural tractors are treated in the interest of providing the same protection and benefits to all users of agricultural tractors. I have attached an NTTL brochure that we provide to visitors and insert in our mailings. Inside the brochure is an organizational chart that illustrates how we fit into the worldwide tractor test scheme. The laboratory also has our Web page identified in the brochure. All test reports prepared by the laboratory since 1998 can be accessed from our Web page. These reports can be printed from our Web site and are free of charge. I have attached four test reports for you review. Two of these reports are for tractors that the laboratory has tested, one with a power level greater than 100 horsepower and one report for a tractor

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with a power level less than 100 horsepower. The other two reports are summaries of the official OECD reports from two tractors, one tested at the French test station and one tested at the Italian test station. As you will notice, our effort is to make all reports seamless in appearance regardless of the point of origin. During the year 2006, our Web site had 141,985 visitors. During the month of December alone, visitors from 73 different countries viewed our Web site. Also during 2006, tours of the laboratory were given to 706 people from six different countries and many states of the United States. These statistics illustrate the usefulness of the information provided, both inside and outside of Nebraska. Additionally, the Nebraska Tractor Test Laboratory employs 10-14 students each semester. These students gain valuable skills and are highly prized by industry, both in Nebraska and in other states. Some students have chosen the University of Nebraska specifically for the opportunity to work at the lab. The tractor test program brings recognition to the University of Nebraska and the state of Nebraska. The law provides legitimacy to the worldwide tractor performance testing. Our product is information. This information has value that can only come from independent testing such as ours, and it's free from our Web site. This a real bargain to all potential tractor buyers. The data we provide shows performance that the user can expect from a particular tractor model. Tractors are sold by power. The dollars spent per horsepower can only be compared by models of different manufacturers when the buyer knows what usable power is being purchased for the dollar outlay. Consumers are assured that these performance data are obtained without bias to tractor color or any favored criteria, and are obtained using worldwide test standards so that the tractor performance can legitimately be compared no matter their country of origin or manufacturer. I believe that 40 horsepower remains an appropriate lower limit for mandatory performance testing, and one could make the case for an even lower limit. I recommend that neither of these bills be passed so that agricultural tractors between 40 and 100 horsepower continue to be tested and their performance data continue to be made available to Nebraska farmers and interested parties around the world. Thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Roger. Any questions for Dr. Hoy? Senator Wallman. [LB200 LB273]

SENATOR WALLMAN: I too am a tractor owner, from 30 to over 200, and I like to see the figures. But couldn't there be some kind of a compromise here that you just test the smaller tractors on PTO horsepower and fuel use and gallons per minute hydraulic instead of going through all the drawbar stuff? Because most people don't use them little tractors on, even like 50 or 60 horsepower anymore. They don't compare them to drawbar stuff. [LB200 LB273]

ROGER HOY: That is exactly what we do, Senator. [LB200 LB273]

SENATOR WALLMAN: Do you? [LB200 LB273]

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ROGER HOY: We don't do drawbar testing on the smaller tractor unless the manufacturer specifically says, hey, I need an OECD report for this tractor so do the whole code test. But to satisfy the permit law we don't do drawbar testing on tractors under 100 horsepower. [LB200 LB273]

SENATOR WALLMAN: But just, say, like an dynamometer test then? [LB200 LB273]

ROGER HOY: That is what we do, although the dynamometer that we use and the fuel measurements we use are things that aren't going to be duplicated in a tractor dealer's shop. You know, we're going to actually get accurate performance data more so than they'll be able to, as well as fuel economy data. [LB200 LB273]

SENATOR WALLMAN: Because I have empathy for the dealers too because they're going to get them somewhere. And it would be nice if we could make a compromise here that we can all feel good about. [LB200 LB273]

ROGER HOY: Well, I thought your suggestion perhaps of solving the sales tax dilemma might make this problem go away a little bit, Senator. [LB200 LB273]

SENATOR WALLMAN: Well, thank you. Thank you, Senator Erdman. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator Wallman. Senator McDonald. [LB200 LB273]

SENATOR McDONALD: Okay, if I decided that I wanted to buy a tractor and I didn't get it in Nebraska, I bought it from somewhere else and I brought it into Nebraska and I used it, and it needed to be repaired. And I took it to my dealer for a repair and they saw that it wasn't tested, does the dealership then request me to test it before they'll fix it? Do they fine me? Do I have to send my tractor to get fixed or get tested, and I pay for that? Tell me what happens then. [LB200 LB273]

ROGER HOY: Well, there would be no penalty to you. The law provides penalties against any party selling a nonpermitted tractor in Nebraska. So you purchased; you didn't sell. Now, if you were to want to sell your tractor later while it was still a current tractor model, you could be afoul of the law. But as far as getting it fixed and repaired, I would suspect the dealership would do whatever he possibly could to repair that tractor for you, and he's under no obligation to tell you it has to be tested or something else. The only obligation he would be under is to not sell a nonpermitted tractor to you in Nebraska. [LB200 LB273]

SENATOR McDONALD: And I would have to tell the person that I purchased it from that I was taking it to Nebraska? I mean, how would they know? Do they...? Would they know? [LB200 LB273]

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ROGER HOY: Ah, I don't know that they would know. And I don't know that we could enforce the Nebraska law, for example, on an Iowa dealer that knowingly sold a tractor to a Nebraska resident. I'm not quite sure how that works. I'm just a dumb engineer, not a lawyer, so. [LB200 LB273]

SENATOR ERDMAN: Some would argue you're better off. Other questions, Senator McDonald? [LB200 LB273]

SENATOR McDONALD: No. That's fine, thank you. [LB200 LB273]

SENATOR ERDMAN: Senator Dubas. [LB200 LB273]

SENATOR DUBAS: Thank you. Just going back to the inception of the tractor test lab, it was created for a purpose of providing unbiased information to consumers, farmers in general. [LB200 LB273]

ROGER HOY: That's the role it's taken on, but its original purpose was to verify that if you were advertising a tractor, that that tractor actually performed as advertised. And I think there was also...still is a provision in there that service parts for such a tractor could be procured. [LB200 LB273]

SENATOR DUBAS: So we've heard talk that these smaller utility tractors are becoming much more popular because we're dealing with the acreages and what-have-you these days. So would it...if we're looking at consumer protection, and it looks like your Web site is used a lot. People are going to your Web site to make decisions on buying these types of tractors. [LB200 LB273]

ROGER HOY: That's correct. And I guess I would say my personal opinion is maybe that hobby farmer who is not a professional farmer needs the protection even more since a professional farmer may be more likely to detect a false claim. [LB200 LB273]

SENATOR DUBAS: So we basically just have some of these certain companies that just don't want to play this game or want to be a part of this system. [LB200 LB273]

ROGER HOY: Some of it, this is largely speculation on my part, but I guess from what I've seen, some of it is you have a company that's not located in the United States, that maybe there's some translation problems that go on between whoever is representing them here in the U.S. and where their home headquarters are about what they actually need to do. Again, just speculation, some of these tractor companies may not want their tractors tested because they would not meet the performance claims that they have made, in which case they would run afoul of the law and would potentially have to buy back tractors. So that's all just sheer speculation on my part, but I think we have brought tractor manufacturers sort of into our fold along the way. We have absolutely excellent

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relationships with companies like AGCO, Case New Holland, and John Deere. We've come a long way here in the last year developing a similar relationship with Kubota. So I...we're doing the best we can to encourage these other manufacturers to come visit us, come see what we do, participate in the testing. And somebody had a question earlier about cost. We're not very out of line I don't think. I know we're cheaper than any other test station around the world, from what I'm told anyway. But if you have an under 100 horsepower tractor, that's going to cost you about \$10,500 to get it tested. It may be another \$50 or \$100 to get the permits for it. These smaller tractors that are sold at a much higher volume, you know, probably talking about maybe the price of a Big Mac or something like that per tractor here. [LB200 LB273]

SENATOR DUBAS: So you are working hard then to cultivate relationships with these companies that currently aren't participating in our tractor test lab? [LB200 LB273]

ROGER HOY: Yes. We've come a long way with Kubota. We've had preliminary discussions with people from Farmtrak, Montana, Kioti. I think a few conversations with Mahindra. Some of these haven't come to fruition yet, but we do explain the law. We do explain what we do. We tell them, this is how you go about getting a permit. We tell them about supplemental permits that allow tractors to be sold before they are actually tested. We go through the different models. You know, somebody made a comment about 16 Kubota models and only a few of them were tested. Well, oftentimes we can test one tractor, and by selecting the tractor properly the testing for that one model can serve for several others because they don't differ in any respect to performance. Or we can do one basic tractor and then just a couple of supplemental tests on some of the other models at greatly reduced costs. So I really don't think that the problem is quite as significant as it was portrayed earlier. [LB200 LB273]

SENATOR DUBAS: Thank you. [LB200 LB273]

SENATOR ERDMAN: Senator McDonald. [LB200 LB273]

SENATOR McDONALD: If I lived on an acreage and I was looking at buying a tractor, a hobby farming tractor, and went to Consumers Guide, and thought I could find something on small tractors. Do they test them or would they...are you...would you be the consumers guide? Or tell me if there's other places that test those that I could go for information. [LB200 LB273]

ROGER HOY: I think, here really in the western hemisphere today, we are the source. It's possible that you could go to the OECD Web site and you might possibly find a test report done at an OECD test station elsewhere in the world. But for the most part, on the tractors that aren't permitted, I think that's very unlikely. [LB200 LB273]

SENATOR McDONALD: Thank you. [LB200 LB273]

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SENATOR ERDMAN: Thank you, Senator McDonald. Senator Dierks. [LB200 LB273]

SENATOR DIERKS: When you talked about the costs, did that include the cost of the manufacturer sending a representative here to stay with the tractor while it's going through the testing? [LB200 LB273]

ROGER HOY: No. That cost is the cost just that the lab charges for conducting the testing and the associated costs of actually getting the permit. So the manufacturer's expense in sending the tractor here and sending a representative with the tractor would not be included, although manufacturers that have a relationship with us appreciate that privilege. For example, this is just anecdotal, but when the Kubota engineers were here with their tractor in November, they were just astounded that they could even be present. Apparently, in Japan, the OECD test station there selects the tractor off of a dealer's lot without the knowledge of the manufacturer, hauls it back to their test station, and they are not allowed to participate or be a part. And we don't do it that way and that seems to be very much appreciated by the manufacturers. [LB200 LB273]

SENATOR DIERKS: Thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator Dierks. Senator Karpisek. [LB200 LB273]

SENATOR KARPISEK: Thank you, Senator Erdman. (Inaudible) can you not do them all? How many can you test in a year, how many models? [LB200 LB273]

ROGER HOY: Well, the lab historically has tested as many as 60 models in a year. In more recent years, we've been running between 20 and 30 tractors. I think we have about 27 scheduled for test this year. The ones under 100 horsepower, we can knock those out very quickly because we spend one day actually testing on the dynamometer, and then a few additional hours to do the hydraulic lift test and hydraulic remote port test and sound testing. If you're going to bring an over-100 horsepower tractor in, we'll spend about three days out on the drawbar track, and there's some associated time in there in between where the tractor manufacturer is usually reballasting the tractor to do back ballast and no ballast. So they are more like one a week. [LB200 LB273]

SENATOR KARPISEK: So do you have a long list of tractors that you are not getting to? [LB200 LB273]

ROGER HOY: We...well, we have a full schedule for this spring and for this fall. If somebody had some under-100 horsepower tractors that they wanted to test, we would sure get them fit in. We could probably accommodate a half a dozen of those tractors if those requests come along. Manufacturers that have done it awhile tend to try to pay deposits a few years out. We actually have some reservations for tests all the way out

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to 2010 right now from some. Our policy is you pick the time when you want to come based on how soon the money for the deposit actually comes in, the temporary permit is applied from. So some of the guys that have done this awhile have discovered, well, we like to be here April 1 and October 1 when the weather is the best for track work, so we go ahead and go and get some reservations in quickly. [LB200 LB273]

SENATOR KARPISEK: The other question is do we, do you, do we get any money in from other people that are using your reports? [LB200 LB273]

ROGER HOY: We do. Well, our test reports are since 1998, we make those available free of charge and that was a policy decision made a few years ago that I really support. If someone wants a written copy of the test, we charge them a nominal fee. We can also sign people up for a nominal fee for a subscription to get every test report that's done as they come out, but those fees are really set just to offset our mailing and handling costs; not to actually try to make any money in the process. [LB200 LB273]

SENATOR KARPISEK: I guess what I'm getting at there is I think that the manufacturers are using your tests in other states to say, hey, look, Nebraska test lab certified this, and we're going to sell it to you. I mean that's wonderful but then does it put our manufacturer or our retailers at a disadvantage because they're using your reports? [LB200 LB273]

ROGER HOY: Well, if you've got a tractor that in a particular class is better than maybe your competitor's, that's going to be used by salesmen, at least astute salesmen, whether they're inside Nebraska or they're outside of Nebraska. I mean, we're in some ways a little bit like Consumer Reports here. You know, you pick up the magazine and you're looking for a product, and they've rated them all and they say this is the best and here's why, if you're that manufacturer you are pretty happy for the report. [LB200 LB273]

SENATOR KARPISEK: And I guess if it's the same tractor, if it's sold here or in Louisiana, it still had to be paid for through this test, and they'll spread that out. [LB200 LB273]

ROGER HOY: Exactly. And I should point out that some governmental agencies outside of Nebraska, when they're buying tractors for their own use, will often, in the bid spec, require performance according to a Nebraska tractor test report. So that's, you know, they use it that way, as well. [LB200 LB273]

SENATOR KARPISEK: Thank you. Thank you, Senator. [LB200 LB273]

SENATOR ERDMAN: Senator McDonald. [LB200 LB273]

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SENATOR McDONALD: Okay, I'm reading here, in 1989 the law was last changed to exempt tractors less than 40 miles per hour...horsepower; I'm sorry. [LB200 LB273]

SENATOR ERDMAN: That would exempt them all, I think. (Laughter) [LB200 LB273]

SENATOR McDONALD: So can you tell me why was that law changed and are we just updating the law that was done then, to keep it current, or tell me why you think that was changed to 40. [LB200 LB273]

ROGER HOY: Well, I can tell you why I think, maybe not why I know, but I think it was to get the lawnmowers out of the tractor test lab. You know, some of these lawn and garden tractors with the belly mount mowers were showing up that were 26-27 horsepower that were intended for mowing large residential lawns instead of agricultural purposes. And we didn't want to really be in that business and we recognized that tractors had grown a little bit in size and that probably that wasn't appropriate to require testing on those smaller machines any longer. [LB200 LB273]

SENATOR McDONALD: Thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator McDonald. Dr. Hoy, just a couple questions. You mentioned the 141,000 visitors on your Web site. Do you have any idea, based on your...either through the information technology folks at the university or otherwise, how many of those are from Nebraska as a percentage? [LB200 LB273]

ROGER HOY: I probably have the answer to that or could get the answer to it but I don't have that here today. [LB200 LB273]

SENATOR ERDMAN: Okay. [LB200 LB273]

ROGER HOY: But I'd be happy to try to find that out for you, Senator. [LB200 LB273]

SENATOR ERDMAN: And then the same question on, you offer...you say you offer a subscription service. How many of those are actually Nebraskans that subscribe to that versus how many of our other American citizens are taking advantage of your great services, as well? [LB200 LB273]

ROGER HOY: I would have to get you a breakdown on that also, but we could produce that. [LB200 LB273]

SENATOR ERDMAN: What's the typical cost for doing a test on a tractor that's above 100 horsepower? [LB200 LB273]

ROGER HOY: Our basis on that is generally 20 hours of test time for the base price,

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and then we charge a rate above it for more than that. So if a tractor manufacturer is well-prepared he could get out for about \$20,000. If he is maybe not quite as prepared and he's not getting the results he thinks he should have and would like us to rerun something, then maybe we're up in the \$25,000, \$30,000 range. [LB200 LB273]

SENATOR ERDMAN: Okay, very good. Thank you, sir. [LB200 LB273]

ROGER HOY: Thank you. [LB200 LB273]

SENATOR ERDMAN: Appreciate your testimony. May I quickly see a show of hands again of how many people wish to testify in opposition to these two bills? One, two, three, four, five, six, seven, eight. Now, out of respect for the committee and out of respect for you, as well mutually, we have intentionally allowed Dr. Hoy to go first as what we believe to be a preeminent expert on this area, and we know that others of you have strongly held opinions, as well. If you have things that have already been touched upon, try not to repeat those, and you can say that you share Dr. Hoy's opinion on that issue, but we do want to give you the opportunity to testify. So if you can begin to come forward, we'll take the next individual in opposition. Try not to be redundant. If you have testimony, try not to read it to us, and we can give you ample time to testify, as well as ask you questions. So, next testifier in opposition, please. Wow, everybody wants to testify but only WIFE is the brave one to come next. [LB200 LB273]

NORMA HALL: (Exhibit 8) I'm Norma Hall, N-o-r-m-a H-a-l-l. Chairman Erdman and members of the Ag Committee, I am Norma Hall, legislative chairman for WIFE, Women Involved in Farm Economics. I reside on a family farm near Elmwood, Nebraska. Today I speak in opposition to LB200 and LB273. It seems each legislative session there is a bill or bills that would change the operation of the tractor testing lab or do away with it completely. Once again, the members of WIFE support the tractor testing lab without changes. Through the years, farmers have found the results obtained at the lab very useful when purchasing a new or used tractor. The lab reports are independent and unbiased. Charlene Finck stated in a 2003 edition of Farm Journal, "Farmers in Nebraska and every state deserve to have an independent tractor testing to prove that the machines do what manufacturers claim they do. The more consolidated and competitive the tractor business becomes, the more important objective testing is to the buyer." I am aware that neither of these bills call for elimination of the lab but I see no valid reason to change the horsepower of those tractors that are currently being tested. I urge the committee to do not pass these bills out of committee. Thank you for your attention. [LB200 LB273]

SENATOR ERDMAN: Thank you, Norma. Any questions for Ms. Hall? I don't see any. Thanks for your testimony. [LB200 LB273]

NORMA HALL: Thank you. [LB200 LB273]

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SENATOR ERDMAN: Next testifier in opposition? [LB200 LB273]

JOE FRYMAN: (Exhibit 9) I would beg your indulgence. I think you'll understand it's better if I do read it and it's fairly brief. Good afternoon and thank you for the opportunity to speak today. My name is Joe Fryman, F-r-y-m-a-n. I'm a farmer from Washington County and live near Blair, Nebraska. My wife Tammy and I raise corn and soybeans on about 1,250 acres. I'm currently president of the Nebraska State Grange. The Grange is an organization that has advocated for agriculture and Nebraska communities since 1872. I would like to share some of our concerns about the recurring attempts to raise the minimum horsepower requirement for tractors to be tested at the Nebraska test laboratory. I have purchased two tractors for our farming operation in the past year. Both units were ten years old. The information provided in the Nebraska tractor test reports was important and useful in making these purchase decisions. The tractor test reports are useful not just for the current new models, but for years to come as we purchase used units. The need for this type of accurate and unbiased information is clear. It is economically beneficial and reassuring to me as a businessperson. The questions has come up as to why senators representing a more urban constituency should be concerned with tractor testing in Nebraska. Having served on the Blair School Board for 20 years, there were several occasions when it became necessary for the district to purchase a tractor for ground maintenance and snow removal in the 40 to 60 horsepower range. The purchase process for the board was to draw up specifications and send them out for bids. Without having the Nebraska tractor test requirements and testing in place, it would be much easier for a bidder to substitute a lower-performance substandard tractor, in turn submitting a lower bid than would otherwise be possible. The board then either accepts the lower bid or must give justification for purchasing a tractor with a higher price. I believe city, county, and state governments would be in the same situation. While these tractors may not technically fall under the category of an agricultural tractor, the need and usefulness of the reports remain. Many acreage owners also have the need for this type of information. I am somewhat surprised that current manufacturers and dealers are not more supportive of the Nebraska tractor tests on lower horsepower tractors, given the increasing number of advertisements I see in farm magazines for new brands and models of tractors coming into this country. I would think that if the manufacturers are confident with their performance claims they would want these comparisons to be made. I am aware of the issues some dealers near our state borders have with customers going across state lines to purchase a tractor that a manufacturer has chosen not to test in Nebraska. This is one reason why the National Grange supports a nationwide system which would provide uniform testing requirements across the nation. I am not convinced that the cost of the Nebraska tractor test is a real reason for wanting the minimum horsepower requirement raised. Unless we are talking about a very limited number of units produced, the cost, when divided over the number of units produced, is a very small part of the price of a tractor. I have also heard that there may be personal issues and personal resentment among players

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in this debate which may affect the outcome of these discussions. I have no firsthand knowledge of this but I would hope that the tractor testing in Nebraska could be decided on its merit rather than on personal issues. The Grange feels that the Nebraska tractor testing has been worthwhile and benefited many in our state. We are opposed to LB200 which would raise the minimum to 100 horsepower. We feel what we have in place is working well. If the decision must be made to increase the minimum, the Grange would much prefer LB273 which sets the minimum at 60 horsepower. Thank you for your attention and your concern. [LB200 LB273]

SENATOR ERDMAN: Thank you, Joe. Any questions for Mr. Fryman? Senator McDonald. [LB200 LB273]

SENATOR McDONALD: Is there a place that tests, like truck tractors, the ones that take the semis down the road? Do they test those anywhere? [LB200 LB273]

JOE FRYMAN: I don't know about truck tractors. I am sure that our cars are tested for miles per gallon or this sort of thing. I don't know. [LB200 LB273]

SENATOR McDONALD: But our semis would be pulling trailers behind and I was just curious if you knew that there was a place that tested those to make sure that they did their job. [LB200 LB273]

JOY FRYMAN: I do not know. [LB200 LB273]

SENATOR McDONALD: Okay, thank you. [LB200 LB273]

JOE FRYMAN: I might just comment that the last tractor test that I downloaded off the Internet was for a 1938 F-20--so the tests are good for a few years--that I'm restoring, so thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Joe. Next testifier in opposition. [LB200 LB273]

VERN JANTZEN: Good afternoon Chairman Erdman, members of the committee. My name is Vern Jantzen, V-e-r-n J-a-n-t-z-e-n. I decided to come here this afternoon because of an experience I had last week. I went on Thursday to the Beatrice John Deere dealer. They had a John Deere day. I like to watch the movie that John Deere puts out on propaganda with all their flashy new stuff that maybe someday I'll be able to buy when it's really used. Anyway, they made the comment in one segment that they were presenting their most fuel efficient tractor ever. And I thought, well, that's a pretty bold statement, and then, sure enough, they said it was tested at Nebraska. So I went home and I looked in my John Deere magazine. There's an ad in there for that tractor. It says it's the most fuel efficient tractor and it says it was tested in Nebraska. So I can sleep good at night. I can believe that statement. I can go find it backed up. I think that's

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the essence behind the tractor test lab and the service it provides is no matter if you are a hobby farmer, a regular farmer, or any kind of designation farmer, how do you figure out what you are told, what you read on the Internet, what's in the magazine, is that true or is it not. When you are making an investment in this kind of equipment there are dollars involved and you get it home and it doesn't work, what is your remedy? I think we need to look at a number of issues with the tractor test lab. It's self-supporting. It doesn't require tax dollars. It provides a good service to the state and I think I would like to see us not...I'm in opposition to both these bills for that reason. I think people need to have a place where they can go to get the information. We have a system in place now. I'd like to see us continue that. Thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Vern. Any questions for Mr. Jantzen? Did you actually go to the tractor testing lab to make sure that they did test it or are you just going to take their magazine's word for it? [LB200 LB273]

VERN JANTZEN: No. If it says it in the magazine, I will take their word for it because it will be a really cold day in July before I can ever afford a tractor like that. [LB200 LB273]

SENATOR ERDMAN: I know that feeling. Thank you. Next testifier in opposition, please. [LB200 LB273]

RICHARD JANING: (Exhibit 10) Senator Erdman and committee members, I'm going to help you out on the time constraints here. I stand in opposition. My name is Richard Janing; that's J-a-n-i-n-g. I'm a retired farmer from Geneva and I'm testifying on behalf of agriculture and purchasers of farm equipment in Nebraska. I stand in opposition to LB200, which would not require agricultural tractors less than 100 horsepower to be tested at the Nebraska test facility. Most of all, not all, U.S. farm equipment manufacturers produce tractors of lesser horsepower which are used in livestock operations and light field work such as haying and production of garden products. I feel LB200 is not in the best interest of Nebraska agriculture and ask that this Ag Committee not advance LB200. Respectfully submitted, Richard Janing. [LB200 LB273]

SENATOR ERDMAN: Thank you, Richard. Any questions for Mr. Janing? I don't see any. Thank you, sir. [LB200 LB273]

RICHARD JANING: Thank you. [LB200 LB273]

SENATOR ERDMAN: Next testifier in opposition? Quickly, can I see a show of hands of those that wish to testify after Mr. Meier? One. I see one. Okay. [LB200 LB273]

NED MEIER: That means I get a half-hour, is that right? [LB200 LB273]

SENATOR ERDMAN: That means you get about 10 seconds because I know the guy

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behind you wants to talk for a long time, too, so say what you need to say and we'll deal with him later because he left his cell phone on. [LB200 LB273]

NED MEIER: Most of you have heard what I am going to say many, many times, because we've at this business since 1945. My name is Ned Meier, M-e-i-e-r. I am chairman or president of the Supporters of the Nebraska Tractor Testing Lab. I am a farmer. I have viewed this whole situation from several different aspects. I presently am a farmer. At one time I was a student and a graduate student that worked at the laboratory during my educational years. I was also a research engineer at Caterpillar, and saw the bill and the effects of the bill and how it is done from an industrial standpoint. A couple years ago, three or four years ago, our organization set up a booth at Husker Harvest Days to collect signatures on legislation at that time would have essentially closed the Nebraska tractor testing lab. In a small corner in a tent at Husker Harvest Days, about four of us collected 1,800 signatures in favor of the lab or in opposition of the bill that was being proposed at that time. I didn't have to twist anybody's arm to get them to sign this legislation. As a matter of fact, we had people lined up at our table that kind of blocked the alleyway for people coming through. So it was a surprise to me how much actual support there is for the Nebraska tractor testing lab because I didn't really realize that that many people were that knowledgeable about it and what it did. And so for those two items I'd like to pass on to you as to the value and to what this kind of support the Nebraska tractor testing lab has within the state and also within other states. Our organization has membership from nine foreign countries. It has out-of-state membership. This is not a local issue. This is not a Nebraska issue. It is supported nationwide and worldwide. Since I've done this many times before, I thought this time I will do a little different approach in my testimony. And what I'd like to do, Dr. Hoy described the Nebraska tractor testing law in technical and very precise terms. I'm going to try and describe it in very layman terms as it applies. Any manufacturer in any part of the world has the right and the privilege to sell a tractor in the state of Nebraska. Any manufacturer in any part of the world can make any claim that he wishes to make with respect to the performance of that tractor, without restriction. There are no minimum standards that have to be met with respect to a tractor being tested at the state of Nebraska. The only thing...excuse me, there's one more thing. There is no such thing as a tractor passing or a tractor failing a test at Nebraska. The only thing that the manufacturer has to do, he sets his own minimum standards and then he is required to meet those standards by an unbiased third-party test which is what Nebraska tractor testing lab provides. These results then are made public. That, in a nutshell, is what Nebraska tractor testing law is. And I'm amazed at the wisdom that the senators that set this up originally had when they did this. As I told you, I worked at Caterpillar in their research department, and at that time noise was a big issue and we were dealing on operator noise and that type of thing and how to get it reduced. And at that time we at Caterpillar had a, I think it's an OSHA requirement, that you had to meet a certain level of operator noise so that the operator could legally be exposed to that type of noise for eight hours, which was 85 dBA. At that particular time,

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Caterpillar made the mistake of sending me to the dealer show...or it's the equivalent to Husker Harvest Days only it's Iowa, Illinois, and Indiana, and I went there. And you're required to write a report when you're finished going to that to justify the day you took off and the steak dinner you charged on your expense account. And what happened at that point is that at that show, agriculture had far exceeded this requirement, so competition is what caused them to make the improvements and so forth in their equipment that they actually made--not a minimum standard. And that is one of the things and the benefits that have come out from requiring...not requiring, but measuring the noise level and making it available to the public. The competitors saw it, and he says, gee whiz, they're doing a better job than I am so now I'm going to have to do a better job. And so that is why we are down to the situation then as far as operator comfort and noise that right now you probably you can't...if you had your eyes closed you couldn't really tell the difference whether you're riding in a tractor or riding in your pickup. The other thing was hydraulics. Hydraulics is a very important part of the smaller horsepower range of tractors that you are considering here to reduce whether they should be tested or not. Hydraulics is a very important part of the information a consumer would make in terms of making a decision on that particular type of tractor. The other one was just referred to is fuel economy. John Deere has just broken the fuel economy record that was set at Nebraska. When I worked there, 720 John Deere had it, Case 1470 broke it. When I left there I don't know how many times it was broken in the process. Recently, Caterpillar is the one that held that record. Now, John Deere has surpassed that and broken it. John Deere can now make a claim that no one can dispute, and they should be able to make that claim because they have spent research dollars to achieve that goal and they should be able to advertise that and not have to prove it because it is already been proved by an unbiased laboratory such as the University of Nebraska. In my opinion, I think dealers are the ones that benefit from this tractor lab as much as anything else. A dealer does not have to prove any truthful claim he makes with respect to his competition. We don't get into this situation: mine is better than yours; no, it isn't, mine is better than yours. There is data that he can use if his claim is being truthful. If I was investing money in a dealership, the thing that I would do is I would take the information from the Nebraska tractor testing lab and I would show that to my customers of where I have a competitive advantage over my competition. If I did not have a competitive advantage over my competition, when the next manufacturer representative came to my dealer I would be saying, gentlemen, you've got a problem; my competition is much better than what you're asking me to sell here. And so I think a reputable dealer, this is one of his best friends is the information that comes out of the Nebraska tractor testing lab. The wisdom, like I mentioned before, that has gone into the designing of this bill, it has lasted for 90 years almost, if all the legislation that the Legislature had passed could stand up to the criteria of how wise this legislation was, there would be some awfully good bills passed in the Legislature. I kind of thought about it. Nebraska would be a heck of a place to live, even though it is kind of anyway, if all the legislation that passed would live to this criteria. Saint Peter would come to the gate and he would invite me to come in with him, and I'd have to say, I'm not so sure, Nebraska is a pretty darn good

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place. So if we can do that, I think that this bill should be killed, not because Nebraska tractor test has been here for 90 years, not because we are preserving tradition and it needs to be preserved. I think there's probably a lot of bills on the books that need to be eliminated and canceled. I think there's probably agencies within the state of Nebraska that have outlived their usefulness and need to be looked at very carefully and either modified or changed. This bill and this lab is not one of them. The bill that is being proposed here should be killed because it is bad legislation. It is bad legislation for the consumer. It is bad legislation for the reputable tractor dealers. It is bad legislation with respect to all of the consumers in the United States and in the world. And I think if there is anything that you should consider with respect to changing the Nebraska tractor law, it's been alluded to a little bit later, it should be the requirement for testing should be lowered and not increased because this information is very valuable to the people that are in the 40 to 100 horsepower class. [LB200 LB273]

SENATOR ERDMAN: Thank you, Ned. You are opposed to both bills. When you say kill the bill, you mean both bills, correct? [LB200 LB273]

NED MEIER: Yes, that's correct. I handed two sheets. [LB200 LB273]

SENATOR ERDMAN: Very well. [LB200 LB273]

NED MEIER: I put both bills on there and you told me I couldn't do that so I had to hand in two of them. [LB200 LB273]

SENATOR ERDMAN: I'm glad you learned how to follow directions. It seems like we have these discussions every year for the last six years. So are there any questions for Mr. Meier? I see none. Thank you, sir. [LB200 LB273]

NED MEIER: Thank you. [LB200 LB273]

SENATOR ERDMAN: I have one more testifier in opposition. We're going to treat him with such respect and love for him that he didn't respect our rules and let his cell phone go off, and for that we will deal with you appropriately later. If you were in the Health Committee, Mr. Hansen, you'd be shot or something that Senator Johnson always says, but we're much more collegial so we'll give you a forgiveness this time but don't let it happen again, young man. [LB200 LB273]

JOHN K. HANSEN: (Exhibit 11) Mr. Chairman, for the record my name is John K. Hansen, H-a-n-s-e-n. I would suggest branding. Just a light branding. (Laugh) [LB200 LB273]

SENATOR ERDMAN: Would you like the Secretary of State to perform that or...?
[LB200 LB273]

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JOHN K. HANSEN: I think maybe he could use the practice. I think it would be good. I apologize. I woefully admit that I am not able to master the business of setting my phone on vibrate successfully. I appear before you today as president of Nebraska Farmers Union and also our paid lobbyist. I have been...in the 17 years that I've been working as the president of Nebraska Farmers Union, this issue has come up repeatedly over and over again, and in those 17 years it seems to me that the support for the Nebraska Tractor Test Lab on the part of customers and agriculture, as a whole, is very solid, and that's been tested time and time again because there's been the hint of the future of the tractor test lab being put in question. And each and every time where that's come into question, the response from the agricultural community has been overwhelmingly positive to say that this is a valuable service to us. We use it. We depend on it. It continues to generate a lot of input on my part as I travel around the state to our committee, to our county and district meetings. And that to me, both bills are not compromises and that in my view all of the efforts that we've done in the past to try to find a compromise have just led to the next bite of the apple, if you will, and that those things that undermine the financial viability of the tractor test lab are not helpful to the tractor test lab. And so at the point at which you don't test enough tractors and the financial viability of the tractor test lab is jeopardized, then all of the testing is jeopardized. And our concern is, and we have been in favor of doing something at the national level of something at the national level could be done. But what we don't want to do is jeopardize the core financing of the tractor test lab until such time as there is some other national or some other source of revenue. And given the tight budget for the university, all things considered, I don't see any other additional funding in the future, or in the near future at least, and so with that in mind our view is to try to maintain the financial base of the tractor test lab so that all of those services to agriculture, which we depend on, continues. And with that I would end my testimony and be glad to answer any questions except for how to shut off your cell phone. [LB200 LB273]

SENATOR ERDMAN: Thanks, John. Any questions for Mr. Hansen? Senator McDonald. [LB200 LB273]

SENATOR McDONALD: After reading your article, it talks about John Deere representative so-and-so and his company want a national testing system that would match Nebraska law. There is none I assume now, and if there was would it be the Nebraska testing lab or would that take away our responsibility to test if they had a national one? [LB200 LB273]

JOHN K. HANSEN: Senator, Bill Hord's article in the Omaha World-Herald refers to the issue of creating a national standard which would say that all tractors under certain criteria would need to be tested in the entire United States so that then the competition inequity that is claimed by Nebraska tractor dealers would go away. So the way that we fund the tractor test lab is by virtue of the fact that we're a big enough market that the

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dealers...that the manufacturers need to be able to test the equipment in order to be able to sell into our market. And so that's the enticement; that's how you get them in the door; that's how you create the revenue. But it does, our dealers argue, creates an inequity relative to neighboring states. And so if you had a national standard that said all the tractors sold in the United States had to be OECD tested under this, then the inequity argument would go away and then they would be tested at whatever OECD laboratory that they wanted, as is the case now, whether it's the one in Nebraska or one outside of the U.S. The one in Nebraska just...we're in this unique position by virtue of the fact that we have the only tractor test lab in the nation. And so the question gets to be, how do you fund it? And funding it, it seems to me, by the manufacturers is a fair way to do it, and I'm not sure what other stick we have or whatever leverage we have to get them to do the testing to create the revenue stream to fund the facility besides the one that we have. And we've looked at that many times and what else do we get them to do to do it? And one of the things you've got to remember, is if there are ten different models or companies that test a particular tractor in a power class range, there usually is only one winner. And there are a lot more losers than there are winners, and so you just kind of do the political math there. You can see why a lot of them are not so hot to do the testing. [LB200 LB273]

SENATOR McDONALD: Thank you. [LB200 LB273]

SENATOR ERDMAN: Thank you, Senator McDonald. Further questions for Mr. Hansen? I don't see any. Thank you, sir. Is there anyone wishing to testify in a...well, let me do this before we get to that point. We have letters in opposition from Mark Huenemann, director of state governmental affairs for Case New Holland in opposition to both LB200 and LB273; a letter from Jerry Parkin, director of ag public affairs, John Deere and Company, in opposition to LB200 and LB273; Charlene Finck, editor of Farm Journal magazine in opposition to LB200 and LB273. We have a letter in opposition to LB200 from Keith Olsen from the Nebraska Farm Bureau. And I did visit with Mr. Parkin this weekend in Washington, D.C., at a farm bill conference, and it's my understanding that the reason that he or a representative of John Deere and Company is not here is because they are in Washington visiting about this and other issues with the leadership in the House. Anyone wishing to testify in a neutral capacity on either bill? I see none. We also have a letter of a neutral position on LB273 from Keith Olsen from the Nebraska Farm Bureau. Both members of the Legislature that introduced LB200 and LB273 have waived closing. That will close our hearings today and we appreciate your

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Disposition of Bills:

LB108 - Advanced to General File, as amended.
LB200 - Held in committee.
LB273 - Held in committee.
LB422 - Advanced to General File, as amended.

Chairperson

Committee Clerk