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Agriculture Committee
January 27, 2009

[LB71 LB130 LB142 LB231]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 27, 2009, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB142, LB130, LB231, LB71. Senators present: Tom Carlson, Chairperson; Annette Dubas, Vice Chairperson; Brenda Council; Merton "Cap" Dierks; Russ Karpisek; Scott Price; Ken Schilz; and Norman Wallman. Senators absent: None.

SENATOR CARLSON: Welcome to the January 27, 2009, hearing of the Ag Committee. We're starting on time without any committee members here yet, but I'll go through the preliminaries, and then if we have to wait to get a quorum we'll do that, but I want to start on time. I'm Senator Tom Carlson, Chair of the committee. Our committee clerk is Barb DeRiese and our research analyst is Rick Leonard, to my right. Our page for the Ag Committee is Kim Weber from Lincoln. And so to my right here is the Vice Chair, Senator Annette Dubas from Fullerton, and we'll just hold off for a few more minutes until we get three more people here. I will go through the instructions, though. Including myself, please turn off or silence your cell phones, pagers and so forth in the hearing room. Those wishing to testify on a bill should come to the front of the room to be heard, and as someone finishes testifying the next testifier should move into the on-deck chair, which Senator Hansen is sitting in up front. So he'll be one of the first to testify and then that chair will be open, so move into that spot, please, if you're to be on the on-deck position. If you don't wish to testify but would like to have your name entered into the official record as being present at the hearing, there's a form by the door that you can sign. This will be made a part of the official record of the hearing. We're using a computerized transcription program and it's very important to complete the sign-in sheets for testifiers prior to testifying. They're on the corner of the table and need to be completed by everyone wishing to testify, including senators and staff introducing bills. If you're testifying on more than one bill, you'll need to submit a form for each one. When you come up to testify, give the form to Kim, our page, and...but don't turn the form in until you actually step up to testify. Please make your form readable. If transcribers have questions about your testimony, they use this information to contact you. As you begin your testimony, state your name and spell it for the record, even if it's an easy name, and if you don't do that I'll try and stop you right away so that you do before we continue. Please keep your testimony concise and try not to repeat what someone else has covered. I don't think we're in this position today. If there were a large number of people to testify, it may be necessary to place time limits. If you have handout material, give it to Kim, our page, and she'll circulate it to the committee. And if you do not choose to testify, you may submit comments in writing and have them read into the official record. However, you'll not be listed on the committee statement unless you come to the microphone and actually testify, even if you just state your name and position. There will be no displays of support or opposition to a bill, vocal or otherwise. If you need a drink of water, please ask the page. If this is your first time to testify in front of a committee, try and relax and enjoy it. Now since I've started here, we've had other

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committee members join us and to my right is Senator Cap Dierks from Ewing, Senator Norm Wallman from Cortland, Senator Brenda Council from Omaha, and Senator Scott Price from Bellevue. With that, then we are ready for the hearing on LB142 and, Senator Hansen, you may open. []

SENATOR HANSEN: (Exhibits 2, 3, and 4) Thank you, Senator Carlson, members of the Ag Committee. I do have three handouts I'd like the clerk to hand those out, if you would, please. One of these is an e-mail from Rick Kolkman in North Platte, president of the First National Bank, and he'd like that read into the record, if you or someone would do that. My name is Tom Hansen, T-o-m H-a-n-s-e-n, and I represent District 42, which is Lincoln County and the principal town there is in the North Platte area. I'm back to your committee this year to put back into...to put into state statute a clarification of a Nebraska Brand Committee existing law concerning transfers or lease of a registered brand. Last year when I came before this committee, all parties felt confident that the Nebraska Brand Committee could address this loophole in the brand law by changing its rules and regulations. On July 23, 2008, as evidenced by the handout--it's getting a little ahead of the handouts--but on July 23, 2008, the Attorney General informed Steve Stanec, the executive director, chief brand inspector of the Nebraska Brand Committee, that "the proposed rules exceed the statutory authority granted to the committee." So we find ourselves today that all parties are at the table again and we're trying to plug the loophole in the brand law. One fiscal change that we did make this year to this year's bill was an increase in the fee for recording the transfer of the brand from not more than \$35 to not more than \$50. Those who will be following me today will be able to describe what happened to a western Nebraska bank that was defrauded by a customer of the bank who leased the brand to a third party. The bank performed its due diligence by inspection of the cattle in question and found them to be in the care and being fed by their customer and carrying that customer's brand. That's when all things got out of control. The customer defaulted on his loan and ownership was now in question. I ask that you listen to those who follow my opening on LB142 and hopefully your committee can help come up with a solution. Thank you, Mr. Chairman. [LB142]

SENATOR CARLSON: Okay. Thank you, Senator Hansen, for introducing the bill. Any questions of Senator Hansen? Seeing none, will you be here to close? [LB142]

SENATOR HANSEN: I will. [LB142]

SENATOR CARLSON: Okay. Thank you. [LB142]

SENATOR HANSEN: Thank you. [LB142]

JERRY STILMOCK: (Exhibit 1) Senators, thank you. Senator Carlson, Chair of the committee, members of the committee, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, register on behalf of my client, the Nebraska Bankers Association, in

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support of LB142. Thanks again to Senator Hansen for taking another swing at this bill. LB142 would first of all clarify that any instrument evidencing the sale, assignment or transfer of a recorded brand must be filed with the Nebraska Brand Committee in order for it to be effective. Now in simpler words, you'd say the bank in this situation of the story that unfolded was hoodwinked or snookered. In fact, they were defrauded and it went something like this, Senators. The bank had a lending relationship with its customer. It included the financing of livestock and other agricultural operations. The customer had recorded the brands and the bank verified that those...at the commencement of its relationship that the brand in fact had been registered and the bank verified that from time to time. The bank took step number two. It properly perfected its security interest in all the livestock owned by this customer. The bank periodically made inspection of the livestock that was pledged as collateral. It relied on the brand that was branded to the animals. It relied on statements by the customer that when the bank went out to inspect that, yes, the customer said, those are my cattle. After that, the bank, subsequent to decisions by the bank with regard to the loans, the customer...were made on the basis of the amount of livestock owned so the bank went ahead and made the loan based upon the representation the livestock was that customer's. And, lo and behold, the livestock even was placed on land that was leased by the bank customer, so everything was copacetic. Well, then sure enough, bank customer defrauded or defaulted--too many D words--defaulted. The bank took action to replevin, take possession of those cattle, and that's when the whammy hit. The whammy was, unbeknownst to the bank, the bank customer leased the brand to an unknown third party so the cattle that were being viewed by the bank during its inspections all had the proper brand on it of its bank customer. What the bank did not know is that the bank customer took that brand and leased it to this third party, all which resulted in the defrauding of the bank and its loan. As I said at the outset, the bank did everything that it could have done in order to protect its position. As Senator Hansen had recited, last session he had introduced legislation, the legislation that is here in green copy before you today. We took a time out. We thought that...I think everybody thought that the Brand Committee, through its regulatory process and powers, would be able to do what the parties contemplated. Attorney General came in and said, no, it would be beyond the statutory scope. So we're back in the saddle again looking at a way to fix this problem, Senators. Now attached to my testimony is an amendment and the amendment was pushed out after conversation this year of how the green copy would mesh with the proposed regulations that were discussed last year. And so the amendment is brought to modify the green copy so that the amendment will in fact mesh, go hand in hand with the regulations that were proposed last year that were not able to be adopted by the Brand Committee. And the amendment would remove the requirement in the green copy that, in a nutshell, what it does is it places the lienholder, the bank, in the position that the bank, if it's going to take...if the lienholder, the bank, is going to take a lien in this livestock that has this particular brand, then it's going to be incumbent upon the bank to notify the Brand Committee and say, hey, we're out here, First National Bank, we have a security interest in this livestock, we're giving the Brand

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Committee notice that we're out here. And so the system would be set up then based upon the proposed regulation that once the bank has taken it upon itself to notify the Brand Committee then, if there would be a request to transfer or a request to assign or a request to sell that brand to somebody else, the committee then, the Brand Committee, would give notice back to the bank, back to the lending institution, and so that the lending institution would either have to consent to the transfer of that brand or it would notify the Brand Committee that its security interest had been terminated. And with that amendment that's attached to my testimony we believe that, though there would be a small percentage that would be impacted by the legislation in LB142, we think it would close this loophole that developed all because the brand was able to be transferred without any knowledge coming from the lending institution, Senators. And for those reasons, I'd ask the committee to consider bringing in that amendment and advancing the measure to General File. Thank you. [LB142]

SENATOR CARLSON: Okay. Thank you, Mr. Stilmock. Any questions? Senator Dierks. [LB142]

SENATOR DIERKS: Thank you, Senator Carlson. Is it common practice to lease brands? [LB142]

JERRY STILMOCK: Boy, not from what our bankers have told us, Senator. It happened this once. I don't know how frequently it does happen, Senator. [LB142]

SENATOR DIERKS: Well, the next question I'd ask is, is it legal? [LB142]

JERRY STILMOCK: I know there was a civil suit brought as a result of this. In this situation, I don't know that the brand itself was pledged as security. It was just the livestock, I believe. So you ask a very pointed and very good question, is if that pledge collateral, and I'm going to use the example, if the pledge collateral was the brand itself, if the pledge collateral was the brand itself, then that would be violation of criminal law. You're absolutely correct, Senator. But I think in this circumstance the bank did not take the brand as collateral. I'm speculating here a little bit, but I believe the bank did not take a security interest in the brand. The bank took a security interest in the livestock. [LB142]

SENATOR DIERKS: Now see, if I were the banker I would have done the same thing. I'm interested in the property, not the brand on the property. [LB142]

JERRY STILMOCK: Not the Xs and the Ys and the Qs on the brand, yes, sir. Yes, sir. [LB142]

SENATOR CARLSON: Okay. Any other questions? Senator Price. [LB142]

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SENATOR PRICE: Thank you, Senator Carlson. Mr. Stilmock, for the city slicker in here, okay, let me see if I comprehend. In another element, if someone buys a stolen car, who retains...and maybe Senator Council can help me here. Who retains ownership of that stolen property or that misappropriated property? It would probably be the original owner, not the person who bought it. So if you buy it from somebody else, someone has established it belonged to another party, you just lost, correct? So I'm a little bit...and what Senator Dierks was saying with the brand and that idea, if the bank owned the cattle then what...is there something specifically unique to cattle or farming that makes an item no longer owned just (inaudible) put a mark on it? Is it because of too many cows and things out there or...? [LB142]

JERRY STILMOCK: Yeah, Senator Price, I think your question is well taken and I believe I understand it. The significance is under the branding law there is a presumption, a prima facie proof, if you will, that that brand equals ownership and that's the difference under the branding law that we have only in the branding law that we don't see in other aspects, is if I put my mark on that cattle, it's presumed that...it's actually presumed, it's prima facie evidence, that that cattle, those cattle are owned by the owner of the brand. So your question is understood and it's unique in the livestock cattle industry that I don't believe that we see in other places. Because you look at the cattle, you look at the livestock, but when that brand is affixed I know it's owned by Jerry Stilmock. [LB142]

SENATOR PRICE: Well,... [LB142]

JERRY STILMOCK: Okay. [LB142]

SENATOR PRICE: ...I look at the brand like a VIN number on a car. [LB142]

JERRY STILMOCK: Okay. [LB142]

SENATOR PRICE: Okay? It's used to establish ownership, anything like that, but if it gets taken or whatever happens to it, I won't say the word stolen because that just has connotations, it still reverts to someone has ownership so the bank will say, I own that car. And that's why I'm wondering. Are we creating something extra here. That's what I want to make sure we're not creating something, unless it's uniquely required due to this industry and this issue, which sounds like what you're saying. [LB142]

JERRY STILMOCK: Then I'll agree with what you said. (Laugh) [LB142]

SENATOR PRICE: I thought so. [LB142]

SENATOR CARLSON: Senator Dubas. [LB142]

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SENATOR DUBAS: Thank you, Senator Carlson. I guess I'd like to follow up a little further on Senator Dierks's question. I know when we register our brand, we pay a fee, that brand is ours. And I was under the impression we couldn't give that brand to anybody else. So I guess that's the question and maybe you can't give me that answer but somebody else surely can. When I register my brand, I don't have the ability to transfer that brand myself to anybody else. Don't I have to go through proper channels to? That brand is mine unless I say I'm not going to register it anymore or... [LB142]

JERRY STILMOCK: It's yours and because it's treated under the law as personal property and, as we speak today, there's no limitation on your ability to transfer that or sell it or lease it to somebody else. [LB142]

SENATOR DUBAS: There is none? [LB142]

JERRY STILMOCK: That's my understanding, Senator, at least there is none...there's no provision that the lender has to be notified, and that's the piece that I'm working into. And I don't know if I can answer your question, Senator Dubas. That... [LB142]

SENATOR DUBAS: Yeah, because my registration fee goes to the Brand Committee (inaudible) to register...or it goes to the state to register my brand and so for me to transfer that brand to somebody else, I would have to record that somewhere, maybe not necessarily with my banker but I would...I guess I would look for someone to just help me clarify that as far as once you register your brand what are your...what are your rights and abilities once that brand is yours. [LB142]

JERRY STILMOCK: The, I believe, existing law does allow for the transfer and it does allow for all that to happen at the recording office, but there's nothing now in the law back to the bank issue. [LB142]

SENATOR DUBAS: Okay. All right. [LB142]

JERRY STILMOCK: Yes, Senator, so thank you for correcting me. [LB142]

SENATOR DUBAS: You bet. [LB142]

JERRY STILMOCK: Yes. [LB142]

SENATOR CARLSON: Before I recognize Senator Council for questions, since we've started Senator Schilz has come in from Ogallala. That's why he was late. He came from Ogallala, (laughter) and Senator Karpisek from Wilber. Okay, Senator Council. [LB142]

SENATOR COUNCIL: Yes, Mr. Stilmock, I'm just trying to get some clarification on what

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the intent of the legislation is. And I appreciate that in part it was intended to provide authority to the Brand Committee that the Attorney General indicated it did not have, and your amendment goes to that in some respects. But my concern and I guess my question is to Mr. Leonard. With regard to the amendments to that particular section, does the language proposed, and I'm saying it's proposed by Mr. Stilmock because he introduced it, does that satisfy what the concern is with regard to the Branding Committee having the authority to promulgate the regulations that we're talking about? [LB142]

RICK LEONARD: Yeah, I would...if I...may I? [LB142]

SENATOR CARLSON: Yes, Mr. Leonard. [LB142]

RICK LEONARD: This is Rick Leonard, committee research analyst. In my view, it does. The current statute that, if you read the letter from the Attorney General that was handed out, he concluded that the statute says the Brand Committee shall record these when they're presented. [LB142]

SENATOR COUNCIL: And they have no authority. [LB142]

RICK LEONARD: That it was a ministerial duty that it just automatically does and it didn't have the discretion not to accept it for recording. This does indeed provide a prescription for the Brand Committee of a procedure they go through, an additional procedure they go through, for the recording. [LB142]

SENATOR COUNCIL: Okay. And with regard to alternative amending language that I have seen, how does the alternative language I've seen compare to what is attached to Mr. Stilmock's testimony? Because it addresses the same section of the bill and I just need to know whether in the language that's used in the amendment proposed by Mr. Stilmock goes as far or not far enough relative to the suggested amending language. [LB142]

RICK LEONARD: I know I can discuss more in Executive Session,... [LB142]

SENATOR COUNCIL: Okay. Okay. [LB142]

RICK LEONARD: ...but it essentially is pretty much parallel... [LB142]

SENATOR COUNCIL: Okay. [LB142]

RICK LEONARD: ...except that it changes the burden upon...a little bit of the burden of...the original bill provides a burden on the brand owner to provide the documentation that the lender approves. The proposed amendment places more of the burden on the

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lender to notify the Brand Committee and then the Brand Committee would have that notice and they would check with the lender. [LB142]

JERRY STILMOCK: And, Senator Carlson, may I respond, even though there wasn't a question posed? [LB142]

SENATOR COUNCIL: It's posed. (Laugh) [LB142]

JERRY STILMOCK: Okay. The effort, the effort by... [LB142]

SENATOR COUNCIL: That's what I was trying to get at, Senator. [LB142]

JERRY STILMOCK: ...the effort by all those before we walked in the room this afternoon was, to make sure the intent certainly was is whatever the Brand Committee needed in order to adopt the regulation and promulgate the regulation would be included in the amendment, yes, sir. [LB142]

SENATOR CARLSON: Okay. Now any other questions? Okay. (Laugh) Senator Wallman. [LB142]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yeah, Jerry, thanks for coming. This is clear as mud, right? But I used to buy cattle branded and then I would sign...that maybe wasn't a lease but that brand was registered, like cows, bred heifers. [LB142]

JERRY STILMOCK: Uh-huh. [LB142]

SENATOR WALLMAN: So wouldn't this be covered under the same thing? [LB142]

JERRY STILMOCK: No, because when you bought those cattle then you were paying for those cattle. In this situation it was all the scheme by the owner of that brand that leased it and all of that happened without the lending institution even knowing about it and that was the problem, Senator, is the lease went from the owner of the brand to the other party but the bank was never notified or the bank never knew about it. So we're just hoping that by the amendment to the green copy that it would clarify that the bank would have the duty to give notice to the Brand Committee that we have a lien out there. Senator, thank you. [LB142]

SENATOR WALLMAN: Thank you. [LB142]

SENATOR CARLSON: Okay. Senator Schilz. [LB142]

SENATOR SCHILZ: I guess the only question I have, and maybe that answered it somewhat, but thank you, Senator Carlson. Mr. Stilmock, let's say we're moving cattle

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from a brand area into the nonbrand area and that isn't taken care of. Maybe I'm not thinking about it properly, but how would you address that? [LB142]

JERRY STILMOCK: Uh-huh. You know, I cannot. I cannot address going... [LB142]

SENATOR SCHILZ: And I don't know either. [LB142]

JERRY STILMOCK: ...from one, the branded area, to an unbranded area or nonbranded. And maybe one of the cattlemen behind me, from that organization, would be able to assist you and I both. [LB142]

SENATOR SCHILZ: Thank you. That's fine. Because I'm in the same position. I don't know how that works. [LB142]

SENATOR CARLSON: Okay. Any other questions? Senator Dierks. [LB142]

SENATOR DIERKS: Well, I think I can answer part of that. When you take cattle out of the brand area, you get a brand release from the brand inspector and that stays with your cattle. And when you sell them, you have that to offer as proof of ownership. [LB142]

JERRY STILMOCK: Okay. [LB142]

SENATOR DIERKS: I'm still trying to get around the legality of this thing. What would be wrong with just making it illegal to lease your brand? Would that be...how did we get to the point where we could lease them in the first place? That's the thing that bothers me. I didn't know you could do that. We've had brands at our ranch ever since they had brands and we...that's a...that's mine. Nobody gets that but me, you know? I just...we give them a release when they buy them and take them out of the country, but we don't lease the brand out to somebody else to use. [LB142]

JERRY STILMOCK: And that's obviously the one little gap or the big gap in this situation that we're trying to close up, is to make sure that all the parties involved in the lending, the customer, the bank, the bank then would have to find out ahead of time, before there was going to be a proposed transfer or assignment or a sale. Right now it happens without the lienholder or the bank knowing about it. [LB142]

SENATOR DIERKS: Well, if it were illegal to lease a brand, that wouldn't even be a problem for the bank because it would be taken care of. [LB142]

JERRY STILMOCK: I'm thinking about your question, Senator. If it were illegal, making it supposedly a criminal act, back to our conversation about whether or not pledged collateral was sold or transferred, I haven't...I haven't contemplated that before you've

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asked the question, Senator. I don't know if I can give you any better answer now.
[LB142]

SENATOR DIERKS: Okay. Thank you. [LB142]

JERRY STILMOCK: Yes, sir. [LB142]

SENATOR DIERKS: Thank you, Senator Carlson. [LB142]

SENATOR CARLSON: Any other...thank you, Senator Dierks. Senator Karpisek.
[LB142]

SENATOR KARPISEK: Thank you, Senator Carlson. Mr. Stilmock, just...but I guess what would happen in Senator Wallman's case if we were? Because that was my first thought, too: Let's just not let them lease these out. But if you buy some bred heifers or...then what would you do if that brand is already on it? [LB142]

JERRY STILMOCK: The system is set up to work that way, is the bank would file its lien notification and would file its notification if those cattle are sold, that who's ever buying that livestock, those cattle, are making a jointly payable check to the bank and to the seller of those cattle. [LB142]

SENATOR KARPISEK: Under your proposed legislation. [LB142]

JERRY STILMOCK: No, the way...I mean the way it works right now is if I have farm products, I have livestock that I'm selling, the system works by having lien notification...
[LB142]

SENATOR KARPISEK: Oh, okay. [LB142]

JERRY STILMOCK: ...and the buyer of those, of that critter, is required to make that check payable to not only the seller but also the lienholders that show up, you know, with the records with the Secretary of State, Senator. So... [LB142]

SENATOR KARPISEK: Okay. Thank you. I think I just muddied the waters more than I cleared them up. (Laughter) Thank you, Senator Carlson. [LB142]

SENATOR CARLSON: Okay. Any other questions from the committee? I have one. I'd like to follow up on something Senator Dierks asked and I'm not trying to put you on the spot, but I'm trying to think of an aboveboard, legal, positive reason that somebody would lease their brand. I see a nodding back there. Senator Hansen might refer to that in his closing. In the bill itself, on page 2, and we start with the first situation there, that is there is a lien and before that can be transferred it has to be okayed by the lienholder.

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That's easy. The second one is a written statement under oath by the owner that no person has a lien or security interest against livestock owned or thereafter acquired by the owner of such brand. Now, if I've borrowed money from you to buy cattle and I paid you off last week but I sent you a check through the mail, so once I did that I've satisfied my obligation with you. You don't have a lien...you don't have a right to a lien on those cattle. [LB142]

JERRY STILMOCK: Okay. [LB142]

SENATOR CARLSON: And then...so I sign an affidavit that they're mine and I don't owe anything on them, but you hadn't released it yet. Is that a problem? [LB142]

JERRY STILMOCK: The amendment...the amendment takes out the requirement that the holder of that brand swear under oath of the circumstances you just have gone through. It would require the bank, when it was paid off, to say when the money was received is we've terminated our interest in this livestock and therefore the cattle would transfer in the normal traded commerce. [LB142]

SENATOR CARLSON: So in researching, going back through this, if I've sent you the check and you've received it and the day after that I sign an affidavit that they're mine, I'm okay. I'm not going to get in trouble just because you hadn't officially released it by that point. [LB142]

JERRY STILMOCK: The bank would have to either consent or the bank would have to release. [LB142]

SENATOR CARLSON: Okay. Okay, thank you. [LB142]

JERRY STILMOCK: Yes, sir. [LB142]

SENATOR CARLSON: Any other questions? We kind of grilled you. Thanks for your testimony. [LB142]

JERRY STILMOCK: Okay. Did my best. [LB142]

SENATOR CARLSON: Okay. [LB142]

JERRY STILMOCK: Thank you. [LB142]

PETE McClymont: Chairman Carlson, members of the committee, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm here representing the membership of Nebraska Cattlemen. We are here in support of the bill. And before I go any further, you asked a lot of good questions as a committee on the technicalities of the brand. There

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are representatives here from the state of Nebraska Brand Committee, so not that I'm unwilling to take those questions, but they will give you a more complete and thorough answer than I can. In our testimony, obviously the instance that has occurred to the lender in this case, obviously, we as a membership and an industry want to make sure that our lenders have the ability to perfect their liens and so any fraudulent behavior is not allowed because there's a loophole in statute, so we're here to support that. Obviously, as we in agriculture find inputs of all sources have risen, we need lenders and so, on that behalf, we're here to support what the Nebraska bankers are doing. And obviously our association has had longstanding policy in support of the Nebraska Brand Committee and have representatives on there, and so this bill has been in the works for over two years and so we've been included with the bankers and the Nebraska Brand Committee to represent our views of our members. And so it would be the hope that this bill and amendment that Mr. Stilmock has brought forward would address the concerns in this bill and amendment would pass legal muster with the Attorney General and we could have this in place to support not only the lenders but also the people that are doing things the right way. With that, I'll conclude my testimony. [LB142]

SENATOR CARLSON: Okay. Thank you. Any questions of Mr. McClymont? This committee has been accused of letting him off the hook too easily, so next time we got to get him. Thank you for your testimony. [LB142]

PETE McCLYMONT: (Laugh) Thank you. [LB142]

GEORGE COOKSLEY: Good afternoon. My name is George Cooksley, G-e-o-r-g-e C-o-o-k-s-l-e-y. Senator Carlson, members of the committee, my name, as I've just said (laugh), I am here today on behalf of the Nebraska Brand Committee to speak in a neutral capacity on LB142. After discussion with producers and our legal counsel, the committee has questions that this bill might become a constitutional issue. Nebraska Statute 54-1,100 states in part, "A recorded brand is the property of the person causing such record to be made and is subject to the sale, assignment, transfer, devise, and descent as personal property." Our question is, will this legislation infringe on personal property rights of Nebraska Brand Owners by impeding the assignment, transfer, etcetera, of the brand? Also there is some concern as to the liability of the Nebraska Brand Committee if this question is left for the courts to determine. We raise this issue not to slow the process of this bill, not to...but to assure that the finished product meets all of the expectations. I believe that we are all in agreement with the need for and the intent of LB142. The Brand Committee process is between 700 and 800 brand assignments or transfers per year. The committee feels that the only brands that should be subject to this legislation are those that the lending institutions have notified the committee about. With that, I believe that the amendment proposed by the Nebraska Bankers Association should address this and is consistent with our policy. Also the committee supports the amendments that have been previously brought forward by the Nebraska Cattlemen. Also here with us today is executive director of the Nebraska

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Cattlemen...or Nebraska Brand Committee, Steve Stanec, who could...I think would be a good resource for the committee if we have questions that I cannot cover. Thank you. [LB142]

SENATOR CARLSON: Okay. Any questions of Mr. Cooksley? Okay, thank you for your testimony. [LB142]

GEORGE COOKSLEY: (Inaudible). [LB142]

SENATOR CARLSON: Oh, that's right, we got a little bit out of order here. We're still supposed to be on people...proponents of the bill. Do we have more proponents? Do we have any opponents to the bill? All right, anybody else in a neutral position? [LB142]

STEVE STANEC: Good afternoon, Senator Carlson and Agriculture Committee members. My name is Steve Stanec, last name is spelled S-t-a-n-e-c. I'm the executive director of the Nebraska Brand Committee and I merely come forward to try to answer some of those questions that were previously posed, if those senators would like to have those answered to the best of my ability. [LB142]

SENATOR CARLSON: Have you filled out a sheet? [LB142]

STEVE STANEC: I have it in front of me here, Senator. I believe Senator Dierks had a question earlier. [LB142]

SENATOR CARLSON: Senator Dierks, do you want to rephrase or reask that? [LB142]

SENATOR DIERKS: Thank you, Senator Carlson. Steve, what brought about the position that the Brand Committee has that brands could be leased? Was there some particular demand for that? [LB142]

STEVE STANEC: If you, yes, if you look at the bill or the statute itself, makes reference to sale, assignment, transfer, devise. Leases fall under assignment in that statute. The Brand Committee has been allowing for the lease of brands for many years. That lease must be noted with our committee before it becomes legal so that that lease will show up in all of the brand records. All our inspectors will have that information at time of change of ownership. So that document is required to be filed with us before it takes effect. [LB142]

SENATOR DIERKS: Okay. The next question would be, what would be wrong...why would the Brand Committee object if we struck lease from the language so that it couldn't be done? [LB142]

STEVE STANEC: The assignment or lease? I think you will have a number of

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producers, specifically feedyards, who actually own a number of different brands who will lease those to out-of-state customers so that they have title to those animals in the prima facie sense. Because most out-of-state producers do not have a Nebraska recorded brand, before you can utilize a brand in the state of Nebraska that brand must be recorded to you. So that was in an effort to assist our major feedyards in providing evidence of ownership through brands to out-of-state producers who did not have a brand. [LB142]

SENATOR DIERKS: Couldn't the same effect result from having a brand release signed at the time that the...instead of transferring, leasing the brand, just get a brand release signed to the...whoever the feedlot wanted to send the cattle to? [LB142]

STEVE STANEC: In the form of the brand itself? Is that... [LB142]

SENATOR DIERKS: The brand release. [LB142]

STEVE STANEC: A brand release. Generally, when cattle enter feedyards, they're not generally carrying one specific brand on any lot of cattle, generally. And to sign over that lease, it's not authorized currently because to perfect that they would have to be inspected for ownership again and a certificate of title issued. So you're going to throw in an additional cost to the feedyard to pass that cost on. The other thing that they look at is freedom or flexibility. When those fat cattle go out of that feedyard, if they are carrying a number of brands on them, the time that it takes to do the inspection is longer, the cattle are held up for a considerable amount of time to inspect each and every animal for those brands against that document of ownership. And certainly I've seen brand inspection certificates come in. You have an auction markets for 100 head; you could have 100 different brands. So I guess this, in a way, is an avenue for feeders to assist their customers in having evidence of ownership on their cattle when they are basically out-of-state producers and they're not there to ensure that their cattle are offered for sale or for...they're marketed correctly, things of that nature. So I guess in one sentence, the availability to lease a brand is a great advantage to our commercial feeders, who we have a number of commercial feeders in the state. [LB142]

SENATOR DIERKS: So the thing that happens then, if the feedlot you're talking about is going to move these cattle someplace else, they'll put one of these brands that they own on all those cattle and then they'll get a lease for that particular brand on that particular bunch of cattle. [LB142]

STEVE STANEC: In a sense. The process that takes place is a little different in that. They must satisfy or obtain the lease first before the animals are branded. The lease must take effect and be secured prior to any branding of any animals. [LB142]

SENATOR DIERKS: Hmm. I'm still thinking. (Laugh) [LB142]

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STEVE STANEC: I think in taking the assignment availability out of the statute would be a great hindrance to our commercial feeders, I personally do. I believe it would be. [LB142]

SENATOR DIERKS: Okay. Thank you. [LB142]

STEVE STANEC: Just a final note on that: As far as leasing assignments go, we only receive a dozen or less annually on leases. The 700 or 800 beyond that are actual transfers. But removing the assignment only takes care of the leases. If this language that is proposed by the bankers is not implemented, they can still transfer the brand. They could still transfer the ownership of the brand unbeknownst to the lending institution. [LB142]

SENATOR CARLSON: Okay. Thank you. Any other questions? Hearing none, thank you for your testimony. Any other testifier in a neutral position? Okay, Senator Hansen, you're authorized to close. [LB142]

SENATOR HANSEN: Thank you, Mr. Chairman. The Nebraska brand registry has been around since 1940, almost 70 years, so we're talking about something that's established. It's been well run as a state agency and it's a cash-funded agency where those people who have their cattle inspected run the agency. Registering brands is important to the western part of the state where we brand our cattle. We want to be sure that everything is adhered to and to protect our personal property and protect the banks that we borrow from. It's a hand-in-hand thing. We're going to be in trouble if we can't borrow money from our banks if this continues to happen. It's only...we only know that it's happened one time. It's a loophole and we know it's there. We agreed upon language a year ago which would have changed Title 54, Chapter 1-100 in the Nebraska Brand Committee's rules and regulations to provide for written notification of liens on cattle with a Nebraska recorded brand. We have in hand today that I passed out an Attorney General Opinion stating any rules and regulations adopted by the Brand Committee pertaining to liens on security interest in branded cattle would first require authority granted by the Legislature. Thank you for the opportunity to introduce LB142. Is there any questions? [LB142]

SENATOR CARLSON: Okay, Senator Dierks. [LB142]

SENATOR DIERKS: Well, I just wanted to tell you, Senator Hansen, that I have the greatest respect for the Brand Committee and always have had and I've worked closely with a number of brand inspectors over the years at the auction markets and I know...I know pretty well what they go through and the procedure they have. So I just...I've got a great deal of respect for the Brand Committee and what they do. [LB142]

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SENATOR HANSEN: Thank you. Appreciate that. I would...kind of would like to remark...reply to your remarks about the eliminating anything on personal property. If we talk about personal property, we're talking about cars, we're talking about tractors, anything, and the need to have that opportunity to be able to sell, transfer, lease any personal property, and a branding iron is no different. It's personal property and I think it needs to be contained in the personal...it states that in the bill, in the existing language, that it is personal property. [LB142]

SENATOR DIERKS: Well, thank you. I have to mature a little bit to get around that, I guess, because I still think (laugh)...I look on that brand of mine, I wouldn't let anybody else have it for sure, lease it or anything. I've got four of them, as a matter of fact, too, but I just...but I respect the commission so much. I've had a lot of dealings with them over the years and I've tried to help advance the inspectors' position. Thank you. [LB142]

SENATOR HANSEN: Thank you. [LB142]

SENATOR CARLSON: Okay. Any other questions of Senator Hansen? Thank you for your testimony, and that closes the hearing on LB142. Annette, the next hearing is LB130 and Senator Dubas will introduce the bill. Yeah, you've got it filled out, don't you? [LB142]

SENATOR DUBAS: You want my sheet? []

SENATOR CARLSON: Yes. Okay, Senator Dubas. []

SENATOR DUBAS: (Exhibits 1 and 2) Okay. Thank you and good afternoon. Thank you, Chairman Carlson and members of the Agriculture Committee. My name is Annette Dubas, that is D-u-b-a-s, and I represent the 34th Legislative District. The idea behind LB130 was brought to me in 2007 by the Nebraska Children and Families Foundation. Senator Harms had originally been working on this legislation and other healthy initiatives for young people when they invited me to be a part of the conversation. I've had the opportunity to meet with a variety of stakeholders over the course of the past year on this issue. As a farmer and a producer and someone who also markets food locally, I can see that there is great use to bring these stakeholders together and to begin planning for the bigger systems to be in place. Finding ways to grow local economies is a key component to statewide economic development. It makes economic sense to support local markets, buy locally, and it also supports better nutrition for our children, yet there are many bigger pieces to this delivery system that are not yet in place. And I started out by thinking maybe if we could put a pilot program in place it would be the way to go, but after a lot of discussion with the various members it seemed we needed to probably start out by taking baby steps, coordinate, plan, and hopefully come up with a more organized approach. And it became apparent that there needs to

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be more permissive statutes to allow schools to actually proceed with buying their foods on a more local basis so I'm looking forward to working with these groups, seeking solutions. So the creation of this task force is actually the first step in bringing these stakeholders together for planning purposes. Currently, there seems to be a great deal of discussion about the value of a task force, but I posit that task forces do not exist as an arbitrary and unpopular tool but as a tool to bring entities and stakeholders into a room who have the expertise and understanding of issues and what is needed to advance from an idea to an action. In addition, the legislation...this legislation allows for the planning and coordination of systems to bring local produce and meat into the school system. There currently are programs in place that are connecting local producers with different entities to provide their foods. In fact, one is at the University of Nebraska right now called the Good Foods Local Program where several residence halls are actually using locally raised produce and meats in their food programs. It has been extremely well received with support from the food preparers, the students who eat the food, and the producers who are selling the products. These kinds of programs are also sprouting up across the country in our schools, in our colleges, nursing homes, hospitals, even correctional facilities. Some of them are starting to grow their own foods to use in their food processing. There are also local grocery stores who are looking for opportunities to sell locally raised products, and we have several right here in Lincoln who are actually doing that. And through the business that my husband and I have in direct marketing, we have talked with some of these local grocery stores about putting our products into their stores. So I think the testimony that's going to follow from people who have actual firsthand experience and knowledge about what it takes to not just grow the food but to make the connections and get this food into our local economies will hopefully prove very informative for you and give you an ability to ask any questions you may have. I also have two letters of support that I'd like to enter into the record. One is from the Nebraska Dietetic Association and another is from the Douglas County Health Department, so I would ask the page to hand these out, and would be happy to answer any questions you may have. [LB130]

SENATOR CARLSON: Okay. Thank you, Senator Dubas. Any questions of her? Senator Karpisek. [LB130]

SENATOR KARPISEK: Thank you, Senator Carlson. Senator Dubas, I really like the idea. I guess my background in the USDA and all those problems that can arise, I mean, I'm sure that this would look at that. I mean can you just comment on the...maybe everybody thinks it's just easy to go...why don't you just get something out of a grocery store and give it to the kids. [LB130]

SENATOR DUBAS: There are a lot of hoops that need to be jumped through when you start selling food to public entities. I mean just our little direct marketing business, in order for us to sell to the public, our meat does have to be processed at a USDA inspected facility. We don't have a lot of those available across the state. We were

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fortunate in our particular area to have one fairly close, but it's not simple. You just don't go up to the school and say, hey, I've got a pickup load of apples out here I'd like to sell to you and the food nutrition manager says sure, great, unload them. You know, there's health codes, there are a lot of things that need to be put into place. That's what we discovered last summer as I brought these different entities in to talk about, okay, what are those, you know, what are those hoops you have to jump through, what are the...what's the paperwork that has to be done, what do we do to help our producers grow the food so that they can get... [LB130]

SENATOR KARPISEK: And then is there a whole nother level for the school system? [LB130]

SENATOR DUBAS: There's certain obligations that they have to meet in order...who they're buying their food from and how is that...the condition that that food is in. And so that's where we kind of, at the end of the discussion, thought, as I said, I was going to do a pilot program but there were just still too many questions, even policywise. Can the schools legally do this? So my question to them was what do I need to do as a policymaker to maybe take down some of these barriers or help move the process along so that you can do it? So I think there's things we need to address policywise, that if we get those questions answered, they've got the ideas, the producers know how to do it, it's just then that gives them the avenues to move that program forward. [LB130]

SENATOR KARPISEK: Okay. Thank you, Senator Dubas. Thank you, Senator Carlson. [LB130]

SENATOR CARLSON: Senator Price. [LB130]

SENATOR PRICE: Senator Carlson, thank you. Senator Dubas, a quick question: In researching, I ran across a Community Foods Security Coalition and the funding they receive. They have some USDA funding and they do this. So I'm wondering, are there other...have we looked at other existing mechanisms to do this? I mean, it sounds like you did and you're wondering how to get through it, but we're proposing yet another way of doing it and we may have a mechanism in place with funding that is already broadly accepted. [LB130]

SENATOR DUBAS: I'm not familiar with that, that organization that you just mentioned. But again, I think the people that will come up and testify behind me will tell us what is available, what they have available for their use, and maybe what are some of the things that we need to continue to look at to ease this situation. [LB130]

SENATOR PRICE: I thank you. [LB130]

SENATOR CARLSON: Okay. Any other questions of Senator Dubas? Thank you for

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your testimony. Okay. Next testifier. [LB130]

JIM CARUSO: Senator Carlson, other members of the committee, my name is Jim Caruso. I am a producer. Spelling of my last name is C-a-r-u-s-o. I'm also here today representing the Old Cheney Road Farmers' Market, Inc., which is a 501(c)(3) organization that operates a farmers' market in Lincoln on Sundays. There have been some questions raised about are there other models that exist in the state or in the country that will increase institutional purchases, and we're talking in this instance of the schools, which I would consider to be an institutional purchaser, and the process that they go through. My experience with them specifically is with the University of Nebraska, and there will be someone speaking about the good, fresh and local program, but I could tell you that it has been very successful. It has enabled local market farmers to increase their sales and the best part of that is that it is keeping those dollars locally, and in this time with an economy that is going downward, we need to do whatever we can to increase sales locally and to keep those dollars within the state. The Old Cheney Road Market, as I mentioned earlier, is a 501(c)(3) organization, and one of the things that we attempt to do through the use of this farmers' market is to undertake educational programs to heighten the awareness of local populations to the benefit of buying locally and eating locally. And we would propose or we would want to become a part of this study that's going to be taken...undertaken by the task force and we would want to assist in any way that we can to further this effort along. Again, we are very supportive of this step. We think that it's going to increase awareness, it's going to be a plus for education, and it's also going to help the local economy in cities throughout the state. At this time, I'd answer any questions that you might have. [LB130]

SENATOR CARLSON: Okay. Thank you for your testimony. Senator Wallman. [LB130]

SENATOR WALLMAN: Yes, thank you, Chairman Carlson. Yes, I appreciate what you're doing. As I grew up, you know, we had the BSDCs grew their own milk and food and the prison system did, had a dairy, and why did they go away from that? Do you know? [LB130]

JIM CARUSO: I think that it was a trend. It was a way of potentially saving money, going to processed foods, but what we're finding today is that we can bring that back. One of the things that we were able to do, and others can speak better than I since they have more experience with it, but there are USDA programs where monies can be brought in to bring equipment that will allow us to use locally produced goods and still maintain...reduce, to some degree, reducing the labor, because that was one of the big issues. But one thing that I've noticed since I've been selling to the university, and I have seen that the number of students that eat at the dining halls has increased substantially. The food is better, they like it, and I think it just serves a number of purposes. [LB130]

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SENATOR WALLMAN: Well, I think it's good. Thank you. [LB130]

SENATOR CARLSON: Okay. Senator Price. [LB130]

SENATOR PRICE: Thank you, Senator Carlson. Sir, a quick question: What about the chain of accountability of foods as they come into our system here? Just recently, and not that this would (inaudible), but peanut butter recalls, meat recalls, tomato recalls, how...I mean I know there will be a study to this, but that would seem to be a little bit troublesome and perhaps why these larger contracts, a different way of doing, just for that accountability. And you know, haven't been anybody (inaudible) but that's what...that chain of accountability. [LB130]

JIM CARUSO: Right. I think that you would find that those that sell locally are well known by the people that buy, and there's nothing that precludes them from going out to see how we grow, how we care for our animals. There are put in place requirements for selling to institutions, how they are picked, how they are washed, how they are packed, how they're maintained at temperatures. So all of those things, you're not...I don't believe that you would...you would not reduce the standards and I don't know that you necessarily have to increase the standards, but buying locally is going to be as safe or safer than if you were importing something 2,000 miles away. [LB130]

SENATOR CARLSON: Other questions? Okay, thank you, Mr. Caruso, for your testimony. [LB130]

JIM CARUSO: Thank you. Thank you. [LB130]

SENATOR CARLSON: Next testifier. [LB130]

PAM EDWARDS: Good afternoon. My name is Pam Edwards and I want to thank you, Chairman Carlson and members of the Agriculture Committee. I am the assist... [LB130]

SENATOR CARLSON: And I'm going to stop you. Would you spell your name? [LB130]

PAM EDWARDS: Oh, Edwards. Edwards, yes, E-d-w-a-r-d-s. I am the assistant director of University Dining Services at the University of Nebraska in Lincoln, but I am here today in a personal capacity and I am not representing the university. I am in support of LB130 and today I want to talk with you about my experience with our local foods residence hall dining and catering program that's administered through the University Dining Services and university housing at UNL. Our program is called the GFL, Good, Fresh, Local, University of Nebraska-Lincoln Sustainable Food Project. And broadly speaking, GFL could be spoken of as a farm to school program at the college and university level. Before addressing the need for a farm to school task force in Nebraska, I want to give you just a little quick overview of the GFL program, tell you a little story

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about it, because I think this will be helpful for you to understand what goes into establishing a program of local foods. Those involved with the GFL project identified the need for a local foods dining program at the university because Nebraska is an agricultural state, and we wanted to provide a variety of food from throughout Nebraska for our students. We started planning the GFL program in the summer of 2005, which was shortly before the local foods movement really took off in popularity throughout the United States. At the time we entered the picture, there were approximately 200 colleges and universities attempting to start local foods programs on their campuses. I think it's interesting now, from what I read, that many are encouraging the Obama family to plant a small garden on the White House lawn and also to include local foods in all the special events at the White House. The goals of our GFL program include the following: to promote the value of local, and we define "local" as Nebraska food; to educate students about sustainable agriculture and the positive impact it can have on the environment, on the local economy and on communities; and to provide a new distribution opportunity for local farmers and producers in the world of university dining food service. The first GFL meal was served in September of 2005 at Cather-Pound-Neihardt dining service. The GFL meals were served during the 2005-2006 academic year, eight months, with only one GFL meal served per month at the dining service. As news of the GFL program caught on with the students, there was a rapid increase in attendance at those GFL meals. The average number of students served per GFL meal was approximately 850 to 900. Normal evenings were about 600 to 650. Beginning in the fall of 2006 up till today, the GFL program has expanded to include the East Campus Union dining service, Cather-Pound-Neihardt, and also the catering program at the university. Cather-Pound-Neihardt and East Campus continue to serve one GFL meal per month and they have also added individual GFL menu items at their breakfasts, lunches, and dinners, such as we have a GFL granola that's kind of a trademark for our program, organic oatmeal, free-range eggs and chicken, prairie raised ground beef, jams and jellies, honey, salad dressings all from Nebraska, things of that nature, natural pork, and homemade bakery products. Today we use approximately 60 to 65 producers and farmers and manufacturers from the state. When we started in 2005 to 2006, we had 20 to 25. The planning and implementation of the GFL project involved the combined effort and the unique expertise of a variety of individuals who we would call the task force team, and that included the University Dining Service, Nebraska Cooperative Development Center, the Food Processing Center, the Nebraska Sustainable Agriculture Society, individual farmers and producers, and students. This task force continues today to guide the GFL program. Because of the very unique nature of local foods...of a local foods university dining program, I can tell you that GFL could not have been accomplished with the success it has without the participation of each of those partners in the team. The GFL project has become, as Jim noted, a very popular program among the students and others. It includes not only the dining component, but also an educational component that addresses why local foods are important to the community, to the environment, and to the economy. Our local foods program is very unique in that it is a totally different type of food system. As we were

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planning, we did not have a local food systems model to use as sort of a cookie cutter approach but we had to take it step by step, identifying the components we thought were needed to make the program work. This required involving those with knowledge and experience in the variety of areas in the world of local foods. We identified right at the beginning that we were going to take baby steps. In fact, that became our mantra and continues to today. But believe me, even with the baby steps, there were bumps along the journey. As I noted, when we started planning GFL, we had to plan for an entirely new type of food system. We had to develop standards of operation specific to local foods. There is not one big food distributor out there who specializes in local foods so we had to try and become the experts in this system. This meant that we as a dining service and the farmers and producers had to find new ways to operate, all the while putting food safety, quality, and the cost control foremost at the top of our list. I call this the newness factor for local foods, because our dining service had to find new ways to do the following. We had to identify the types of local foods that were available. What are they, when are they available, where are they available, and how do you get them? We had to identify the farmers and producers and manufacturers for those products. Where are those folks and how do we educate them about a large university food service and the requirements needed to be a vendor at the university, the insurance and everything else that's involved? We had to plan the menu with the information that we were gaining from these folks. We had to order the food. Most of these individuals don't have on-line ordering systems and they have phones, but you have to learn when they're going to be at home to call them. We had to receive the food so we had to know when these farmers and producers were going to be able to make their deliveries and how often. And when the cost of gas went up, those deliveries became fewer so we had to, you know, kind of work around that. We had to figure out how we were going to store the food. How is the food packaged and would these farmers, producers, and manufacturers be willing to package it differently for a large institution food service? And we had to prepare the food the old-fashioned way. That is, we didn't get carrots...we don't get carrots coming in that are peeled, sliced, diced, however you want them, or potatoes. You get them in with the tops on. You have to peel them, cut them, slice them, which all takes more time, takes different types of equipment and all of those types of things. And we also had to determine if we had the right kind of equipment to do all this old-fashioned cooking. And we had to serve the food and we wanted to make sure that the students knew what was unique about this food so labeling the food with where it came from, putting a connection with the farmers and producers who supplied the food and where it was from. While our dining service was addressing those newness factors, we also had the farmers and the producers who were having to decide if they wanted or if they could even enter a new way of doing business, that is providing food for a large university food service that needed a large volume of food, for example, chicken for 250 servings or 750 servings that included very specific requirements. This would be in comparison to what many of them had been used to dealing with farmers' markets or direct marketing where the volume of food needed was much smaller. So all of this meant that they were gaining experience in new ways of doing business, marketing their

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food differently, receiving the orders from us in a different manner, how they were going to package their food, how they were going to transport it and deliver it to make sure that the food safety was topmost on the list with temperature time controls, how they were going to invoice their products, and having enough supply to serve all the large needs that we have. Addressing all of these newness factors is possible, as evidenced by the success of our GFL program, but it takes a great deal of planning and implementation time. By using the time to plan and proceed and using those baby steps, we have averted many of the pitfalls that could have occurred. But all this planning and implementation was well worth it because of the benefits that we've seen with our students and the farmers and producers. Because there are so many systems involved for implementing a local foods program for one university food service, I strongly recommend the establishment of a task force to study the systems needed for a farm to school program in the state of Nebraska. Thank you. [LB130]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Senator Price. [LB130]

SENATOR PRICE: Senator Carlson, thank you. Ms. Edwards, in talking to cost control,... [LB130]

PAM EDWARDS: Uh-huh. [LB130]

SENATOR PRICE: ...I am curious to know if there are any incentives for a small grower/producer in the contract over, say, a Sysco or somebody like that. Are there like in (inaudible), small business comes in, they get a certain percentage of the business, or is all the cost equal across the board? Whoever comes to me with 100 pounds of tomatoes, whether it's a local grower or Sysco, it's just 100 pounds of either potatoes or tomatoes. [LB130]

PAM EDWARDS: What we do is we have bid letters that go out and, dependent upon how those come back in and how the farmer/producer decides to price their product, you know, if the quality in what we're looking for, we take all of that into consideration, so it may be that someone is able to, based on a larger volume, give us a better cost compared to somebody else who may not be able to do that. So it just depends on how they're going to price their products. [LB130]

SENATOR PRICE: So then within that criterion, one of them is if it's a locally grown food versus a nonlocally grown food? [LB130]

PAM EDWARDS: We're actually, with our local program, we're not comparing local to nonlocal. It would be all the local that would be compared against each other for the decisions that we would make for this particular program. So if we were buying carrots from another distributor and we were wanting to serve local foods, unless their carrots

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were coming from a local distributor then for that...for this particular program, that would not be...we wouldn't be making those comparisons. It's only local to local. Does that make sense? [LB130]

SENATOR PRICE: Oh, no, it makes sense. I guess the true root of my question was can you talk to the cost differential between a locally grown food versus food not in the GFL program for 100 pounds of potatoes. [LB130]

PAM EDWARDS: Right, I'm sorry. Right. Right. A majority of the time, local foods are...do cost more, but I think you have to put it in the context of what also is involved with the local producer, that they don't have the volume that the larger ones... [LB130]

SENATOR PRICE: Oh, absolutely. [LB130]

PAM EDWARDS: So that's going to happen and the...you know, it will be interesting to see as local foods grow and the volume becomes greater how those price differences narrow. I think you can see that sometimes in the...I know I certainly can see it in the grocery stores. There's some of that happening now. [LB130]

SENATOR PRICE: All right. Thank you. [LB130]

PAM EDWARDS: Yes, it is, it is more costly. [LB130]

SENATOR CARLSON: Okay. Any...Senator Dierks. [LB130]

SENATOR DIERKS: Just as a point of interest, do you...how do you prescribe or what do you prefer to use for drinks for these lunches? [LB130]

PAM EDWARDS: Drinks? [LB130]

SENATOR DIERKS: Drinks, yeah. [LB130]

PAM EDWARDS: You know, we don't. That is one part that we haven't gone to. We have...our milk supplier at the university is from...is Roberts, which is a local. I mean you can...it's a local company. We do also serve soy milk, but we have not gotten into the area of local, local. [LB130]

SENATOR DIERKS: But you have something that you prefer them to drink besides pop. [LB130]

PAM EDWARDS: Oh, yes. Yeah. We have...well, we have, as you probably know, we have the Pepsi contract with the university so we have Pepsi products but also juice that it's, you know, just the concentrate, and then milk. We have three types of milk, yeah,

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we serve. [LB130]

SENATOR DIERKS: I was involved in a study a number of years ago that insisted that children had to have milk in their diet daily in order to mature and develop normally in older years, and I think they had a lot...these people I had talk, one was a professor over at Creighton University, did an outstanding job of presenting the issue that it was important for especially for women in their fertility days and their...and as they grew older. And we tried, I think, to start that program in Nebraska, that the schools were supposed to provide as much milk product as they did pop in their cooler, and they did...they were well accepted. The students accepted that very well. Thank you. [LB130]

PAM EDWARDS: I think our students are learning more and more about the importance of it and drinking more milk, but yeah, we do. [LB130]

SENATOR DIERKS: Thank you. [LB130]

SENATOR CARLSON: Senator Schilz. [LB130]

SENATOR SCHILZ: Thank you, Senator Carlson. Not to make a quip or anything, but do you serve water? [LB130]

PAM EDWARDS: Yes. [LB130]

SENATOR SCHILZ: Does it come out of the tap? [LB130]

PAM EDWARDS: It comes out of the tap. [LB130]

SENATOR SCHILZ: That's Nebraska water. It's a Nebraska product. [LB130]

PAM EDWARDS: Yes, it is. Yeah. Very good. I hadn't thought about that. I have to add that to the list. [LB130]

SENATOR SCHILZ: Label it. [LB130]

PAM EDWARDS: Label it, okay. [LB130]

SENATOR CARLSON: Any other questions? All right. Thank you for your testimony. [LB130]

PAM EDWARDS: Yeah, you bet. [LB130]

SENATOR CARLSON: Next testifier. We're in proponents. [LB130]

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CHARUTH LOTH: Good afternoon. My name is Charuth Loth and I'm a producer in Lancaster County. My husband... [LB130]

SENATOR CARLSON: And spell your name. [LB130]

CHARUTH LOTH: Oh, yes. My first name or just my last name? [LB130]

SENATOR CARLSON: Both. [LB130]

CHARUTH LOTH: C-h-a-r-u-t-h and Loth, L-o-t-h, is my last name. My husband Kevin and I own Shadow Brook Farm and we are a vegetable producer in Lancaster County. We've been producing vegetables for 14 years and we've been selling all those vegetables locally in the Lincoln and Omaha areas. We market through a lot of different routes. We do as much as we can direct to farmers' markets, but we also sell to grocery stores and restaurants in Lincoln and Omaha, and we have sold to the Good, Fresh, Local program at UNL, as well as other wholesale accounts as well. So as a producer, I think this is a wonderful legislation that we're talking about today, and I really think that the time is right for this. And I've seen wonderful examples so there's lots of models that we can look at of the farm to school programs in other states. Oklahoma has one and I know like Berkeley, California, is really doing a good job with theirs as well. I've also been involved in the community through Buy Fresh Buy Local and some other organizations. I think we're going to have someone to represent that a little bit today, too, maybe. But basically, the need for locally produced food is really growing. We've seen this over the years that we've been doing this. I've also been involved with schools through the Dimensions early education program in the Arbor Day Foundation, working on outdoor classrooms and brings garden projects to school, so there's two schools that I was involved with doing that. I helped with a project at First Plymouth preschool putting in a greenhouse and a science-based curriculum for the children there to learn about science through a garden. We've also done a lot of tours of our farm with school groups coming to the farm. And the really amazing thing that happens when you have children coming to the farm, seeing produce being grown, is that they want to eat it. So I think that's very monumental to this, is that a lot of times we think of children not wanting to eat food...or vegetables, I mean, and when you actually see children out in the field, they'll eat raw asparagus. They'll try carrots because all of a sudden there's an interest there that's very hands on. And when they have these classroom gardens at schools, the same thing takes place. And so when they have these wonderful garden programs, it kind of also side by side with this food to...the farm to food...to school programs, then the children want to eat these vegetables because they've grown them or they've seen them being grown. So I think this is really, really important for the health of our children because, as we know, obesity and processed foods are a big issue, and I think this is a wonderful way that we can do something about that. [LB130]

SENATOR CARLSON: Okay. Thank you. Questions? Senator Wallman. [LB130]

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SENATOR WALLMAN: Thank you, Senator. Thank you for coming. [LB130]

CHARUTH LOTH: Thanks. [LB130]

SENATOR WALLMAN: I think it is an excellent program for children and my wife is involved in mother-to-mother ministry, teaching young mothers how to garden, so... [LB130]

CHARUTH LOTH: Exactly. [LB130]

SENATOR WALLMAN: ...and so thank you for what you do. [LB130]

CHARUTH LOTH: Yeah. Thank you. Thanks for having me. [LB130]

SENATOR CARLSON: Any other questions? What kind of acreage does your operation involve? [LB130]

CHARUTH LOTH: We have 34 acres, and actually just recently we've added a dairy. We've just gone through the University Food Processing Department and got two USDA grants and put in a dairy, a goat dairy. So probably goat milk won't be going into the schools anytime soon but... [LB130]

SENATOR PRICE: With cheese. [LB130]

CHARUTH LOTH: ...we make cheese, we do, but we sell this at the farmers' market so I don't think that will necessarily be something that the school lunch program is interested in, but I am, you know, aware of what's going on in the community and I think there's a need for this and it would be wonderful. [LB130]

SENATOR CARLSON: In your 34 acres, what's the largest acreage on a given product? [LB130]

CHARUTH LOTH: Yeah, that's a good question. Everything is very small and very diverse. We grow...because we have a local market, we grow lots of things and very small quantities of them. However, you know, we have our marketing figured out. Our niche is pretty clear. It's more kind of gourmet centered around salad mix and things like that and leafy greens. However, there are plenty of other producers in this area that would be very interested in an opportunity like this to market through. [LB130]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you for your testimony. [LB130]

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CHARUTH LOTH: Uh-huh. Thank you. [LB130]

JILL JANK: (Exhibit 3) Hello, Senator Carlson and Ag Committee. I am Jill Jank, my last name is spelled J-a-n-k, and today I'm speaking on behalf of two organizations, the Nebraska Dietetic Association and the Nebraska Action for Healthy Kids. The Nebraska Dietetic Association represents over 500 registered dieticians in Nebraska, and the Nebraska Action for Healthy Kids has over 100 team members and represents many organizations. A few of these include the Nebraska Department of Health and Human Services, the Nebraska Department of Education, the Nebraska Dairy Council, some of our county health departments, some of our public schools, the University of Nebraska Extension Service, and the Nebraska Heart Association. Our goal in partnering together is to help combat childhood obesity so we're working with schools to help improve the nutrition and fitness of kids so they're even more ready to learn. We are in support of LB130. One of the important steps we can take toward our goal of healthier kids is to provide more highly nutritious and minimally processed foods. These include vegetables, fruits, whole grains, and low-fat dairy products. Research shows that farm to school programs increase kids' consumption of highly nutritious foods, especially fruits and vegetables. As their eating improves, so does their health and academic achievement. We are excited to think that this program not only benefits our children but our local and state economy. Over 400 school districts in 23 states have implemented a farm to school program. In North Carolina, farmers sold \$500,000 worth of fresh fruits and vegetables to their state schools in 2004 and 2005. In Oklahoma, according to one estimate, farmers could sell about \$6 million worth of fresh fruits and vegetables to schools during the current school year. Schools can purchase locally grown produce with the same federal reimbursement money they use to buy all food items. Schools also get a small amount of money to purchase locally grown fresh fruits and vegetables through the USDA school commodity program. In setting up this task force, we are looking at an idea that is good for our kids and good for our Nebraska economy. As a registered dietician representing the Nebraska Dietetic Association, I am pleased to see that the task force will include roles currently filled by registered dieticians. We are the food and nutrition experts. RDs provide important expertise to this committee, they will provide that expertise as they look at nutrition and food safety issues. Both the Nebraska Action for Healthy Kids and the Nebraska Dietetic Association are pleased to support this initiative to develop a farm to school program in Nebraska. Thank you. [LB130]

SENATOR CARLSON: Okay. Thank you. Any questions? [LB130]

SENATOR COUNCIL: Just one, Senator Carlson. [LB130]

SENATOR CARLSON: Yes, Senator Council. [LB130]

SENATOR COUNCIL: Yes, Ms. Jank, looking at the proposed composition of the task

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force, I'm interested in where you see...where you can specifically identify registered dietitians participating in the task force. Is it through the Action for Healthy Kids or... [LB130]

JILL JANK: Yes, we could provide an RD, that actually I would love to see that role on as an amendment to the bill. But we kind of discussed it as an organization and said, okay, well, because we know that some of these roles are already filled by RDs and that would be probably University of Nebraska Food Service, or we hope it would be, because we hope Pam Edwards, who just spoke, would be serving in that role. We also have Edith Zumwalt, who is a registered dietitian. Currently she does not belong to NDA but she is a registered dietitian and would serve in that capacity. And I believe that there is one more, well, if we have an Action for Healthy Kids dietitian on that...in that role. [LB130]

SENATOR COUNCIL: Okay. But it could be...it's possible that the Healthy Kids, Action for Healthy Kids representative could be someone other than a registered dietitian. [LB130]

JILL JANK: That's correct. That's correct. [LB130]

SENATOR COUNCIL: And in that regard, there's been some conversation about providing for participation and representation from county health departments because of their role in dealing with obesity. What are your thoughts on that? [LB130]

JILL JANK: Uh-huh. Uh-huh. Uh-huh. That seems to be a very good idea, uh-huh. [LB130]

SENATOR COUNCIL: Okay. Thank you. [LB130]

JILL JANK: Yes, thank you. And in fact, if you would want to propose an amendment to include those two on the task force, we would highly support that amendment. [LB130]

SENATOR COUNCIL: (Laugh) Thank you. [LB130]

JILL JANK: Okay. Thank you. [LB130]

SENATOR CARLSON: Okay. Other questions? All right. Thank you for your testimony. How many more proponents do we have? Are there any opponents? Or anyone testifying in a neutral position? Okay, please come forward. [LB130]

BEVERLY BENES: (Exhibit 4) Thank you, Senator Carlson, and thank you to the Agriculture Committee for having this hearing today. I am Bev Benes, the last name is spelled B-e-n-e-s, and I am the director of nutrition services in the Department of

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Education and we're responsible for the school lunch program, the child and adult care food program, the summer food service program, and the fresh fruit and vegetable program. What I am coming today is to present a neutral position in that I want to certainly reinforce that this is something that the USDA is very interested in and it is something that, from what I was able to discern on the farm to school Web site, which is an independent Web site, has identified 40 states that currently have some type of farm to school program in their state. Some are much more comprehensive, such as California. Nebraska is actually listed because Prairie Hill Learning Center had a farm to school program at their facility. What I have shared with each of you on my handout is a description of some of the regulations that we are bound by in our nutrition services, the school lunch program. And I think Dr....or, Senator Price, you questioned, you know, some of the regulations, and certainly there are some things that the schools will have to take into consideration and the task force will also. (Recorder malfunction--some testimony lost.) [LB130]

SENATOR CARLSON: We will take a five-minute break here. We'll give...continue. [LB130]

BEVERLY BENES: Okay. As I was saying that the USDA also does still have the procurement regulations that the schools must comply with and the primary one there is that it still must be a competitive offering to the suppliers, and that it has to meet with all the federal laws and regulations for procurement. I would like to share one positive program that is currently happening in Nebraska. It hasn't had a lot of publicity because this is the very first year that we've been able to offer the students in Nebraska a fresh fruit and vegetable program. And I wanted to share this because we've had some local communities working very well with the schools, meeting all of the USDA requirements for competitive bidding and being able to purchase locally and meeting food sanitation and safety requirements. In the fresh fruit and vegetable program, it actually was piloted in 2004 and over a four-year period they increased the number of states that were included in this pilot project. And in school year 2008-2009 it was expanded to all states, and we were able nationally to provide \$40 million in funding to states to provide fresh fruits and vegetables. These cannot be frozen. They cannot be dried. They have to be fresh fruits and fresh vegetables. In Nebraska, we currently have 28 schools participating. This is our pilot year, our inaugural year, and so far the anecdotal stories have been extremely positive and they certainly echo what we've heard previously. The kids eat fresh fruits and vegetables. Lots of creative things are going on in the schools, getting the kids to especially try vegetables, but they seem to like them. The cutest story of all, quick one here, little side note: a little guy was...they had made a cauliflower and then a red pepper and a tomato on a skewer and so the kids were trying these up in Omaha and the little guy turned to the reporter and said, I'm going to go tell my grandma to buy white broccoli; I've never had white broccoli before. And it was cauliflower (laugh) because he had never had that before. So again, I certainly will be there to provide insight on what the USDA regulations are to the task force. As was

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mentioned by Senator Dubas and some of the others, there are issues that I believe the task force will need to address to make this an effective program, issues of sanitation and safety, issues of preparation, equipment needs. We have one farmer in Wood River, Nebraska, that's donating 300 pounds of potatoes in the fall to the school, which they welcome, but they also had to purchase an additional piece of equipment to be able to get all those potatoes peeled and washed and cleaned. Labor needs are an issue, the costs of foods, and that has been addressed quite well I think by Pam Edwards and the presenter from Shadow Brook Farms, and also the availability of foods, but I don't think any of those can be barriers. I think we...the task force can certainly address those. So I support the...I guess I'm neutral but I think the task force has taken on an excellent project. Any questions? [LB130]

SENATOR CARLSON: Okay. Thank you. Senator Price. [LB130]

SENATOR PRICE: Senator Carlson, I just wanted to make sure that everybody understood I like food and I've spent many (laughter)...no, I'm going somewhere with this. I've spent many years in the military eating something they called food. It came out of a foil bag or a can that sat on a shelf for many years. So I just wanted you to know, I really like food that was grown in that same year that I ate it. (Laughter) (Inaudible) say that. Thank you. [LB130]

SENATOR CARLSON: Thank you. [LB130]

SENATOR COUNCIL: You're consuming it in the same year it was grown. [LB130]

SENATOR PRICE: Yeah, right. [LB130]

SENATOR COUNCIL: Okay. [LB130]

SENATOR CARLSON: Senator Dierks. [LB130]

SENATOR DIERKS: Thank you, Senator Carlson. Senator Price, you had me fooled. [LB130]

SENATOR PRICE: Thank you. (Laughter) [LB130]

SENATOR CARLSON: You know where liars end up. [LB130]

SENATOR DIERKS: I just wanted to ask you about does the Department of Education have any connection with the Native Americans? Do you deal at all with them and the diabetes problems they have? Is that part of your area? [LB130]

BEVERLY BENES: Certainly we have schools in each of the reservations that are

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participating in our school lunch program and our child and adult care food program. We actually for training that we offer in June, one of the representatives, one of the school lunch managers from Winnebago, participated in listening and being exposed to a background in nutrition education, which she had never had the opportunity to do; went home--this was a few years ago--and actually created a food guide pyramid with Native foods. And the...you know, and it still fit into the school lunch program, it was totally acceptable, and the kids loved the foods. So right now the reservations are under the regulations of the USDA but within that there are some efforts to certainly be able to offer Native foods and, of course, we also are very concerned about the obesity of children and working with our...through our staff to do some training on, you know, preparing foods more healthy. [LB130]

SENATOR DIERKS: Thank you. [LB130]

BEVERLY BENES: Uh-huh. [LB130]

SENATOR CARLSON: Any other questions? Hearing none, thanks for your neutral positive testimony. (Laughter) [LB130]

BEVERLY BENES: Thank you. (Laugh) Yeah. Thank you. [LB130]

SENATOR CARLSON: Anybody else in neutral position? [LB130]

ELAINE CRANFORD: (Exhibit 5) Thank you, Chairman Carlson and the Ag Committee. I think I'm neutral but maybe a bit positive as well. I'm testifying on behalf of the Nebraska Cooperative Development Center, which is part of the University of Nebraska in Lincoln, and I have this handout. Basically is just a summary of what I'll be presenting today. But America's rural... [LB130]

SENATOR CARLSON: Yeah, excuse me. Would you spell your name? [LB130]

ELAINE CRANFORD: Oh, I'm sorry. Of course. Elaine Cranford, E-l-a-i-n-e, Cranford, C-r-a-n-f-o-r-d. America's rural communities possess valuable assets, and in Nebraska these are hardworking people who understand and value the culture and environment of their communities. At the same time, they face significant challenges that include job loss, decline in personal income, the out-migration of young people, the continuing persistent poverty. Local food systems provide a value chain where Nebraskans can capitalize on their skills to retain more of the food dollar. And by "value chain," I mean everyone from the farmer to the processor to the distributor to the retailer, institution, the entire food system. An increase in produce production and consumption equals economic impact. For example, our neighboring state, Iowa, conducted a study using production estimates generated by the Iowa produce market potential calculator and they found the following. A study on the economic impact of increasing fruit and

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vegetable production and consumption in Iowa showed that eating five servings of fruits and vegetables every day could mean an additional \$302 million in sales and more than 4,000 jobs that would be added to the Iowa economy if just 25 percent of the extra fruit and vegetables were grown within the state. The study used the following crops: apples, squash, tomatoes, carrots, and spinach. And based on the current estimates in Iowa, only 25 to 50 percent of the apples, 12 percent of the squash, 10 percent of the tomatoes, 5 percent of carrots, and 1 percent of spinach that was consumed in fresh weight basis was grown in Iowa. So this demonstrates that with an increase in production of both produce and also an increase in the consumption of this produce, it provides an opportunity significant to rural economic development here in Nebraska. Local food systems strengthen local businesses while promoting a safe, nutritious food supply. And I believe that LB130 provides a timely opportunity for a local foods task force to provide a strategic plan and recommendations on how to create a farm to school program in the state. [LB130]

SENATOR CARLSON: Okay. Thank you for your testimony. [LB130]

ELAINE CRANFORD: Thank you. [LB130]

SENATOR CARLSON: Any questions? Hearing none, thank you. [LB130]

ELAINE CRANFORD: Thank you. [LB130]

SENATOR CARLSON: Anyone else in a neutral position? If not, that closes the hearing on...oh, excuse me, Senator Dubas. That closes the testimony but you will close on the bill. [LB130]

SENATOR DUBAS: Thank you very much, Senator Carlson. I think you can see from the testimony that was presented to you today there are a lot of good things already happening in the state. And I think we can build on what's happening by, as legislators, opening that policy door and allowing for the crafting of rules and regulations and procedures to continue the successful programs that are already in place. I think one of the things that I've discovered as a direct marketer is even in Nebraska, which is very much an agricultural state, our consumers have lost the connection to the farmer. Everybody used to have a grandma or an aunt or an uncle or somebody on the farm, and that's not so much the case anymore. And one of the greatest pleasures I get out of...when I'm at the farmers' market is when my regular customers come up and introduce a new customer to us by saying, this is my farmer. And it's my opportunity to educate our city cousins about the role that agriculture plays in the state and what it takes for me to produce the food that they enjoy. So I think through types of programs like this, in talking with some of the food nutrition managers last summer in our meetings, they see this as an opportunity for them to not only feed their children very high quality, good food but to educate the children too. So I think there's, you know,

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multiple issues that can come into programs like this. And there are many pieces to complete this puzzle, and I think the Legislature's piece is just one part of that puzzle in crafting the policy to allow the development of rules and regs. So whether it's dealing with the production end of it or the distribution or the preparation, there are still many questions that need to be answered, and I think the task force would be a very good place for those questions to begin to be addressed. Planning is important. Task forces can and do serve a purpose. And as I met with the vested parties last year, it became obvious that this idea has merit but that changes in policy would need to be made. This is a task force, in my mind, that has a very clear objective and in order to assist me or any other senator in crafting legislation to help move this very plausible idea to reality. There have been many task forces in the past before any of us were even here, maybe some that Senator Dierks would even remember, that have been instituted and have come up with very good ideas, good legislation and good direction. We've had the substance abuse task force, the Water Policy Task Force which is still in place which I think serves...has served Nebraska very well in the direction for our water legislation. We've had juvenile diversion and detention that helped with our correctional system; teacher salary task force that led to loan forgiveness programs to attract our teachers in this state. There's been a wide variety of task forces and I guess I go this direction because maybe we're kind of getting the idea that we're overblown on task forces and, you know, if we don't know what else to do we just create a task force, and that may be true to an extent. But I also think that there are task forces that have served a great purpose, and I'm inclined to think that this foods (sic) to school task force would serve that exact same purpose. So I appreciate the committee's indulgence today and would be happy to answer any other questions. [LB130]

SENATOR CARLSON: Okay. Thank you, Senator Dubas. Senator Council. [LB130]

SENATOR COUNCIL: Yes. First, Senator Dubas, I really support the objective of the task force. And in that regard, one of my concerns and one of the reasons I'm excited about being a member of the Ag Committee is to make that connection that you said that we're losing between our rural community and our consumers, most of whom...many of whom live in urban areas. And I was wanting to know if you would be adverse to potential expansion of the task force members, first of all, based on the testimony with regard to maybe specifying a registered dietician. I have seen communication from the director of the health department for Douglas County suggesting an urban county health official and a rural county health official, particularly with regard to obesity. In my legislative district, obesity is among the top three health concerns. And to provide an opportunity through programs that could be developed as a result of this task force to teach youngsters about...youngsters and their parents about nutrition, I'd really like to seize the opportunity to get that kind of participation on the task force; and then finally one of the ex officios being one of the health food service officials from the largest urban school district in the state. So I'm just asking if you'd be open. I'm saying four because it makes it an odd number, but if you're... [LB130]

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SENATOR DUBAS: Right. I am totally open to any modifications or changes. [LB130]

SENATOR COUNCIL: Thank you. [LB130]

SENATOR DUBAS: I've already had quite a few calls to my office saying, hey, you know, I could represent this position. And I know you have to have some parameters, but I'm definitely open to... [LB130]

SENATOR COUNCIL: You don't want it to be unmanageable. [LB130]

SENATOR DUBAS: ...right, what can we do to make this task force the most effective and productive in addressing the concerns. So, yes. [LB130]

SENATOR CARLSON: Okay. Thank you. Any other questions? Okay, thank you for your testimony. [LB130]

SENATOR DUBAS: Thank you. [LB130]

SENATOR CARLSON: And that does close the hearing on LB130. We will open the hearing, thank you for your patience, Senator Avery, on LB231. You may open. [LB130]

SENATOR AVERY: Thank you, Chairman Carlson and members of the Agriculture Committee. I think this is my first appearance before this committee and I'm pleased to be here. I am here to introduce LB231. The purpose of this bill is to clarify membership on the Nebraska Rural Development Commission. It would allow the Governor to appoint a member of his office to the commission. It would allow the Governor to appoint the director of Economic Development or his or her designee, the director of Agriculture or his or her designee, and the chief executive officer of the Department of Health and Human Services or his or her designee. Making this technical change--and I do emphasize that it is not a huge bill, it's a technical change--will improve and preserve the Rural Development Commission in its service and advocacy for rural Nebraskans and rural initiatives. It has in the past focused on the needs of rural Nebraska. It's been involved in growth projects, innovation, in various projects involving cooperation with rural communities. I just want to point out three successful initiatives of the commission. One is the Building Entrepreneurial Communities Act, which is part of the Nebraska Advantage Act which has been very successful, and I think it's led to the investing of over \$2 million since 2005 in rural Nebraska communities; secondly, promoting Grow Nebraska, whose mission is to maximize the state's entrepreneurial and small business spirit. People can buy Nebraska-made products, experience tourism treasures throughout the state, and learn about marketing and training programs. And finally, the Western Nebraska Entrepreneurial Initiative, this is still in its formative stages but the initiative has created a program to educate and technically assist small business owners

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and entrepreneurs. If you would decide to advance this bill, as I hope you will, I do have one amendment to suggest. On the second page, under Section 1(b), I would ask that the committee consider adding the state historical preservation officer or his or her designee in the membership on the commission. There are a number of reasons why this makes sense. There's a representative here from the society who will elaborate on what those reasons are, so I will not take time to do that myself. That is my testimony, Mr. Chair. With your permission, I would like to waive closing since I have duties in another committee. [LB231]

SENATOR CARLSON: Okay. Thank you, Senator Avery. Any questions of Senator Avery? Well, I do have. Oh, excuse me. [LB231]

SENATOR KARPISEK: Go ahead, Mr. Chairman. [LB231]

SENATOR CARLSON: In these insertions of "or designee," I know you put thought to that. How does that possibly make this a stronger...if it doesn't make it a stronger unit then why would we do it? And I know that your thinking is that it does, the commission. [LB231]

SENATOR AVERY: It might be that the director of Economic Development doesn't have time to do it but has someone in his office that is very well qualified for this. It does involve the department heads in a more active way in this commission. I think that strengthens it. And I might add that this legislation came to me at the behest of the Department of Economic Development. [LB231]

SENATOR CARLSON: Okay. Thank you. Any other...Senator Dierks. [LB231]

SENATOR DIERKS: Thanks, Senator Carlson. I just wondered, Senator Avery, you have another appointment here by the...by the... [LB231]

SENATOR AVERY: Speaker. [LB231]

SENATOR DIERKS: ...Speaker of the Legislature but it's nonvoting. Why would you want somebody on the commission that's nonvoting? [LB231]

SENATOR AVERY: That is to give the Legislature an opportunity to observe and participate in the activities of the commission without the responsibility of voting. [LB231]

SENATOR DIERKS: I thought maybe they'd be more likely to come to the meeting if they had the responsibility to vote. [LB231]

SENATOR AVERY: I suspect that the Speaker will find someone who is interested in

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the commission and would appoint the right person who would be likely to attend. You might want to direct that question to Mr. Baier, who will be following me. [LB231]

SENATOR CARLSON: Okay, Senator Karpisek now. [LB231]

SENATOR KARPISEK: Thank you. That was my question. [LB231]

SENATOR CARLSON: Okay. Any other questions? [LB231]

SENATOR AVERY: We get plenty of opportunities to vote. [LB231]

SENATOR CARLSON: Okay. (Laugh) Thank you, Senator Avery, for your testimony. [LB231]

SENATOR AVERY: Thank you. [LB231]

RICHARD BAIER: (Exhibit 1) Good afternoon, Chairman Carlson, members of the Agriculture Committee. For the record, my name is Richard Baier, the last name is spelled B-a-i-e-r. Since 2004, I've had the pleasure of serving as the director of the Department of Economic Development and I'm here today to testify in support of LB231. I want to begin by thanking Senator Avery for introducing this bill for us. As most of you know, DED serves and provides budget administrative oversight for the Rural Development Commission. Was set up that way as part of the legislation in 2004. I want to talk with you today about the reasons for this bill and why we asked Senator Avery to introduce it, and then also answer some of your questions that have already come up. I will try and skip some of the testimony--I know you've had a long afternoon--the parts that would be repetitive with what Senator Avery addressed. But the committee is currently made up of 19 members that consist of ag and private industry, along with economic development groups, government representatives, and educational institutions that care about viability and the success of our state's rural economy. One member is appointed by the Speaker of the Legislature, by statute, to represent the Legislature on the commission. Article II of Nebraska's Constitution states, in essence, that members of one branch of government cannot exercise any power that belongs to another branch. Right now, the way the statute is written, the RDC member on the Legislature has voting privileges on the commission, meaning that when they vote on grant fundings, for example, that they are exercising the executive branch's power. We believe that this was an oversight of those that drafted the current statute regarding the requirements of the RDC and are proposing to make the Legislature's representative on the commission a nonvoting member. This change can be found on line 2, page...or on page 2, line 13, and we believe it would bring the commission within the guidelines of the state's constitution. We do currently have...Speaker Flood has recently appointed a new member of the Legislature. Senator Arnie Stuthman actually attended our meeting earlier this week, maybe last week--they run together this time of year--when the

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commission met, and he is very excited about this opportunity. There's also a list of the commission members adjacent to my testimony, and I think Senator Avery did a nice job of talking about some of the successes of what the commission has been up to. So with that, I think it might be easier if I open it up to any questions that you might have. [LB231]

SENATOR CARLSON: Okay. Thank you, Director Baier. Any questions from the committee? Seeing none, thank you for your testimony. [LB231]

RICHARD BAIER: Okay. I wish...can you guys move down to the Revenue Committee? (Laughter) Life would be better. [LB231]

SENATOR PRICE: It's all of us new kids. We don't want (inaudible). [LB231]

RICHARD BAIER: We have (inaudible) of those too. [LB231]

SENATOR CARLSON: Okay, next testifier, and we're in proponents of the bill. [LB231]

BOB PUSCHENDORF: Good afternoon, Senator Carlson and members of the Agriculture Committee. My name is Bob Puschendorf, that's spelled P-u-s-c-h-e-n-d-o-r-f, and I'm associate director and deputy state historic preservation officer for the Nebraska State Historical Society. As Senator Avery had mentioned, he would like to propose an amendment to include the state historic preservation officer on this committee. And please accept our support for LB231 and our comments do relate to the participation of our agency on the Rural Development Commission. We feel the representation of the Nebraska State Historical Society will benefit Nebraska's rural development initiatives by inclusion in this bill, and you may be wondering what does history have to do with economic development, so I will articulate a few points where historic preservation has been put to work in our rural communities. The Nebraska State Historical Society has been a partnering agency in the Nebraska Main Street Program and was instrumental in bringing this program to Nebraska in 1994. Since that time, the Nebraska Main Street Program has been active in scores of communities, most of them under 5,000 in population, bringing reinvestment and revitalization to these traditional commercial centers. The Nebraska State Historical Society is also a partner in the Nebraska Byways Program, which is administered by the Nebraska Department of Roads and the Nebraska Division of Travel and Tourism. This program supports grass-roots efforts to encourage travel across nine scenic and historic byways promoting tourism and visitation to our rural communities, small museums, and historic sites. Nebraska's Valuation Incentive Program is a property tax freeze for owners of historic properties that are rehabilitated. This has assisted many small business owners and residential property owners in communities such as Grant, Kimball, Loup City, Mitchell, Nebraska City, Plattsmouth, and Sidney. The Nebraska State Historical Society also sits on the affordable housing agency coalition, a group of housing service

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providers that promote incentives for housing creation, including those offered by our agency. A report released in 1998, "Preservation at Work for the Nebraska Economy," cites dozens of examples of successful economic benefits brought to Nebraska, including building rehabilitation projects that have benefited by assistance from the Nebraska State Historical Society in terms of economic incentives, increased property values, and the important role of heritage tourism. We would be proud to be included in Nebraska's rural development initiatives. If we can offer further information or support for this bill, please let me know. [LB231]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? You didn't fill out a form, right? [LB231]

BOB PUSCHENDORF: Yes, I have a form. [LB231]

SENATOR CARLSON: Oh, you did. Okay. Okay. All right. [LB231]

BOB PUSCHENDORF: Thank you. [LB231]

SENATOR CARLSON: Thank you. And more proponents? Anyone in opposition to the bill? Anyone in a neutral position? Seeing none, that will close our hearing on LB231. Thank you for your testimony. As we move to the next bill, any of you that want to testify, if you haven't gotten a form to fill out, please do that and have it filled out when you come to the table. We will open our hearing on LB71. Senator Cornett will open. [LB231]

SENATOR CORNETT: Good afternoon, Senator Carlson and members of the Agriculture Committee. You know, I think this is my first time here in four years. I was just sitting back there going, I don't think I've been to Ag before. [LB71]

SENATOR DIERKS: We're mean. [LB71]

SENATOR CORNETT: You're terrible? (Laughter) I represent the 45th Legislative District and I'm here to introduce LB71. LB71 requires any animal care professional or any employee, while acting in his or her professional capacity or within the scope of his or her employment, who observes or involved in an incident which leads the animal care professional or employee to be reasonably suspect that an animal has been abandoned, cruelly neglected or cruelly mistreated shall report such to the entities or entities that investigate such reports in that jurisdiction. LB71 also adds clarification of the definition of healthcare professional as a veterinarian or a veterinarian technician. We will be offering the committee an amendment to clarify that language a little further. There are some concerns that it's a little broad. There will be testifiers following me that will discuss some of the other issues which brought this bill to the committee. I thank you for your time and consideration and would be happy to answer any questions I can

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at this time. [LB71]

SENATOR CARLSON: Any questions of Senator Cornett? Okay. Thank you for your testimony. All right, we are asking for testifiers that are proponents for the bill. And how many proponents do we have? Okay. [LB71]

AARON TRUAX: Chairman Carlson, Vice Chair Dubas, honorable members of the Agriculture Committee, my name is Dr. Aaron Truax, A-a-r-o-n T-r-u-a-x. I'm a veterinarian at the Bellevue Animal Hospital and I'm here, obviously, to provide positive input toward LB71. I guess I'd first like to thank Senator Cornett for her sponsorship of the bill, as we obviously feel it's an important change to Nebraska law. Liability protection is the hallmark of our concern at Bellevue Animal Hospital. We feel that while idealistically reporting of abuse, cruelty, and neglect would automatically happen in any veterinary hospital, I think the realism is that currently we enjoy no liability protection from nonmalicious intent reporting. Thus, some veterinarians may be hesitant to face the repercussions of turning someone in without this protection. This protection is currently, obviously, extended to our colleagues in the human medicine field and our teachers as far as that. It seems only reasonable that we, as veterinary medical practitioners that are licensed by the state of Nebraska, both enjoy the protection from the liability and share the responsibility of reporting. This brings me to my second point. While mandatory reporting of any item based on any topic is daunting, reporting someone for abuse, cruelty or neglect of their child or a pet is grueling and they tend to take it very personally and lash out, initially, in anger when that occurs. I've done it. I really don't like it at all when I have to do it, but I knew that it was the correct thing to do. And how it makes us feel obviously must be secondary to the best interests of our patients, you know, the dogs, cats, birds, fish, everybody else that we are there to protect and help. With this said, during the entire reporting and investigating process, when I have had to do that, I always have that knot in my stomach that something bad is going to happen; you know, that I have put myself out there and I'm not really shielded. You know, I know it's the thing that I should do, but I'm not really protected if the owner decides that they want to come back at me in a liability fashion. Fortunately, the owners in all those cases have accepted my decision and moved forward, you know, in working with the reporting agency with that. While it worked out for me, I think the gate is open, and without appropriate protection, legal action obviously could occur. Thus, I feel that these two items again must go hand in hand. If you require the reporting, I feel it's essential to provide the liability protection that would go along with that. Third, I agree with the inclusion of veterinary technicians, as they are licensed individuals by the state as well, and our veterinary practice employees are included in some fashion there as well. So again, our support staff that could be entangled into one of these umbrella things that's got my name and ten people's name on it I think is important as well. So in closing, I'd like to thank you for your time and consideration on this matter, and I'll certainly stand for any questions that you have of me. [LB71]

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SENATOR CARLSON: Okay. Any questions of Dr. Truax? Senator Dubas. [LB71]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Dr. Truax. [LB71]

AARON TRUAX: Sure. [LB71]

SENATOR DUBAS: So just to help me get this better in my mind, right now what is your obligation if you suspect abuse of an animal? [LB71]

AARON TRUAX: Legally or ethically? (Laugh) [LB71]

SENATOR DUBAS: Legally. [LB71]

AARON TRUAX: Well, I think legally there's none. [LB71]

SENATOR DUBAS: None. Okay. [LB71]

AARON TRUAX: I mean there's no requirement of us that we have to do that. Obviously, part of what I'm describing is what we know we should do, you know, our ethical obligation to again protect the animal and not really worry about what could happen, you know, after that. [LB71]

SENATOR DUBAS: And so then when you make that decision who do you report to and what is their course of action? [LB71]

AARON TRUAX: In our area, we report to the Nebraska Humane Society. They're our agency that would take care of any of those complaints so we would just make a complaint to them and then they have officers that come out and help us figure everything out. [LB71]

SENATOR DUBAS: Okay. Thank you very much. [LB71]

AARON TRUAX: Sure. Thank you. [LB71]

SENATOR CARLSON: Senator Dierks. [LB71]

SENATOR DIERKS: Senator. (Inaudible), if I understand, you're providing enforcement from the standpoint of an employee of an animal care facility. Is that right? [LB71]

AARON TRUAX: Of a private practice. Yeah, I'm not a...we're not a government agency or a humane society or anything like that. You know, my... [LB71]

SENATOR DIERKS: But you're talking about a veterinary practice. [LB71]

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AARON TRUAX: Correct. [LB71]

SENATOR DIERKS: And giving that employee of that practice the opportunity to report. [LB71]

AARON TRUAX: Absolutely. And I think that we have...we obviously have the ability to do that but not the shield, I guess, is what part of the concern is that I hope that if you would provide that shield, that liability shield for us, that it would help us do our job better, you know, to where then again we could feel that we could easily report those cases. and not have to worry about the legal stuff. [LB71]

SENATOR DIERKS: Okay. Thank you. [LB71]

AARON TRUAX: Uh-huh. [LB71]

SENATOR CARLSON: Senator Schilz. [LB71]

SENATOR SCHILZ: Senator Carlson, thank you very much. Dr. Truax, as I look here, obviously I can understand the idea for the liability coverage. Do you have concerns that, if this is enacted and put into place, do you have concerns about what you should report and what you shouldn't report? I mean will we run into some gray area there as to, gee, if I don't report this or if I don't report that am I shirking my duties as...? [LB71]

AARON TRUAX: Sure. And I...yes, I mean I think that, you know, the...it's broad, I guess, to allow us, just as professionals, to use our judgment, you know, to decide, you know, what we think is... [LB71]

SENATOR SCHILZ: Right. [LB71]

AARON TRUAX: ...is good or bad. And I don't know exactly how the law is written that protects medical doctors and teachers but, again, I think there's...no matter what law you write, personal opinion, there's still going to be the latitude of that decision-making process of the professional that's there. [LB71]

SENATOR SCHILZ: Sure. One other question: It says here that you're to do this while you're carrying out your regular duties. Are you on call 24 hours? [LB71]

AARON TRUAX: No. [LB71]

SENATOR SCHILZ: Okay. I was just wondering. Are some veterinarians on call 24 hours? [LB71]

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AARON TRUAX: Yes. Yeah. [LB71]

SENATOR SCHILZ: So if you're driving to work and...or even if you're driving to work and you see something, are you required to report that under this law? [LB71]

AARON TRUAX: If I see something...I think that any time that I... [LB71]

SENATOR SCHILZ: That may look suspicious. [LB71]

AARON TRUAX: ...yeah, I think personally... [LB71]

SENATOR SCHILZ: Define "suspicious." (Laugh) [LB71]

AARON TRUAX: Sure. You know, I guess personally that if I, no matter whether I'm clocked in at work or not,... [LB71]

SENATOR SCHILZ: I understand. Yeah. [LB71]

AARON TRUAX: ...I would presume, yes. You know, I mean I don't check my license at the door kind of thing. [LB71]

SENATOR SCHILZ: I understand, yeah. [LB71]

AARON TRUAX: Uh-huh. [LB71]

SENATOR SCHILZ: And I'm just trying to see how that all would fit. I have a concern that, you know, we may make it to the point where somebody is looking over your shoulder and saying, oh my gosh, he's not reporting this, or, oh my gosh, I saw this over there, or... [LB71]

AARON TRUAX: Sure. [LB71]

SENATOR SCHILZ: ...I looked in your...I was visiting my cat and I saw this dog, that should be reported. [LB71]

AARON TRUAX: Right. [LB71]

SENATOR SCHILZ: And then you're into a...then you're into a different set of liability that you're trying to get away from anyway, just coming from the other side. [LB71]

AARON TRUAX: You bet. You bet. And I have thought about that and I guess... [LB71]

SENATOR SCHILZ: Uh-huh. [LB71]

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AARON TRUAX: ...I guess ultimately it comes down to, you know, my job being the welfare of animals. So, you know, I guess that's the ultimate thing. You know, I mean I need to take responsibility for protecting the animals that I'm charged with, you know? [LB71]

SENATOR SCHILZ: Sure. No, I... [LB71]

AARON TRUAX: And I think that if something bad is happening then I need to make a decision, you know? [LB71]

SENATOR SCHILZ: Sure. [LB71]

AARON TRUAX: And I have but I just haven't had that protection, you know,... [LB71]

SENATOR SCHILZ: Sure. [LB71]

AARON TRUAX: ...that would back me up and say that's the right thing to do. [LB71]

SENATOR SCHILZ: Right. Understandable. And I...then I look at it from the other side, is that there's certain things that may look one way and turn out to be something different entirely. [LB71]

AARON TRUAX: Absolutely. [LB71]

SENATOR SCHILZ: Are you protected in that instance? [LB71]

AARON TRUAX: I don't know for sure the answer to that question and I will say that that has happened. You know, I mean I think that there...you know, until...you know, we're not...we wouldn't be the investigative part of that. [LB71]

SENATOR SCHILZ: Gotcha. Right. [LB71]

AARON TRUAX: You know, we would be the part that says, you know, this looks hinky, you know? [LB71]

SENATOR SCHILZ: Something smells. [LB71]

AARON TRUAX: Yeah, and we need to turn that over to the humane society to allow them to investigate appropriately and say yes or no that it's a problem. [LB71]

SENATOR SCHILZ: Okay. Thank you. [LB71]

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AARON TRUAX: Uh-huh. Sure. Thank you. [LB71]

SENATOR CARLSON: Senator Price. [LB71]

SENATOR PRICE: Thank you, Senator Carlson. Dr. Truax, first, thank you. You treat most of my animals, so I appreciate that. [LB71]

AARON TRUAX: Yeah. (Laugh) Thank you. [LB71]

SENATOR PRICE: My question comes to the issue, and I think Senator Schilz may have been working around that bush, what one person will call cruelty another person will say that's the de facto way. And I'm thinking of tethering. You have your animal and you go to a park and you're not going to leave your animal running around or you're getting ready to go out on a hunting camp, whatever. It's just the idea that it leaves open to interpretation, then we start the you must within...line 21, paragraph (3), you must within two days report this, you know? It starts getting pretty serious there without a definition, an adequate definition. I see some definition and, sure, we all--we don't have to be ridiculous--we understand what abuse is, I think most people do, but it's in that other gray area again when one...what one person does, one person doesn't. Yet we've enacted and we've laid a responsibility on your doorstep and other people's doorstep--they must report. But what are you reporting? [LB71]

AARON TRUAX: Right. [LB71]

SENATOR PRICE: So how do you see that? I mean, what is your opinion on, let's say, tethering? [LB71]

AARON TRUAX: Well, I guess if it's done appropriately then it's fine. You know, I mean I think that if they have the appropriate type of collar, they have the appropriate access to shade, water, shelter, and you know they aren't inhibited as far as their mobility, then I think it's acceptable. You know, I mean I think as long as you take the appropriate steps to ensure the safety of the pet then it's fine. You know, it's just like anything else, cattle, anything else. You know, if you put them in the wrong situation then you are going to discourage them from a healthy environment, they aren't going to produce well. You know, all the bad stuff is going to happen. So, you know, if they put a choke chain on them and they put them on a four-foot leash and they put them out...they stick them out in the middle of their grass and they've got a four-foot leash with water six foot away then it's abuse. You know, I mean they will have a problem in the middle of the summer when they don't have access to water and they're staked down. [LB71]

SENATOR PRICE: Great. [LB71]

AARON TRUAX: So...and then in reference to some of the things that you had

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described there, the...I don't know if you're familiar with the Omaha code that they have as far as that, but they do have at least some things in that particular law that we have utilized up to this point, just looking at it and giving us guidelines to decide, you know, is this something that we should be concerned about or, you know, and move that way. Because most of the time it's pretty clear. You know, I mean we...I mean you know. You know most of the time whether this is a problem or it's not, and I think that, you know, our staff, you know, we have multiple tiers of staff that will go through history taking with each patient and through that process I think that also evolves the story, you know, that happens to them. And again, we have to take that into consideration as far as, you know, what history brought us to this point, and then again use our judgment, you know, as a veterinarian, you know, or technician to decide whether we think that's appropriate or not. And then report it to the people that investigate it and then they have to decide. Uh-huh. [LB71]

SENATOR PRICE: Thank you. [LB71]

AARON TRUAX: Sure. Thank you. [LB71]

SENATOR CARLSON: Okay. Other questions of Dr. Truax? Seeing none, thank you for your testimony. [LB71]

AARON TRUAX: Yeah. Thank you, Mr. Chairman. Thank you. [LB71]

MARK LANGAN: (Exhibit 1) Good afternoon. Thank you, Senator Carlson. Thank you, Senators. My name is Mark Langan, M-a-r-k, last name L-a-n-g-a-n, and I'm the vice president of field operations for the Nebraska Humane Society. We provide animal control service in the Omaha area and Sarpy County but routinely provide assistance and advice throughout Nebraska. The Nebraska Humane Society responds to 40,000 calls for service a year in the Omaha area and investigates such crimes as animal cruelty and dog fighting. The city of Omaha has a similar city ordinance to that proposed by LB71, which requires animal care professionals to report animal cruelty. My department receives calls from Omaha veterinarians and their staff on a regular basis reporting such crimes. Many times veterinarians and animal care professionals, such as vet techs, are the first to notice signs of animal cruelty or dog fighting. It only makes sense that they report these crimes to the local animal control authority or law enforcement. The Nebraska Humane Society supports LB71. Thank you very much, and I can answer any questions. [LB71]

SENATOR CARLSON: Okay. Thank you for your testimony. We have questions? Senator Dierks. [LB71]

SENATOR DIERKS: I was just...we haven't talked about penalties. Are there any penalties you know of in this legislation, any fines or...? [LB71]

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MARK LANGAN: I'm not aware as to what the penalty would be for failure to report based on this bill. [LB71]

SENATOR DIERKS: Okay. Thank you. [LB71]

SENATOR CARLSON: Senator Price. [LB71]

SENATOR PRICE: Senator Carlson. Yes, sir, Mr. Langan, in your testimony here, paragraph three, last line, last word, you state that you...that the regular basis, reporting such crimes, that we identify that it's a crime before we've investigated or (inaudible) reports that later subsequently are moved into a criminal realm? [LB71]

MARK LANGAN: We would conduct a proper investigation and determine if it was a crime and then prosecute based on that. A great example of that, to your question, is a recent report by a veterinarian clinic in regard to suspected animal cruelty that sounded good initially and within the past several days we conducted an investigation to determine that a crime did not exist. [LB71]

SENATOR PRICE: So it would be more accurate in your testimony that you are responding to reports from veterinarians and then validating, verify that it's a crime. [LB71]

MARK LANGAN: That's correct. [LB71]

SENATOR PRICE: Thank you. [LB71]

SENATOR CARLSON: Any other questions? I'd like to ask, let's see, dog fighting is mentioned twice in your letter here, what does that mean? [LB71]

MARK LANGAN: Well, dog fighting is a crime. It's a Class IV felony here in the state of Nebraska and we have...we've conducted numerous investigations in regards to dog fighting in the Omaha area. Some arrests have been made over the past several years in situations connected with dog fighting. And anywhere, especially where you have a large concentration of gangs, which we have in Omaha, we find that we have the crime of dog fighting, involving the dog, the pit bull dog. So that's a problem that we have in the Omaha area that my department actually investigates. [LB71]

SENATOR CARLSON: So it's not a friendly dog fight. It's an arranged fight probably with some betting on it. [LB71]

MARK LANGAN: That's correct. We've investigated what we consider to be large-scale dog fighting operations where large amounts of money are wagered--one particular

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individual is currently in federal prison that we investigated on drug crimes, because drugs and dog fighting go hand in hand--all the way down to the spontaneous street fight where two gang members come up on each other and decide to fight their dogs. [LB71]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you for your testimony. [LB71]

MARK LANGAN: Thank you very much. [LB71]

SENATOR CARLSON: Any other proponents? [LB71]

ROBERT DOWNEY: (Exhibit 2) Chairman Carlson, distinguished members of the Agriculture Committee, my name is Robert Downey, D-o-w-n-e-y. I've never made a movie in my life and my addiction is to bicycles, so... [LB71]

SENATOR COUNCIL: Okay. (Laughter) [LB71]

ROBERT DOWNEY: I'm here to testify in favor of LB71. I think it's a right step forward. But I'm also here to say that by bringing veterinarians and licensed veterinary technicians into this law, we need to maybe take a little bit stronger look at some of the definitions of the entities that are in there at this time. For instance, Capital Humane Society, I don't believe, qualifies under this law. We're a 501(c)(3) private entity. We take 8,500 to 9,000 animals a year through our organization. We see animals come through our facility that have obviously been abused and neglected, and while I don't think we are mandated to report this particular statute, we do to our local animal control authority and to our local sheriff's department when appropriate. And my suggestion would be that any sheltering organization in the state of Nebraska that is required to have a license from the commercial dog and cat inspection program be put into this particular statute too. We're not a governmental authority, we don't do animal control work, but we are still sheltering large numbers of animals and see the obvious outcome of neglect and abuse. [LB71]

SENATOR CARLSON: Okay. Thank you. Do we have questions of Mr. Downey? Senator Price. [LB71]

SENATOR PRICE: Senator Carlson, thank you. Mr. Downey, thank you very much for coming today. And I don't doubt that you do see a lot of neglect and cruelty in animals. I'd only be concerned that I know that there have been many times I have picked up an animal and taken it to a shelter of some sort, whether it's a rescue mission or something like that, and if that dog had been...if that dog had been mistreated, I could be afraid that...I don't want to turn it in because they'll say I did it. So that would be my one concern, that people would maybe stop bringing animals in that they find because I

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have a son who is a stray dog magnet and so that, you know, we do what we can where we can if we can't keep him ourselves. [LB71]

ROBERT DOWNEY: Exactly. And I think it's incumbent upon an agency like ours that is receiving the animals from the public to get documentation at the time you bring the animal to the shelter. You found this animal, you've had it for this period of time, so on and so forth, which tells us this indeed is not your animal, you're not the person who put this animal into the condition that it's in. However, should somebody come forward to claim this animal as a lost animal from our organization, we need to be notifying local animal control authority of the reclamation of this animal so they can follow up with an investigation as to whether there is true neglect and abuse going on. [LB71]

SENATOR PRICE: Thank you. [LB71]

ROBERT DOWNEY: You're welcome. [LB71]

SENATOR CARLSON: Okay. Other questions? Hearing none, thank you for your testimony. [LB71]

ROBERT DOWNEY: You're welcome. [LB71]

SENATOR CARLSON: I listen to you regularly on the radio and you appear to be as kind in person as you are on the radio. [LB71]

ROBERT DOWNEY: Oh, thank you. [LB71]

SENATOR CARLSON: Next testifier. Okay, do we have opponents? Do we have people testifying neutral position? Any others in a neutral position? Okay. [LB71]

HANK CERNY: (Exhibit 3) Senator Carlson and the members of the Agriculture Committee, my name is Hank Cerny, C-e-r-n-y. I'm a veterinarian in private practice here in Lincoln, Nebraska. I am here today on behalf of the Nebraska Veterinary Medical Association to testify in a neutral capacity on LB71. As we understand the bill, it would provide a protection to veterinarians and veterinary technicians for reporting animal abuse. We currently have the obligation to report in our state statutes. We appreciate Senator Cornett's efforts to give legal protection to veterinarians for reporting abuse. Our concern with the bill come from Section 2 on page 4 on line 12. The bill strikes Section 28-1017. We believe it needs to stay in. We believe that removes a protection that veterinarians have for performing regular or commonly accepted care and treatments and we would be subject to being reported for abuse for treating an animal. Such examples could be the practice of dehorning of cattle or tail docking of sheep, or tail docking or declawing of dogs. We hope if you advance this bill that you would simply strike Section 2 of the bill. And I would be happy to answer any questions.

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[LB71]

SENATOR CARLSON: Okay. Thank you. Questions? Senator Wallman. [LB71]

SENATOR WALLMAN: Thank you, Chairman Carlson. I guess would castration be under that too? (Laugh) [LB71]

HANK CERNY: Yes. Not of me personally. [LB71]

SENATOR CARLSON: Senator Council. [LB71]

SENATOR COUNCIL: Yes. It's my understanding that it was believed that the enumerated examples of activities that the bill doesn't apply to was broad enough. Would there be, instead of reinstating 28-1017, would there be an opportunity to add a paragraph that provided the kind of protection? Because I'm looking at my colleague Senator Wallman talk about castration. On page 5, subparagraph (7), commonly accepted practices of animal husbandry with respect to farm animals is not covered. So would there be a possibility, rather than reinstating that section? Because, as I understood it, the intent was that since we had this enumeration of activities and treatments that we no longer needed 28-1017. And then we can address your concern by adding a paragraph that defines some activity that you don't believe is covered within some of the enumerated items. Would that address the concern? [LB71]

HANK CERNY: I would say we're just trying not to get pinned down as practices and times change and in time what is acceptable now may not be acceptable later. A classic example is the cropping of dog ears. There's great debate right now on whether or not that should be performed. And so, as I say, down the road things could change that could cause problems. [LB71]

SENATOR COUNCIL: Under 28-1017, are you protected in the event that you...because I haven't read it so I don't know. [LB71]

HANK CERNY: It gives a broader protection to what we commonly do in practice. [LB71]

SENATOR COUNCIL: Okay. Okay. [LB71]

SENATOR CARLSON: Thank you. Other questions? Senator Dierks. [LB71]

SENATOR DIERKS: Oh, I just wanted to say hello to Hank. Hank's... [LB71]

HANK CERNY: Hi, Dr. Dierks. [LB71]

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SENATOR DIERKS: Hank's father was a veterinarian that I knew very well years ago. He went through the chairs at the Veterinary Medical Association, was president at one time, and Hank has been a good friend of our family. [LB71]

SENATOR CARLSON: Good. Okay. [LB71]

HANK CERNY: Thank you. [LB71]

SENATOR CARLSON: Other questions? Thank you for your testimony. [LB71]

HANK CERNY: Thank you. [LB71]

SENATOR CARLSON: And any other in a neutral position? Seeing none, that closes the hearing...whoops, oh, it does not close the hearing. I'm learning, Senator Cornett. [LB71]

SENATOR CORNETT: No, it does not. (Laughter) [LB71]

SENATOR CARLSON: Stay with me. Senator Cornett will close. [LB71]

SENATOR CORNETT: Just so the committee is aware, because there are a number of people that weren't here last year on the committee, I had a number of bills up last year which define animal practices, common animal practices. What we have going on with that section is probably a misunderstanding between Bill Drafting and myself, and we are working with the lobbyist for the veterinarians to fix that section and to basically harmonize it. We will be offering an amendment when we come to some agreement on exactly how that section should read or how to harmonize it with what's been passed previously. But the first part of the bill is fine and I would appreciate your support in passing this very much needed legislation. And I will be working with the lobbyist for the veterinarians on that section of the bill, because we have areas where they reference specific veterinarian practices that we did last year and then just standard veterinarian practices. So I'll be happy to work with the committee also on that. [LB71]

SENATOR CARLSON: Okay. Any questions? Yes, Senator Council. [LB71]

SENATOR COUNCIL: Yes, Senator Cornett, what about the issue of shelter operators, as raised by Mr. Downey? [LB71]

SENATOR CORNETT: I did not hear that. Could you...we couldn't hear his testimony back there. [LB71]

SENATOR COUNCIL: Okay. He was talking about the addition of shelter operators because they don't fit within the definition. [LB71]

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SENATOR CORNETT: You mean shelter operators outside a humane society,... [LB71]

SENATOR COUNCIL: Right. [LB71]

SENATOR CORNETT: Like Town and Country Animal Shelter, if someone drops an animal off that's... [LB71]

SENATOR COUNCIL: Yes. Should it be like maybe licensed shelter operators? [LB71]

SENATOR CORNETT: I would have no problem with that. [LB71]

SENATOR CARLSON: Okay. Thank you. Other questions? Thank you, Senator Cornett. That does close the hearing on LB71. Thank you for coming and for your patience. [LB71]

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Disposition of Bills:

LB71 - Placed on General File with amendments.
LB130 - Held in committee.
LB142 - Placed on General File with amendments.
LB231 - Placed on General File with amendments.

Chairperson

Committee Clerk