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Agriculture Committee
February 10, 2009

[LB254 LB263 LB581 LB641]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 10, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB254, LB263, LB581, and LB641. 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: It's 1:30. Good afternoon and welcome to the February 10 legislative Agriculture Committee hearing. We'll get started with the preliminaries and hopefully we'll have more of the committee members here by the time I finish. I'm Senator Tom Carlson, Chairman of the committee. To my right is Rick Leonard, our research analyst for the committee; and the committee clerk over here to my left is Barb DeRiese. To my right is Senator Scott Price from Bellevue; to my right two people over is Senator Annette Dubas, she's Vice Chair of the committee, she's from Fullerton. And then to my far right is Senator Norm Wallman from Cortland. We'll be having Senators Brenda Council from Omaha, Russ Karpisek from Wilber, and Ken Schilz from Ogallala joining us momentarily. I read this because I speak to myself as I say it. Before we begin, please turn off your cell phones, if you need to do it, pagers or anything else like it in the hearing room. Those wishing to testify should come to the front of the room to be heard, and as someone finishes testifying, the next one in order should move into the on-deck chair which is either side of the aisle here. If you do not choose to testify but would like your name entered into the official record as being present at the hearing, there's a form at the door that you can sign. This will be made part of the official record of the hearing. Also, if you do not choose to testify, you may submit comments in writing and have them read into the official record. However, you will not be listed on the committee statement unless you come to the mike and actually testify, even if you simply state your name and position. This year we're using a computerized transcription program and it's very important to complete the sign-in sheets before you actually testify. So those of you who intend to testify, if you don't have that sign-in sheet and...Barb, are they at both doors?

BARB DeRIESE: Yes.

SENATOR CARLSON: ...at either door, please get that, fill it out, and be ready to hand it in before you testify. If you're testifying for more than one bill, you need to submit one for each bill. And bring the form with you as you come up to testify, don't turn it in beforehand so we keep everything straight. And please print so that we can read. If Barb has questions about your testimony, she'll use the information off that form to contact you. As you begin, your testimony, state your name and spell it for the record, even if it's an easy name like Carlson. Please keep your testimony concise and try not to repeat what someone else has covered. If there are a large number of people to testify, we may put a time limit on. If you have handout material, give it to our page and

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that's Kim Weber over here from Lincoln and she'll distribute it to the committee. And we do have our full committee here now, so I'll go around again real quickly. Ken Schilz over here from Ogallala; and then Senator Scott Price; Russ Karpisek; and Rick Leonard our research analyst; Senator Dubas; Senator "Cap" Dierks; Senator Wallman who I've introduced; and Senator Brenda Council. With that, we're ready to open the hearing on LB254. Senator Dubas. [LB254]

SENATOR DUBAS: Good afternoon, Senator Carlson and members of the Agriculture Committee. My name is Senator Annette Dubas, that's D-u-b-a-s, and I represent the 34th Legislative District. LB254 was brought to me by the Nebraska Aviation Trade Association after they had approached and worked in this issue with the Ag Committee during the interim last year. NATA's concern in particular was about the direct contracting of pilots by pesticide dealers and retailers to apply product. This practice bypasses traditional aerial application services. They believed at the time, and it was later agreed upon during our original meeting, that a spike in this activity led to corresponding spike in aerial spray complaints received by the department during the 2008 season. Last year with the promise of great crop yields as well as good prices, farmers were a little more willing to spend money on some additional spraying. And then couple that with the wet weather putting farmers in a bind as far as getting that kind of work done, there was more of a demand for aerial application and, in turn, more of a challenge for those types of applicators to get the job done. So unlike other states, including neighboring Kansas and Iowa, Nebraska does not require an applicator business license or limit application to licensed businesses. Nebraska only licenses the actual commercial applicator. A typical compensation agreement is to pay the contracted pilot a set dollar rate per acre. This creates the economic incentive for the contracted applicator to have possibly cut corners, take risks, and to apply in more marginal spraying conditions, both in terms of location and weather, in order to maximize acres sprayed. Nebraska law currently provides for a pesticide dealer business license, but licenses only individual personal commercial applicators. The Nebraska Pesticide Act does not set forth a definition of a commercial applicator, except indirectly in subsection 2- 2624, any applicator required by the act to obtain a commercial applicator license. Section 2-2638 specifies activities and conditions when an individual is required to perform an application as a commercial applicator. My legislation seeks to require an aerial pesticide business license for aerial pesticide application within the state of Nebraska. This creates an oversight and accountability for contracted aerial applicators. And hopefully will alleviate some of the complaints and concerns that were raised last year with not proper notification to neighbors when spraying was done, and just some general issues about how the process is done, who's doing it, and following up on complaints when there are issues. There will be testifiers following me who have much better firsthand knowledge about this process and hopefully will be able to answer any questions you may have, but I'd be happy to try to entertain any questions you have at this time. [LB254]

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SENATOR CARLSON: Okay. Thank you, Senator Dubas. Are there any questions? Yes, Senator Price. [LB254]

SENATOR PRICE: Senator Carlson, thank you. Senator Dubas, again, you may not be the one who knows the answer, and if anybody following can answer I'd appreciate that, but who does the burden of notification of spraying fall on, the owner of the property or the person doing the spraying? [LB254]

SENATOR DUBAS: My understanding it's the person doing the spraying, but there are actual applicators in the audience who will be able to give you that precise information. [LB254]

SENATOR PRICE: Okay. Thank you. [LB254]

SENATOR CARLSON: Okay. Any other questions? Thank you, Senator Dubas. And do you want to close? [LB254]

SENATOR DUBAS: Yes, I will. [LB254]

SENATOR CARLSON: Okay. All right. We're ready for those of you that are testifying in support of the bill. How many proponents do we have? Okay. And you can come forward and begin testimony and let's have others of you move into the on-deck position so that we're ready to go. Good afternoon. [LB254]

DOUG JOHNSON: (Exhibit 1) Good afternoon. Senator Carlson, members of the Senate Ag Committee, thank you for allowing me to testify today. My name is Doug Johnson, D-o-u-g J-o-h-n-s-o-n. I'm here on behalf of the Nebraska Aviation Trades Association and as a aerial applicator based in Nebraska in support of LB254. The adoption of LB254 is necessary to solve a myriad of problems which I'll expand more on later. These problems are many and widespread and stem from the current lack of accountability that the Nebraska Department of Agriculture has with aerial applicators and aircraft. This is particularly true with applicators coming in from other states that do not work directly for an established instate applicator. The department issues a commercial pesticide applicator license, but knows nothing of a pilot's currency status, the aircraft they are operating, where they are operating it from, or who they are operating it for. Few problems have arisen with instate applicators because the vast majority of them have been in existence for many years. They operate professional, high-quality businesses that have been passed down through family generations and, unlike out of state applicators, they are familiar with the environment and area they operate in. However, even instate applicators are only accountable to the Department of Agriculture by a commercial pesticide applicator card with the aerial category, and the rest is by a default to the individual businesses longstanding in a community. In terms of accountability, this is proving insufficient. Currently, the aerial application industry is one

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of the most heavily regulated agricultural-based industries in the United States. However, none of those regulatory agencies have an enforcement arm that interfaces with an aerial application business like the Department of Ag does. This interface that the department has is the reason why it is important to provide them broader authority to require reporting of the items listed in LB254, and allow them the ability to enforce those prerequisites. Other states, such as Kansas, Iowa, and Illinois, have already adopted similar legislation. From the Department of Ag's statistics based on the past ten years, the number of complaints generated last year alone increased by 60 percent. That is not acceptable to the members of NATA. The problems ranged in severity from an aerial applicators illicit use of a municipal airport to off target applications, all the way to human exposures to economic pesticides. And since the vast majority of aerial application operations originate from public municipal airports, accountability is crucial. Tim Creger with the Department of Ag told NATA this story that I call "the house that Jack built story" about a pilot from Florida flying an airplane leased from a northern Missouri company by a Nebraska-based company, but the airplane came from northern Illinois and was working in the Plattsmouth area for yet another company. The customer would get one bill from one company for the pesticide and another bill from another company for the application, and the grower had no idea about who was flying their fields or what was being applied until possibly the time he received both invoices. Then, when a problem would manifest itself, the retailer would say the applicator was responsible and the applicator would say the retailer was responsible. All of these problems have a negative impact on the aerial application industry, and as always seems the case, do not accurately reflect the majority. As a result of the situations I've talked about and because of the potential for similar future problems, we, the members of NATA, believe an emergency exists necessitating the operational date of May 1, 2009, for implementation of the Nebraska aerial pesticide business license. NATA is also cognizant of the additional costs to the state that may be incurred by the adoption of LB254 and feel those have been adequately addressed with the licensing fee structure. With that, I would like to take any questions that you might have. [LB254]

SENATOR CARLSON: Okay. Thank you. Questions? Senator Dierks. [LB254]

SENATOR DIERKS: Doug, are you an applicator? [LB254]

DOUG JOHNSON: Yes, sir. [LB254]

SENATOR DIERKS: Do you have a license to apply fertilizer? [LB254]

DOUG JOHNSON: Yes, I do. It's a commercial pesticide applicator card with number 12 aerial category. I am also licensed with the FAA under Part 137, and then my aircraft is also registered with the FAA. [LB254]

SENATOR DIERKS: And then are you also registered with the Department of

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Agriculture or is that not... [LB254]

DOUG JOHNSON: Currently, there's no requirement to have the aircraft registered with the department or have any of the FAA side reported to the Department of Agriculture now. There's virtually no interface once you receive that 137 certification from the FAA. That's virtually good for life, so there's virtually no interface there with that department at all on a yearly basis. [LB254]

SENATOR DIERKS: How do you define pesticide? [LB254]

DOUG JOHNSON: Pesticide is any economic poison that can be dispensed through an aircraft, and... [LB254]

SENATOR DIERKS: It can be either a herbicide or a grubicide? [LB254]

DOUG JOHNSON: Herbicide, insecticide, fungicide, that's correct. [LB254]

SENATOR DIERKS: Okay. [LB254]

DOUG JOHNSON: And typically those that are listed in the restricted category, restricted use category. [LB254]

SENATOR DIERKS: So then when you're spraying my neighbor's pasture, and some of your spray gets over on my shelter belt and it looks like it's going to kill it, who pays for that if I file a claim? [LB254]

DOUG JOHNSON: Well, typically it's the applicator or the insurance that they carry. [LB254]

SENATOR DIERKS: You have insurance that covers that? [LB254]

DOUG JOHNSON: That's correct. [LB254]

SENATOR DIERKS: Is that a requirement of your licensing? [LB254]

DOUG JOHNSON: It is not at this time. There is provision in the law now, and I can't cite those numbers, that require a listing with the Secretary of State as far as the chain of responsibility. [LB254]

SENATOR DIERKS: Is there any requirement about where you land and take off as far as doing your spraying? Is that a...you have... [LB254]

DOUG JOHNSON: No. [LB254]

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SENATOR DIERKS: You can land in my pasture and load up there and take off there and do the spraying? [LB254]

DOUG JOHNSON: Well, yes, that is true, but there's paperwork to file with the FAA to use a private airstrip. There has to be...FAA requires registration of a private strip, so yes. [LB254]

SENATOR DIERKS: Thank you. [LB254]

DOUG JOHNSON: You're welcome. [LB254]

SENATOR CARLSON: Okay. Other questions? Senator Price. [LB254]

SENATOR PRICE: Senator Carlson, thank you. [LB254]

SENATOR CARLSON: Wait a minute. Wait a minute, Mr. Johnson. We're not done with you yet. (Laughter) [LB254]

DOUG JOHNSON: Okay. (Laugh) [LB254]

SENATOR PRICE: Mr. Johnson, I had a couple of questions for you. [LB254]

DOUG JOHNSON: Sure. [LB254]

SENATOR PRICE: In your statement here you say the pilot's currency status and the aircraft they're operating that the department wouldn't know anything about that, but doesn't the FAA know about it? Aren't there already laws on the books, I think rhetorical in nature, but the FAA pretty tight on their laws and their regulations for an aircraft, correct? [LB254]

DOUG JOHNSON: That is correct. [LB254]

SENATOR PRICE: Okay. Thank you. And then would there be any mitigating circumstances in the past year...later on you said a 60 percent increase, were there any mitigating circumstances that would cause a increase in spraying? I mean, to throw a statistic out here, I'd like to make sure that we understand in the body of that time and space. Were there any infestations or any reasons that they'd have even more application, as Senator Dubas said, because the advent of higher prices for the product that more people were doing it. So there could be a correlation that the violation and the percentage are the norm. [LB254]

DOUG JOHNSON: That's correct. But if you look at the statistics more closely from the

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Department of Ag, the majority of that 60 percent increase was due to out of state applicators. Even though the number of applications was up for last year overall industrywide, the percentage of increase and complaints, that majority was due to out of state applicators. [LB254]

SENATOR PRICE: All right. And finally, in dealing with the "house that Jack built story," when you buy your aviation fuel, do you know the name of the driver of the truck that brings it to the airport or facility where you buy your aviation fuel? [LB254]

DOUG JOHNSON: At all my operations, yes, I do. [LB254]

SENATOR PRICE: The name of all the truck drivers and everybody in that supply chain? [LB254]

DOUG JOHNSON: Yes. [LB254]

SENATOR PRICE: All right. Thank you. [LB254]

SENATOR CARLSON: Okay. Any other questions? Okay. Senator Karpisek. [LB254]

SENATOR KARPISEK: (Laugh) Thank you, Senator Carlson. Help walk me through what you need now. You need a spray license just like a farmer would to put tanks on his tractor. [LB254]

DOUG JOHNSON: Well, yes. As far as the legal requirements, you are required to have an FAA Part 137 certificate. Of course, you're legally obligated to have your aircraft registered with the FAA and as part of that, there's an annual inspection... [LB254]

SENATOR KARPISEK: Sure. [LB254]

DOUG JOHNSON: ...that's due on the airplane, 100-hour inspections that are due on the airplane. As far as the individual pilot flying that aircraft, they have to have at least a commercial pilot's license. They must have a medical with at least a Class II medical, which is good for a one-year period, and a biannual flight review, and also a 137 sign-off. So at some period in the past, they had to have been signed off by a 137 operator to make sure that they are current. And then they also have to have a biannual flight review sign-off. Currently, there's no one that actually looks at that information as far as the Department of Aeronautics or the FAA is concerned. It's kind of on the honor system. And where we have the situation with all these pilots coming in from different areas, and likely the same sort of scenario with instate pilots, there's no enforcement arm that looks at that to make sure that all that is in place before an aerial applicator goes to work. [LB254]

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SENATOR KARPISEK: And then you also need your chemical licensing, correct?
[LB254]

DOUG JOHNSON: That's correct. [LB254]

SENATOR KARPISEK: Again, like a farmer would on his tractor. [LB254]

DOUG JOHNSON: Right. But, well, yes, but on a commercial basis. [LB254]

SENATOR KARPISEK: Right. [LB254]

DOUG JOHNSON: And it must have the category 12, which is the aerial category.
[LB254]

SENATOR KARPISEK: Air. Somebody that owns a Big A, but not the category 12, the commercial. [LB254]

DOUG JOHNSON: Right, right. [LB254]

SENATOR KARPISEK: Okay. [LB254]

DOUG JOHNSON: They would be required to have a category 12. [LB254]

SENATOR KARPISEK: So really what you're after is saying that that way we know who's flying our airspace, who's putting what on, and there's some oversight. [LB254]

DOUG JOHNSON: That's correct. And the Department of Ag is the one that has the field inspectors that will actually go out to the individual operations and simply by looking at an N-Number of an agricultural airplane sitting on an airport, that individual can tell if everything is kosher with that individual plane and pilot. [LB254]

SENATOR KARPISEK: And probably even if they're in the air. [LB254]

DOUG JOHNSON: That's correct, that's correct. [LB254]

SENATOR KARPISEK: Okay. Thank you, Mr. Johnson. [LB254]

DOUG JOHNSON: Absolutely. [LB254]

SENATOR KARPISEK: Thank you, Senator Carlson. [LB254]

SENATOR CARLSON: Okay. Senator Schilz. [LB254]

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SENATOR SCHILZ: Thank you, Senator Carlson. And just a question getting back to the...we talked about drift and things like that as to whether or not...I'm sure that you, as a responsible applicator, carry insurance on your business. [LB254]

DOUG JOHNSON: Yes. [LB254]

SENATOR SCHILZ: And is that required? Let's say on your...is it required that you carry insurance if you're using your aircraft for commercial purposes? [LB254]

DOUG JOHNSON: No, it's not currently a requirement. [LB254]

SENATOR SCHILZ: Okay. But any good businessperson is going to be carrying that insurance, otherwise they'd be out of business pretty fast, wouldn't they? [LB254]

DOUG JOHNSON: That's correct. [LB254]

SENATOR SCHILZ: I mean... [LB254]

DOUG JOHNSON: That's correct. [LB254]

SENATOR SCHILZ: Okay. Thank you. [LB254]

DOUG JOHNSON: Absolutely. [LB254]

SENATOR CARLSON: Any other questions? Okay. Now it's my turn. (Laugh) [LB254]

DOUG JOHNSON: Absolutely. [LB254]

SENATOR CARLSON: You recommending operational date of May 1, 2009, for implantation of the Nebraska aerial pesticide business license. What's involved in applying for and getting this license? [LB254]

DOUG JOHNSON: Basically it's going to be required reporting on the behalf of the individual that's applying for the license. The form could be a one-page form that is sent into the Department of Agriculture as far as listing their 137 certificate, the aircraft registration number or N-Number of the aircraft, the pilot that's going to be flying that aircraft, and then the currency requirements for that pilot in the aircraft, and then the area that they're based out of or operating from. [LB254]

SENATOR CARLSON: And that application goes to the Department of Ag? [LB254]

DOUG JOHNSON: That's correct. [LB254]

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SENATOR CARLSON: What's the reasonable turnaround time for the department to act on these requests? [LB254]

DOUG JOHNSON: I'm not sure I can answer for the Department of Ag, but we have talked to them prior to this. I think that that could be a relatively short period of time. And in the communication that one would have with the Department of Ag and the methods used, this information could be sent to them via e-mail, and I would think that two or three days would be more than sufficient to accomplish this, putting these things into place for the business license to be issued. [LB254]

SENATOR CARLSON: Okay. How many different types of people or businesses or business arrangements--help me understand--would probably be applying for this? And this action is coming about as a result of what happened last summer with a situation that required quick action and not enough people to get the job done in the state. [LB254]

DOUG JOHNSON: That's correct. [LB254]

SENATOR CARLSON: When you got valuable crops out there that need to be protected, what are the different...so somebody...you would be an example in your business of someone that would apply for and hold this license. [LB254]

DOUG JOHNSON: Yes. [LB254]

SENATOR CARLSON: What are some...and you actually fly? [LB254]

DOUG JOHNSON: That's correct. [LB254]

SENATOR CARLSON: What would be some other types of businesses that would want this license, that would be required to have this license now? [LB254]

DOUG JOHNSON: Well, anyone that wanted to utilize an aerial application method, so a co-op, a retailer similar to what we have as traditional co-ops in the state. That would be pretty much the extent of it. [LB254]

SENATOR CARLSON: Okay, okay. Thank you. Senator Price. [LB254]

SENATOR PRICE: Senator Carlson, thank you. Just one more thing, you brought up a good point there. On the turnaround for this, what outside agencies, I'm thinking specifically to the FAA, would be required to respond when you're checking on the currency or the licensure or the statutes of the aircraft, as you brought forward here? Would we need to contact the FAA and have them also respond for this action? [LB254]

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DOUG JOHNSON: No. Currently, all that information could be found online. It's a matter of public record, so it would be a very short process for the Department of Ag to check on. [LB254]

SENATOR PRICE: Okay. Thank you. [LB254]

SENATOR CARLSON: Yes, Senator Council. [LB254]

SENATOR COUNCIL: Yes, thank you, Mr. Johnson. You've mentioned twice FAA's certificate 137. I don't profess to know what that means. [LB254]

DOUG JOHNSON: Okay. [LB254]

SENATOR COUNCIL: Is that a category limited to a certain type of aircraft involving a certain type of operation or... [LB254]

DOUG JOHNSON: It is. Part 137 refers to agricultural aircraft operations. Part 135, likewise, is commercial aircraft operations, so that's the difference. [LB254]

SENATOR COUNCIL: Okay. Now, does the deal as it's written require an individual to have Part 137 certification? [LB254]

DOUG JOHNSON: That's correct. [LB254]

SENATOR COUNCIL: Okay. [LB254]

DOUG JOHNSON: And that currently is the law now, but there's no enforcement arm. That's sort of a thing that you do on the honor system as far as having that 137 certification. [LB254]

SENATOR COUNCIL: Thank you. [LB254]

SENATOR CARLSON: Okay. Any other questions? We worked you over pretty good. Thank you for your testimony. [LB254]

DOUG JOHNSON: Thank you for your time. [LB254]

SENATOR CARLSON: Okay. Next testifier and then whoever is next, on-deck and ready to go, please. [LB254]

GERALD ADAMS: Senator Carlson, Senators, in listening to Doug, he's kind of went over everything, I think. [LB254]

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SENATOR CARLSON: Okay. Give us your name and spell it, would you please?
[LB254]

GERALD ADAMS: (Exhibit 2) Sure. Oh, excuse me. Gerald Adams, G-e-r-a-l-d A-d-a-m-s, of Norfolk, Nebraska. I'm the airport manager up there. I thought I might put just a little bit of different slant on it. I worked for Chevron Chemical after I got out of college for 31 years. And so whenever we came with a new chemical that could be used by air, you know, we'd work with some people, working good. And then all of a sudden something would happen and they'd be bringing somebody from somewhere else, we'd have product complaints. And that guy that did it is gone, you know. I mean, nobody knew...it was John. Well, who's John, you know? So we end up with a lot of product complaints from this ever since I started with the chemical company all the way through. And then I could give you hundreds and hundreds of examples, but I don't think you're interested in that. But there are just all kinds of things that happen when you bring somebody in that's not qualified or they don't know what's really going on at that particular time. And it just seems like we have this same problem over and over. Just...I'll give you a quick example. Like I say, there's a...like last summer, there's all kinds of things going on, everybody is busy. You've got a fertilizer chemical dealership out here that wants to get...he's got to get something done, he can't get anybody locally. So he goes out of state someplace or out of the area anyway, brings a guy in. He doesn't know anything about aerial application, so the guy is running off a strip out here and he's making a big mess, he's polluting, you know, spilling chemicals, doing all kinds of things. And then once he gets his money and he leaves, and then the product complaints come in. And I think this is where this will really eliminate that, give some, you know, accountability to who's out there, who's doing what. And I just think it's an excellent thing. For years it's been needed, and I'm sure up for it anyway. But they asked me to talk a little bit about the airports. Some of the airports aren't manned all the time, and you have somebody come in, we hear it all the time, they'll come in and just start working off the airport. Pretty soon you got a big area out there that's, you know, nothing is growing there because they've spilled stuff and...you know, when they change their oil, they just dump the oil and, you know, so this is a really needed bill, I think. You know, and I could give you a lot of other examples, too, on the airports but, you know, the interest of time and stuff I think you've heard a lot of them, so. [LB254]

SENATOR CARLSON: Okay. All right. Thank you for your testimony. Senator Wallman, a question. [LB254]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yeah, thank you for coming. Now, you know, you're along the border counties. Do you have trouble with aircraft coming across the border and spraying too? [LB254]

GERALD ADAMS: From other states you mean? [LB254]

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SENATOR WALLMAN: Yes. Like I live along the Kansas area. [LB254]

GERALD ADAMS: Yeah. Yes and no. Like in Nebraska they have a lot of seed corn, you know, and if you don't know the rules about spraying around seed corn, and you come in from another place, they don't know. They may be a good operator where they're from, but they don't know the rules and they can, you know, have some problems there. There could be people out in the fields, stuff like that. So it isn't just that somebody from Alabama or Tennessee, it could be from South Dakota or Iowa or Montana or wherever, you know. And when they get real busy, they pull people in, you know. And I think this thing, this addition to this bill will give the guys that...even the good applicators that do a good job, when he's going to call some people in, he's going to be more apt to really look at that guy and make sure he's going to do a good job than just bringing somebody in, because he's going to be responsible for half of that the way this thing is written. So I think it's a... [LB254]

SENATOR WALLMAN: Thank you. [LB254]

GERALD ADAMS: Yeah. [LB254]

SENATOR CARLSON: Senator Price. [LB254]

SENATOR PRICE: Senator Carlson, thank you. Sir, with regard to your airport background, at what point in time may people take off from airports without filing a flight plan with the FAA? [LB254]

GERALD ADAMS: Yeah, they can take off anytime that the weather is above minimums. And like, well, anytime it's...the minimums are, you know, 200 feet... [LB254]

SENATOR PRICE: Twenty years in the Air Force, I understand VFR flying rules. [LB254]

GERALD ADAMS: Yeah, yeah. Okay. [LB254]

SENATOR PRICE: I just wanted to understand that. So at any point in time VFR flying rule are available, a person can take off... [LB254]

GERALD ADAMS: Yeah. [LB254]

SENATOR PRICE: ...with a commercial aircraft, do commercial business without flying a...and go across interstate lines without filing a flight plan,... [LB254]

GERALD ADAMS: That's correct, yeah. [LB254]

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SENATOR PRICE: ...have nothing to do with flight level or location or airspace. [LB254]

GERALD ADAMS: Well, they got some limits on how high they can go, you know, VFR, you know. But, no, there isn't. [LB254]

SENATOR PRICE: Okay. Thank you. [LB254]

GERALD ADAMS: Um-hum. [LB254]

SENATOR CARLSON: Okay. Senator Schilz. [LB254]

SENATOR SCHILZ: Yes, thank you, Senator Carlson. Mr. Adams, I guess the question that I would have is a lot of times when we see this and there's people coming in from different areas, who's hiring those folks? Is it the farmers that are hiring those folks or is it the actual applicators that can't keep up that are hiring them? [LB254]

GERALD ADAMS: It's usually the applicators or applicators that aren't aerial applicators, you know, I mean, they're... [LB254]

SENATOR SCHILZ: Uh-huh. [LB254]

GERALD ADAMS: Like I say, a fertilizer chemical dealer and they can't get anybody to do this job and his customers want it done. So he's trying to find somebody and he may know the name of some outfit in another state, and they'll send somebody over. And in the past, a lot of times they send them over and they don't really know who they are. [LB254]

SENATOR SCHILZ: Right. [LB254]

GERALD ADAMS: You know, they don't know if they're really...they just want to get it done. [LB254]

SENATOR SCHILZ: Right. Now, are you a commercial applicator? [LB254]

GERALD ADAMS: No. [LB254]

SENATOR SCHILZ: Okay. So you... [LB254]

GERALD ADAMS: I'm a commercial pilot, multi-instrument. Yeah. [LB254]

SENATOR SCHILZ: You know about the pilot and stuff. [LB254]

GERALD ADAMS: Yeah. [LB254]

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SENATOR SCHILZ: Okay. All right. Thank you very much. [LB254]

GERALD ADAMS: You bet. [LB254]

SENATOR CARLSON: Okay. Any other questions? Senator Karpisek. [LB254]

SENATOR KARPISEK: Thank you, Senator Carlson. Mr. Adams, this isn't saying then that that pilot from another state couldn't be certified in Nebraska, correct? [LB254]

GERALD ADAMS: Yeah, they could be. [LB254]

SENATOR KARPISEK: So if I had a buddy in Iowa that we kind of change back and forth whoever was busier or not, we could make sure that we're both licensed in each other's states? [LB254]

GERALD ADAMS: Sure. As I read it, yeah, you can do that the first part of the year. If you know he's going to come over, be all set up. [LB254]

SENATOR KARPISEK: And I'm going to throw this out. I know you probably won't know the answer,... [LB254]

GERALD ADAMS: Yeah. [LB254]

SENATOR KARPISEK: ...but maybe there's even some reciprocal type of laws that could apply in those situations, and... [LB254]

GERALD ADAMS: Yeah, there is. You're supposed to be certified in that state, you know. So, you know, like guys from Nebraska. We got guys from Nebraska that go to Texas when there's not much going on in Nebraska and other places. And they just get that reciprocal...like I say, South Dakota, Nebraska I think has a reciprocal agreement you don't need to, you know, test. Some do, some don't, I guess. You have to ask one of the applicators. [LB254]

SENATOR KARPISEK: Sure. Well, I'm sure they'll be different everywhere. [LB254]

GERALD ADAMS: Yeah. [LB254]

SENATOR KARPISEK: Okay. Great. Thank you, Mr. Adams. [LB254]

GERALD ADAMS: You bet. [LB254]

SENATOR KARPISEK: Thank you, Senator Carlson. [LB254]

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SENATOR CARLSON: Any other questions? One of the statements that you made early was...it's kind of alarming but it may be the truth, but you talked about these pilots coming in from out of state. And they just fly in and they dump oil and they spill chemical and cause a real problem. Well, they must be the renegades of the outfit because... [LB254]

GERALD ADAMS: Yeah. [LB254]

SENATOR CARLSON: ...that's not a norm, is it? [LB254]

GERALD ADAMS: That's not a norm, but it's...now, I'm backing up a few years. I don't think that happens much anymore, but you'll get guys who'll come into an airport that's not manned and they'll just start flying off of there. You know, and they may make a big mess, and then they're gone. I've had instance where guys say, yeah, they're coming in, they got this pad they're going bring in, you know, so they're legal to do this. And, you know, after three or four days, well, the pad doesn't show up and they're gone. You know, they say they got the pad, but they don't have it, you know. And I just think there needs to be more accountability for whatever they're doing, so. [LB254]

SENATOR CARLSON: Okay. All right. Any other questions? Thank you for your testimony. [LB254]

GERALD ADAMS: Okay. You bet. Thank you, gentlemen. [LB254]

SENATOR CARLSON: Next testifier. [LB254]

SANDI DECKER: Good afternoon, Senators. I'm Sandi Decker, S-a-n-d-i D-e-c-k-e-r, and I'm here representing the Fairbury Municipal Airport and also the Nebraska Association of Airport Officials. And so I'm here on a little bit different thing similar to Gerry before me. We are greatly hoping that this licensing comes in effect because last year during the height of...everybody was busy, seed companies and co-ops and others were hiring in or bringing in, I want to call them, "fly-by-night" operators. And they would come down to our airport and they would want to operate off of our airport, and we have fortunately a very strict contract that we have with our operator. We're a satellite operation out of Milford, but we have a strict contract that we make these people go by. They have to pay us so much money to operate off of our airport. We have a spill apron there. We have a chemical shed. And these people will come in, they'll contact us, and they'll say, well, we want to fly off of there. And we're going: Okay, here's our contract. This is what you have to do. And usually or so far it's been enough to keep them from operating off of there. But our main concern is, again, the spill because they could come in, have a major chemical spill, decide, okay, we're leaving, not coming back, leave the chemical set there. We also have the problem that every time...with drift, every time

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somebody next to the field that was sprayed has a problem and it killed something, the first place they call is the airport because it was an aerial applicator that put it on. Okay. Who did it? We have no idea. It may have been somebody from our field, it may have been somebody from 50 miles away. Again, we have no way of telling. So basically I'm just here to support this bill and I hope that you, you know, follow up. I've been an airport manager for 80 years...80 years, since 1980. (Laughter) Eighty years! I wish! [LB254]

SENATOR CARLSON: We need truth in this committee. (Laughter) [LB254]

SANDI DECKER: Well, hey. Who's going to admit...a woman that's going to admit she's been or 80 years come now? But anyway, I've been since 1980 and we've had this happen where people have come in and they've wanted to operate, and we have managed to stop them. And most airports do have some sort of a contract that they have with their applicators which helps us enforce it, but I would love to see it licensed to keep it so that we don't have some...because this...I have no idea where this company is from. The airplane, I looked up the N license number on the plane, it was registered in one state, they were supposed to be working out of another state. I never did actually find out who they were working for. So that's all I have to say. [LB254]

SENATOR CARLSON: Okay. Thank you. Questions? Senator Price. [LB254]

SENATOR PRICE: Senator Carlson, thank you. Thank you, ma'am. Real quick, how do you see this law stopping people under VFR flight rules coming in from wherever they want to and doing this? [LB254]

SANDI DECKER: Well, hopefully, it's not really...if they're really going to do it, they're going to do it. But at least this way when we are at our airports...and like I said, I'm from a very rural airport, we have no regulations whatsoever, no tile or nothing. So at least if they do come in and contact us about working there, we can say: Okay, show us your license to operate in Nebraska... [LB254]

SENATOR PRICE: Okay. [LB254]

SANDI DECKER: ...you know, prove to us that you have the right to be here and then we'll work with you. [LB254]

SENATOR PRICE: But if they come to one of these abandoned airfields, we would never know hide nor hare. [LB254]

SANDI DECKER: No, not unless somebody happens to see them operating and turn it in. [LB254]

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SENATOR PRICE: Okay. Thank you. [LB254]

SANDI DECKER: Um-hum. [LB254]

SENATOR CARLSON: Any other questions? Senator Schilz. [LB254]

SENATOR SCHILZ: Senator Carlson, thank you. Ma'am, thanks for coming in today. If I understood it correctly during your testimony, you said that your airport has a strict contract that you utilize in these situations. [LB254]

SANDI DECKER: Yes. We use it regular. I mean, it's for our regular gentlemen that operates... [LB254]

SENATOR SCHILZ: Sure. [LB254]

SANDI DECKER: ...off our field as well as anyone. [LB254]

SENATOR SCHILZ: Sure. And anybody else that would come in. [LB254]

SANDI DECKER: Yes. [LB254]

SENATOR SCHILZ: And you're also testifying today that almost every other airport that you... [LB254]

SANDI DECKER: Well, the ones that I know of. [LB254]

SENATOR SCHILZ: Or any airport that's out there could... [LB254]

SANDI DECKER: Could do it, yes. [LB254]

SENATOR SCHILZ: ...institute a contract on their own to make sure that they're protected themselves. [LB254]

SANDI DECKER: Yes. [LB254]

SENATOR SCHILZ: Okay. Thank you. And then I guess I'm trying to figure out how, if you have this law, it would preclude people from still giving you a call. I mean, you're the airport, so you're going to get the call no matter what happens, I should... [LB254]

SANDI DECKER: Well, I know, but if the law is there, we're going to know who did it. We're going to know what company to contact and say, okay, Farmers Union Co-op... [LB254]

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SENATOR SCHILZ: Okay. [LB254]

SANDI DECKER: ...had this pilot come in and spray for them or whatever, and then we can trace it down. [LB254]

SENATOR SCHILZ: Okay. [LB254]

SANDI DECKER: As it is... [LB254]

SENATOR SCHILZ: So you sure you want to trace it down? [LB254]

SANDI DECKER: (Laugh) Well, sometimes I wonder. [LB254]

SENATOR SCHILZ: Okay. [LB254]

SANDI DECKER: I've seen some aircraft coming in that I'm wondering how they even passed a... [LB254]

SENATOR SCHILZ: How they got that far? Yeah. [LB254]

SANDI DECKER: Yeah. [LB254]

SENATOR CARLSON: Senator Karpisek. [LB254]

SENATOR KARPISEK: Thank you, Senator Carlson. Ms. Decker, I really liked your fly-by-night analogy. (Laughter) That's really why I had to say anything, but I want to ask kind of what Senator Wallman asked about do you see...do have a lot from Kansas coming in? And do you know is there any...do they have licensing and how does that work? [LB254]

SANDI DECKER: Well, as you know, Fairbury is only ten miles from the Kansas border, and there is a gentleman that is one mile over the Kansas border who flies over us all the time but, yes, he is licensed in Nebraska. And I believe that there is a reciprocal agreement with Kansas. But he...I know that the ones that are right along us do have a license to operate under Nebraska rules. [LB254]

SENATOR KARPISEK: Well, and if we don't really have one, probably don't... [LB254]

SANDI DECKER: Well, I don't mean this, but I mean that they're registered with the... [LB254]

SENATOR KARPISEK: Sure. [LB254]

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SANDI DECKER: They go in for their training and the whole... [LB254]

SENATOR KARPISEK: Does Kansas, do you know, have something like the bill that we're talking about? [LB254]

SANDI DECKER: I really don't have any idea. [LB254]

SENATOR KARPISEK: Not for to ask you, but thank you. [LB254]

SANDI DECKER: No problem. [LB254]

SENATOR KARPISEK: Thank you, Senator Carlson. [LB254]

SENATOR CARLSON: Okay. Any other questions? Early in your statement you indicated you could charge a fee. [LB254]

SANDI DECKER: Yes. [LB254]

SENATOR CARLSON: Are there any limitations on what you can charge? [LB254]

SANDI DECKER: As long as what they're willing to pay. (Laugh) [LB254]

SENATOR CARLSON: Okay. Okay. Thank you. [LB254]

SANDI DECKER: I mean, I'd love to charge, you know, \$10,000 every time they offer it, but no. [LB254]

SENATOR CARLSON: Yeah. But you're not regulated that way, so you could. [LB254]

SANDI DECKER: No. [LB254]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you for your testimony. [LB254]

SANDI DECKER: Thank you. [LB254]

SENATOR CARLSON: How many more proponents do we have? Okay. Come on up. All right. [LB254]

JACK MOORS: Mr. Chairman, members of the committee, my name is Jack Moors, J-a-c-k M-o-o-r-s. I'm here today in support of LB254 representing the Nebraska Corn Growers Association and Syngeta Seed Company. The corn growers are back in Washington trying to get stimulus, and I'm here representing Syngeta from North

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Carolina. We have no organized testimony, just to say we support the bill and we feel that the accountability that would come with this bill is very important to us. From the standpoint of the seed company, there's a period of time when detasseling takes place where if there's an aircraft in the air, we want to know who they are and what they're spraying. And if they're not licensed in Nebraska, we have no way to trace if there should be a drift, which there hasn't been but there could be. So we'd ask you if you would consider this bill. [LB254]

SENATOR CARLSON: Okay. Any questions? [LB254]

JACK MOORS: Thank you. [LB254]

SENATOR CARLSON: Okay. Thank you. Next testifier. [LB254]

CASEY WILLIAMS: Good afternoon. Thank you. Casey Williams, C-a-s-e-y W-i-l-l-i-a-m-s. I'm a aerial applicator from Broken Bow, and also the president of the NATA. And I don't have a testimony. I just want it on the record that I'm a proponent of LB254. Thank you. [LB254]

SENATOR CARLSON: Okay. Thank you. Any questions? Thank you for your testimony. [LB254]

DAVE MLNARIK: (Exhibit 3) I'll get to that paperwork in a minute. My name is Dave Mlnarik, D-a-v-e M-l-n-a-r-i-k, the director of the Nebraska Sports Council. I'm here as a citizen, avid outdoorsman, and adventure racer. Our organization does put on adventure races, and we use a lot of rural country roads in other areas in the country. And seeing this bill it just seemed like it was a commonsense way to protect the environment. And like the previous person who had people out in that environment, it's a way to avoid the possibility of reckless behavior on the part of people and the pesticides. The other thing is I'm always a proponent of protecting Nebraska businesses and think that there should at least be a level playing field where that's concerned. So that's my testimony. [LB254]

SENATOR CARLSON: Okay. Any questions? Thank you. [LB254]

CHIP COSLOR: Good afternoon, Senator Carlson and Senate Ag Committee. My name is Chip Coslor, C-h-i-p C-o-s-l-o-r. I am also here on behalf of the Nebraska Aviation Trades Association and I am an aerial applicator in Nebraska. I don't have a testimony. I just wanted to state my position as a proponent to this bill. [LB254]

SENATOR CARLSON: Okay. Any questions? Okay. Thank you. Anymore proponents? All right. We'll hear from those that are opponents of the bill. How many are going to testify in opposition? [LB254]

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SENATOR KARPISEK: You are? [LB254]

SENATOR CARLSON: I'm not. [LB254]

SENATOR KARPISEK: Oh, you had your hand up. (Laughter) [LB254]

SENATOR CARLSON: So we have no one testifying in opposition. Anybody testifying from a neutral position? Okay. How many from a neutral position? Okay. Please come forward. [LB254]

MARVIN WILES: Good afternoon, Senator Carlson and distinguished senators. My name is Marvin Wiles, M-a-r-v-i-n W-i-l-e-s. I'm the president of Wiles Brothers Fertilizer at Plattsmouth, Nebraska. We, last year in 2008, hired through a reputable aerial applicator in the state of Nebraska and brought in contract aircraft to spray in a crisis situation in southeast Nebraska. Unfortunately in our area we have so much urban sprawl that most aerial applicators would prefer not to fly close in our area. Did a great job. Our individual when he went through was great to work with. Now, everything that we did in our area, we build through our own business. I have been in business for 33 years. I've been on various advisory councils in my tenure in this business for Monsanto, Dow, Syngenta, and have sprayed hundreds of thousands of acres and we have millions of dollars of revenue we generate every year. We have over a thousand customers. This year when we try to answer why we had so many complaints in our area...and I know Mr. Creger very well. I knew him before he was with the Department of Ag. I knew him when he was in distribution. If you look in our area, we would normally spray with aerial application with local guys less than 5,000 acres a year. We sprayed over 80,000 acres. If we were to break down those acres that were treated--and we were well beyond the thresholds, this wasn't an issue of just treating when we were approaching the threshold--in most cases we were two to four times the threshold when we needed to treat. But anyway, when we had these pilots come in, did a good job, again, we built it all ourselves, the bottom line on what that did for our area economy is that most farmers will agree that they probably generated a minimum of \$100 extra revenue as a result of better crops in our community. I stand here neutral because the obligation that I have to long-term customers is that I will gladly work with approved local pilots. Our area does not have that. So if I would fall in a category where I would have to bring in other pilots, I prefer not to do that because I'm a ground rigger. These other gentlemen and ladies represent the facets that know the integral workings of aerial application. However, it leaves us in a horrible situation in southeast Nebraska to know what we need to do. In our element down there the entity that we worked with was very exacting. Every pilot was licensed in the state of Nebraska, and the entity that they are was licensed as well. We will be glad to comply with what we need to do on that, but there are a few things that we need to point out. When you look at aerial application, I pose a question, if I may, that some of those aerial applicators don't have certified crop

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advisors on staff, they don't have agronomists. So if we're going to look at who's going to be calling the shots on these deals, in most cases a full-service retailer, whether they be of a cooperative, independent, or national account status are probably more capable of making better expertise or having more expertise, giving better advise to the area farmers. So I stand in front of you or sit in front of you, I should say, that I come here again neutral, but I do not want to be left out on this because of my obligation to farmers that I grew up with and my father grew up with. I started the business right out of college in 1976. I have a host of customers that are hopeful that we will be able to attain the type of aircraft that we need to satisfy the needs of our community and their needs there. The expertise that we have in a local community where we know where the organic farms are, we know where there are sensitive areas that we can send in alternate ways of applying pesticides by using ground rigs or in some cases wouldn't use at all. We know where the restricted airspace is. And so it'd be very difficult for us to work with, for example, someone at North Platte or somewhere else that is not knowledgeable about our area. I just want to stand on record here as voicing a concern of how we would be able to take care of our clientele in this area knowing that it could cost them hundreds of thousands of dollars. And if President Obama is trying to get our economy jump started, we better make sure we can do it from an agricultural standpoint. Thank you. [LB254]

SENATOR CARLSON: Okay. Thank you for you testimony. And I think you meant to say it was \$100 an acre that it was going to get the... [LB254]

MARVIN WILES: Correct, correct. Yes. [LB254]

SENATOR CARLSON: Okay. Questions? Senator Wallman. [LB254]

SENATOR WALLMAN: Thank you, Chairman Carlson. Do you pilot yourself, sir? [LB254]

MARVIN WILES: No, sir, I am not. [LB254]

SENATOR WALLMAN: Okay. A fixed-wing aircraft was in your area or helicopters? [LB254]

MARVIN WILES: Yes, fixed-wing aircraft and we do have customer application involved in our facility. We have over 15 ground rigs that we run in this area, and have been doing this for 33 years. And if you check with Mr. Creger with the Department of Ag, you'll see we have one of the best records standing in the state of Nebraska as far as complaints. [LB254]

SENATOR WALLMAN: Thank you. [LB254]

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SENATOR CARLSON: Okay. Other questions? Senator Schilz. [LB254]

SENATOR SCHILZ: Yes, sir. Thank you for coming today. Would you characterize last year as an exceptional year? [LB254]

MARVIN WILES: It was an atrocious year. [LB254]

SENATOR SCHILZ: (Laugh) Absolutely. When was the last...have you ever seen a year like that before? [LB254]

MARVIN WILES: Never ever. Prior to this year we had sprayed maybe 200 or 300 acres for soybean aphids. This year our total was over 65,000 by air, and we probably did another 20,000-plus with ground rigs in sensitive areas where we wouldn't even think about sending aircraft in. [LB254]

SENATOR SCHILZ: Right. So in your opinion this increase of 60 percent on the complaints may not tell the whole story? [LB254]

MARVIN WILES: That is correct because I don't know what the rest of the state was. I'm sure the northern areas had a lot more problems with it, but where we were at, normally we don't have soybean aphids get that far south. [LB254]

SENATOR SCHILZ: Sure, sure. And then the next thing is, I guess...and I understand your concern, I guess it really doesn't matter if somebody comes from out of state or the other end of the state because if they don't know the lay of the land, they don't know the lay of the land. So do you run into...are you saying that you may run into some problems there as well? [LB254]

MARVIN WILES: Well, we can, but what we do in our area, sir, is we download satellite maps that have latitude and longitude on them. And all the pilots came into our conference room and we went over each map accurately so that they know where they're at. And they were instructed that if we had any issues there, don't spray it. They were great to work with. You need someone that has the home court advantage so you know where those sensitive areas are so you don't do anything stupid. We respect our environment as well, and we've got a lot of urban sprawl down there, more than some might have at Fullerton, for example or, you know, some other small town. So we have a lot of areas as we go north in our trade territory, we couldn't begin to run aircraft next to where Senator Price is very knowledgeable about. [LB254]

SENATOR SCHILZ: Sure. And then I would take it as well that, like you say, you invoice your customers through your business, so it's your business that's on the line. [LB254]

MARVIN WILES: Absolutely, and we were the accountable party even though we

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weren't licensed as far as it being an aerial application. But we, because of our reputation, Department of Ag sent their representative down to our location, we serviced every one of those things, have no carryover issues. And most of those were concerns of a smell of the pesticide, you know. No real property damage. Fortunately, we had no calamities, and the area farmers benefited greatly. [LB254]

SENATOR SCHILZ: Would you...and maybe you don't know this, but even if it's just your opinion and you don't know for sure, these folks that...I guess anyone in your position out there that's hiring folks like this or doing that through a co-op or whoever, they're probably setting the bill out in their name, too, as well, aren't they? [LB254]

MARVIN WILES: I don't know in every case but on that part I would think because of some of the integral parts about the billing procedure, we aren't in...most of our customers are all in the system, and if there is split billing involved, it there would be atrocity for anyone else to try to do that in such short order. [LB254]

SENATOR SCHILZ: Right. [LB254]

MARVIN WILES: Yes. [LB254]

SENATOR SCHILZ: Sure. Absolutely. Okay. Thank you. [LB254]

SENATOR CARLSON: Okay. Any other questions? Mr. Wiles, I think you said that all the pilots you hired were licensed in Nebraska. [LB254]

MARVIN WILES: Yes. And, again, we were going through a reputable aerial applicator. All ours were brought in through them. Yes. [LB254]

SENATOR CARLSON: Okay. And if you stayed with that kind of action and this bill became law, what would be the new requirement for you then? [LB254]

MARVIN WILES: Well, the main thing that I would need knowing that these aerial applicators can be overwhelmed as easily as the next that if they're going to concentrate on areas that would be more favorable for application, my area in southeast Nebraska is not perceived to be very friendly. We have too much urban sprawl and other issues there that we would have no resources in order to cover acres like that. And you think, well, if we have 15 applicators, we can get over fairly fast, not nearly as fast as these airplanes. In one day, we sprayed 9,000 acres and we scheduled more than that for the next day. We had a horrible infestation of soybean aphids and those thresholds were well beyond 1,000 aphids per plant. The normal economic threshold is 250. [LB254]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you for your testimony. Anyone else in a neutral position? Okay. Senator Dubas. [LB254]

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SENATOR DUBAS: Thank you, again, Senator Carlson and members of the Ag Committee for your attention and great questions on this issue. I think if every business in the state and basically across the nation operated as Mr. Miles' business, we wouldn't be sitting here talking about this. But unfortunately that's not always the case. And I think the fact that this bill came from the people who actually do this, where it came from the aerial applicators says a lot for their degree of responsibility and...you know, how many people come to us and ask us to regulate them more? And the fact that they are asking for this shows their degree of responsibility that they take towards their job, and in wanting to make sure that there's always going to be those people out there who are going to push the line and not follow the rules. But they want to make sure that there's a degree of accountability in the way they do business, and I think that speaks volumes for their business as well as their willingness to protect the citizens of the state of Nebraska and our number one industry, agriculture. So, again, I think that just speaks volumes for them and their actions. I know they raised the issue about wanting to get this bill enacted as soon as possible, basically just due to our time line in the things that we have to do in order to enact legislation. Most of their spraying business is over and done with before this would actually go into law, but I understand that there are certain requirements we have to go through to come up with the rules and the regulations, etcetera. But, again, I think it just speaks to their willingness and the importance of this issue to make sure that they're running their business the best way they can. So I appreciate your consideration of this legislation. Be happy to answer any other questions you may have. [LB254]

SENATOR CARLSON: Okay. Any questions? Senator Price. [LB254]

SENATOR PRICE: Senator Carlson, thank you. Senator Dubas, thank you. In reading this, and if we turn to page 2, lines 5 and 6, and again on page 3, line 4 it says: A person shall not apply for pesticide by use of aircraft or cause or arrange. That was on line 6 of page 2. And when we go to page 3, line 4 it further defines it by "employing" or "contracting." Would that mean that every farmer who wants to do this would have to do this because to me it's any person? I just want to make sure we're not going to levy a require on every farmer who contracts outside of a co-op to have to get a license. [LB254]

ANNETTE DUBAS: No, no. That would not be the case to my understanding. No. [LB254]

SENATOR PRICE: All right. Good. Great. [LB254]

SENATOR CARLSON: Any other questions? I have one, Senator Dubas. Because we've got...counting yourself, we've got eight people testifying positively on the bill and one in a neutral position, Mr. Wiles. He's got an ag-related business I'm concerned

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about what impact this would have upon him, but I'm not understanding what impact this would have upon him. If he hires pilots that are licensed in Nebraska, he doesn't have to do anything different than what he's doing now, does he? [LB254]

SENATOR DUBAS: That's my understanding. Remember, we discussed a lot of these issues when we met with the Department of Ag, and that was one of the points we brought out. We aren't looking to make this more onerous for the co-ops and for those types of businesses who are already doing things the right way. So unless I'm missing something or there's something that they can bring to our attention that we need to address, I'm not thinking that this should be causing them any problems. [LB254]

SENATOR CARLSON: One other question then. I would assume in his business he doesn't presently have a license for aerial pesticide application. If he doesn't have a plane and can't fly, he can't get one, can he? [LB254]

ANNETTE DUBAS: Right, right. This is for the applicators. [LB254]

SENATOR CARLSON: But you're saying he doesn't need one. [LB254]

SENATOR DUBAS: This is for the applicators, the aerial applicators. [LB254]

SENATOR CARLSON: And if we're hiring people from within the state that are licensed within the state, that should be good enough. [LB254]

SENATOR DUBAS: Yeah. This is just building in that degree of accountability. [LB254]

SENATOR CARLSON: Okay. [LB254]

SENATOR DUBAS: And, again, if there are some issues that aren't quite clear, I'd be more than happy to work with the committee and those interested parties to clear those things up. [LB254]

SENATOR CARLSON: (See also Exhibits 4, 5) Okay, thank you. With that, we close the hearing on LB254. And we go to LB263 and Kent...Senator Rogert. [LB254 LB263]

SENATOR ROBERT: You can call me whatever you want, Chairman, (laughter) just don't call me late for dinner. All right. Chairman Carlson, members of the Agriculture Committee, my name is Kent Rogert. I represent the 16th Legislative District, and I'm here today to introduce LB263, a bill that will provide that Nebraska law will prevail relating to seed and fertilizer uses in this state. Many years ago, Nebraska adopted the Nebraska Pesticide Act, a provision that included language which states state law prevails as to the use, sale, distribution, and the like for pesticides sold in Nebraska. This law would simply add seed and fertilizer to this type of state preemption. The

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rationale behind this type of legislation is primarily for labeling requirements unique to the seed and fertilizer industry. If each political subdivision could create their own requirements, this would provide to be overly burdensome in the form of operational costs in an attempt to comply with each entity's unique regulation. This would undermine the goal of uniformity without providing consumer benefit and would eventually result in restricted sales of certain products in the state. Enforcement of localized law would be difficult due to the complexity of industries. Currently, state seed and fertilizer officials are highly trained in the science and nuances of seed and fertilizer while local officials may lack the background to effectively and consistently enforce those unique laws. Eighteen states have adopted preemption legislation addressing seed labeling and standardization; 13 states have adopted fertilizer preemption; and 3 states are considering legislation this year. In recent years, seed and fertilizer production and marketing costs...excuse me, seed and fertilizer production and marketing are consistently conducted on an interstate basis. Farmers farm land in more than one county, township, political subdivisions across the state as well as do ag retailers operate in large areas across different counties and municipalities across the state now. Having consistent legislation statewide makes sense for farmers, those who will sell seed and fertilizer, and manufacturers who must comply with very rigid labeling laws. The Nebraska Department of Ag currently administers the Nebraska fertilizer and soil conditioner law and the Nebraska Seed Law. LB263 would also do nothing to preempt or otherwise limit the authority of any city or county to adopt and enforce zoning regulations. It's pretty straightforward. I can answer any questions possibly or defer them to those coming behind me. [LB263]

SENATOR CARLSON: Okay, thank you. Any questions of Senator Rogert? Hearing none, do you want to be here to close? [LB263]

SENATOR ROBERT: I'm going to step out for a minute, but I'll be back so I'll stay around. [LB263]

SENATOR CARLSON: Okay. Thank you. On LB263, how many people do we have testifying as proponents? Okay. Let's have the next one come up in the on-deck position and we're ready to go. Welcome. [LB263]

TOM MONKE: (Exhibit 1) Good afternoon, Senator Carlson and members of the Agriculture Committee. My name is Tom Monke, T-o-m M-o-n-k-e, with Monke Brothers Fertilizer in Waterloo, Nebraska. I appear before you on behalf of my company as well as the Nebraska Agri-Business Association in support of LB263. As outlined in the introduction of this bill, the purpose of LB263 is to ensure state regulation of seed and fertilizer in Nebraska. We support unified regulation of all seed and fertilizer in the state. We have many of our farmer customers who farm in more than one county and having laws or regulations which may differ county by county or township by township would be detrimental and difficult for farmers to comply with. Due to nonscientific claims, some

counties and other states have passed regulations or laws which relate to the types of seeds which may be grown in their county, specifically referencing biotech crops. Biotech crops are delivering significant economic and environmental benefits to growers. Farmers have been the primary beneficiaries of the incremental value created by biotech crops in the 14 years that they have been commercially available. The National Center for Food and Agricultural Policy estimated that U.S. growers who planted biotech crops realized over \$1.9 billion in added value in 2003 alone. Since 1995, total input costs have declined by more than \$12 per acre by the reduction in the use of pesticides and other products. Biotech seeds bear the ability to be resistant to many insects, other crop pests, and drought resistance, which has been prevalent in Nebraska the past few years. Dr. Stephen Baenziger, University of Nebraska agronomy and horticulture professor, said misleading information in the public domain about risks often drowns out the positives of genetically modified crops such as reducing the need for pesticides and adding vitamins and minerals. Dr. Michael Fromm, director of the University of Nebraska Lincoln Center for Biotechnology, said there are no known cases of anyone becoming ill from eating products made with genetically modified crops. About 80 percent of the total acres of corn and 96 percent of the soybeans planted last year in Nebraska were genetically modified. In 2003, genetically modified crops accounted for 25 percent of the cultivated acreage worldwide. Genetically modified plants have gone through more rigorous testing than nonmodified foods according to Dr. Anne Vidaver of the university department of plant pathology. Currently, agricultural biotechnology bans in California have taken valuable agricultural tools and technology away from California farmers. Farmers should have every federally approved tool available in making decisions about the products and practices that best fit their crop and pest control needs. Furthermore, bans could potentially put farmers at a competitive disadvantage compared to other growers across the state and country who have access to plant biotechnology. Uniform regulation of seeds makes sense. This bill ensures that farmers will have continued access to valuable seeds without fear that activist-driven agendas at the local level might take those resources away. And the bill provides that these seeds will be regulated at the state level. Uniform regulation of fertilizer follows the same principles as that of seed. There are three basic forms of fertilizer. Nitrogen is the first major element responsible for the vegetative growth of plants above ground. With a good supply, plants grow sturdily and mature rapidly with rich, dark green foliage. The second major element in plant nutrition, phosphorus, is essential for healthy growth, strong roots, fruit and flower development, and greater resistance to disease. The third major plant nutrient, potassium oxide, is essential for the development of strong plants. It helps plants to resist diseases, protects them from the cold, and protects during dry weather by preventing excessive water loss. Nebraska's fertilizer and soil conditioner law regulates the labeling and integrity of fertilizer in Nebraska. The Nebraska Department of Agriculture provides for inspections of fertilizer sold in this state to make certain retailers who purchase the products and farmers who utilize the products are getting the accurate guaranteed analysis of the fertilizer. Retailers who sell the products pay a 10-cent-a-ton inspection fee to the department to provide for this protection.

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Fertilizer and soil conditioner laws are very much similar state by state due to the coordination with the American Association of Plant Food Control Officials organization. Fertilizer is fertilizer. Very little fertilizer is manufactured in Nebraska. Most of it comes from national and international markets. A great deal is shipped by rail and it comes in bulk quantities. Having to deal with local labeling, shipping, and distribution laws would be impossible given the quantity and method of shipment of product. Fertilizer offered for sale at one retail facility may be sold in several counties or political subdivisions. The product cannot be broken into storage areas for separate labeling based on which county in which it will be sold. Federal and state regulations, where appropriate and with scientific oversight, is the right place to regulate seeds and fertilizer, not at the local level where there are limited financial resources. LB263 does not remove regulation of seeds, biotechnology, and fertilizer. It simply provides for uniform regulation at the state level so as to prevent the loss of products to certain areas of the state and provides a level playing field for all of Nebraska's farmers. I would urge the committee's support of the bill and ask for your vote to move it to the floor of the Legislature. If you have any questions, I'll do my best to answer them or provide any additional information if I can. Thank you. [LB263]

SENATOR CARLSON: Okay, thank you for your testimony. Do we have questions? Senator Wallman. [LB263]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yeah, thank you, Tom, for coming. As far as these chicken fertilizer ingredients, you know, with 1034-O or nitrogen levels, have you ever had anybody challenge, you know, like if nitrogen is it actually 82 percent or whatever you think? Has anybody ever taken that to the... [LB263]

TOM MONKE: The only people that I've ever dealt with that would be the state people as they came and checked our bins or storage tanks and... [LB263]

SENATOR WALLMAN: For dry fertilizer? [LB263]

TOM MONKE: Dry fertilizer or liquid products. [LB263]

SENATOR WALLMAN: Um-hum. [LB263]

TOM MONKE: We've never had an issue that way. [LB263]

SENATOR WALLMAN: Okay. Thank you. [LB263]

SENATOR CARLSON: Okay. Other questions? Okay. Thank you for your testimony. [LB263]

TOM MONKE: Thank you. [LB263]

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ROBERT ANDERSEN: (Exhibit 2) Senator Carlson and members of the Agriculture Committee, my name is Robert Andersen. I'm with the Nebraska Cooperative Council. We're a trade association representing the ag co-ops throughout the state. Considering the testimony you have just heard here from Senator Rogert as introducer of the bill, and we want to compliment him on introducing this bill as well as Mr. Monke's comments, I'm not going to repeat basically what you've heard. I want to leave it on the record that we firmly agree and applaud the efforts of this legislative intent as been introduced in this bill. I think the primary thing that we see in this is so vitally important to us is the uniformity, you know, from one end of the state to the other part so that we don't impede commerce out there so we all know where we're at and we don't diminish the opportunities for ag producers in the state to maximize the economic returns that they can out there. So, Senator Carlson, I can repeat what has been said, but in fairness to the committee and that, I think it's best to leave it on the record that we definitely support this bill. And I would welcome any questions that the committee may have. [LB263]

SENATOR CARLSON: Okay. Thank you for your testimony. Any question? Seeing none, thank you. [LB263]

ROBERT ANDERSEN: Thank you. [LB263]

CRAIG HEAD: Good afternoon, Senator Carlson and members of the committee. My name is Craig Head. It's C-r-a-i-g H-e-a-d, and I'm the assistant director of government relations for the Nebraska Farm Bureau Federation and appreciate the chance to come before you today in support of LB263. Given light of the two previous testifiers, I think I would just reiterate a couple of points that we think are important. And really for us, this bill is about two things: access and uniformity. Those have both been hit on previously. But as was mentioned earlier, our members are working in a very highly competitive field. Access to biotech crops and commercial fertilizers for us to compete not only locally but globally are vital to the industry. And to have a checkerboard set of rules and regulations out there governing seed and fertilizer is a great concern to us. And we want to make sure that we have a level playing field across the state for all of our members. So with that, I would conclude my comments and be glad to answer any questions you might have. [LB263]

SENATOR CARLSON: Okay. Thank you. Any questions? Rolling, thank you. [LB263]

CRAIG HEAD: Great. Thank you. [LB263]

JACK MOORS: (Exhibit 3) Mr. Chairman, members of the committee, my name is Jack Moors, J-a-c-k M-o-o-r-s. I'm here on behalf of Nebraska Corn Growers Association in support of LB263. They're handing out the testimony that was to be given by our

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president, who is still back in Washington, as I said in the prior bill, and I have no formal testimony for you except for that. We would like to point out to you during the 19...of the 2008 growing season, Nebraska producers or corn growers planted 86 percent was biotech corn and 97 percent of our soybeans were biotech soybeans. So this bill is important to us and we ask for your consideration and passage. Thank you. [LB263]

SENATOR CARLSON: Okay. Thank you. Any questions? [LB263]

DUANE GANGWISH: Senator Carlson, members of the committee, my name is Duane Gangwish, that's D-u-a-n-e G-a-n-g-w-i-s-h, and I'm here representing Nebraska Cattlemen. Our board voted to support this bill and its underlying intent and we commend its introduction. Mr. Monke and others have presented detailed and knowledgeable information that...more than I could possibly give you. I have a personal interest in this in the fact that I came from a family that's been in the seed production business for over 50 years and understand dearly the intricacies that could be dealt with if you try and go on even a state-by-state basis, let alone a local basis. It makes no sense to us as an organization to allow any kind of a patchwork regulation. We ask you to forward this bill on. Thank you. [LB263]

SENATOR CARLSON: Okay. Thank you for your testimony. No questions. Any more proponents? Anyone in opposition to the bill? Okay. [LB263]

ADAM HINTZ: Good afternoon. My name is Adam Hintz, A-d-a-m H-i-n-t-z, and I am testifying in opposition of the bill. My big concern is the disillusion of local control of the organisms and the chemicals coming into my community. I would like to be able to control what kind of things come into my community, what kind of things affect the local ecology, and I believe that this bill threatens that. You know, these claims that unscientific, you know, accusations that genetically modified organisms are dangerous, they are...I mean they will drift. And they will affect antique crops. They will affect the biosphere. You can't put something into an ecology without it being affected. And I think if we take away regulation to allow us to decide what comes into our communities, then the things that we want to protect we won't have a device to do that. That's all I have. [LB263]

SENATOR CARLSON: Okay. Any questions of Mr. Hintz? Yes, Senator Wallman. [LB263]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thank you for coming. Are you concerned about GMO seed? [LB263]

ADAM HINTZ: Yeah. I'm concerned about GMOs altogether. And if this allows GMOs to come into my community more easily, then that's my concern. [LB263]

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SENATOR WALLMAN: So do you grow so-called genetically-free crops? [LB263]

ADAM HINTZ: I don't grow any genetically-free crops as far as I know. I mean, everything is connected to genetics one way or another, right? So...(laugh) [LB263]

SENATOR WALLMAN: Yeah, yeah. You know what I meant. [LB263]

ADAM HINTZ: Yeah. [LB263]

SENATOR WALLMAN: Yeah. [LB263]

ADAM HINTZ: As far as modified, you know, I haven't taken the stuff that I grow and bring it down to the genetic level. I don't know...I mean this stuff has been perpetuated for so long who knows how we've been affected by it, you know. I mean the regulation has to stand, though, so we can at least do as much as we possibly can to keep it out. It's out there right now. Like the gentleman said, a lot of...86 percent of it is being grown in Nebraska. And what we need to do is...I would prefer if it would stay 86 so the stuff that has some sort of buffer doesn't get affected. [LB263]

SENATOR WALLMAN: Thank you. [LB263]

ADAM HINTZ: Thank you. [LB263]

SENATOR CARLSON: Any other questions? Okay. Thank you for your testimony. [LB263]

ADAM HINTZ: Thank you. [LB263]

SENATOR CARLSON: Next testifier. [LB263]

KENNETH WINSTON: Good afternoon, Chairman Carlson, members of the Agriculture Committee. My name is Ken Winston, last name is spelled W-i-n-s-t-o-n. Is the microphone at the right level? Is it okay? [LB263]

SENATOR CARLSON: You're okay. [LB263]

KENNETH WINSTON: Okay. [LB263]

SENATOR CARLSON: You can lift it up if you want to. [LB263]

KENNETH WINSTON: Okay. Well, I just want to make sure that it's being picked up appropriately. Last name is spelled W-i-n-s-t-o-n, and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in opposition to LB263. I was just notified about

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this bill today, so I didn't have a chance to write up testimony on this. So hopefully my testimony won't ramble too badly. There are two things that I am testifying about, and it's specifically related to the genetically modified organism issue and the language of the bill that refers to any seeds...the genetic makeup of any seeds. And so that's specifically what I'm addressing in my testimony. In the 2006 session of the Legislature, there was a bill that was more...it was a broader bill that dealt with more issues, and this bill is more narrowly tailored. But it still does contain the preemption language related to genetically modified seeds and, therefore, we're in opposition to that. And there's two aspects of this. First is protecting organic agriculture, and secondly is supporting local government. Now the preemption legislation as we see it imposes on local governments in a way that strips their authority from the duly elected governmental bodies to protect and uphold the rights and best interests of its citizens. When local control is taken, a democratic layer of government is removed and its people silenced. Issues which particularly affect the agricultural economy and land use and the health and safety of community members are particularly important policy decisions which should allow for full decision making and debate among the affected people in the community. The seed preemption bill strips local communities of local control of this particular issue, leaving all decisions related to this to policymakers at the state and federal levels. And then the second issue is related to the organic agriculture aspect. And there are several issues, and, as I said, I didn't prepare as well as I would have liked to, but there are issues and I know that different people have different perspectives on GMOs that, you know...I was a good science student when I was in school and so there are a lot of things I like about science and I find it fascinating. And there's a lot of benefit that we've achieved through science, and some of them have occurred in the agricultural area. But not everything that science does is beneficial. In certain cases, science creates monsters and creates things that aren't beneficial. And sometimes people fear things that they shouldn't fear, and I will concede that. But I do think that there does need to be a reasoned debate about these things and shouldn't necessarily preempt a local government from considering all these things. And I don't think we should just say, well, GMOs are all okay and nobody should be able to think about this on the local level. Some of the issues that have been raised about genetically modified organisms is that there are, in some situations, pests that have been...that have arisen that become resistant to normal control measures because they've ingested the genetically modified organism and now they don't...you know, the normal stuff that used to kill them doesn't take care of them anymore. And then there's some things that are happening in nature that we don't necessarily know all of the causes for, but there have been some negative impacts on bees, for example, on our flora and fauna that are beneficial to us. And if bees cannot pollinate, then the rest of our agriculture...much of our agriculture is dependent upon bees being able to pollinate. And I've read some articles about some of the judgmental things that have happened to bees, and I am not saying that there's a definite connection to GMOs, but there have been some people who have studied this issue who believe that's the case. And I'm not going to make that claim here, but I think it's something that we need to consider, that we need to have those things on the table.

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And then as Mr. Hintz indicated, organic agriculture is very important, and it's a growing enterprise in this state, and it's a growing enterprise nationally and across the world. Now I'm not an expert in organic agriculture, but it's my understanding that if there's a drift from a nonorganic field onto your field that then you can't be organic anymore and that you lose the right to market your products as organic. And for that reason, you would lose that market if you have that drift on your field. Now as I understand it, it can drift for several miles. And, once again, I'm not an expert on pollen drift or anything like that, but those are studies that I have read. Now there's more and more people that are doing organic agriculture and more and more interest in organic agriculture. If you go into a grocery store and you go into the Hy-Vee or any of the grocery stores around, now they've got organic sections and Wal-Mart has an organic section. And I would hate to see the passage of legislation like this that would end up making it so that organic farmers would find it more difficult to get into the business of growing organic and cutting out that market. And one of the other things that hasn't been discussed is the fact that there are large markets that do not allow GMO products. And I'm...once again, I apologize for not being as well prepared as I would have liked to have been, but it's my understanding that most of the European Union does not allow genetically modified products for sale in their markets. And so if somebody is marketing for that reason or if they're growing crops for that reason, I would hate to see legislation pass that would prevent that from happening. And as was previously indicated, a large percentage of the crops already are biotech crops. I don't think there's anything that would say that they wouldn't be able to continue to grow and expand. I guess what I'm thinking of would be if, say, a county would decide to create an organic zone where they could promote organic agriculture in that zone, this bill would prohibit that from happening. And that could prevent economic development in that county and economic development in the state of Nebraska. And so for those reasons, I would like to suggest that the bill be amended or in any event I would be glad to work with the committee and the introducer on this bill to accommodate their interests, but also to accommodate the interests of organic agriculture. I would be glad to answer questions if I can. [LB263]

SENATOR CARLSON: Okay. Thank you for your testimony. Questions? Mr. Winston, I would be very much against any kind of an effort to curtail organic agriculture. I don't really see how this bill does that. But a question to you, can organic agriculture feed the world? [LB263]

KENNETH WINSTON: Well, I guess I would let somebody who is in the business of organic agriculture answer that question. What I'm saying is...I'm not saying that we necessarily have to have the whole world be organic. But by the same token, there is a lot of people who have a lot of interest in it, and I would hate to prevent that interest from growing. [LB263]

SENATOR CARLSON: And we're not in disagreement on that. It's a matter of difference of opinion, I guess, on how something like this would curtail or not curtail organic

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agriculture. [LB263]

KENNETH WINSTON: And to be clear, Senator, I'm not saying that it would curtail it. I would... [LB263]

SENATOR CARLSON: You said that. You were afraid that it might. [LB263]

KENNETH WINSTON: If I said that...what my concern is that it would limit the opportunities for the growth of organic agriculture. [LB263]

SENATOR CARLSON: Okay. Any other questions? Thank you. [LB263]

KENNETH WINSTON: Thank you, Senator. [LB263]

SENATOR CARLSON: Next. And how many more do we have in opposition? Okay. [LB263]

MICHAEL HENRY: Good afternoon, Senator Carlson, committee members. My name is Michael Henry, that's M-i-c-h-a-e-l H-e-n-r-y, and I'm an employee at Open Harvest Cooperative Grocery here in the city of Lincoln. And I just wanted to voice my opposition to LB263 basically for the reasons that have been said in the previous testimony. I am a...(Recorder malfunction--testimony lost) [LB263]

SENATOR CARLSON: Okay. Any questions of Mr. Henry? Okay, thank you for your testimony. [LB263]

MICHAEL HENRY: Thank you, Senators. [LB263]

AMY BRT: (Exhibit 4) I believe you had this earlier. This was...I just needed to enter into the record for Laura Krebsbach her testimony since she could not be here today. And I also am here to testify for myself. My name is Amy Brt, A-m-y B-r-t, and I'm speaking for myself as a citizen. Many of the concerns that...many of the issues that I'm concerned with have been raised already and been talked about. And I don't have formal testimony. I just have some notes. But the two issues that I have, the reason I'm not for this is that the restricting of the local control, and my second issue is of the GMOs and/or other fertilizer use. My biggest issue is of the use of GMOs. They have yet to be proven safe, contrary to what maybe many people think. There's not been any proof that GMOs are safe. There has been...and I also have a concern with the rise in pesticide use with GMO crops like Roundup Ready crops that are able to spray Roundup on the crops. So I have a concern of the raise and increase in pesticide use with GMO crops. One of the other issues relating to GMO is food safety. As a person suffering with multiple food sensitivities, sensitivity being something that I don't react to certain food immediately but I react to certain foods within one to two days, and I suffer food

sensitivities of over 20 foods, I have many concerns of our increased pesticide use and GMO use in our communities and in our food. And the numbers that were presented here today by the ag community that they seem very proud of, actually is very alarming to me that I believe 80 percent of the soybean crops are currently GMO here in Nebraska. That is extremely alarming to me. There are already 60 percent of the foods that we eat contain GMO foods and they are not required labeling in the United States. So we could be eating...I could be ingesting GMO foods daily and this could exacerbate my allergies, and I would have no knowledge of this. I'm also concerned...I bring up this food allergies, the food sensitivities, excuse me, because, you know, I'm a healthy individual. I'm 32 years old and suffered many health issues. And then I had these food allergy testing, food sensitivity testing and came back with 20 foods that my body responds negatively to. And I do not know how this happened. I'm a healthy individual. I grew up in a healthy family eating healthy food. And this is occurring all over the United States. Dairy and soy and gluten are the top three that I understand--I don't have any records with me today--but as I understand the top three foods that are American food allergies. That's a great concern to me. And so to restrict...to override local control of possible GMO crops is where my concern rides. Also, of bringing in both GMOs and pesticide use again, you know, the ecological impacts of our community, you know. Pesticides may at a certain time increase yields, but they kill soil microbes and the beneficial bacteria and the soil life. And, you know, I'm a proponent of organic farming and growing, gardening. I think that's the natural way to do it. That is the way that it's been done for, you know, hundreds and thousands of years. We don't need to rely on chemicals to produce food. And I do...I'm not an...I'm a food producer for myself, but I'm not in the agriculture business. But I do firmly believe that organic foods can feed the world. We just have to have...we need a different model than our model crop agribusiness. And I'm a student in sustainable community development, that is part of my studies. And I would be happy to share information that I can gather about different biointensive gardening, permaculture. There's different forms and techniques that are available to us to grow foods without chemicals and without GMOs. And the biggest concern about GMOs that I have is the fact that they're not natural. They have taken genes, you know, nature has a way to cross-pollinate and create new, you know, squash strains or new varieties and that's done naturally. GMOs is not a natural process, and that is my big concern. And releasing something that's not natural has huge implications into our community. Bee pollination was discussed earlier, you know, that bees do not differentiate the difference between GMO products and non-GMOs and that there's been, you know, cross-contamination. There has been, you know, more and more studies about weeds and insects becoming resistant. And so there's...especially in a climate change. I have huge concerns about, you know, more and more weeds becoming resistant, especially invasive weeds. So I just check my notes here before...oh, the other point I wanted to make regarding GMOs and restricting local control is that, you know, in a free market I believe that we should have the right to choose what we eat and what we grow. And that, you know, if this were to pass, as I understand it, would restrict that local control. And I believe very firmly in the ability and

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the need for local control and local...the voice. So I think that is all I have today. I'll take any questions. [LB263]

SENATOR CARLSON: Okay. Thank you for your testimony. Senator Council. [LB263]

SENATOR COUNCIL: Yes, thank you, Ms. Brt. And I have been listening intently to both the proponents and opponents here. And my question, and I hear the concern expressed with regard to local control, can you explain to me when you talk about local control, and let's talk about the regulation of the planting of particular seeds, who are you identifying to be the authority at the local level for determining whether a particular type of seed should or should not be planted in that area? [LB263]

AMY BRT: That's a great question. I actually can't answer that myself. That's not the area that I'm in. I see more of a citizen and I'm looking at my concern in regard to local control is if a community wanted to have regulations, say, against GMOs or regulations for how, say, liquid manures are used, as I understand it, this would restrict that local voice in regulating that, as I understand it. [LB263]

SENATOR COUNCIL: Okay. Now with regard to fertilizer and maybe the introducer can correct me, but I read it this says, "Nothing in this section shall be construed to preempt or otherwise limit the authority of any city or county to adopt and enforce zoning regulations." So if the county wants to enact some zoning regulation that prohibits the spreading, for lack of a better term, of fertilizer of a particular type in a particular area, as I read the proposed bill, this would not strip that local authority of that ability. Senator Rogert, am I... [LB263]

SENATOR ROGERT: I'll address it. [LB263]

SENATOR COUNCIL: Okay, if he'll address that because I think that's my concern. When I look at the bill, as I understand it, it's we're relying on the Department of Agriculture. And I'll tell you I don't know a GMO from a non-GMO, and I look to the experts to tell me, you know, what it means, what it can do to me. And that's what I'm looking at for purposes of the local control argument. Who is that authority? Under the bill, it's the Department of Agriculture who I would tend to give some weight and some credence to in terms of the testing that's performed and the auditing functions that go on. I'm just trying to find out who would be the regulator at the local level. [LB263]

AMY BRT: Well, and I can't answer that, although you brought up a good point. I actually firmly believe that every local authority should have some overseeing, either ecologist or department or head of ag. I believe every town, city should have the authority to...and expertise, I understand the need for expertise. [LB263]

SENATOR COUNCIL: And that's my concern is the expertise. And I want to

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acknowledge that I received a number of e-mail communications from Ms. Kreesback (phonetic), is that Krebsback (phonetic)? [LB263]

AMY BRT: Krebsbach. [LB263]

SENATOR COUNCIL: Krebsbach. And I intend to ask Senator Rogert a question particularly with regard to the incident she related about the grain elevator. Now as I read the law, there would be nothing that would prohibit a local entity from enacting regulations governing grain storage. But if that's not correct, then perhaps there may be some need to address that amendmentwise. I think that Ms. Krebsbach may raise a very legitimate concern. [LB263]

AMY BRT: Well, it does, you know, talk about ordinance, rules, and regulations superseding. [LB263]

SENATOR COUNCIL: Well, in the e-mail I received from her, she talked about her concern was if a county wanted to have zoning that required separate storage, they would be unable to do so because the bill supersedes local control. And that's a legitimate concern, and I just want to...and I'll determine from Senator Rogert and probably working with the research analyst if there's a way to address what I'm indicating to you I believe is a genuine concern--the authority of the county to regulate or local political subdivision to regulate grain storage. [LB263]

AMY BRT: My understanding it's through zoning, but that it does talk about that it would preempt any ordinance or regulation. So I guess, you know, I would need clarity on that myself. If I... [LB263]

SENATOR COUNCIL: Okay, that's what I need. And because it speaks to the extent that it conflicts with Nebraska Seed Law, and that's what I think we just need to get clarification, because if there's no conflict, then the local entity can enact whatever ordinance they wish to as long as it doesn't conflict. And that may be the area that you're looking because it deals...that's the section that deals specifically..."No political subdivision shall prohibit or in any other manner regulate any matter relating to the storage, transportation, distribution...that are in addition to or in conflict with the Nebraska Seed Law." So as long as it's not in addition to or in conflict, the local authority would have the ability to regulate. So...and maybe that answers the question. I'm just pointing that out and maybe Senator Rogert or research analyst can answer that at some point in time. [LB263]

SENATOR CARLSON: Okay. Thank you. Senator Wallman. [LB263]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thank you for being in the hot seat here. I want to go on record. I plant GMO crops, and I don't think it really hurts me.

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In fact, you know, like Bt corn, we don't have to spray for insects. And so I think maybe it's beneficial. But I... [LB263]

AMY BRT: What happens when those crops become immune to that? I'm sorry. [LB263]

SENATOR CARLSON: It's our responsibility (laughter) to ask the questions and yours to answer. [LB263]

SENATOR WALLMAN: And I know things evolve different ways and the bees thing. I don't know about the bees, but I actually think it might be more healthy with GMOs in certain instances, you know, like certain countries grow tomatoes, the cotton, things like this. I don't know if we could feed the world without it. But I definitely appreciate people that grow organically because there's a farmer in my area that does it on a quarter section, supports a family, and sells everything around, you know, to the markets. So that's where I'm coming from. And certification, you can still certify if you grow "nonpopcorn," you know, non-GMO popcorn or something. You can have your bins certified and cleaned out and inspected, and I don't think that would have anything to do with this bill, but you can...but thanks. [LB263]

SENATOR CARLSON: Okay. Any other...Senator Schilz. [LB263]

SENATOR SCHILZ: Thank you. Ms. Brt, thank you for coming in today. I appreciate it. And as Senator Wallman, I also farm and grow some GMO crops as well. And just like you, I have a few food allergies. My biggest sensitivity to foods seems to be I eat it and I grow, but (laughter). [LB263]

SENATOR _____: I got that too. [LB263]

SENATOR SCHILZ: But, you know, and that gets me...and it's just a personal question on my part. If there was a way that these GMOs could help you to be able to eat more of those foods and take that sensitivity away, wouldn't you be interested in that? [LB263]

AMY BRT: No, because it's not a natural product. [LB263]

SENATOR SCHILZ: So it's okay to be allergic to it and you'll just deal without it. [LB263]

AMY BRT: Yeah, and I'll eat the foods that, you know...what I've done is I've gone to, you know, buying as much as I can locally and organically, but actually growing my own food because there are past GMOs. I have a long list of food safety and food security issues... [LB263]

SENATOR SCHILZ: Uh-huh. [LB263]

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AMY BRT: ...concerns and GMO is a part of that. But if GMOs were to help me with my food allergies, I would still not eat them because it is not a natural product. It's not. There's a difference between a hybrid and a GMO. [LB263]

SENATOR SCHILZ: Is there? [LB263]

AMY BRT: Yes. Hybrid is... [LB263]

SENATOR SCHILZ: Or have we just moved the process forward to where we don't have to wait for that pollen and the stamen to... [LB263]

AMY BRT: If nature were to produce a product for me... [LB263]

SENATOR SCHILZ: Uh-huh. [LB263]

AMY BRT: ...or through selective breeding... [LB263]

SENATOR SCHILZ: Are you familiar with the plants in the rain forest where they got some of this GMO technology was that they found the plants that around them in a certain area, the weeds didn't grow because they naturally created a herbicide for themselves? And all we did is we turned around and used that to put a...callisto I think is what it is and that's where that came from. And I was just wondering if you were familiar that that started out as a naturally occurring thing? [LB263]

AMY BRT: That plant naturally occurring, but taking that gene from that plant and putting it into another completely unrelated plant, that's GMO and that is what I'm not in favor of. If there was cross-breeding that would happen between that plant found and other plants and the offspring, the hybrids selected breeding, then I would be in favor of those plants and I would consume those plants because nature has decided that those plants, those genes go together. GMO plants take genes from unrelated plants and put them together in a laboratory. [LB263]

SENATOR SCHILZ: Yes. [LB263]

AMY BRT: That's why I'm not in favor of GMO. [LB263]

SENATOR SCHILZ: Okay. Thank you. [LB263]

AMY BRT: It's totally different than hybrids or selective breeding. [LB263]

SENATOR CARLSON: Okay. Any other questions? Thank you for your testimony. [LB263]

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AMY BRT: Thank you. [LB263]

SENATOR CARLSON: Anyone else in opposition? Anyone testifying from a neutral position? (See also Exhibits 5, 6) Okay, seeing none, Senator Rogert, you're recognized to close. [LB263]

SENATOR ROBERT: Thank you, members of the committee. Well, this turned into a GMO hearing and that's not what this bill is about in all reality. I am an expert on pollen drift and seed production and genetically modified crops and pesticide use and their benefits and their negatives. I've been doing this my entire life, and I'm in the business of seed production and pesticide sales and fertilizer sales for 20 years. And I took some notes, and I'll try to answer some of those questions. Drift of GMO...drift of pollen absolutely travels miles. There's nothing you can do about it. It travels miles. The wind catches it. We produce...seed companies produce genetically modified crops and they produce nongenetically modified crops at the same time, and they do it by isolation and they plant products around them to protect from pollen drift. Most places that's how organic farms work as well. They plant taller crops around the outside to catch the pollen that comes in that would be genetically modified and they grow their organic crops right in the middle. Works pretty well. Organic farming is an exploding business in the United States, and I commend them for that. When I was in college, I couldn't understand why anybody would want to do that and now I see. There's a lot of money in it. People really like organic crops. It's great. Whole Foods and the guy from Open Harvest, those guys are doing really well. I'm glad for them. It's a great market, and I wouldn't want to do anything to protect...to keep those guys from doing what they're doing. You can see that the market sorts itself out when it comes to organic versus non. There are people who will want to buy organic, and that's going to continue to grow. Like you said, in the state of Nebraska, 86 percent of the corn and 92 percent of the beans was GMO this year. I don't see that going anywhere but up. The state would never mandate the production of genetically modified crops. So the argument of saying local control, how can we...we might be shut out of growing organic crops, that doesn't stand because we would never say you could not do that. As I look through here, a few more things. Senator Council asked who is the authority on this type of issue on the local areas and there isn't one. I contend to you that the Department of Ag and the EPA have stringent regulations regarding pesticide use, labels and how you use things that are labeled, fertilizer use, and the storage and use of GMOs. And that's who I want to rely on instead of the county board member or city council member. I appreciate Ms. Brt's desire to have an ecologist on every local city council. That would be wonderful but absolutely unrealistic. It just wouldn't happen. We also have had major decreases in pesticide use in the last decade due to genetically modified crops. Pesticides kill...can kill beneficial organisms in the soil. We aren't having to use those near as much because of genetically modified crops. For a county to say between County Road 10 and 12, 30 and 40 we're going to create a square and say only organic crops can be grown in that area, first of all, I think that would probably be unconstitutional. Second of

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all, it would be very detrimental to those landowners in the middle of that area. Local control says you can grow whatever you want. We'll let you do that. We're not going to tell you, you cannot. We're not going to let you tell us we can't grow something in that area that we own. Also, we talked about the spreading of liquid manure. This doesn't talk anything about that. What we're talking about produced fertilizers which would be nitrogen, phosphorus, potassium, and then some micronutrients they'd have in there, those things. There are local ordinances and we would not be pushing to the side that deal with spreading manures close to towns. We have those on the books. We'd leave them on the books absolutely. I contend everybody has the right to eat and grow what you want. That's the purpose of this bill. I'd take any questions. [LB263]

SENATOR CARLSON: Okay. Any questions of Senator Rogert? Senator Dubas. [LB263]

SENATOR DUBAS: Thank you, Senator Carlson. Senator Rogert, just to help me further clarify this local control issue, I'm a former planning and zoning board member so I understand you have ag zones... [LB263]

SENATOR ROGERT: Sure. [LB263]

SENATOR DUBAS: ...transitional, but let's just say you have a county that is heavy into organic production. [LB263]

SENATOR ROGERT: Yep. [LB263]

SENATOR DUBAS: And a lot of their producers are organic producers so they want to set up an organic zone... [LB263]

SENATOR ROGERT: Um-hum. [LB263]

SENATOR DUBAS: ...which basically states in this certain area we're going to protect this organic zone. Would that fall...would that be allowed under your legislation? [LB263]

SENATOR ROGERT: Well, I don't know that they could do that anyway. I think if they want to, I think the way you have to do it is you zone industrial or commercial and you give waiver for those guys that meet specifications. You could say we're zoning for commercial except for agriculture that meets these limits. You could do that. [LB263]

SENATOR DUBAS: Or you could do it under maybe the conditional permit usage also. [LB263]

SENATOR ROGERT: You could do it under conditional use permit. Those things are all subject to public hearing and so you would have input from the outside on that area. I

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think you would have...and especially if you have landowners that are contiguous that you'd want to be able to do that. I think you absolutely could do that because you wouldn't have anybody in the middle that would be stuck saying, wait a minute, I want to grow what I want and you guys all around me are growing whatever you want and telling me I can't do that. But that's where it allows the local control on that kind of a deal. Does that answer the question? [LB263]

SENATOR DUBAS: Yes. [LB263]

SENATOR ROBERT: Okay. [LB263]

SENATOR DUBAS: I guess, you know, we all know that we support our local control issues... [LB263]

SENATOR ROBERT: Absolutely. [LB263]

SENATOR DUBAS: ...passionately and so I think that we probably need to just continue to clarify what this is or is not doing to the local control issue. [LB263]

SENATOR ROBERT: And I think uniformity is the biggest goal of this. Take for an example Central Valley Ag in my district. They're a co-op, 53 locations crawling across I think 19 or 20 counties and probably have 40-some towns, well, they have 53 towns. To have different rules and regulations about what fertilizer you can spread and what crops you can grow across that would put them out of business. That would just be nearly impossible to do. And I think that's a major goal of this piece of legislation. [LB263]

SENATOR CARLSON: Okay. Any other questions? Thank you for your testimony. [LB263]

SENATOR ROBERT: Thanks, guys. [LB263]

SENATOR CARLSON: (Exhibit 4) And for the record, I have a letter here from Laura Krebsbach in opposition to LB263 and then on the earlier bill, LB254, I have a letter here support of LB254 from Mary Harding, so that will be in the record. With that, we close our hearing on LB263 (See also Exhibits 5, 6). And we're ready for the opening on LB581 and Mr. Leonard. [LB263 LB581 LB254]

RICK LEONARD: (Exhibits 1, 2, 3) Thank you, Senator Carlson and members of the Agriculture Committee. My name is Rick Leonard, research analyst for the Agriculture Committee, that's R-i-c-k L-e-o-n-a-r-d, introducing this bill on behalf of the introducer, Senator Carlson. The bill was kind of drafted as a project of a result of work that the Agriculture Committee did over the interim, again, looking at means of securing the funding for our noxious weed program. Our modern noxious weed program was first put

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in place in 1989. Senator "Cap" Dierks, who is a member of this committee, was the sponsor of that legislation. We had had a noxious weed program before the primary responsibilities of the Department of Agriculture were primarily advisory and the technical assistance to the counties. The counties have had authority all along to enforce landowner responsibility in terms of noxious weeds. A significant change in that 1989 bill that has made a significant difference is that we put a little bit of teeth into the bill. We provided for state oversight of the adequacy of those county programs, and with that came additional responsibility as well as some additional costs including deploying an inspector force. The department has probably been much more active in terms of the advisory technical assistance and research and other items to support county efforts, as well as the regulatory function of overseeing the advocacy of those programs. From the very beginning, the original legislation created a Nebraska noxious weed act stated legislative intent that the program would be funded 50/50, half General Funds and half Cash Funds. And from the very beginning, part of the primary cash funding source has been the pesticide product registration fee. And since 1989, we've dedicated \$30 of each, both specialty and nonspecialty pesticide product registration fees here in the state, to support of the noxious weed program. In the items I've handed out to you, you'll see the first item is a table showing title/budget actions affecting the noxious weed program funding. Beginning in 2001, we've had a series of budget actions which have slowly reduced and dwindled the General Fund support of this program from 50 percent to now with budget actions taken in the last budget biennium that of reduced General Fund support of this program to 15 percent. In 2004, we did pass LB869 and, again, that was in response to budget actions that were asking the program to continue forward with 25 percent General Fund, 75 percent cash fund. We did enact some items that...some additional cash funding sources that allowed us to fund the program at that General Fund mix for the foreseeable planning horizon. The actions taken last year with the budget, again, reduced the base budget General Fund support to just by \$55,000, so approximately half of what it was before. We were able to sustain that because we had LB701 was passed and we began a riparian initiative, and there were some administrator salary that was assigned to the riparian initiative that enabled that cost formerly absorbed by the noxious weed program was assigned to that funding source. When we just go over the components of the bill, basically the bill provides for a series of redistribution of fee revenues. The primary change in the bill would be to change the allocation of the pesticide product registration fee to the noxious weed program to increase that from \$30 to \$40, while reducing the allocation to the buffer strip fund from \$60 to \$50. There's a couple of transfers from the buffer strip fund that are authorized under the bill that includes an additional \$1,000 one-time transfer to the Noxious Weed Cash Fund, and \$1,000 to contract directing the Department of Agriculture to...\$100,000 to contract with IANR for water use efficiency research. There are two revisions to disposition of revenues we get from the publication of a weed book. The Department of Agriculture is currently directed a duty under statute is produce a weed reference book. There is a document called Weeds of the Great Plains that the department, under that authorization, provides for its publication. We currently provide that 25 percent of the

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sales price of that book, which results in a little over \$6,000 a year, goes to the Noxious Weed Cash Fund. This bill would change that distribution to the noxious weed and invasive species assistance fund, which is a grant program that provides for state grant program to stimulate and to support weed management area projects for special weed control projects. And in the current law, there is a sunsetting an ability to transfer \$25,000, to the extent there's money available to do that, annually from the weed book cash fund to the Noxious Weed Cash Fund. The last time we reprinted the noxious weed book, we had very favorable contract with a printer and left us with about \$150,000 excess funds in that. So we've been providing for \$25,000-a-year transfer from that fund to support the noxious weed program, part of the decisions we made in LB869. That authority to transfer expires in fiscal year 2009. This bill would simply allow no end to the authorization to transfer. Again, transfers would only occur to the extent there's surplus money available in the Weed Book Cash Fund. The other two items that are with you are projections of the Noxious Weed Cash Fund, the colored charts. The very first one is under current scenario, and you'll see my assumptions. This is a projection of where the cash flow projections will go if there were no intervention. Scenario two is with the enactment of this bill, but it also assumes that the riparian initiative and the funding for that would not be renewed and the noxious weed program would have to reabsorb the cost of an administrator that are currently assigned to the LB701. Scenario three is the projection of the noxious weed cash flow assuming this bill with the revenue enhancements provided for in this bill, as well as reauthorization of the riparian management task force. The last page shows a projection of the buffer strip impact. As you know, the bill would reduce the annual revenues going to the buffer strip fund by one-sixth, as well as provide for two \$100,000 transfers. We currently have somewhat of a structural imbalance in terms that we have revenues currently exceeding our commitments, and at least for the time being, the pace at which we are acquiring new commitments from the buffer strip cash fund to pay landowner payments who place their land in the qualifying activities. The bill...this shows a projection of where the buffer strip cash fund would be if we assume annual commitments buffer strip payments to producers remaining at their current level for an indefinite period. And you see that even with these two...with the change in distribution of buffer strip fund, what's in the cash fund now as well as future revenues to the fund we see the program has sufficient cash reserves to meet its commitments through fiscal year '17-'18. That's under this assumption. [LB581]

SENATOR CARLSON: 2018. [LB581]

RICK LEONARD: 2018. [LB581]

SENATOR CARLSON: Okay. [LB581]

RICK LEONARD: Did I say '17-'18? [LB581]

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SENATOR CARLSON: Okay. [LB581]

RICK LEONARD: Fiscal year '17-'18. [LB581]

SENATOR CARLSON: '17-'18. [LB581]

RICK LEONARD: So if you have any questions, that concludes my testimony. [LB581]

SENATOR CARLSON: Any questions of Mr. Leonard? Senator Karpisek. [LB581]

SENATOR KARPISEK: Thank you, Senator Carlson. Mr. Leonard, did we, last year or the year before, increase our buffer strip? [LB581]

RICK LEONARD: We certainly did. We passed legislation, LB790, last year that increased the maximum, statutory maximum, compensation that can be made available through the buffer strip program. Part of the deal was, of course, high commodity prices that we were seeing, and other factors that we were not seeing new sign ups or, as old contracts expired, people renewing their contracts or re-enrolling those acres. And so there was...we did enhance the potential compensation to hopefully continue or help enhance the incentive to re-enroll. [LB581]

SENATOR KARPISEK: Wasn't it maybe from \$100 an acre to \$200, something like that? [LB581]

RICK LEONARD: I forget the...I think it was \$150 maximum to \$250 maximum. But keep in mind, that is a maximum we provide...the buffer strip in most cases provides an enhancement of other available like land-altering or idling or conservation incentives like CRP. There are some other deal...some special programs dealing with watersheds and something. So the buffer strip doesn't necessarily pay \$150 an acre, but in combination that potentially we can go there. Now, that's a statutory maximum. We don't always go to that extent as well. There will be some acres that we would where there's no other available that the full amount, but that is capped...if the buffer strip is the only contributor, that's capped at \$225. And I'm not aware that we have any at that level. That's the statutory maximum we can allow. [LB581]

SENATOR KARPISEK: So, but I guess my concern is by taking this extra \$10 out of there, we're not going to run our buffer strip dry, right, that fund? [LB581]

RICK LEONARD: Well, we won't in part because the blue line there are projected expenses. I believe it is...no, total expenses is a continuation of where we're at today in terms of how much we annually have commit to meet the landowner payments. Now, what we actually do commit will be commensurate with what resources we will have available. What this chart is telling you is that at least in estimation of the Department of

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Ag, that we could continue to fund the current commitment through fiscal year '17-'18 for current dollar level. Now, understanding that may not necessarily be the same amount of acres. If it's costing us more to bid up acres, we may not get as many acres in as we could, but that would be the case whether or not we did this bill or not though. [LB581]

SENATOR KARPISEK: Thank you for refreshing my memory and reconfusing me on that issue. (Laughter) [LB581]

SENATOR CARLSON: Any other questions? Senator Dierks. [LB581]

SENATOR DIERKS: Rick, I'm sure I missed it, and I'm sure you went over it, but I still have difficulty with understanding why the ending balance continues to go down when the revenue and expenses stay pretty even. [LB581]

RICK LEONARD: Those revenue expenses are...again, that's an assumption based on assuming 3 percent annual inflation in the cost of delivering this program. The salaries, the medical costs, everything that it takes to deliver the program and deliver the functions inflates at 3 percent a year. One of the problems is that the revenue sources here it's based on...there's no inflationary increase in revenues to correspond with the inflation in the costs of the program. It's based on the number of...it's a set amount per the number of products registered. And so we do assume some inflationary increase in what's called the continuation of the General Fund contribution. We assume a base and then we inflate that by 3 percent a year. It's arbitrary. There's actually different ways of calculating continuation, but adding 3 percent a year is kind of a representation of that. So you can see that even where we're at now, you'll see the crosslines, our case reserve draw down. We don't have sufficient revenues, combination of General Funds, and cash fund revenues to fully support the program. So to maintain the program at the current effort level, we would have to draw down cash reserves, cash reserves that are available in the cash fund. That's not unusual. That happens with every fee-funded program. There is a fee cycle that in the early (inaudible) when we set a fee, we gather more revenues than we expend for a time being. Then as inflation catches up, we start spending more money than we're bringing in every year. So you'll see that cash fund balance go up and then down. And usually when we set cash funds, we set them for a five to seven or ten year...usually five to seven year planning horizon knowing that we hope the new fee schedule will last us for five to seven years. Then the Legislature is going to have to come back and look at that again. [LB581]

SENATOR DIERKS: Okay. [LB581]

RICK LEONARD: We actually did a...I'm sorry. [LB581]

SENATOR DIERKS: Go ahead. [LB581]

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RICK LEONARD: We actually did an interim study on that topic, LR80, when you were chairman, and I'd be happy to supply that information. We did a lot of examination. We had a number of funds in the Department of Ag that seemed to be excessive. And we did a lot of examination of the cash funds. And so if the committee has any interest, I have that report done up. I think there's a fairly good discussion of cash fund management in that. [LB581]

SENATOR DIERKS: That would be interesting to see it. So tell me in layman's terms, how are going to solve our problem for the immediate future? [LB581]

RICK LEONARD: In terms of? [LB581]

SENATOR DIERKS: Of funding the weed program. [LB581]

RICK LEONARD: Well, this bill proposes some enhancement of revenues going to the noxious weed program. And if we did LB5...the first chart, if this is the chart you're looking at, number one shows if we did nothing, we would be soon running into a funding deficit. We wouldn't have enough money to sustain the current program. [LB581]

SENATOR DIERKS: I understand that. [LB581]

RICK LEONARD: And the way we're going to...we will never get to this point because the Department of Ag would change its...probably most likely to reduce its field inspector staff by one or two people to bring them in line with the revenues available. This program would, this bill here would increase revenues to...cash fund revenues so we would...between the enhancement of revenues and cash reserves that we have in the fund now, we can cash flow the program through fiscal year '15-'16, which is typical five to seven year planning horizon. [LB581]

SENATOR DIERKS: Okay. Thanks. [LB581]

SENATOR CARLSON: Okay. Any other questions? Okay. Thank you. [LB581]

RICK LEONARD: (Exhibit 7) Senator, may I...we do have a letter that I'd like to introduce in my testimony from Larry Dix in support of the legislation. He's the executive director of NACO. A copy of this letter is behind your tabs and I'll give the original to the clerk. [LB581]

SENATOR CARLSON: Okay. Thank you. All right. How many people do we have testifying as proponents? Okay. [LB581]

CHARLES BROOKS: (Exhibit 4) Good afternoon, Senator Carlson and members of the

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Agriculture Committee. My name is Charles Brooks, C-h-a-r-l-e-s B-r-o-o-k-s. I'm past president of the Nebraska Weed Control Association and a member of the Nebraska Weed Control Association's legislative committee. I'm also chairman of the Riparian Vegetation Management Task Force, which was created with the passage of LB701 during a 2007 legislative session. The Nebraska Weed Control Association was formed in 1947 for the primary purpose of establishing a uniform program to prevent the spread of noxious weeds across the state. Currently, all 93 counties are dues-paying members of this association. I am here today on behalf of the Nebraska Weed Control Association to testify in support of LB581. The Nebraska Weed Control Association, along with the Nebraska Department of Agriculture, shares equal responsibility for the implementation of the Noxious Weed Control Act. The partnership that has developed between the two entities has resulted in a good noxious weed control program being administered in Nebraska. Nebraska's program revived and revised by LB49, sponsored by Senator Dierks, is truly the envy of our neighboring states. The benefit of this consistent, coordinated program are illustrated by the following statistics: In 1990, the four listed noxious weeds infested 3,988,732 acres, and by 2007, even with five additional noxious weeds, only 1,540,027 acres are infested. The noxious weed program, which at one time received 100 percent General Funds as its funding sources, receives approximately 15 percent of its total dollars from General Funds today. The Nebraska Weed Control Association has actively sought a program or funding source that would reduce the dependence on general funding from the Legislature to maintain the basic infrastructure of the Department of Agriculture noxious weed inspection program. The inspection program, with five full-time inspectors, oversees the 93 county weed control programs--I have a map attached on the back that breaks those regions out--ensuring that each weed control authority maintains a viable program. The inspectors meet with each county authority at least once each year, present an evaluation of the weed superintendents program, and work with weed superintendents to help them achieve the goals outlined in the county control plan. New weed control superintendents are educated and trained to spot new noxious weed locations in their counties. The inspectors also physically inspect 1 percent of each county's land to ensure that a viable noxious weed program is in effect. The passage of LB581 will allow the Department of Agriculture to maintain adequate inspector oversight necessary for the continuation of strong county noxious weed control programs. The Nebraska Weed Control Association and the Nebraska Department of Agriculture have demonstrated the benefits of having strong county weed programs in place when LB701 was implemented to protect our riparian areas. Thirteen weed management areas were in place to provide leadership in utilizing 4 million state dollars to reduce the invasive vegetation so our rivers could freely flow through the state. The Department of Agriculture and its inspectors played a vital role in LB701 implementation by administering the grants, coordinating activities and meetings, and helping evaluate the final results. In summary, the Nebraska Weed Control Association would like to thank the Agriculture Committee for considering LB581, and ask that you advance the bill out of committee. The bill would remove the need to reduce the number of inspectors that provide oversight throughout Nebraska on

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all nine noxious weeds. LB581 does not impose a new fee on anyone and, most important, it assures the Department of Agriculture that they will have adequate funding in the future for implementing the Noxious Weed Control Act. Thank you. I'd answer any questions you might have. [LB581]

SENATOR CARLSON: Okay. Any questions for Mr. Brooks? Well, hearing none, I'll simply say thank you for the work that you've done, and I've certainly appreciate it and look forward to it continuing. Senator Dierks. [LB581]

SENATOR DIERKS: Well, thanks. Charles, just for the record, I'd like to make a statement. That I've served on a great number of task forces over my years in the Legislature, but I've never served on one like this LB701 task force. It's been the most positive thing I've ever been involved with. We have really seen great things happen because of that task force and, of course, you're the one that drove the task force. So I wanted to just thank you personally for that. [LB581]

CHARLES BROOKS: Thank you, Senator Dierks. [LB581]

SENATOR CARLSON: Okay. Anyone else? Thank you. [LB581]

JACK MOORS: (Exhibit 5) Mr. Chairman, members of the committee, my name is Jack Moors, J-a-c-k M-o-o-r-s. I'm here on behalf of Nebraska Corn Growers in support of LB581. We have visited with the Department of Agriculture and the people involved in this bill and we want you to know that the buffer program is very dear and near to our hearts. We began the program back in the nineties with Senator Elaine Stuhr. That has been very successful for us. We hope and trust that it will continue once the price of corn gets back to \$2 a bushel and land rent is \$100. Having said that, we know that will never happen again, but we do support this program and ask that you consider this bill. If you have any questions I'd be glad to answer them. [LB581]

SENATOR CARLSON: Okay. Any questions of Mr. Moors? Thank you. [LB581]

DAN WALTERS: (Exhibit 6) Senator Carlson and the Ag Committee, I appreciate this opportunity to testify in favor of this bill. My name is Daniel Walters, D-a-n-i-e-l W-a-l-t-e-r-s. I am a professor of soil science since 1984 at the University of Nebraska-Lincoln, and I'm not an administrator. I have primarily research appointment within the department, but I also teach courses in soil management, plant nutrition, soil fertility, and root soil interface modeling. My intent this afternoon is simply, I hope briefly, outline for you what we would intend to do with the allocation stipulated on the bottom of page 6 and page 7 of the bill. And our proposal is one to attempt to create the delivery of modern science to the farmer in an obtrusive way. We understand and we certainly all know that corn, soybean production must continue to increase in order meet the demands of a growing population, population growing at the rate of about 3.5 people a

second on the world. That's a Lincoln, Nebraska, by the way, every 17 hours that populates this earth. But the state of Nebraska specifically relies quite a bit on irrigation to supplement its productivity. And that has done well in terms of the agricultural economy of the state. But we also know that about 5 percent, only 5 percent, of producers in the state of Nebraska actually have adopted irrigation scheduling in a formal fashion using current technologies. And the reason for that is because of the difficulty farmers have in adapting to the technology, the rigor of the science, and the expense related to water monitoring equipment. Now, if you look at the proposal I put in front of you, there have been some advances that we have made in the last decade that we think we can put forward to the farmer in an easy fashion to use. Our new field research with corn and soybean have identified new approaches to irrigation water management where really the science is now fully vetted. We have had those trials out. We've proved them. They've been published in referee journals, and we've even interacted with our clientele, but in a minimal fashion. We have demonstrated that equal or greater grain supplies really can be achieved with decreasing irrigation water use. Okay. So we recognize that there's a significant opportunity to reduce the consumption of irrigation water and maintain current levels of productivity and even increase levels of productivity with the adaptation of the three things I outlined here. We have developed two user friendly mechanistic crop simulation models: Hybrid-maize and SOYSIS for soybean, Hybrid-maize for corn. They're very sophisticated mechanistic models that allow us the capability of evaluating a previous single year growing season or long-term simulations and the current season in a forward-looking real-time mode. So we can take the current season and look at water use, look at crop growth in a real-time fashion. In addition, practical output of these models include irrigation requirement in both time and amount as estimated based on real-time crop to water requirements. Both are packaged in user-friendly graphic interfaces. We have also learned a lot about crop stage based water requirements to be used in conjunction with salt water depletion monitoring, which is the current mode of advanced water management in cropping systems. And in this mode, we can determine the most effective use of irrigation water, use in scheduling is triggered by the phenological stage of crop growth rather than simply the depletion of water within the soil profile. And we have vetted this out in the last two years with corn growers where we have gone out and pored comparisons with farmers. We've taken over one pivot and compare our irrigation scheduling to weathers last year or I'm sorry, the year before last. Last year was kind of a wet year. In eight comparisons, eight side-by-side comparisons, seven of those we beat the farmer's yield, okay, with three-quarters of the water use, okay, simply by taking this tack and using these models. And, of course, we have the establishment now of the automated water data network by the High Plains Regional Climate Center which allows anyone in the state direct access to long-term real-time weather data that really drives the models Hybrid-maize and SOYSIS. And it's the envy, okay, of the country in terms of access to long-term and quality weather data. So our proposal then is that we feel it's time now, and we have the expertise and the tools, to implement all these advancements in a manner that can provide widespread implementation with a minimum investment and

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training or part of the user. So we're going to develop a sophisticated but simple Web-based graphical user interface that the farmer can access whereby a minimally trained producer or consultant can identify a specific field with aerial photos using Google Earth. Okay. So you just...if anybody here used Google Earth you can find your house, read almost the license plates on cars with it. Well, farmers can take Google Earth and find their field. Okay. So it's really hand-on. NRCS is a superimposed soil data to Google Earth data. Okay. So we can get a soil map of that farm. And with that data we get field-specific salt water characteristics. Then we select the nearby automated water data network station for long-term and real-time crop and water use and climate information and for precise crop staging for irrigation timing. And this has been a real problem, crop staging, because it's often very difficult to stage a crop as it develops because it requires you to take preliminary measurements at the start of the crop. And we can talk about that later if you want, but it's a difficult thing for farmers to do to stage a crop precisely. And then all the farmer really needs to do is input periodically during the season, field specific precipitation, okay, or irrigation data. And then view on this Web-based information a specific salt water balance and irrigation scheduling recommendation generated by these models running in the background, okay, against real-time climate data that's occurring in the field that we get from the high plains weather station. So it takes minimal training, doesn't take any knowledge of differential equations or water balances or the Penman-Monteith equation. Okay. It's simply plugging in what rainfall I've had and when I've planted my crop and what crop I have planted, okay, to achieve a feedback in terms of irrigation scheduling that is modern and scientifically based with the best tools we have. So we anticipate the impacts to be an increase in the usage of really precise irrigation scheduling from 5 percent to 20 percent, okay, within the first 2 years. And what we would be using these dollars for primarily is the development of this Web site would be the majority of dollars would be spent for personnel costs. We need a good mathematician and a good programmer to unite these programs with Google Earth, create the interface, okay, and also a fair percentage of the allocation would go to outreach programs. So we would take this to the farmer, work on a one-to-one basis in counties, bring this to them, and the best advertisement we can get are when we get farmers involved in the use of product that we have because in the coffee shops during the wintertime, that's when that information pays off. With that, I'll stop and take any questions or field any questions you might have. [LB581]

SENATOR CARLSON: Okay. Thank you, Dr. Walters. Senator Price. [LB581]

SENATOR PRICE: Senator Carlson, thank you much. Dr. Walters, you've piqued my curiosity. Twenty years in the Air Force weather agency and seven years Air Force Agency Global Weather Central, when you talk of weather modeling and weather data sets, I'm curious to know if you've tapped into their vast resources for a lot of the modelling data that's already collected? And they're charged with collecting all this data worldwide, so I'm sure the data sets are available already there at AFGWC global or the

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weather service at Offutt Air Force Base. [LB581]

DAN WALTERS: Well, they are limited and the one limiting piece of information in those weather databases is solar radiation. Okay. Solar radiation drives both Hybrid-maize and SOYSIS, and most of those databases are lacking in solar radiation. We have precipitation, snowfall, snow depth, wind speed, relative humidity. Solar radiation is really key. And that's one thing, we're not collecting new weather. We're not proposing to collect massive data sets of weather. We have that in place with the High Plains Regional Climate Center. [LB581]

SENATOR PRICE: Um-hum. [LB581]

DAN WALTERS: We have a network of automated stations that is, like I say, the envy of most crop growing regions of the world because it is very dense. So we can pinpoint weather data within 10 to 15 miles of any location in the state based on the density that we have of weather stations. Now you say, have we tapped into the federal government? Yes. We're using now Hybrid-maize on a global basis in Indonesia and South America where they have no weather databases, but we're tapping into NASA. So we have the opportunity to use NASA's satellite weather database, okay, where they're estimating solar radiation from reflectance. And the thing is, we need past weather data as well as current real-time data. Past weather data allows us to develop the statistical analysis... [LB581]

SENATOR PRICE: Right. [LB581]

DAN WALTERS: ...of the probability of return on an irrigation event given rainfall and productivity level potential of a given region. So solar radiation has been the primary problem. [LB581]

SENATOR PRICE: So if that's one parameter, solar radiation, I will go back and I will engage my brethren at Air Force Weather Agency and find out. [LB581]

DAN WALTERS: Um-hum. The other thing is density of that information. Okay. [LB581]

SENATOR PRICE: Sure, sure. I understood from your model. [LB581]

DAN WALTERS: Right. [LB581]

SENATOR PRICE: But I just wanted to make sure that as you know, were aware we have a tremendous capability here within the state and we're always looking for ways to leverage technologies and data sets. And I just want to ensure when you talk about that and that the joint Air Force army weather information network, which is a very large Web-based application where you can... [LB581]

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DAN WALTERS: Um-hum. [LB581]

SENATOR PRICE: ...generate products worldwide at the touch of a button. [LB581]

DAN WALTERS: Right. And like I say, we have... [LB581]

SENATOR PRICE: And then we could talk about that offline at any point in time. [LB581]

DAN WALTERS: We have engaged NASA, actually, in obtaining global weather data, the type of data we need to run a plant growth model. [LB581]

SENATOR PRICE: Okay. [LB581]

DAN WALTERS: Yeah. [LB581]

SENATOR CARLSON: Any other questions of Dr. Walters? Senator Dierks. [LB581]

SENATOR DIERKS: Thank you, Senator Carlson. Mr. Walters, when you talk about phenological timing, are you talking about what the plant looks like at a certain phase? Phenology or phenotype in cattle, you're looking at a picture of an animal. Genotype you're looking at the inside and figuring out what they're composed of. [LB581]

DAN WALTERS: Yes. [LB581]

SENATOR DIERKS: What's that mean here? [LB581]

DAN WALTERS: By phenology, I mean the progressive time development in change and stage of growth of the plant as it develops. So when we say phenological staging of an irrigation event, we're saying that the probability of an irrigation event, although soil depletion may warrant it at this point, the probability of return on a grain yield is low. And that usually occurs during the vegetative portion of grow. We're capable of reducing most of...a quarter of our water input during the vegetative stage of growth in maize, and I'd say 10 to 15 percent in soybean during the vegetative stage of growth. And I can explain what that does, but that's what we mean by phenological, the stage of growth of the... [LB581]

SENATOR DIERKS: Okay. Now, when you're talking about maize, I mean, can you...is that a synonym for corn? [LB581]

DAN WALTERS: Yes. I'm sorry. I use maize all the time. That's the international... [LB581]

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SENATOR DIERKS: Well, we've seen, with the advent of ethanol production, complaints from people in the feeding industry, the standpoint that they don't have as much corn today to feed to their hogs and cattle. And I argue that we produced more corn today for cattle feed than we did before we started making ethanol because of our ability to...we do a better job technologically raising corn. Am I wrong or am I close? [LB581]

DAN WALTERS: Well, we have a steady increase in the productivity of maize. It amounts to about 1.7 bushels per acre per year increase in growth, very steady, steady increase in growth. Okay. So if you look at that 1.7 bushels per acre, that's about a 1 percent, maybe 1.5 percent increase. The average yield of corn is about 140-some bushels nationwide. So it's a little over 1 percent increase per year in the production of grain. You know, it's interesting to note, if you look at nitrogen consumption in corn, it has not gone up since 1980. If you look at the federal statistics nitrogen consumption per acre on corn, it's been level since 1980. Okay. And the increase in yield we're seeing is accompanied by an increase in nitrogen use efficiency. Just based upon good agronomy, advanced technologies, good fertilizer management, all the things we like to pat ourselves on the back for in the work we do. But you're right, we do have an increase, but it isn't keeping pace with world demand. And that's a serious concern in both rice, wheat, and corn, the three major crops is that world demand for those grain stocks surpasses the rate of increase in yield that we're realizing at this time. [LB581]

SENATOR DIERKS: Thank you. [LB581]

SENATOR CARLSON: Okay. Any other questions? Thank you, Dr. Walters, for your testimony. [LB581]

DAN WALTERS: All right. [LB581]

ALICE LICHT: Senator Carlson and members of the Ag Committee, my name is Alice Licht, and that's A-l-i-c-e, last name is L-i-c-h-t, and I represent the Nebraska Agri-Business Association, which would be local cooperative and independent fertilizer and chemical dealers, seed dealers, manufacturers of those products. We appear in support of this legislation today. Originally when this bill was being discussed this summer, there was talk of possibly increasing fees to help fund noxious weeds. And in the bill it provides, and over the years, the label fee for a company that sells pesticides in this state. There are several things that that pays for. For example, an ag pesticide pays \$110 toward the groundwater quality fund that is utilized by the NRDs; a portion goes to noxious weeds, which was introduced by Senator Dierks; a portion goes to the buffer strip fund, which was introduced by Senator Stuhr; and then on specialty pesticides, which would be like Clorox and Lysol, there's a fee that goes to the state for administering that program. So we appreciate that, Senator Carlson, not increasing that

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fee and making the adjustment. If you'll look in the legislation, essentially it is drafted that a portion of the buffer strip fund goes to noxious weeds, and it is reduced by \$10, so we are supportive of that concept. The second concept we support is what Dr. Walters just discussed, and that is the water efficiency study at the University of Nebraska. The additional funds that are available to make that happen...you know, if you'll notice in the bill there's \$100,000 that goes to the noxious weed program, and there's \$100,000 which would be made available to the Department of Agronomy and Horticulture at the University of Nebraska. As our retailers work with farmers, we're dealing with less and less water in certain areas of this state, as many of you are aware. In the Republican River area, in the Pumpkin Creek area, out in the Scottsbluff area we are having to drastically reduce our irrigation water and the amount of water we can use. This particular study, as he indicated, shows that crops can be grown with less water, and we would love to see those dollars, which there are excess of, out of the fees paid by our pesticide companies to go to something that would benefit agriculture, particularly in the water areas. So we support those concepts in the bill. And I thank you for allowing me to testify, and I'd be happy to answer any questions. [LB581]

SENATOR CARLSON: Okay. Any questions? Seeing none, thank you. [LB581]

ALICE LICHT: Thank you. [LB581]

KENNETH WINSTON: Good afternoon, Chairman Carlson, members of the Agriculture Committee. My name is Ken Winston, and I'm appearing on behalf of the Nebraska chapter of the Sierra Club in support of LB581. My last name is spelled W-i-n-s-t-o-n. We support efforts to control invasive weeds and that's...we supported the original program that was enacted and became part of LB701 two years ago, and we're pleased at the efforts that have been made so far. And actually to my knowledge the success...it's been a tremendous success story. It's succeeded beyond what a lot of people thought it would be able to do. And so we really want to continue supporting that effort because effective control of invasive weeds is a very important tool for improving the flow of streams. And as you know, streamflow is one of our big issues. We want to maintain the flow of streams. And although we don't comment on the appropriateness of the funding sources because I don't really know about the...I mean, I'm trusting that Senator Carlson and your able staff understands the various funding sources, so we're trusting that you know best as to how to achieve that. But we're supporting having a funding source for this program. And so we're supporting LB581 for that purpose. We also enthusiastically support the research and the efforts that are being made to conserve water in production agriculture while maintaining yields, because that's something that could pay tremendous dividends for the people of the state, environmentally and economically and on every level. So we definitely support those aspects of the bill. I'd just like to make a couple of comments. As I've said before, we always ask that when weeds are removed, they be done in a way that's environmentally appropriate. And we also support the idea of research into ways of utilizing those

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products in ways for fuel, for example, as Senator Schilz's bill envisions or Senator Louden's bill, the biomass bill, there may be some opportunities to use some of these products in that way. Would be glad to answer questions. [LB581]

SENATOR CARLSON: Okay. Any questions for Mr. Winston? Senator Dierks. [LB581]

SENATOR DIERKS: Thank you, Senator Carlson. Ken, does the Sierra Club have any dollars running around out there that could be applied to the weed program? [LB581]

KENNETH WINSTON: (Laughter) I'm not aware that we have any spare dollars, Senator Dierks. [LB581]

SENATOR DIERKS: (Laugh) Thank you. [LB581]

SENATOR CARLSON: Worth asking. Any other questions? [LB581]

KENNETH WINSTON: If we find any, I'll let you know. [LB581]

SENATOR DIERKS: Okay. [LB581]

SENATOR CARLSON: Okay. Thank you. [LB581]

KENNETH WINSTON: Thank you, Senator. [LB581]

SENATOR CARLSON: (See also Exhibit 7) Any other proponents? Any opponents testifying against the bill? Anyone in neutral testimony? Okay. Seeing none, that concludes our hearing on LB581. And we go to our last bill of the day, LB641, and Senator Schilz. Welcome to the committee. [LB581 LB641]

SENATOR SCHILZ: Thank you very much, Senator Carlson and members of the Ag Committee. For the record, my name is Ken Schilz, K-e-n S-c-h-i-l-z, and I represent the 47th District. I'm here to introduce LB641, which introduces the concept that was presented last session in the form of LB1053. The intention of LB641 is...excuse me, excuse me. LB641 assigns authority to the Director of Agriculture to provide a direct production incentive that may be claimed per our producers of renewable diesel utilizing advances in conversion technologies and systems that meet this certain criteria. LB641 includes the following substantive provisions. First, it states legislative finding of public interest in encouraging research and demonstration, technology transfer on commercialization of innovative means of renewable diesel production, and states legislative intent to provide the incentives to the renewable diesel energy. Two, it provides for a renewable diesel technology transfer and commercialization production incentive of 30 cents per gallon within limitations set forth in this section and elsewhere in the bill. The intention of LB641 is not a general incentive for investment in renewable

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diesel facilities, rather it's intended to stimulate research, demonstration, and technology transfer in providing a risk premium for early efforts to commercialize innovations in producing renewable diesel. Particularly, the bill focuses on stimulating private sector use of those methods and technologies, especially those that may be capable of more efficient conversion methods. And we've got some folks here that will be testifying that will be able to answer any questions. I would like to say thank you to Rick for all of his work that he has done on this in the past. And with that, I'd be happy to answer any questions. [LB641]

SENATOR CARLSON: Okay. Thank you, Senator Schilz. Any questions? Okay, and do you want to close on the bill? [LB641]

SENATOR SCHILZ: I'll go ahead and close. Must be getting late, huh? [LB641]

SENATOR CARLSON: And how many proponents do we have? Okay. [LB641]

KENNETH WINSTON: (Exhibit 1) Good afternoon, Chairman Carlson and members of the Agriculture Committee. My name is Ken Winston, last name is spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska chapter of the Sierra Club in support of LB641. I'm just going to...my testimony is brief, so I'm just going to go through it quickly. We support LB641 for the following reasons: It is important to develop renewable fuel sources that make beneficial use of materials that would otherwise be discarded as supported by LB641. Secondly, making good use of Nebraska resources provides economic benefits for Nebraskans, including creating jobs. And finally, using native resources will help Nebraska and the nation in the effort to become independent of foreign oil sources. We're asking that LB641 be advanced. [LB641]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of Mr. Winston? [LB641]

KENNETH WINSTON: And I'm not one of those experts that Senator Schilz was referring to. (Laughter) [LB641]

SENATOR CARLSON: Okay. All right. Well, that's good to know. Okay. Thank you. [LB641]

KENNETH WINSTON: Thank you, Senator. [LB641]

ROBERT BYRNES: (Exhibit 2) Good afternoon, Senator Carlson, members of the Agriculture Committee. My name is Robert Byrnes, B-y-r-n-e-s. I'm here as representing Nebraska Renewable Energy Systems of which I am the owner, and the Nebraska Renewable Energy Association of which I am president, also, as the first commercial producer of biodiesel in the state of Nebraska. I come here to support LB641. And I've

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been involved with this and I also thank Rick for his work on this and Senator Schilz for bringing this forward. In my testimony, I refer to this as LB626, which I think is the original bill. How much things have changed since last year in this time in regards to biodiesel? It is a different world. A year ago when we visited on this bill as LB1053 before the Ag Committee, and I'll never forget my exchange with Senator Chambers at that time, but we were looking at the first generation expansion of biodiesel like just was wide open. We had plants in the process of popping up all over the state utilizing some of the 500 million gallons per year of oils that we produce here annually. One year later we sit here with one plant left. Everything else is scuttled, up for auction, already sold or the project has been completely abandoned. The only project that has survived is northeast Nebraska in Scribner, which I was involved with from day one, and that is a vertically integrated facility. They don't buy oil, they buy seed in most cases, and their only limiting factor was the fact that they couldn't squeeze all the seed to supply that plant. But the fact that they had an oil refinery, they can take scrap oil from...they're actually processing corn oil right now from an ethanol plant and selling it as animal feed to have a vegetable refinery in there. The vertical integration saved them or we would have nothing. We got into the industry late, largely because of the lack of incentives in Nebraska. Nebraska has a 600 million gallon per year diesel consumption. We have the largest diesel consumption on the farm in the Midwest. We have tremendous ready market here for a fuel, but we've been buying. We actually had seeds leaving the state, getting processed, and coming back, and now we're back to that. It is clear the first generation feedstock such as soybean and canola oils have run their course much like corn ethanol which in a similar situation. Both renewable alcohol and diesel now find themselves in a gap that must be bridged to access the second generation feedstocks. Renewable diesel production in Nebraska can provide tremendous value through economic development for rural areas. The northeast Nebraska facility in Scribner clearly shows the impact to a local rural economy and, as I mentioned, is the only surviving commercial facility in the state. This industry is now in recession as ethanol and renewable diesel facilities that had based their inputs on refined soybean oil were the first ones to go out of business. Renewable diesel, though, still has a tremendous requirement in the renewable fuels stand federally. And the need for second generation feedstocks is great. And I did have the opportunity this past summer to testify before Congress in this regard. And this is very important area and I think a lot of the federal subsidies both that came down at the end of the year last and are in the process of coming down reflect this need. The goal of LB641 is to support the pilot research into these second generation feedstocks so that these efforts will result in development here so that Nebraska will benefit in the long term. We missed the first round, let's get in the second one. I talked about the facilities. I mentioned the names of some of the facilities that have halted construction. I was involved in many of them. I'm glad I have other things that I can do to support my family because this was quite an event here that happened this past year. A hundred million gallons of biodiesel production was scraped in the last 12 months. Of each 10 million gallons of production, NPPD's research documents indicate \$33 million of impact to rural economies per 10 million gallons.

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LB641 outlines a program that will provide a 30 cent per gallon production incentive for facilities for a maximum of 24 months and/or 2 million gallons in the form of transferable tax credits. This up-front boost to help research facilities and small plants get started on the right foot. This amount would essentially provide a 4 cent a pound feedstock buffer used to create biodiesel. Biodiesel...and I use the term...I slipped and used the term biodiesel, and I'll mention the difference here. I actually wrote it too. Okay, I'll mention the difference here. The production of biodiesel, 75 percent of the cost of finished goods for a gallon of biodiesel is feedstock. So when soybean oil...when we started the northeast Nebraska biodiesel plant three years ago or so, the feedstock cost from soybean oil was 23 cents a pound, and that was a ten-year average. That worked great. At 50 cents a pound, at 30 cents a pound it's getting tight; 35 cents a pound it's not looking good. And those were based on those historical models. Soybean oil is tied to petroleum, which went up with petroleum. When petroleum dropped down, it uncoupled from petroleum and never went below 30 cents. The original bill had qualifications for the program that required majority of Nebraska ownership and feedstocks. While this would not preclude out of state investiture, it does ensure the ownership of a taxpayer subsidized facility remains in Nebraska. I would support the insertion of this language to the bill as defining a qualified producer. Transferability of the credit should also be addressed, and I mention this again. This bill uses language that refers to renewable diesel, which includes but is not limited to biodiesel. The term biodiesel has been trademarked and the ASTM testing which defines it has been built around the soybean model and soybean feedstocks. Renewable diesel refers to fuels produced from other feedstocks and processes which will not meet ASTM standards, but will operate the diesel motor in the same manner. This broadening of the definition for renewable diesel in this bill echoes that which is occurring with federal incentives as well. The original diesel motor was designed by Rudolf Diesel at the turn of the century to run on straight vegetable oil, in that case peanut oil. This is an example of a fuel that can...now, this is a lighter alcohol. And eight chain in the highest size in here. Diesel starts at 14 and then goes up to 18, carbon chain length. This is a Fischer-Tropsch fuel and it comes from gasification. Gasification is the process of the Germans used in World War II to make liquid fuel from coal. This is the first example of this product being used in Nebraska. Just the same, this would be used for an alcohol-like gasoline replacement. Those same renewable diesels can be produced from gasification processes where we're burning solid wood, cellulose, anything that will burn with the exception of iron, ceramic can go through gasification process and be converted to liquid fuels. This fuels would not meet...if this was a renewable diesel from a gasification process, it would not meet ASTM requirements, but it would run a diesel just the same and displace the petroleum gallon one for one. Qualified production is capped at 1 million gallons per year to incent the decentralized production of the second generation fuels. A greater number of smaller, locally owned facilities will clearly provide a much greater economic development footprint in our rural areas where these materials are both produced and consumed. This cap will help level the playing field to allow a number of facilities to take part in this incentive. Also, a suggestion for the language: When these qualified facilities

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receive this taxpayer subsidy, they should also be required to allow some portion of their product to be made available to local markets. I know there's a similar bill addressing this in the ethanol arena in terms of having these fuels accessible to local markets. And then transferability of the qualification was addressed in the original bill and it is not in LB641. There were some problems with the ethanol incentive in terms of the initial entity qualifying, and then the ultimate entity receiving was not the same because it was not addressed in those original incentives, so that might be considered by the committee. LB641 is a sorely needed and progressive research incentive for these production facilities to find these long-term feedstock pools that are not part of our food supply. These facilities will be working research facilities and such incentives in this direction is intended to result in the development of Nebraska-based intellectual property. To date, there is little or none in any field of renewable energy. This incentive could also encourage producers to use Nebraska produced ethanol over toxic methanol, and help drive the innovation that will address long-term feedstock supply issues. In short, I believe this is an excellent bill. I think it has been reviewed over the years, various amendments have been applied to it. The initial scope has been significantly reduced to decrease the fiscal cost of such a program. I think at the level that it's currently at to me represents a minimum size really to make any significant impact. At 2 million gallons per year at 30 cents a gallon, that's \$600,000 a year. That is a lot of money. It's transferable tax credits is probably the best way to fund that as most of those tax credits are taken out of state. I hope the committee will choose to move this bill out of committee and into Select File and support it so that we can be a part of this next stage of development for second generation biofuels. Algae is another one, there's many examples, I think, of the second generation feedstocks that are available, nonfood feedstocks like Camelina crumby (phonetic) oilseed crops themselves, recycling of corn oil from ethanol plants, other waste streams. I mean, with today's technology, you can convert municipal solid waste into liquid fuels. These are the kinds of things that this bill would target to incent. With that, I'll take any questions. [LB641]

SENATOR CARLSON: Okay. Any questions for Mr. Byrnes? Senator Dubas. [LB641]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Robert, for your testimony. It's always enlightening. Tell me what your thoughts would be should we not advance this bill and nothing happens? [LB641]

ROBERT BYRNES: Well, to do nothing as was...if you look at the surrounding states in the Midwest and Iowa, just really all around us where the vegetable oils were present and there is a significant biodiesel industry. They took a hit, but a lot of that still exists. Just like the ethanol, they took a hit, but it's still there. They're rebounding, they're better for it, the survivors anyway. Because Nebraska has...in the first round had no incentive, you know, when producers look at all this energy, you know, the incentive is the icing on the cake and that's what makes the final decision. And we still have very stunted growth in the first round. If we don't do anything for the second round we can expect similar

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results. If you don't plant the garden, you cannot expect a crop. And that is the role of government is to create...in my view, is to create energy policy that fosters economic development and jobs. If we do nothing, we can expect nothing is the short answer. [LB641]

SENATOR DUBAS: Thank you. [LB641]

SENATOR CARLSON: Senator Dierks. [LB641]

SENATOR DIERKS: Thank you, Senator Carlson. Robert, you did a great job, like Senator Dubas says, as usual. [LB641]

ROBERT BYRNES: Thank you. [LB641]

SENATOR DIERKS: One of the mistakes we made with the ethanol industry was we let the control of the ethanol product get away from us. It seems to me like when you're talking about intellectual property rights, you're trying to keep that control in Nebraska. Is that right? [LB641]

ROBERT BYRNES: Absolutely. I'd like this research and certainly the...you know, there's a lot of big brains in the university. That information, that knowledge needs to be planted in Nebraska businesses so we have the businesses here, not only to foster the industry here and provide those jobs, but to sell other states things so we don't have to always buy from them. There is not one plant except for the Mead plant which came from Prime BioSolutions, there is not one plant, one ethanol plant in Nebraska that came from Nebraska, even though we have a 30-year history with ethanol. The basing of intellectual property is the ultimate owners, and the owners are the ultimate winners in renewable energy development. As C-BED strives to keep ownership to the public...that is the intellectual property, the ownership. So if we don't have the intellectual property, we don't have the ownership, we're just consumers from a technology standpoint. [LB641]

SENATOR DIERKS Thank you. [LB641]

SENATOR CARLSON: Okay. Any other questions? Yeah, Senator Wallman. [LB641]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thank you, Mr. Byrnes, for coming. I always enjoy your testimony also. [LB641]

ROBERT BYRNES: Thank you, Senator. [LB641]

SENATOR WALLMAN: Now, this here, the ones that are setting empty now are...would they, do you think this would be enough to get them going, like Beatrice? [LB641]

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ROBERT BYRNES: Beatrice...as it stands now, Beatrice would qualify because it uses a novel technology to solve catalyst. [LB641]

SENATOR WALLMAN: It's supposed to be the latest, I guess. [LB641]

ROBERT BYRNES: Right. That is a new technology. That's the Axis technology from overseas. That would have qualified...the original bill would not have qualified because it was foreign owned. [LB641]

SENATOR WALLMAN: Um-hum. [LB641]

ROBERT BYRNES: Without that stimulation of Nebraska ownership it would qualify because that is a novel technology even though it uses a first generation feedstock soybean oil. The program has been reduced in scope. I think the original scope was 10 million gallons a year, but from a fiscal standpoint that's been reduced to 2 million gallons a year under which no one producer can claim more than half. So I'm not sure that that would be enough for a facility that size. I'm not sure that that would be enough to breath life into that particular project. However, I am work...I don't know, the value-added grant was just awarded to a facility that I'm working with in developing in Springfield, Nebraska. And that's going to utilize cellulose ethanol and hybridize with biodiesel on the farm that will use the technology that will differ from the reactor technology here, but on the back end of the process will utilize a technology that would apply for this. There's a number of facilities that are contemplating the use of recovering corn oil that would...something like this is meant to push them over the edge to do it here. So that particular case, I think that's a 50 million gallons plant, 1 million gallons is a very small part of that. [LB641]

SENATOR WALLMAN: Okay. Thank you. [LB641]

SENATOR CARLSON: Okay. Any other questions? Yes, Senator Price. [LB641]

SENATOR PRICE: Senator Carlson, thank you. Sir, being new to the committee and to Legislature, I haven't looked at this subject in this depth. So I have a question and I apologize if it is too rudimentary, but it is born out ignorance. And that is I see two things here: One of them is how we've termed biodiesel. If we just re-termed biodiesel without anything else, how would that help the situation here in Nebraska? [LB641]

ROBERT BYRNES: I'm not sure...are you talking about in terms of re-termining biodiesel in this bill? [LB641]

SENATOR PRICE: Yeah. And in general because you said the ASTM and the testing, and you brought out the goo and the whole thing,... [LB641]

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ROBERT BYRNES: Right. [LB641]

SENATOR PRICE: And I'm just wondering if we have incentivizing to do studies and then we have renaming of the available feedstocks and using them. So it seems to be there could be two elements here that we're asking for, not just one. []

ROBERT BYRNES: Well, the naming is, as I said, biodiesel is a trademark term. And the term for a material to be able to be called biodiesel, it has to meet the testing regiment that is established by ASTM 6751-04 I think it's at now. That is a very strict regiment, it is a very difficult test. Small producers, you can't...there's no way you could do that testing. Ethanol, I just drop a hydrometer in. No problem. You got your proof counts. With biodiesel, the determination of free and total glycerin in particular is very, very demanding. But when this industry started so quickly, that term was picked up and used for any renewable diesel. And what's happened is as we move away from first...now, the biodiesel standard, the ASTM standard was generated with all credit to the soybean checkoff funds that were used to both create market acceptance through a standardized fuel, to allow mixing at the terminal level ultimately in down to assure the petroleum boys that they're going to be getting a consistent product that is rigorously tested, okay, to be able to have it mixed at the pumps. And that requirement is appropriate. And there are also other political ramifications of that standard as the European standard was built to keep soybean oil out of Europe. Okay. So there's other things there. But the motor doesn't care. The motor will run on most any of it, and I've been running...I have an off grid...my farm is off grid five years next month. And I've been running a non-ASTM biodiesel through my standby generator for almost four years with no problem. The motor doesn't care, it's everything else. So what I'm seeing on the federal level is that as this advanced technology is coming around, we can make stuff out of all kinds...we can make fuel out of this table, except the glass part. The technology is there. So what we need to do is broaden the definition. We can't come in and require the soybean board to change the biodiesel definition. They've worked hard for that. They've paid for that testing. That's their trademark. But we can expand the definition. And we're seeing that in federal, at the federal level by biodiesel appearing in quotes or biorenewable diesel or bio...all different subtle changes. I think ultimately if the fuel is to be used for general consumption at the retail pump, it needs to meet a commercial standard, whether that's the ASTM standard or another that comes behind it, so that the consumer and distributor knows that they have something that meets a certain criteria that's been established and tested. For this because LB641 is trying to establish research and innovation, if we require that, who's to say how...they want to put this in a test engine and do the test trials. That's part of the research and development aspect of it, and that's the most valuable work we would want to promote through something like this. So I think renewable diesel includes biodiesel, but not the other way around. [LB641]

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SENATOR CARLSON: Okay. Any other questions? Thank you for your testimony.
[LB641]

ROBERT BYRNES: Thank you, the committee. [LB641]

CRAIG HEAD: Good afternoon, Senator Carlson and members of the committee. My name is Craig Head, C-r-a-i-g H-e-a-d, and I'm here today on behalf of the Nebraska Farm Bureau to offer our support for LB641. I would just offer some broader, general support for LB641 based on some policy that we have as an organization that supports renewable fuels production and development of programs to help us grow a viable renewables fuels industry here in the state. As has been referenced, the bill targets more research and alternative renewable diesel fuel production sources. Just specific to the bill a few things that we do like about it (1) it does very specifically target the incentives, so that's a good thing, (2) as was referenced earlier about the fiscal situation, it does limit the exposure of the state to \$600,000 which we think is positive in this current climate. And then finally, in terms of review of the applications and the process, the inclusion of the industrial ag products center at the University of Nebraska-Lincoln in determining which types of projects would receive incentives under the program. So with that, the last thing I'd just comment on is any time that we can get some economic development opportunities at the local level through these alternative-type programs, we're supportive of that. So with that, I would conclude my comments. [LB641]

SENATOR CARLSON: Okay. Thank you. Any questions? Thank you. [LB641]

CRAIG HEAD: Thank you. [LB641]

SENATOR CARLSON: Anymore proponents? Anyone opposed? Or a neutral position? Okay. [LB641]

LOREN ISOM : Senator Carlson, members of the Ag Committee, I'm Loren Isom with the University of Nebraska Industrial Ag Products Center, and... [LB641]

SENATOR CARLSON: Would you spell, please? [LB641]

LOREN ISOM: (Exhibit 3) It's L-o-r-e-n I-s-o-m. And I do have a written copy of my testimony here as well, I guess. But as an employee of the university Industrial Ag Products Center, I've spent the past six years working on renewable fuels, specifically in the area of renewable fuel feedstock processing and industry development. Dr. Hanna the director of the center has 30 years of experience working in biofuel processing technology and feedstock availability, whether that's traditional, alternative, and then market applications related to that. So we bring off of that experience to bring to the Department of Agriculture in reviewing the technologies that might qualify for this

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incentive in that regards. The goal of the center is to provide accurate information to constituents that may or may not be looking at working in the area of biofuels. And specifically to this bill our interest isn't specifically for or against incentives, but to bring awareness to the opportunity available to Nebraska to add value to our renewable resources. So that's kind of where I come from on the criteria that...or the way the bill is written for the Department of Agriculture to consult with the Industrial Ag Products Center on reviewing technology. I think our center, as well as other faculty from the university, can bring some expertise to help evaluate or analyze those processes and those feedstocks, and that would be our goal is to help set the criteria for that evaluation. Just in reiterating a few points that Robert made, you know, the bill can provide technology, the enhancement of technology or one the other side, a broadening of the feedstock base. And that's a critical component as he said because that makes up such a large percentage of the end product cost. Just to highlight a little bit more as well, some points that I add there is that Nebraska is a leader in the production of soybeans and livestock, the two commodities that can be processed to provide a large pool of feedstock for biodiesel production. And if we look at that, Nebraska produces about 200 million bushels of soybeans, and slaughters 7 million cattle. If you look at those two sources combined, that could be enough feedstock to produce 400 million gallons of biodiesel or renewable diesel. In that sense and for prospective purposes, the energy office statics estimate that total diesel fuel consumption in Nebraska is approximately 600 million gallons a year. So, you know, that could be an opportunity to create a domestic, to Nebraska, source of fuel to supply our diesel...a replacement for diesel fuel. Robert mentioned some other feedstocks, those are listed there as well. Corn oil from the dry grain ethanol industry just seems like a real obvious resource that currently goes to cattle feed at a very low value caloritic input. And it could be put to a much higher value use, in my opinion, as a fuel source for biodiesel feedstock or renewable diesel feedstock. Other royal crops besides soybeans or corn oil that can produce much greater oil or feedstock per acre of production could be utilized. The high oil producing algae, that's something that a lot of research is being done, and Robert mentioned that as well. One of the key components with that is there's a lot of research to be done on that. The algae system sound very intriguing in that they can produce huge amounts of oil on limited quantities of land. But there's a lot of research that needs to be done to figure out how to that most efficiently, how to extract the oil from that material, and then how to...also whether it's cost-effective over the long term. And also the biomass resources that could be thermochemically processed that he referenced that would make a biocrude or a synthetic gas that could be further processed to make these alternative diesel fuel products that would work. So I guess that with the renewable diesel production beyond biodiesel is really in an infancy stage, commercially speaking, and that's where...regardless of whether it's biodiesel or renewable diesel, it's going to face some of the same challenges. And that's that the biodiesel industry across the United States is seeing very tough times in their economic market as far as processing margins. Here closer to home in Nebraska we've got maybe 70 million gallons of production capacity that is at some stage of development. So that's looking at

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the Beatrice facility that makes up the most of that, that facility is basically 80 percent, or better, finished. But with the situation for the processing margins and the financial situation of its owners is in bankruptcy at this point, it was something to help a technology of that size would be interest. And I agree with Robert's assessment that something that's limited like this bill is, it probably isn't going to have dramatic effect to, say, a buyer of that facility, but it may be a little nugget in that consideration. But in Nebraska we've produced less than 5 million gallons of biodiesel to date. So very limited production has actually taken place in the state. And with that, I expect most of Nebraska's biodiesel feedstocks that we have great resource will be processed out of the state again in facilities that are operating at partial capacity. So, again, it will be a situation of export our feedstock for somebody else to add the value added processing to it, and then in some cases bring that product right back to Nebraska to consume. I believe that Nebraska has opportunities to overcome these challenges that challenge and add value to the royal commodities we produce and the value added process taking place in Nebraska. And I believe that will have a positive economic impact. If you have further information, I've got outlined it on here as well as additional resources. And if you'd like, I could coordinate with other members of the university to provide a presentation that could provide specific issues that you might be interested with regarding technology in this area. Thank you for the opportunity to testify today, and I'm glad to clarify any points or answer any questions you might have. [LB641]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Okay. Thank you. And I think that...anymore in neutral position? Okay. Senator Schilz. [LB641]

SENATOR SCHILZ: Thank you, Senator Carlson, members of the Ag Committee. First thing I want to do is apologize to you. Senator Carlson, this morning you asked me if this thing created a funding mechanism or not, and it does. And so I need to set the record straight with you. Whether or not the Legislature vows to appropriate anything to that does not kill the bill, which I think is important. And I think the gentlemen from the university made that clear that not only is this about funding some of this stuff, but it's also about saying, hey, we're open for business and we're willing to work with you. So I would want to clarify the record that way and I apologize for that this morning. I would also like to say that in talking with Mr. Byrnes and with the committee, I would more than happy to entertain amendments to answer his concerns and concerns of the committee. And with, I don't have anything else. I just hope that I can get the support of the committee. And I thank you very much for your time today. Any questions. [LB641]

SENATOR CARLSON: Okay. Any questions? Yes, Senator Council. [LB641]

SENATOR COUNCIL: Senator Schilz, my question relates to your statement that if the Legislature doesn't appropriate the money... [LB641]

SENATOR SCHILZ: Um-hum. [LB641]

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SENATOR COUNCIL: ...for the incentive, it doesn't kill the bill. [LB641]

SENATOR SCHILZ: Right. [LB641]

SENATOR COUNCIL: But isn't that what the intent is to encourage the development of the renewable diesel production, and if there's not incentive associated with it, how do...and I'm referring back to... [LB641]

SENATOR SCHILZ: Sure. [LB641]

SENATOR COUNCIL: ...Mr. Byrnes's testimony about the people who undertook to do this and didn't have...well, for the commodity issues and financing issues, he went out of business or never got off the ground. [LB641]

SENATOR SCHILZ: Right. [LB641]

SENATOR COUNCIL: What would occur here if the funding isn't here? [LB641]

SENATOR SCHILZ: And I'm with you. The only thing that we would have then is then we would have vehicle that at a later date...because not only are we taking in money from the Legislature perhaps, but if you look in the bill here it talks about taking in from private sources, grant funds, things like that. So there may be other opportunity for funding besides the Legislature. And I'm always looking for ways to pay for things with monies that are brought from other sources other than state coffers. So that's the only thing that I would say there. [LB641]

SENATOR COUNCIL: Okay. But my concern is that, you know, if we enact this legislation, someone like Mr. Byrnes goes and makes the investment, and then turns to get his incentive and there's nothing there. [LB641]

SENATOR SCHILZ: Okay. I'm with you. Let's incentivize it, let's do it. Yeah. [LB641]

SENATOR COUNCIL: Okay. [LB641]

SENATOR SCHILZ: No, I know what you're saying. Yeah. [LB641]

SENATOR COUNCIL: I mean, I don't want to mislead, you know, to enactment legislation, not that it would...if the body doesn't pass an appropriation, it's not going go anywhere for all intents and purposes. But I mean this bill is dependent upon there being that incentive there,... [LB641]

SENATOR SCHILZ: Absolutely. Yeah. [LB641]

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SENATOR COUNCIL: ...at least from the testimony from, as I understood, Mr. Byrnes testimony and reading the bill. I mean, without that incentive it's virtually impossible for someone to make the kind of investment that needs to be made to make this process work in the state of Nebraska. [LB641]

SENATOR SCHILZ: Sure, and I'm not denying that at all. I agree with what you're saying. I would always like to make sure that we've got the opportunity to take in other monies besides the states, so. But I think you're right. I think that if we're going to move forward we need to put some money into it. Absolutely. [LB641]

SENATOR CARLSON: Okay. Any other questions? I'll make one statement in closing here then. Thank you for bringing this. That regardless of how difficult economic times seem to be, we've got to look at something as to the merits of the idea. And the responsibility of the committee, I think, is to make a decision on whether something is a good idea or not. And we can't take the...we shouldn't take the stance, well, this is a good idea, but the body won't accept it or if they do accept it, Appropriations won't fund it, so let's not do it. We can't do that. A good idea needs to have debate. And with that, thank you. Our hearing on LB641 is closed. [LB641]

SENATOR SCHILZ: Thank you. [LB641]

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Disposition of Bills:

LB254 - Placed on General File.

LB263 - Placed on General File with amendments.

LB581 - Held in committee.

LB641 - Held in committee.

Chairperson

Committee Clerk