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Agriculture Committee
December 03, 2009

[LR42 LR42 LR112]

The Committee on Agriculture met at 1:30 p.m. on Thursday, Dec. 3, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR42 and LR112. Senators present: Tom Carlson, Chairperson; Annette Dubas, Vice Chairperson; Scott Price; Norman Wallman. Senators absent: Brenda Council; Merton "Cap" Dierks; Russ Karpisek; and Ken Schilz. []

SENATOR CARLSON: Well, welcome to the December 3, 2009, hearing of the Agriculture Committee. I'm Tom Carlson, Chair of the committee. To my left over here is committee clerk Barb DeRiese, and to my right is research analyst Rick Leonard. And then to my far right is Senator Wallman from Cortland and Senator Dubas, Vice Chair of the Ag Committee, from Fullerton. And to my left Senator Price from Bellevue. And we may be joined yet by Senator Schilz if he can get here from Ogallala. So we'll see as time goes along. Senator Dierks and Senator Karpisek were unable to be here today. But I'd ask you, if you haven't already done so, to turn off or silence your cell phones during our hearing. Those of you that wish to testify should come to the front of the room to be heard. And if you do not wish to testify but would like your name entered into the official record as being present at the hearing, there's a form by the door that you can sign. This will be made part of the official record of the hearing. We're using a computerized transcription service program, and it's very important to complete the sign-in sheets--the green sign-in sheets--for testifiers before testifying. And please complete those, and then as you come forward, put those in the box by Barb there, and we'll have that for the record. And if you're testifying on more than one bill, you need to sign a form--complete a form--for each one. When you come up to testify, please give your full name and spell at least your last name. And, again, that's for the benefit of the transcription. We shouldn't have any problems today. Normally, we would say to keep your testimony concise and try not to repeat what someone else has covered. If you have handout material for the committee, we don't have a page here yet, so...okay, if you have handout material, give it to Barb, and she'll distribute it to the committee. If you

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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 just state your name and your position. And we don't have any displays of support or opposition to a bill by anybody in the audience; just treat everyone with respect. We've never had a problem with that, and we won't have a problem today. So with that, we'll begin on LR42. And this has been submitted by Senator Dubas, and she'll introduce LR42. [LR42]

SENATOR DUBAS: (Exhibit 1) Good afternoon, Senator Carlson and members of the Ag Committee. My name is Senator Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s, and I represent District 34. Hopefully, you remember last session I introduced a bill, LB130, that dealt with local foods--getting local foods into our school lunch programs. I had that bill rolled into a legislative resolution and created a somewhat formal task force. We met three times over the course of the late summer, early fall. It was a great group of people from a wide variety of backgrounds: We had school lunchroom managers; we had nutrition experts; we had people from the retail sector; we had actual producers. We just had a very good cross section of people who could talk about these issues. I'm very proud to say that a school in my district is already doing this type of a program, using local foods from local producers in their lunchroom program with a lot of success. And she's done a great job in documenting the increase in the children in their participation and how much they're enjoying having those local foods for their lunches. So it was quite evident that there are a lot of good things already going on in our state. They're kind of going on in isolation of each other, but the hopes of this resolution and this task force is that we can maybe coordinate our efforts and get this to be a much bigger program and one that will really move Nebraska to the head of the line. There's been a lot of discussion in the news lately about health care and health care reform, and there's a lot of strong opinions on all sides of the issue. But I think there's maybe one thing I would hope that we could all agree on and--that if we eat better and live healthier lifestyles, we're going to reduce our health care costs. And we hear a lot in the news these days about childhood obesity and childhood diabetes, and a lot of that is directly

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related to the diets that we expose ourselves as well as our children to. And so if we can move towards more fresh fruits and vegetables and locally raised foods, that, hopefully, will pay us dividends in the long run. There's a lot of attention and focus at the federal level on local foods, local producers, making those connections between local producers and consumers. This administration has a "Know Your Farmer, Know Your Food" initiative, and the USDA will be appropriating money to support this initiative. Jenny Montoya from the Obama administration was in Nebraska; she toured several farms in the area, quite impressed with the things that she saw. You have the report in front of you, and if I do say so myself I think it's a pretty good report. I had a lot of help from Rick Leonard and my legislative aide, Jess Watson, in compiling all the information that was brought to us through the task force, so I won't go through the entire report, because you have the ability to read and digest that yourselves. But I think the things I would like to particularly highlight are what our final recommendations were. And we only met three times, so we really got down to the nuts and bolts of what we wanted this task force to do. And at our last meeting, it's like, okay, let's set up our priorities and the direction we would like to see this particular program go. And we created short, intermediate, and long-term goals--what we'd like to see. One of the things that became quite obvious was there are a lot of good things happening in our state; a lot of schools are doing good things. There's a fruit and vegetable program that's supported by federal dollars. I believe that there are about 50 schools that are using that right now. That's not necessarily locally raised foods, but it is fresh fruits and vegetables that are being incorporated into the kids' days at school. So we did find out that there were a lot of good things going on, but they're all happening in isolation. So it became very apparent that for any kind of program to really take root and gain momentum is you need someone who's going to coordinate those efforts and be that data collector and that entry point for schools that have questions about how do I get connected with a local producer and get those kinds of foods into my school. So we recognize the economics of the times and the difficulty that that might be in funding that particular position. We talked about where the appropriate place for that position would be--whether it'd be in the Department of Ag, whether it'd be in the Department of Education in the school

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nutrition program, whether it'd be through extension. We had extension educators as a part of this task force. They brought some great information and were a real asset to this group, and they--after learning more about what they do--seemed like they could be a logical place for this position to be located. So we know that, you know, it'd be important for us to have a coordinator for these efforts--not exactly sure where the best place for that person would be. When I came back to my office after our meeting that day, I was really excited about what we had put together but also feeling a little bit dejected, knowing that it always comes down to money and where do you find the money to support good efforts. And so working with several people--and I think we'll have some testifiers behind me who will be able to talk in more detail about this, but--quickly put together a grant application that will support a pilot program, and, hopefully, we'll be able to get some dollars to fund this coordinator position. So I've just today received the details of that grant, so I don't think I could answer your questions. But, as I said, there'll be some people coming behind me--Dr. Thompson, in particular, who was a part of that grant-writing process--who will be able to answer your questions more specifically. We also realized the importance of an education component--an across-the-board education component. We need to educate our farmers. As farmers and producers, we don't have any problem raising the food; it's knowing what channels do we need to go through as producers for you to be able to use that food in a school system. My husband and I sell our meat products directly through the farmers market. There are quite a few regulations that we had to comply with in order for us to be able to sell to the public. And so you don't just knock on a school lunchroom door one day and say: Hey, I've got a couple bushel baskets of something out in my truck; do you want to buy them? There's a lot of rules and regulations that you need to be met with--procurement regulations, things like that. So producers know how to produce the food. It's how we educate them about what they need to do to take that next step to deliver their food to the destination they want it to go to. School systems need to have an understanding of what's available for them: what types of produce is available, where it's located at, what are the quantities that are available. You know, we're talking about school districts that serve thousands of students on down to, you know, just 20-30

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students. So we have a great diversity of school lunchroom programs. So how do we hook up those types of programs with the producers that can give them the foods that they need? So educating the school systems, the public--you need to educate the public just about the benefits of getting fresher, locally raised foods and produce into their school lunchroom programs--and also bringing the parochial schools, the private schools into this mix. Sometimes they get overlooked, but they have desire and maybe the capacity, too, to use these kinds of programs. So those were, kind of, the immediate things that we looked at, education being...as with most things, educating your audience about what it is you're trying to do is very important. Then we moved on to intermediate goals. And that was a need to review current rules and regulations. And, again, that coordinator would be able to gather those rules and regs--procurement rules and regs, etcetera, labeling requirements--that's a big, big deal, especially if it's a processed food. So making sure that everybody's able to comply with those rules and regulations and then maybe looking at the possible necessity of changing those rules and regulations to accommodate the use of local foods into our school system. Food handling and food safety is a huge, huge issue--how that food is handled, how it's processed; there's some pretty stringent things that you need to be able to meet with to meet those standards. Then a statewide assessment of processing and distribution--again, we have people who are able to raise those foods and that produce, but it's getting it to where it needs to go that is a huge, huge challenge. We had several people from the retail sector who brought a lot of information on how they deal with distribution and connecting with local producers--so just taking a statewide assessment of where we're at as far as food distribution, distribution centers, and processing. Again, we have some great things happening in our state. We've got the Nebraska Food Co-op, which is working with local producers of all kinds--fruits, vegetables, meats--they cover the gamut. And they're trying to create a system where they can connect with the consumer, where they have distribution points. They're really doing some great work, and so if we can kind of build on that model or cooperate with them, as far as using them as a distribution point, it would be great. There's community-supported agriculture, where people can buy into gardens; you know, they pay so much money up front, and then they on a weekly basis

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receive the products of that garden. Sometimes those CSA projects are where you can actually come out and work in the gardens, collect the foods yourself, or sometimes you just show up and you get your bag. And you as a consumer take some of the risk along with the producer, because the producer can't--you know, they get hailed out or something like that; well, then you get what's produced in the garden. So community-supported agriculture is really something that has a strong foothold in our state. And, again, I think it's a model that we can look to to build upon for a school lunchroom program. And then finally our long-range goals--and we didn't attach necessarily a time frame to these goals. We knew they were short, intermediate and long range. You know, we're looking several years out into the future when you start to look at some of these long-range goals. Regional cold storage: cold storage facilities are...it's a big deal. It's just huge, and, you know, outside of our grocery stores, we probably don't have a lot...and our distribution centers or mass quantities of food. We don't have necessarily those cold storage facilities in place for the use of more-local producers. There was talk about creating a voucher program for schools. We have something in place already that our senior citizens can use at farmers markets. There are coupons that they can use, similar to a food stamp coupon, but they get so many dollars a month where they can go to farmers markets and actually buy local fruits and vegetables. And so if we could create some kind of a voucher program at the state or federal level where schools could actually use those dollars to produce locally raised foods. Volunteer commodity program for local foods at the state level. Again, this would be to improve childhood nutrition in the schools, strengthen the local and regional farm economies. We have a great volunteer system in a lot of different aspects all across our state, and so I think we just take that volunteerism and bring it into this realm where we could use them in the, maybe, the distribution centers or something like that or use them for the educational component as they go out and travel around the state. And finally the last thing that the group talked about was how much they appreciated being able to come together and share their thoughts, share their ideas, learn from each other and would like to be able to continue to have those meetings ongoing, past just this particular topic that we were talking about. They found it very beneficial. Everybody

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knows what's going on in their particular realm, their particular turf. And we don't get a lot of opportunities to interact with each other, and sometimes we find that maybe we're duplicating services that that shared information can really support what somebody else may be doing that they didn't know that was going on. So it's my hope that it can continue maybe on a less formal basis to keep this group together, moving forward. As I mentioned in my opening, this is a big issue at the federal level. The Obama administration has made this a priority issue for local foods, know your farmer, those types of things. I think the work that this task force did, the recommendations that we have made, hopefully, some of the grants that I'm keeping my fingers crossed that we will be awarded will really move Nebraska to the front of the line for any future federal programs, federal dollars that will be available. I think Nebraska could be a model state for this type of program. We're the breadbasket of the nation. Yes, we raise a lot of commodities, like corn and beans and wheat, but we also raise the types of foods that we can use in our schools, in our hospitals, in our nursing homes. And even there's connections with local restaurants. Local restaurants like to feature local foods. We sell to a small, little restaurant down in the Haymarket. And that's really what he likes to focus on is foods that are raised in the area. He advertises: He puts the food that he's making that day, the producer that provided it, where they're from. And so it's very important that we as urban people reconnect with our rural roots. As my husband and I are in the farmers market, we have so many people who come up and say: Oh, you know, I used to go to the farm when my grandma lived there. Well, we're now three generations removed from the farm; we're losing that connection. And so I think through a school--if we can do something like this through our school lunch program, children are not only getting great-tasting, very nutritious foods, but we can incorporate that into the curriculum, so that they can learn about what it took to raise that food, who that farmer is, what that farmer contributes to their local communities, to their local economy, to our state's economy. So I don't want to spend a lot more time talking about the report. As I said, you'll be able to read through it yourself. I did want to highlight those particular recommendations. The people that will follow me, as far as testifiers, they're the ones that are out there making it work and I think will be able to answer some of your

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questions about the grants and what are going on at the federal level, but I would be happy to answer any questions you may have now. [LR42]

SENATOR CARLSON: Thank you, Senator Dubas. Questions? Senator Wallman. [LR42]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yes, thank you, Senator Dubas, for bringing this forward. Did you have any religious communities, like the canning outfits in our area that go around for nursing homes and things? [LR42]

SENATOR DUBAS: No, we didn't have any... [LR42]

SENATOR WALLMAN: And they're inspected by the USDA, and they can meat, they can vegetables. So you could have canned products. [LR42]

SENATOR DUBAS: Um-hum. [LR42]

SENATOR WALLMAN: And that's inspected. [LR42]

SENATOR DUBAS: Yeah, the rules and regs are out there; it's just helping everybody understand what those rules and regulations are. And that brings up another good point too. When we were putting this task force together, we literally had to turn people away. There's such a strong interest in this. There were a lot of people who wanted to be a part of this, but we needed to keep it, you know, a group that we could work with and get some things done. So as I said, the timing is there; the interest is strong. And there are people who really want to get involved and make this work. [LR42]

SENATOR CARLSON: Okay, thank you. Other questions? Senator Price. [LR42]

SENATOR PRICE: Thank you, Mr. Chairman. Thank you, Senator Dubas. And I

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appreciate personally that you all took the time to review the safety aspects. And I believe when we had the previous hearing, that was one of my biggest concerns--about making sure that the product and the safety of the food all the way through the process--and it looks like there was a lot of attention to that. But when you talk about the financial aspect, that bottom layer, that driver, and you mention about the money for the inspector, of funding that position, I was wondering: Were there other places where you were going to see the state was going to have to come to the table, with particular emphasis on the cold storage, the regional cold storage? I thought that maybe you found other places where the state will have to come up with the dollars and if anybody else afterwards would--on the grant process--want to address it. Are these grants 25/75, 50/50, 100 percent grant? In other words, sometimes they'll match them--like we talk about the Air Guard, the Army Guard--they have matching grants and stuff that are federal funding. So I wanted to know: Do you have any idea of the structure of those grants and the other places the state will have to put money into the program? [LR42]

SENATOR DUBAS: As I said, I just got the information on the grant application right before the hearing, so I believe Dr. Thompson, hopefully, will be able to answer that. And if she can't, I certainly can get the information for you. I am familiar enough with grants to know that quite often there is a matching requirement. Sometimes it's just through an in-kind type of donation, but oftentimes there's actual dollars that have to be put up there. So, you know, we would have to understand that and know that. And again, if we could get this coordinator position, that person would be able to ascertain a lot of these other issues that were raised by the task force and how do we move forward to reaching those goals. [LR42]

SENATOR PRICE: All right. Thank you. [LR42]

SENATOR CARLSON: Any other questions? Senator Dubas, you'd mentioned some possible outlets for this local food. Obviously, the school is one, and then you mentioned nursing homes. What else did you mention? [LR42]

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SENATOR DUBAS: Hospitals. [LR42]

SENATOR CARLSON: Hospitals. Are there differences in regulations for hospital versus school versus nursing home in terms of inspection or whatever, regulation? [LR42]

SENATOR DUBAS: I am not certain of the specifics, but I know food safety is pretty much...I mean, when you're bringing food into facilities like that, there's federal codes and state codes that they all have to meet, so... [LR42]

SENATOR CARLSON: Well, I know that safety is an important issue. But sometimes it can really be frustrating, because in Holdrege, where I live, in the nursing home, that is right out next to a cornfield, where the farmer put in some rows of roasting ears, and they couldn't use them, which is ridiculous. So those are...that's not the way it ought to be, and yet safety is important. So... [LR42]

SENATOR DUBAS: Um-hum. And I think, I believe--Pam, are you testifying? Pam Edwards, who's with the university...and they have a local foods program in their university dining hall, and she'd probably be able to better...and we've actually sold some of our product to them. So, you know, yes, we have to go through a USDA-inspected facility; yes, we have to have insurance; and we have to meet some pretty stringent guidelines for us to be able to sell into an institution like that. [LR42]

SENATOR CARLSON: And you may experience this yourself in your own operation, but when you say USDA-inspected facility, then beef that is butchered at a facility that's not USDA-approved, that meat cannot be given, and we ran into that. [LR42]

SENATOR DUBAS: Um-hum. [LR42]

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SENATOR CARLSON: And it's so frustrating... [LR42]

SENATOR DUBAS: Um-hum. [LR42]

SENATOR CARLSON: ...because you know it's good, but you can't do anything with it. [LR42]

SENATOR DUBAS: And you'll find that the state-inspected facilities really are pretty much...it's just that they don't have that USDA inspector there. So those are issues that we need to look at. [LR42]

SENATOR CARLSON: They don't pay the big fee so they can be called that. Yeah. Okay. [LR42]

SENATOR DUBAS: But those are definitely issues that we would have to look at. [LR42]

SENATOR CARLSON: Yeah. Okay. Any other questions? All right. Thank you. [LR42]

SENATOR DUBAS: Thank you. [LR42]

SENATOR CARLSON: All right. Those of you wishing to testify, if you've been here before, then you're veterans to this process; if you haven't, just come up, relax, and enjoy yourself. [LR42]

PAM EDWARDS: See if I remember the instructions. I'm supposed to...I'm Pam Edwards, P-a-m E-d-w-a-r-d-s. Good afternoon and thank you, Chairman Carlson and Senator Dubas. My name is Pam Edwards. I'm a registered dietitian. And I'm currently the president-elect of the Nebraska Dietetic Association, and I speak on behalf of 600 registered dietitians who are Nebraska's food and nutrition experts. I was one of the four

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registered dietitians asked to serve on the LR42 task force to study farm-to-school programs in Nebraska. And I want to thank Senator Dubas for the opportunity to participate in this very valuable and educational experience. On behalf of the Nebraska Dietetic Association, I'd like to express the association's support of the recommendations presented by the LR42 task force. Developing farm-to-school programs in Nebraska would benefit schools and farming communities throughout the state. Because of the many components that are involved with farm-to-school programs, the task force has identified--as Senator Dubas has explained--the immediate goal of creating a statewide position to facilitate the development of farm-to-school programs throughout the state. A second immediate goal is the development of an educational approach between school and farm communities involved with the farm-to-school programs. Intermediate and long-range goals were also identified that must be addressed with these types of programs. Overall, the Nebraska Dietetic Association supports the development of farm-to-school programs in Nebraska in order to reconnect students to the food they eat. Incorporating local foods such as fresh fruits, vegetables, grain, dairy, and meats in schools provides an opportunity for students to include these foods in their meals and their snacks and learn about nutrition and wellness at the same time. In addition, including local foods in farm-to-school programs can benefit farmers and producers by providing new distribution outlets for these individuals. Overall, farm-to-school programs can benefit an entire community, and they can do this both nutritionally and economically. Again, the Nebraska Dietetic Association supports the development of farm-to-school programs throughout Nebraska, and I would like to once again thank you for the opportunity to be on this task force and also the hope that, as the senator indicated, that this continue because there are so many issues involved with local foods that need to be discussed among a range of people throughout the state. Any questions? [LR42]

SENATOR CARLSON: Okay. Thank you for your testimony. [LR42]

PAM EDWARDS: Yes. [LR42]

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SENATOR CARLSON: Are there questions? Senator Dubas. [LR42]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Pam, for being here and for being a part of the task force. You brought a great deal of wisdom with you. You didn't touch in your testimony about what you do at the university and the program that you have going at the university, so would you mind sharing that program with us? [LR42]

PAM EDWARDS: Sure. I'm at the university--UNL--and am the assistant director of university dining services, and we started a local foods program--dining program four years ago. I spoke earlier about our first meeting in 2005. We started from the ground up, literally, and there were numerous, numerous challenges for this type of program--all that were presented in this task force, and that's why I think the task force was needed. We're in our fourth year. It's been incredibly successful. The students have taken to it just throughout the campus. They now...students now know what local foods are about. We started our program kind of just at the very beginning of when local foods were starting to become popular, and so we've been in at the right time. And it's been very interesting to see the positive reinforcement that the students have given us to continue this type of program and, equally, the reinforcement from our farmers and producers, who we've developed tremendous partnerships with throughout the state, and learning how to start this different kind of food service. Quite honestly, it's going back to the old--we call it the old-fashioned way of doing business in food service, because things are not processed; they're fresh. And therefore it's a different way of ordering; it's a different way of receiving; it's a different way of preparing, storing, everything. So we started over with a lot of our folks in learning this. All that to say that those are the kinds of things that need to be...that have to be addressed in starting a food-to-school program. It's not just: Well, today is Monday, and next Monday we're going to start this farm-to-school program. There's a tremendous amount of planning and development that has to take place with it. But the bottom line is it has been

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extremely successful, and this state is ready for a program like that to be spread throughout the state to public schools, parochial schools. The time is right. [LR42]

SENATOR DUBAS: Something that we talked about in the task force was: What is local? And, I think, we thought, you know, there are a lot of definitions of local. What do you, in your program, what do you define as local? [LR42]

PAM EDWARDS: We define local as Nebraska. So we...everything...all I can think...there's perhaps one item, a corned beef item, that we have to get from Kansas. But other than that, local is...we have on our posters: Local equals Nebraska. So primarily these are smaller farmers and producers. But we also include in that other manufacturers that are larger that are housed in Nebraska, all supporting the economy of our state. [LR42]

SENATOR DUBAS: What were some of the regulations that were some of your challenges? I know you had some producers who just showed up--like I said, those bushel baskets. What are the things that you had to make your producers aware of? [LR42]

PAM EDWARDS: Well, the...our producers are...have...fall under the same categories as all of our other vendors, as far as food safety, the way that we...the quality, the cleanliness, everything. So there's really no separation. As you mentioned about...our meats all have to be USDA inspected. But it falls into the education. A lot of...I shouldn't say a lot, but there were a few--I can remember one producer that showed up with carrots that had dirt on them. And he was perfectly...I mean, he had no idea; this is the way that he sells his product. So it was an education process of, you know, they need to come clean; they have to be in certain temperatures and those types of things. And that is, with this task force, what the coordinator--a key component of it would be educating about how things are to be delivered, how would they be packaged, the food safety aspects of it, all of that. So it...now they know. When people come...you know, the ones

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that have been with us understand all that, and new folks, you know, we take a great deal of time in explaining what our expectations are. And if they don't meet expectations, we don't receive product. And then they make the decision whether they want to continue with us or not. [LR42]

SENATOR DUBAS: Thank you. [LR42]

SENATOR CARLSON: Senator Wallman. [LR42]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thanks for being here--very interesting. [LR42]

PAM EDWARDS: Oh, thank you. Thank you. [LR42]

SENATOR WALLMAN: And have you...do you think in order...you know, we struggle with point of origin on our meat products, and do you think it's ever going to get back to, like, the butcher shops, you know, in Europe? And take the meat maybe out of the general stores? That would be pretty easy, then, to have point of origin. [LR42]

PAM EDWARDS: Yeah. You know, I just... [LR42]

SENATOR WALLMAN: That takes a lot of money. [LR42]

PAM EDWARDS: Yeah. I don't know. I think what our citizens have become a lot more aware of, as you were talking, is food safety. So I think that is what's going to drive a lot of it, is our...we...you know, the United States prides itself on having the safest food source in the world. And, sure, there are difficulties at times, but we're very much aware of that. So I think those are the kinds of questions that would have to be answered--with that. [LR42]

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SENATOR WALLMAN: Thanks. [LR42]

SENATOR CARLSON: Senator Price. [LR42]

SENATOR PRICE: Thank you, Mr. Chairman. And thank you for coming forward and helping out on the task force and doing all that you do. [LR42]

PAM EDWARDS: Oh, thank you. [LR42]

SENATOR PRICE: And I'm going to ask some questions, and it's for a bizarre curiosity and for having a better understanding; it's not to...it's just hard questions, so I apologize ahead of time. The program you're running at UNL--does that run side by side to the current food service program--so you have a local-grown program and then you have a regular program, correct? [LR42]

PAM EDWARDS: Correct. [LR42]

SENATOR PRICE: So... [LR42]

PAM EDWARDS: Well, let me just say that the...where we have the local is not 100 percent. It is part of it, so we have a special meal once a month that is primarily--I mean, as much as we can do locally. [LR42]

SENATOR PRICE: Um-hum. [LR42]

PAM EDWARDS: Of course, at this time of the year, you're not going to have strawberries from Nebraska unless they're frozen. [LR42]

SENATOR PRICE: Sure. [LR42]

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PAM EDWARDS: But...so it's not totally, but it is...and then... [LR42]

SENATOR PRICE: Okay, because I was looking at if you're running a program side by side and we go into schools, we're going to have to run it side by side to an existing one, and how much are we going to grow that lunchroom staff, who has to...and all the people--the purchasers and the district? When you put that overlaid on a smaller district, it could be more cumbersome with all the rules and regulations versus a larger district. So that's one thing. The other thing is, in your professional way of being a dietitian--and that's a great segue you just gave me on the strawberries, I appreciate that. The quality of food that is natural is obviously much better, as far as nutritive values; but once you start freezing them, boiling them, or cooking them, that changes it. So where...what if the amount of food is truly, actually fresh and the quality of that nutritive-wise over frozen strawberries versus frozen strawberries? I ask that because I know in processing you lose some, but is there really a marked difference, and if we have to freeze--and we talk about cold storage, cold storage of fresh produce, you've ended up at the same place you were if you got it from Sysco. So what do you believe as a professional is the value added in this program, of frozen versus frozen? [LR42]

PAM EDWARDS: Okay. I'll try and get to that question, but first of all, there are not definitive research studies that show that, say, organic or natural is more nutritious than other. But what we say and what I believe strongly is that if you have local food, it's highly likely that it's going to be a little bit fresher or a lot fresher, because it's traveling a shorter distance. Therefore, oftentimes, what we hear with the students is: Why do they eat it? Because it tastes good. And it's not to say that the other doesn't taste good, but it may have a little bit of a different flavor. Therefore, they eat it. And I think you find that particularly with younger children, so then it's going to be more nutritious, because they're eating it versus they didn't want to have the canned peas or whatever that might be. As far as the nutritional value of frozen versus fresh, you know, I think that there can be...our processing techniques are so sophisticated in many cases that you could have very equal nutritional value frozen versus fresh. We're starting in our...we have started

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this year freezing as much produce as we possibly can so we can use it throughout the year. So it's a matter of if you have a choice between frozen or not at all, you'd want to do the frozen, because then you're going to get the nutritional value versus not eating any of it. So does that answer...? [LR42]

SENATOR PRICE: I think you hit at right what I was asking, and that was the portion...we know it tastes better; everybody knows fresh fruit tastes better, and it wasn't that one had a higher quality, but it's what's left in it. You know, you cook a potato and you lose the vitamin C, but also if you eat that potato out of season, you lose a lot of that vitamin C also. So all those different factors add up, and I want to make sure that when we're asking for the money, that we can clearly articulate the derived benefit from the program. [LR42]

PAM EDWARDS: Right. [LR42]

SENATOR PRICE: So thank you. [LR42]

PAM EDWARDS: No, and I think...the other part, too, is training the staff in the... [LR42]

SENATOR PRICE: ...preparation. [LR42]

PAM EDWARDS: ...right, educating them why it is so much more important. And anecdotally I can tell you that what's happened with us, is that the relationships that have developed between our staff and the farmers and producers is unbelievable. They've gotten to know each other. I think the old way of just doing business is what some people would say--it's the trust; it's the handshake; it's the, you know, the pride in their product and wanting it to come the best that they can. Stories should be written about that as well, which is a really great thing to see happen. [LR42]

SENATOR PRICE: Thank you. Thank you. [LR42]

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SENATOR CARLSON: Okay. Any other questions? You'd mentioned in your testimony about this position of farm-to-school coordinator, and then, of course, it's in the report as well. How do you envision that being funded? [LR42]

PAM EDWARDS: With lots of state money. (Laughter) [LR42]

SENATOR CARLSON: Okay. That's okay. I just wanted an answer. I'll ask the same thing of Senator Dubas when she closes. [LR42]

PAM EDWARDS: Okay. Okay. [LR42]

SENATOR CARLSON: Okay. Thank you. [LR42]

PAM EDWARDS: Okay. Thank you. Now do I turn this in too? [LR42]

SENATOR CARLSON: No, unless you want that distributed, you don't need to. [LR42]

PAM EDWARDS: Oh, okay. All right. Thank you. [LR42]

SENATOR CARLSON: Okay, next testifier. Welcome. [LR42]

JOYCE RICE: Welcome. My name is Joyce Rice, J-o-y-c-e R-i-c-e. I am a food service manager for Central City, Nebraska. I represented the urban schools at the task force, and I want to thank you for including me. If I get a little emotional--I'm not so educated, you know, at speaking, but I'll talk from the bottom of my heart. I have been getting fresh produce for our school for six years. And the benefits that I see is that it's fresh. The safety--I know the people that's raising it; I see the fields; I see how they handle it; I see how they store it. And I know I take it and serve it to the students, and I know how I store it and how I handle it. I also did a survey, because I applied for a award, and it

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was 12 weeks long. And the first 6 weeks was all fresh produce, and the next 6 weeks had to be bought because of our growing season. And I have it all documented; I have all the information. And when I had the fresh fruits and vegetables, it was 199 percent more food taken in than when I bought it from, like, Pegler or Sysco. These people are...have children in our school district. They're paying taxes to support our schools. They also are spending money in our community. It's not coming from different states, different countries. I think that it's a good deal to support local. This year I had a good comment from one of my students: they said they were so disappointed it was going to be the last week of the fresh produce. I put a map of the state of Nebraska; I have Central City, St. Libory, so they see where this food was growed. I just think it's a real good program. I learned a lot from being on this task force. And I'm real nervous, so I'm sorry. But I do support it, and I would like to see it brought in. Some of the...I know it's a lot more work, because I go out and get it myself. The storage is a problem at our school. I've got the cooks working there, so it's not any extra money--I mean they're just not idle when we have to do all these watermelons, cantaloupes. We prepare it fresh. The kids will eat cucumbers, peppers, tomatoes; if it's fresh and it tastes good, they will eat it. You don't have to put the sauces on it or anything. I don't know any other questions that...you know, so, and, you know, I'm not going to be real smart to answer your questions, I'm going to tell you right now. So, you know, I'll do the best if you have any questions. [LR42]

SENATOR CARLSON: Well, you've given a good testimony with your enthusiasm and your heart... [LR42]

JOYCE RICE: Thank you. [LR42]

SENATOR CARLSON: ...and we appreciate that. Are there questions? Yes, Senator Dubas. [LR42]

SENATOR DUBAS: Joyce, I truly do appreciate you coming forward, and you brought

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such great personal experience to the task force, and, you know, you did represent the smaller schools... [LR42]

JOYCE RICE: Um-hum. [LR42]

SENATOR DUBAS: ...and how it was a little bit easier for you, maybe... [LR42]

JOYCE RICE: Yes, definitely. [LR42]

SENATOR DUBAS: ...than a school...you know, we had a school lunchroom manager from Lincoln. [LR42]

JOYCE RICE: Um-hum. [LR42]

SENATOR DUBAS: You know, I mean, obviously, there's some very different issues that have to be dealt with, although the Lincoln school said, you know, it...there are possibilities. But you did mention the amount of work. What are some of the additional things you and your staff have to do to get the fresh fruits ready versus...? [LR42]

JOYCE RICE: Well, we're hauling--like I say--we're hauling it in, putting it in the refrigerator. Other than...like, if we'd got our watermelon and cantaloupe from Pegler, it would be...you'd still have to wash it, peel--because it's all edible fruit. When I did my comparison--it's edible fruit so it's more prep. Because when you start doing, like, 200 cantaloupes in a weekend--or week--and 30 watermelons, it's a lot easier than opening up a canned goods of...or just getting a box of apples or a box of bananas or, you know, something like that. It's the actual...it's labor, time-consuming. [LR42]

SENATOR DUBAS: You mentioned the award that you applied for. Would you tell us a little bit about it, because you did win that award? [LR42]

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JOYCE RICE: No, I didn't win it, but there again, I applied for Louisa Bled (phonetic) award, and I didn't have my apples to apples, you know. But I knew I didn't do the actual award right, but I wanted to finish it, because you had to commit yourself in December if you're going to do it and then enter it in March, and I wanted to have something that they knew that I did try. [LR42]

SENATOR DUBAS: You did receive some statewide recognition, though, didn't you? [LR42]

JOYCE RICE: Oh, yes--for the action kids. That was a different one. Um-hum. Yes, I did, for the action kids award. I got the silver, and there was only ten in the state that got that. [LR42]

SENATOR DUBAS: Well, again, you brought a great example of things that are already working in our state. And so if we can continue to build on those successes, I think... [LR42]

JOYCE RICE: Okay. Okay. [LR42]

SENATOR DUBAS: ...we know that it's possible. [LR42]

SENATOR CARLSON: Okay. Senator Price. [LR42]

SENATOR PRICE: Thank you, Mr. Chairman. Thank you very much, and I would echo you did a great job testifying. Don't ever worry; you did a great job. And I would like to ask you in your professional--because you have the ground truth--do you see a shelf-life difference of the fresh fruit that you went and got locally? So you go and you get it on day 1--does your stuff you get last longer, with no difference? [LR42]

JOYCE RICE: It lasts longer. [LR42]

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SENATOR PRICE: Okay, great. [LR42]

JOYCE RICE: And... [LR42]

SENATOR PRICE: Okay, that's great. [LR42]

JOYCE RICE: And like I say, it's less than 24 hours. They bring it in, and I have it on the table in less than 24 hours. And it's safe, because those farmers have to go and take a lot of classes on pesticides and herbicides, you know. Some might question: Is it safe? Our local people and in America are a lot better than getting it from, you know, somewhere else. [LR42]

SENATOR PRICE: Great. [LR42]

JOYCE RICE: Okay, I'm sorry. I won't add any more. [LR42]

SENATOR PRICE: No, and the other thing is, when you did the hauling, were you doing that in your car or a school car? [LR42]

JOYCE RICE: No. I get a school van. But I even documented--see, I even compared price, and I should have probably brought that along; I'm sorry I didn't. But it was, I would say, anywhere from a half to a third less than when I...considering my...it didn't matter about my labor, because they were going to pay me if I was going to be sitting at my office or if I was going to be lugging those 20- or 30-pound watermelons. I was going to get paid the same. Then I figured in the gas mileage for the van. And it still was cheaper to do it that way. [LR42]

SENATOR PRICE: Great. [LR42]

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JOYCE RICE: But, yeah, it takes a lot of...you've got to have somebody that's willing to do it, you know, because it's a lot harder doing that than just sitting on your desk and...but the kids--the smile--and then to support our local people, because I'm a farm wife, and I want people to buy my products... [LR42]

SENATOR PRICE: Right. [LR42]

JOYCE RICE: ...and so that's why I got started. As soon as I got to be a food-service manager, I asked the state, you know, what the requirements were. I got the bids. And, you know, I had to...you know, I just...I'm following the guidelines, is what I'm trying to say, of, you know, everything's up and up. [LR42]

SENATOR PRICE: Thank you very much. [LR42]

JOYCE RICE: Okay. [LR42]

SENATOR CARLSON: Any other questions? Now, I think I caught a statistic you gave. You said that the kids eat 199 percent more... [LR42]

JOYCE RICE: 199 percent more. [LR42]

SENATOR CARLSON: Why don't they eat twice as much? [LR42]

JOYCE RICE: Because, I think--well they...I meant...well, I mean, the...I don't know, I guess because it was so fresh and so good. I mean, it's just--those watermelon and cantaloupe are just like candy. [LR42]

SENATOR CARLSON: But... [LR42]

_____ : Because she didn't have it available to eat. [LR42]

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JOYCE RICE: Yeah. [LR42]

SENATOR CARLSON: And you didn't have to talk them into it. [LR42]

JOYCE RICE: No. [LR42]

SENATOR CARLSON: They just...pure fact: they eat more of what they like. And if it happens to be good for them, that's a bonus. [LR42]

JOYCE RICE: Oh, yes. Yes, definitely. [LR42]

SENATOR CARLSON: Okay. All right. Thank you for your testimony. [LR42]

JOYCE RICE: Thank you. [LR42]

OLIVIA THOMPSON: (Exhibits 2, 3, 4, and 5) That's a tough act to follow. I'm more nervous now. [LR42]

SENATOR CARLSON: Just relax; you're...you'll be fine. [LR42]

OLIVIA THOMPSON: (Exhibits 2, 3, 4, and 5) Sure. Thank you all for the opportunity to speak today. My name is Dr. Olivia Thompson, O-l-i-v-i-a T-h-o-m-p-s-o-n, and you're going to be given some handouts. And while you're getting those, I'll just go ahead and introduce myself. I am a nutritional epidemiologist from the Center for Human Nutrition, which is in Omaha, Nebraska, and I'm also an assistant professor with the University of Nebraska's Medical Center. My research portfolio spans focus areas that include childhood obesity and also local food systems and health, and I'm also very involved in program evaluation and survey development. My experience is in public health; I have local, state, and federal experience, worked both at the CDC and the NIH. So I'm here

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today representing the Center for Human Nutrition to support the farm-to-school initiatives that are going on in the state of Nebraska. So I think if you have it, you should have in your file a "State Indicator Report on Fruits and Vegetables." Do you have that yet? It's from the CDC. And this was just recently released, so it is hot off the press. You should have one for the state, and then behind it you'll have one that is national, and then you'll have a larger document that you could read later if you have trouble falling asleep. It's actually kind of interesting. So if we could take a look at the "Nebraska Action Guide," what I'd like to really draw your attention to is the second page. And under the "Potential Action Items" for promoting access to healthy foods such as fruits and vegetables, you can see that support to farm-to-school initiatives and policies is one of the recommended action steps by the CDC. And this is a way for schools to purchase local foods from the farms. Also, what I'd like you to really look at is that what you'll notice is that while many states have state-level farm-to-school policies--there are 21 states that have policies in place--the state of Nebraska does not, even though we have the infrastructure to not only have farm-to-school policies but be a model state for regional and national models. It is so critical that we promote access to healthy foods such as fruits and vegetables because of our nation and our state's current obesity crisis. What you have in your packet is a bar chart that shows data--again, this is also hot off the press--and this is for the state of Nebraska specifically. I'm sure many of you have been hearing on the media 25 million of our nation's youth are either overweight or obese--25 million--that's one in four. And this extends to the state of Nebraska. As you can see from these bar charts, about 30 percent of children and adolescents living in Nebraska are either overweight or obese. On the second page, you can see bar charts that show children who are at greatest risk. And what we see from national data are that children who are of Hispanic ethnicity, African-American, American Indian race--those children tend to be at a higher risk than whites. In the state of Nebraska, what we see is that the group who's at the highest risk for overweight and obesity are Hispanic youth. We also see that children who live in households where the annual income is low, about 100 percent of poverty--they're at the greatest risk. And that's why farm-to-school programs are so important, because these kids don't have access to healthful foods.

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And farm-to-school programs can ensure that children get the food; they spend a third of their day at school--they're there, so they get the food, and it's available to them. Earlier, Senator Dubas was speaking about some work that we've been doing at the Center for Human Nutrition by way of getting grants. We have submitted to date two grants--they're USDA grants--to establish a farm-to-school pilot initiative in Johnson, Nemaha, Pawnee, and Richardson counties. We've partnered with the university of Lincoln; we have partnered with a woman named Dr. Julie Albright (phonetic)--she's a food safety specialist. We've also partnered with the rural extension and the Nebraska Food Cooperative. And if this grant is awarded, we at the center will hire and house a farm-to-school coordinator to coordinate this farm-to-school pilot initiative. We've also recently submitted a USDA grant called an added-value grant. And that grant is to do what's called a feasibility study and also to develop a planning grant for the Nebraska Food Cooperative. If you all aren't familiar with them, it's kind of interesting because they have an online component. You can actually order fruits and vegetables and other locally produced agricultural food products year-round online. One of the things that's lacking is they don't have a centralized hub to store their food, and so it's very expensive for them to be going around over the state picking up food and dropping it off. So part of the work that we're hoping to do at the center is to really develop this business plan and feasibility study so that they can get a centralized location. Also in the grant we have budgeted a lot of money for cold storage, which was when I was talking with the farmers--I am not a farmer; I don't know much about the technical aspects of farming, but they were saying that that is really a need, to have a centralized hub and a cold storage facility that is in a safe and secure place. Also something that you should be aware of: the CDC is going to be awarding grants to the tune of \$4 million to \$5 million--sometimes \$7 million--per state, and Douglas County Health Department has gone in on one of those CDC grants. We at the center are a subcontract on that grant, and if awarded, we have allocated funds for a full-time farm-to-school coordinator. So that's my brief testimony, and I thank you so much for your time. [LR42]

SENATOR CARLSON: Okay. Thank you. Do we have questions? Senator Price. [LR42]

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SENATOR PRICE: Thank you, Mr. Chairman. Ma'am, thank you for coming forward and...great amount of data here. [LR42]

OLIVIA THOMPSON: Sure. Sure. I love data. [LR42]

SENATOR PRICE: Do you, in looking at programs across the United States--you said that 20 states or 21 states have current guidelines in place, programs... [LR42]

OLIVIA THOMPSON: There are 21 states with state-level farm-to-school policies. [LR42]

SENATOR PRICE: And do they...do any of those states have centralized cold storage? [LR42]

OLIVIA THOMPSON: They do. And the details of those policies are on the CDC's Web site. And I would be happy to send you that information. What the states do...what I see as something that's very important--there's a number of states where they have funds appropriated for farm-to-school initiative; and within the language, they allocate funds for cold storage. [LR42]

SENATOR PRICE: And the question I was going to get to a little further down the line is: For a state the size of Nebraska... [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

SENATOR PRICE: ...and with our population and the density and where we have it, is there a norm for the size of cold storage? [LR42]

OLIVIA THOMPSON: That's an interesting question. I just asked it, actually, at the

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board meeting of the Nebraska Food Cooperative, because I was developing the budget for the grant, and I had no clue how much something like that would cost. And the buildings range in price: they can go from 10,000 all the way up to 30,000, and then they can go beyond, just depending on what type of building it is. But what I was told is that there are a number of abandoned corner stores--grocery stores--throughout the state and that those facilities could easily be converted into a cold storage warehouse, because they have that cold storage ability; they're in a safe area; and they generally are secured. [LR42]

SENATOR PRICE: Was that 10,000 to 30,000 square feet? [LR42]

OLIVIA THOMPSON: Dollars--about \$30,000. [LR42]

SENATOR PRICE: I'm asking the size. Are we looking for a...that's really what it comes down to, is, I mean, we're talking about walk-in... [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

SENATOR PRICE: ...a walk-in type of freezer that's no bigger than this room? [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

SENATOR PRICE: For the entire state, I find that a little bit tough to wrap my head around. I'm thinking that you're talking a cold storage that probably has around 120,000-200,000 square foot--something like you would have at a Pegler or Sysco. I mean, I used to have a restaurant... [LR42]

OLIVIA THOMPSON: Yeah. [LR42]

SENATOR PRICE: ...so I understand how that works. [LR42]

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OLIVIA THOMPSON: Yeah. I think you're right about that. And what I was told is that to purchase the size of the building to accommodate the state, it would probably cost roughly \$30,000, but that could range, depending on the type of facility that it was--to actually rent or lease the building. [LR42]

SENATOR PRICE: Okay. We'll check more on that, but thank you very much. [LR42]

OLIVIA THOMPSON: Yeah. Yeah. And that's--again, it's a rough estimate, you know. [LR42]

SENATOR CARLSON: Okay. Thank you. Other questions? Senator Dubas. [LR42]

SENATOR DUBAS: Thank you, Dr. Thompson, for your information. I'd like to go into some of the grants that... [LR42]

OLIVIA THOMPSON: Sure. [LR42]

SENATOR DUBAS: ...you have been involved with. And this pilot program--what would that pilot program actually do? [LR42]

OLIVIA THOMPSON: What we would hope is that the pilot program would establish a model program for the state of Nebraska about how to get farm--really locally grown agricultural food products into schools. So we would incorporate aspects of food safety, nutrition education in the classroom; we would have a coordinator to do what's called a needs assessment, to do feasibility study, and to evaluate the program, so that the data then could be published not only at the state and local level but also at a national level. [LR42]

SENATOR DUBAS: Great. Thank you. I believe I mentioned in my introduction and I

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think maybe you touched on it too--what could this do...what does Nebraska need to do to move themselves to the head of the line in establishing a farm-to-school program? And are we in the position to do that? [LR42]

OLIVIA THOMPSON: Oh, absolutely. I moved here from D.C., and I wouldn't have come if I didn't think the infrastructure was here to really do something. I'm passionate about childhood obesity, and if we're going to solve the childhood obesity epidemic, we're going to have to get kids eating healthier foods and moving more. And I think Nebraska is ripe to do that; the infrastructure is here. And farm-to-school initiatives--that's how you do it; you make these healthy foods available and accessible. What we need to do, in my opinion, is appropriate funds to establish farm-to-institution initiatives, so that we are getting our locally produced agricultural food products not only into schools--and that's where we start--but restaurants, hospitals, and other large institutions. And in order to do that, we've got to establish a wholesale order-and-delivery system so that these foods can really be affordable and to these large institutions. [LR42]

SENATOR DUBAS: In the grant process, I think--believe it was asked of me, and I wasn't able to answer that question. Is there a matching component as far as the state's obligation? [LR42]

OLIVIA THOMPSON: Um-hum. There sure is. With the USDA grants, there's a 1-to-1 match. And that's actually why we at the center are able to partner with these other groups. At the center we have an overhead requirement, so on any grant that we get, we also get a significant amount of overhead. We are allowed to donate that overhead and use that as an in-kind match. So if we write a grant for \$100,000, then we can donate \$45,000 to that process. So on the grants that we've submitted at the center, I have donated my time; the center's director, Dr. Amy Yaroach, has donated her time; and then we've also donated the center's overhead to help the cooperative and other groups really get to that 1-to-1 match, because it's pretty tough to do. On the USDA

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added-value grant, the type of grant that we applied for is called a planning grant. So the only in-kind match--you can give staff time; you can give overhead; and you can do cash donations--nothing else. Now, if we are awarded that grant, which is for \$100,000, the second phase is something called a working capital grant, and that grant is for \$300,000. We can really do something with that. And it's much easier to get to that in-kind match, because, for example, the food cooperative could donate their produce to the farmers market; it could then be sold, and they could still profit from that, but that donation would count towards that 1-to-1 match. So this added-value grant that we applied for, if awarded--that next phase is to move on to that working capital grant. [LR42]

SENATOR DUBAS: The grant that creates the pilot program--will there be any obligation on the state's part, should that grant be awarded? Will the state have to contribute any dollars? [LR42]

OLIVIA THOMPSON: No, not at all. Not at all. [LR42]

SENATOR DUBAS: Thank you. [LR42]

OLIVIA THOMPSON: Um-hum. Sure. [LR42]

SENATOR CARLSON: Okay. Other questions? Now, you'd mentioned if you get this grant that part of that would be used to fund this position--coordinator position. [LR42]

OLIVIA THOMPSON: Correct. [LR42]

SENATOR CARLSON: What would that coordinator do, and where would that coordinator, do you think, be located? [LR42]

OLIVIA THOMPSON: Well, the way that we have structured it: we have an office on

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campus--on the medical school's campus--we have basically a basement of an entire building and several empty offices. So we would hire and house that person. And what they would do, they would do a needs assessment; they would conduct a feasibility study; they would coordinate efforts--food safety efforts, agriculture in the classroom efforts, efforts with the cooperative to make sure all of those pieces were coordinated; and then, ultimately, they would evaluate the process so that that pilot initiative could be a model for the state, for the region, for the country. [LR42]

SENATOR CARLSON: Okay, thank you. Senator Price. [LR42]

SENATOR PRICE: Thank you, Senator Carlson. I have one question for you then. [LR42]

OLIVIA THOMPSON: Sure. [LR42]

SENATOR PRICE: What authority would this coordinator operate--if you roll out a program where they're going to be the ones purchasing the food and doing things, they're going to need some type of authority, are they not? [LR42]

OLIVIA THOMPSON: I'm not sure I understand the question. [LR42]

SENATOR PRICE: Well, I mean, if you have a consumer-driven market right now... [LR42]

OLIVIA THOMPSON: Um-hum. Right. [LR42]

SENATOR PRICE: ...there are Department of Health... [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

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SENATOR PRICE: ...there are people who have authority to make sure things are up to snuff... [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

SENATOR PRICE: ...and would be met. And now we have a coordinator who becomes basically the state coordinator. [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

SENATOR PRICE: Would they have authority to do something? I mean, what if you have a producer that has three violations... [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

SENATOR PRICE: ...then they would be maybe on a two-year suspension from providing. So there would be some--it would seem to me that there would be a need for authority for punitive, for contract awards... [LR42]

OLIVIA THOMPSON: Um-hum. Um-hum. [LR42]

SENATOR PRICE: ...for all those different things. Does this happen in other states? Do they have that type of a model in place? Or, I mean, when you talk about a statewide program... [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

SENATOR PRICE: ...and then you're talking about a director... [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

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SENATOR PRICE: ...if you don't have authority, you're not a director; you're just another volunteer. [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

SENATOR PRICE: So I was just wondering how you saw that. [LR42]

OLIVIA THOMPSON: That's a great question. And I think that that's why it's so imperative to do this pilot. Yes, every state has a different model--for the states that have programs--and I think that what's needed in Nebraska is a pilot initiative to kind of figure those pieces out and work out those kinks. So when this goes statewide, we really know what we're doing. [LR42]

SENATOR PRICE: Okay. Thank you. [LR42]

OLIVIA THOMPSON: Um-hum. [LR42]

SENATOR CARLSON: Okay. Senator Dubas. [LR42]

SENATOR DUBAS: Thank you, Senator Carlson. One more question. [LR42]

OLIVIA THOMPSON: Sure. [LR42]

SENATOR DUBAS: Obviously, there's some great things in the works; there's strong interest. You're doing this without the state's involvement. Does the state need to be involved? [LR42]

OLIVIA THOMPSON: Oh, I think so. For this to be successful, I absolutely think so. Yes. [LR42]

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SENATOR DUBAS: And how do you see the state's involvement, through...? [LR42]

OLIVIA THOMPSON: We've got to appropriate funds for these programs. And it would be wonderful to have a state-funded coordinating position. I think that that's imperative. There is so much going on around this state. Much of the good work that Ms. Edwards was speaking of--I'm new to the state, but I didn't know about it. My goodness, that's wonderful. We need someone to coordinate these efforts, and then we can really make a big impact. [LR42]

SENATOR DUBAS: Thank you. [LR42]

SENATOR CARLSON: Okay. [LR42]

OLIVIA THOMPSON: Thank you all. [LR42]

SENATOR CARLSON: Other questions? Okay. Thank you for your testimony. [LR42]

OLIVIA THOMPSON: Sure. [LR42]

SENATOR CARLSON: How many additional testifiers do we have for LR42? Okay. [LR42]

LARRY SITZMAN: (Exhibit 6) Senator Carlson, members of the Agriculture Committee, my name is Larry Sitzman, L-a-r-r-y S-i-t-z-m-a-n, and I'm the executive director of the Nebraska Pork Producers Association and testifying on their behalf. We want to thank Senator Dubas for bringing LB42 (sic) forward. And we want to thank each one of you for taking the time today to direct your efforts to providing more Nebraska-produced food to our Nebraska residents. The Nebraska pork industry helps our nation produce the highest-quality, safest pork in the world--and, I might add, in our nation's history.

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The United States' domestic market consumes 80 percent of that total pork production. We must rely on foreign markets for the remaining 20 percent of the market. And I think you all know that recent misleading H1N1 virus information associated with our industry shows the very volatile situation that reliance on foreign markets places upon our producers. We have the highest per-capita consumption of meat in the world. Yet, total U.S. meat consumption peaked in 2007 and declined in both 2008 and 2009 and is projected to decline in 2010. This will be the first three-year decline in American history. The nation's pork industry currently has excess production. The rate of pork demand for our domestic market must now grow rather than decline if we wish to maintain high-quality, safe domestic pork. Earlier, Senator Dubas pointed out the many hoops that producers will have to jump through to go through this program. But I think LB42 (sic) offers the opportunity for Nebraska individual pork producers to work with the United States Department of Agriculture-accepted local packer and butcher shops in marketing and supplying Nebraska-grown pork commodities directly to our Nebraska schools for meals and snacks. This effort could be assisted and given help by the University of Nebraska's food-processing center--maybe in packaging, preparation, or developing new, delicious, healthy, tasty pork meal and snack products. Combined, these efforts will help decrease excess pork supply, increase pork producers' markets and profitability ability, and help provide Nebraska schools with high-quality, safe, nutritious pork products. We look forward to further communication and assistance in placing this tremendous idea into mutual producer and Nebraska school rewards. I want to add something. Recently the USDA's household food security report stated that in 2008, 17 million American households, or 14.6 percent of all households in this country, are food-insecure. This number represents 49 million Americans and includes 17 million children. What really should shock us all is the report states that one in four children in this country live on the brink of hunger. A recent Hormel Foods report found that one-fourth of all adult Americans say they ate less this year to ensure that their children had enough food to eat, and 8 percent said they went to bed hungry at least once a year due to the lack of money to buy food to feed their children. Now, anybody that doesn't think one of those four kids aren't (sic) in this state is fooling themselves. And I

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think this opportunity gives local schools a great benefit in making sure that those children are fed healthy, nutritious foods while at school. Senator Dubas, I think I know the answer on state funding, but I just happen to serve on a foundation that happens to have some funds that just almost seems designed for what you're asking for. And I know nobody's asked for them. So I'll put you into contact to make sure that that's available to you. This concludes my statement, and I'll be glad to answer any questions. [LR42]

SENATOR CARLSON: Okay. Thank you, Larry. Any questions? Senator Dubas. [LR42]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you very much, Mr. Sitzman, for coming forward. And I will definitely get that contact information from you. And I think that shows the importance of this resolution and why we needed to have this task force and why we need to bring this discussion--we need to raise the level of this discussion and get it into the public domain so that people can understand what are the opportunities out there. Not only will our kids get great-tasting, good-tasting, nutritious foods, we're going to support our local economies; we're going to support our local farmers and ranchers. It's just a win-win no matter how you look at it. Now you did mention the university--the food-processing center. Our University of Nebraska is a land-grant university. Do you see this particular issue falling under that purview of what a land-grant university is supposed to do? [LR42]

LARRY SITZMAN: You know, if I really answered that question the way I felt, I'd probably get in trouble. But, yes, it is something that a land-grant university should be doing. [LR42]

SENATOR DUBAS: Well, I would agree with you. Thank you very much. [LR42]

LARRY SITZMAN: I would also add that the statements made before about storage and etcetera--cold storage--I know where there are available former milk trucks and

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etcetera--refrigerated--that you can buy at a very low price that will store a lot of produce and food. [LR42]

SENATOR CARLSON: Now Larry, just a minute. (Laughter) [LR42]

LARRY SITZMAN: Oh, I'm sorry, sir. [LR42]

SENATOR CARLSON: You may not be done yet. Other questions? Senator Wallman. [LR42]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thank you for coming, Larry. Appreciate your testimony. I had a beautiful pork roast last night... [LR42]

LARRY SITZMAN: Thank you. [LR42]

SENATOR WALLMAN: ...and you can't hardly beat that. And any ideas you have from your pork producers and that to help you out--we appreciate it. [LR42]

LARRY SITZMAN: Thank you. [LR42]

SENATOR CARLSON: Okay. Other questions? Okay, Larry, thank you for your testimony. [LR42]

LARRY SITZMAN: Thank you, sir. And I'm not nervous. (Laughter) [LR42]

SENATOR CARLSON: Okay. Are there other testifiers for LR42? Okay. Seeing none, we thank you for your testimony. And, Senator Dubas, do you want to close? [LR42]

SENATOR DUBAS: Thank you very much, Senator Carlson. I hope that you can see why I was excited to be a part of this task force and the great wealth of information we

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have available to us. You know, the million-dollar question--maybe it's not quite that high, but where does the money come from? And how much does the state ante up as far as this goes? I think the state should be at the table with this. I think we should be financially invested in this, but I think we've also heard that there are a lot of other resources available to us to take advantage of to build a very strong program for the state of Nebraska. I think we're going to be able to get this off the ground, maybe without a lot of state dollars right at the beginning. But if we want this to continue, if we're very serious about this as a long-range program--these long-range goals--we're going to have to decide if it's a priority issue for the state and if we're going to be willing to find those dollars and provide those dollars to keep the program going. Again, I think at the federal level there's going to be dollars available; obviously, there's some foundation dollars available; there are a lot of other resources, I think, that we have available to us. It's raising this discussion, bringing it out into the public domain, getting the private sector involved, getting local producers involved, just bringing everybody to the table so that everybody can understand what it is that we're trying to do, everybody has an opportunity to put their ideas in. And I just think we are just on the verge of really moving this kind of a program forward and growing. One of the things Ms. Edwards didn't mention in her testimony, but she reiterated it quite frequently during the task force--their program is four years old. They still are--and they started it out with baby steps. We can't jump into the deep end of the pool on this; we can't see that every school across the state of Nebraska is going to have local foods every day for every meal in their school system. This has to be...a pilot program is a great way to start. There are a lot of things that...you just can't, as I said, jump into the deep end of the pool. We've got to take very incremental steps, very purposeful steps, very well-planned-out steps in order to grow this program. But again, I think the timing is right. Everything...I think the stars are aligned for us if we can just find the dollars to make it move forward. So I know it's a priority for me; this is something that I will continue to work on. Do we need to make some changes to existing policy to allow these kinds of programs to go forward? I think we need to continue to look at that. I hope that I can keep this group meeting on a less-formal basis so that we can continue

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to exchange these ideas, maybe bring...you know, we didn't have people such as Mr. Sitzman at the table at the beginning. We need to start bringing some more producers into the mix and into the discussion and get the benefit of their experience too. So, again, I think there's a lot of opportunities for us. I know the dollar question is the most difficult one that we have to deal with. But I hope down the road--I hope we can get some things in place, and then maybe down the road the state will be willing to make this a priority issue for them. [LR42]

SENATOR CARLSON: Okay. Thank you. Any questions of Senator Dubas? Senator Price. [LR42]

SENATOR PRICE: Thank you, Mr. Chairman. Senator Dubas, in thinking about that bottom-line dollar, what popped up to me in listening to testimony is that this is a program that doesn't lay on top of an existing...it replaces eventually what you're talking about; so I was thinking about the state aid formula. When we look at that, there must be a component within that that takes care of the cost of meals at schools. So it sounds to me as if there's already been a funding mechanism...the idea would be to go to the Education Committee and say--have them take that formula, instead of it being a new one, because it wouldn't go on top, if I understand, it'd go in place or instead of. [LR42]

SENATOR DUBAS: Work with. Yeah. [LR42]

SENATOR PRICE: Yeah. [LR42]

SENATOR DUBAS: It's a part of, not--like you said--not in a...and I think something, too, and I know we have to look at that bottom line, and we all know whenever we introduce a bill, what's the first thing we look at? We look at the fiscal note... [LR42]

SENATOR PRICE: Fiscal note, yeah. [LR42]

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SENATOR DUBAS: ...because that's--you know, we live and die by the fiscal note. But I think it's something--we also have to look at what's the benefit, what are the benefits that we're going to get? You know, you have to spend money sometimes to make money, and I think the return on this investment could be huge for our state, as far as what it would do for our local producers, our local economies. I've always said: If the farmer makes money, everybody makes money. Because you put money in a farmer's pocket, he doesn't keep it in his pocket, he takes it right out into his local community, and he spends it. So whether we're talking small producers, large producers, this has, I think, incredible potential to generate those additional incomes that we are always scrambling and searching for--how do we broaden our revenue base? And I think that has--this program, this type of a program--has that potential to broaden that revenue base. [LR42]

SENATOR CARLSON: Okay, thank you. Any other questions? I might make one comment. Part of the reason...I have two reasons for asking about funding. Of course, one of them is what you stated: We've got to be that way. The other is, I think, that we're finding that there's some potential on cash funds--if we as a Legislature learn to keep our hands off them--to try and balance the budget. And there's some good potential there for funding things that are important as well. So thank you for your work on this. Thank you for those of you that came to testify. And with that, we close the hearing on LR42. And let's take a ten--a nine-minute break before we open the hearing on LR112. [LR42]

BREAK []

SENATOR CARLSON: Okay, we'll open the hearing on LR112, which is on Good Fences Make Good Neighbors. Senator Sullivan will open. [LR112]

SENATOR SULLIVAN: Thank you very much. Good afternoon, Senator Carlson and members of the Agriculture Committee. I'm Senator Kate Sullivan; that's K-a-t-e

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S-u-l-l-i-v-a-n, representing Legislative District 41. LR112 continues our discussion on fencing law issues brought forward by LB667, which I introduced earlier this year. LB667 was never intended to be the solution. It was actually what I considered to be the beginning of our discussion about what needs to be done to clarify, to ensure that Nebraska's fence laws apply fairly to all landowners. Over the past six months several meetings have been held with stakeholders and ag law experts about what should be done to fix the current fencing statutes. Although I wasn't able to attend those meetings, my legislative aide attended on my behalf. Senator Carlson, you chaired the October 2 meeting with the stakeholders, and I thank you for that. Each stakeholder group has different interests, so their suggestions for solutions probably varied. You'll be presented today with two different options: a simple option and a more complicated one. I strongly recommend to you that simple option. Essentially it does three things. Number 1, it includes legislative intent language stating that there is a societal benefit in requiring adjoining landowners to contribute to the construction and maintenance of division fences; 2, it defines "just proportion" as "an equal burden for each landowner unless otherwise specified in statute or by agreement of the parties involved"; thirdly, it strikes Section 34-102(3), and it eliminates statutory references to zoning and land use. I encourage you to amend LB667 with the simple option and advance it to General File in January. This option will solve our immediate issues and give landowners a fencing statute that works. Although there's merit in the more complicated option, I do not feel that adding those provisions to LB667 would be in the landowners' best interest. Now I should mention that Mr. Leonard will follow me to discuss the meetings that were held and the recommendations at more length. So I'm going to defer to him if you have any questions about the meetings or the more complicated options and hope that he can address them. But certainly at this time I'd be happy to try to answer any questions. And that concludes my remarks at this time. [LR112]

SENATOR CARLSON: Okay. Thank you, Senator Sullivan. And you're really saying: Don't ask me too many hard questions; let's let Rick summarize a little bit. [LR112]

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SENATOR SULLIVAN: Essentially. Essentially. [LR112]

SENATOR CARLSON: Okay. [LR112]

SENATOR SULLIVAN: But I could also say: Follow it with the rule of KISS--Keep It Simple, Stupid. (Laugh) [LR112]

SENATOR CARLSON: Thank you. Do you want to...are you going to be here to close? [LR112]

SENATOR SULLIVAN: Sure, I'll stick around. [LR112]

SENATOR CARLSON: Okay. Okay. Thank you. [LR112]

SENATOR SULLIVAN: Thank you. [LR112]

SENATOR CARLSON: Rick, do you want to summarize? [LR112]

RICK LEONARD: Thank you, Senator Carlson and members of the committee. My name is Rick Leonard, R-i-c-k L-e-o-n-a-r-d. I'm the research analyst for the Agriculture Committee. Senator Sullivan summarized the process fairly well. We had a very substantial--fairly substantial rewrite of the fence law a couple years ago; we rewrote the fence law with LB108. Basically we were updating the fence law, bringing it into modern times, to update a law that had been written in the 1800s--1860s--that hadn't been changed substantially. There were a couple of objectives we had in mind. We felt the process for resolving fence disputes, selection of fence viewers, was imposing a burden on counties that were--imposing an undue burden on counties. We changed the process of appointing fence viewers in 1994; we recognized the need to change that. Also, additionally, we took the opportunity with LB108 to make some changes to--that potentially would address points of potential constitutional challenge to the fence law.

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As I mentioned, these laws were written in the 1880s often in open-range contexts; we've since changed the fencing rules. Additionally, land-use patterns have changed in that time. So there were some changes in here meant to address and mitigate potential constitutional challenges to the compelled-contribution portion of this statute. LB667 I...subsequent to the passage of LB108 there were some...I was starting to hear some concerns about the law. And I think the number 1 issue with the changes we made in LB108 was that we changed some provisions--the compelled contribution in 34-102. And that'd be in Section 2 of Request 3430. We feel the changes probably inadvertently inserted some ambiguity into the statute about what is the duty, what is the...who has the duty and what is the extent of that duty. It's always been that adjoining landowners had a shared responsibility for that fence line and assumed to be an equal responsibility. LB667 as introduced and as this in front of you--the primary objective is to define "just proportion" so that we remove that ambiguity about what is the duty. Additionally, the simple option that Senator Sullivan referred to also inserted some--would insert some statutory language of legislative findings. It's important in this day and age for the fence law to be relevant in the days and age...we need to--the courts and we need to recognize that fences have value to everyone beyond just the restraint of livestock. This statement of legislative findings was derived from a court case in Iowa on a similar fence law, where a person who challenged--who didn't own livestock and had challenged whether they had--should have a responsibility. The court came and said: No, there are a lot of societal and individual benefits from the encouragement and support of landowners building and maintaining fences that we find justifies that compelled contribution. This is derived from that court's observation and ruling in that case. So those were the main things. We had a series of meetings. There were--the first bill you have before you is Request 3430, which makes a couple of minor changes that, in our meetings with Dave Aiken and Anthony Schutz of the university as well as the livestock groups--what I call the users of the fence law--there seemed to be a fair amount of consensus that these indeed were--I would call them minor tweaks of what we did with LB108 to make a couple clarifications. Beyond that, in our discussions on our October 2 meeting, the second bill involves some additional items that amongst

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the groups that were meeting on the topic were items that came up, and it was left--when we left off it was...you had asked me, Senator...I would go ahead... these were ideas that--some concepts that were discussed but we didn't--we ran out of time to discuss them all or come to some agreement on them. And I was asked to prepare some ideas in a draft form for the industry to respond to--of some additional clarifications. Again, I wouldn't call them major changes but some additional clarifications beyond the primary concepts that are contained in Request 3430, which parallel what is in LB667, which is pending before the committee right now. [LR112]

SENATOR CARLSON: Okay, briefly, what's 3431? [LR112]

RICK LEONARD: 3431 is basically...3430 contains the consensus changes to the fence law of the groups that we consulted, and 3431 contains these consensus recommendations plus a few more tweaks. So... [LR112]

SENATOR CARLSON: So the 3430 is the simple one. [LR112]

RICK LEONARD: Right. Right. [LR112]

SENATOR CARLSON: Okay. All right. Thank you, Rick. Are there questions? Senator Price. [LR112]

SENATOR PRICE: Thank you, Mr. Chairman. Rick, the question I have, in looking at this and letting my eyes swim in all this, is how, when we talk about promoting peace and security of society, and it says: by demarcation of rural boundaries, right? And in--where I--my district, rural abuts to urban, and we had a question before about fenced lines where you have a rural--or agricultural concern, and then you have a subdivision. And who then has the burden in that demarcation point? Seeing that we're saying here that the homeowners in the subdivision would bear some of that burden then? [LR112]

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RICK LEONARD: Potentially the...as again it gets difficult because this law was written for a very different era, when we...assuming all the abutting owners were... [LR112]

SENATOR PRICE: It's all or nothing is what you were saying, right? [LR112]

RICK LEONARD: Yeah--right--were agricultural producers, livestock owners, or very similar. The fence law is superseded a lot of times by local--when you, in more urban areas...rules and...the fence law has been interpreted to be applied in agricultural settings. The issue is what is really the whole...underlying the entire thing is that the fence law is now being asked to serve in a very different context in many areas of the state. In the Sandhills, the very remote areas of the state, conditions are fairly similar to the way they've always been. We get into southeast Nebraska, some of the farming...we're starting to see conflicting land uses come into play that the fence law may not have contemplated. Currently we...generally the case law is that the fence law applies in agricultural settings. [LR112]

SENATOR PRICE: Okay. [LR112]

RICK LEONARD: Potentially you could have--and that's a good question. And I had hoped to have some...be able to bring you some information today. I did contact the county zoning officials and asked them...I think, within zoning law there is the ability to say as part of your regulations: Hey, if you're going to go out in an area that's been farming, and you're going to all of a sudden bring residential development--five-acre acreages on 100 acres in an area that's currently agriculture is going to be that potentially one of the regulations to mitigate that impact on the local farming is that you may be responsible for fencing that periphery. [LR112]

SENATOR PRICE: Great. Because I was thinking about acreages, the ETJs, and then if the Sandhills, if a--let's just say a foreign landowner wanted to put a fence around his property, then all the agricultural concerns that abut to his property would have a shared

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responsibility for maintaining that fence. [LR112]

RICK LEONARD: Very well could be. And, of course, that's what we've had all along. [LR112]

SENATOR PRICE: Okay. Thank you. [LR112]

SENATOR CARLSON: Now as--you got a question? [LR112]

SENATOR WALLMAN: You can go ahead first if you want to. [LR112]

SENATOR CARLSON: Go ahead, Senator Wallman. [LR112]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yes, Rick, in others words, we put up personally a fence for private development for ourselves. Now if that fence doesn't meet the neighbor's, whoever, the acreage's, do I--if they want to put up a fancy board fence or something--do I have to equal that fence? [LR112]

RICK LEONARD: The law has--and that question comes up. In fact, I think that question was just put to me. I believe the Farm Bureau, to follow, will ask that very question. Right now, the law says that the--unless the neighbors specify otherwise--that the fence shall be a lawful fence. And in a later statute of the fence law, there is a statute that defines a lawful fence; there's a Warner Patent fence. My understanding is that you're only held to that fence. If your neighbor wanted to put up a 7-foot-tall and wanted you to share, and if it's a division fence, serving as a division between two properties, right on the property line, that you would only be held to whatever the cost would be for a lawful fence, which--those are defined. I think this question just got brought to me by the Farm Bureau when they were having a meeting on this topic. And so I had hoped...I haven't had time to prepare for that question completely, but I think that issue is going to be raised by a later witness. [LR112]

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SENATOR WALLMAN: We built the whole fence ourselves... [LR112]

RICK LEONARD: Yeah. [LR112]

SENATOR WALLMAN: ...you know, on our dime. So, well, thanks. [LR112]

SENATOR CARLSON: Okay, I'm going to use Senator Price and me as an example here to ask my question, because I don't think it's a matter so much of urban/rural, but it might be acreage. And so he bought an acreage next to my quarter of land that I've been raising corn on. But now I've decided that I want to bring some cattle in and use the stalks. And so he doesn't want a fence. So I could--one of my options: he doesn't want a fence; if I don't want to try and argue with him and come to some kind of an agreement, I could put up a one-strand electric fence to hold my cattle in. But his kids are playing out there; I don't know how comfortable he's going to be with that. But if he doesn't want to agree with me and go half the cost of a fence that would protect both of us, then he's going to have to just accept whatever I do. Now that's--is that correct? [LR112]

RICK LEONARD: The fence law itself does not speak to liability for the trespass of cattle in this case. That's under--the herd laws are 54 Section 4, which defines the liability. The fence law itself...all the fence law is concerned with is if we're putting a fence on our property line, we both benefit and derive a value from that fence. Even if I'm not the livestock owner, I may have the value that I have less concern about cattle coming out while my kids are playing or something. The fence law only deals with who is compelled to contribute to the construction and maintenance of that fence and the process for enforcing that compelled duty. [LR112]

SENATOR CARLSON: I don't think it'd be too difficult for me to prove to him that I think he wants a fence there. Now, we can squabble over that and who's going to pay what.

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But let's go another step. So he realizes that one-strand electric fence that I'm going to put up there--if we don't come to some agreement--is not really good for him and his family. So he begins to talk with me again. And I say: Okay, then, we're going to split the cost of the approved fence, the--what terminology do I want? [LR112]

RICK LEONARD: Lawful fence. [LR112]

SENATOR CARLSON: Lawful fence. But that's barbed wire. So we're going to split the cost of that, and he agrees: Well, that'll probably do the job; I don't want a barbed-wire fence in the back of my lot. So then he finally decides. And that barbed-wire fence is going to cost \$1,000, so it's \$500 for me and \$500 for him. But he doesn't want the barbed-wire fence. So he says: Well, across my part of it, I want to put up a \$2,000 fence because it'll look better. It'll still serve the purpose, but it's \$2,000. That's fine. Then he's going to pay \$1,500, and I'm going to pay \$500. Would that be correct? [LR112]

RICK LEONARD: Right. And, in fact, I think this will be part of the testimony to come behind me, is that I think some of the groups have considered that, that if there is that, that we need to define what is the limit of what I'm liable for. [LR112]

SENATOR CARLSON: Okay. [LR112]

RICK LEONARD: If my neighbor wants to put up a brick fence with--7-foot-tall, I should only be held to a certain standard not sky's-the-limit cost. [LR112]

SENATOR CARLSON: Okay. When I used Senator Price as an example, I knew you'd be easy to deal with. (Laughter) [LR112]

RICK LEONARD: Sure. [LR112]

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SENATOR PRICE: But I do have a question. [LR112]

SENATOR CARLSON: Okay, Senator Price. [LR112]

SENATOR PRICE: Thank you, Mr. Chairman. So in all this, Rick, it begs the question that if two neighbors have that issue--and you did declare that in the fence law, it's a boundary fence. [LR112]

RICK LEONARD: Correct. [LR112]

SENATOR PRICE: If I put that fence 2 feet inside my property line, I no longer have a boundary fence, do I? What's the... [LR112]

RICK LEONARD: Correct. [LR112]

SENATOR PRICE: Okay, so that's one thing. And then that also led me to a question to think about easements and those types of things. How does fence law work with easements, particularly when we think of utilities? If you drive along a road, you know...a utility out there. Have we looked to make sure that we've looked at that too? I don't know if it plays in here. But all that we've talked about here is boundary fences. The solution does still exist to put it within a property line, and therefore it was no longer an issue. [LR112]

RICK LEONARD: And it occurs a lot of times to have the authority--access to this lot to compel your neighbor to share the duty. It needs to be on the boundary, and you're both utilizing the fence. You may be aware of the term "devil's lanes," where neighbors have not been able to agree or get along on sharing the responsibility of a fence, so they each build a fence 3 feet back from the whatever. And so you have these two parallel fences that are great for hunting, because they make great pheasant habitat. But the term...I think some devil's lanes exist, because sometimes they do build them back,

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so...but then they have full responsibility for their own fence; they pay for it all. There's probably some economics if they can't agree to...instead of each cut the cost in half, but... [LR112]

SENATOR CARLSON: All right. Now under this law, he decides to put that fence 5 feet inside of the boundary, because he wants his fence. But I want the boundary fence, and I want it the lawful fence. He's still going to have to pay half the lawful fence. He can do whatever he wants to 5 feet inside, but in the boundary he's going to have to pay for half that lawful fence. [LR112]

RICK LEONARD: Yes. Yes. [LR112]

SENATOR CARLSON: Yes. And that's the way it ought to be, I think. I'm just asking these questions before we even get into the rest of the testimony because it might affect the way you talk about things, and if we're all understanding where we're going here a little bit, it may be helpful. Okay, thank you, Mr. Leonard. All right. First testifier. [LR112]

PETE MCCLYMONT: Chairman Carlson, members of the Ag Committee, I'm Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm vice president of legislative affairs for the Nebraska Cattlemen. I'd like to thank Senator Sullivan for the introduction of LB667 and subsequent meetings and the two drafts that have come out of LR112. I'd like to just quickly highlight three things and maybe get to some questions. Obviously, one of the things that we like in Section 1 of 3430 is what you stated, Senator Carlson, that good fences make good neighbors, and so if that section provides good legislative intent for potential lawsuits in the future--legal disputes--that would be a good thing. The second thing, in Section 2: "just proportion"--that's been a frustration of our members that we've had a couple of issues. A member in Cass County as well as Kearney County and Jefferson County have had disputes, and so giving definition to "just proportion" is very helpful. Our policy urges that the presumption of each landowner is responsible for 50 percent of the dividing fence. In the latter part of Section 2, the removal of the zoning

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language from statutory language we would view as a positive thing, because zoning issues, in many cases, go to the use and the location, and so if...a fence is a fence in a lot of our members' eyes, so whether it's western Douglas County or whether it's Hemingford, a division fence is a division fence. Of the two drafts, we would concur with Senator Sullivan that we like the first one; it's more concise. I think the second version addresses some individuals' concerns, but I think it might get into finer points that may become a lightning rod and cause more heartaches; so that if there is a dispute and it's not resolved, and you have to go to some arbitration or legal setting to resolve that, a judge is going to probably do that anyway. So the first draft does a great job of going a long way, yet in a concise way, to do it. Senator Dierks obviously commented this is--with the LB108--that the more that we try to attempt to put into statute has probably created more concerns. And so by having it simple with 3430, that does a good job of addressing those things. And I will say this in response to Senator Price's previous question: I think one of the biggest issues that we face as a state is acreage owners, which is great. People are moving out. So I don't necessarily perceive it as a Lincoln or Omaha issue. You can have acreage issues in small communities outside of where we're all from. So I think to say it's an urban/rural issue isn't really fair. It's just how people want to have 5, 10, 20 acres, and so that's something that we have to deal with. And this bill goes to that intent. One of the things that I would offer the committee in considering this and, hopefully, passing this is that, for instance, I'll use the comparison of a feedlot. If...I'll flip the tables here: Senator Price, you own a feedlot; and I move out and want to buy an acreage next to your feedlot. Right now, it's understood in statute and case law that that feedlot was there before you moved out--or before I moved out next to your feedlot. So in that case, I knew that there were the potential of smell, flies, dust, and so forth. So I know that going in, and I can't come to you at a later date and say: Hey, this is bringing in flies; it's bringing in dust; it's bringing in smell; I don't like it. Well, you knew that when you moved out there. So I think to use that same analogy in an argument: if you're an acreage owner--and obviously the developer is the first one that establishes that, if it is a development, whether it be an individual or a developer--if you move out and you want to have a piece of the heaven we have out in rural

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Nebraska, you know that you're walking into potential issues that aren't the same on 122nd and Pacific or the middle of Grand Island or wherever. You know moving out there that you're going to have potential livestock issues; you're going to have machinery out there, you know, planting time if it's a farming, a cropping operation. So to say that I don't want to have that fence, we would submit that you knew that going in, in that acreage setting, that there was potential for the current use and now you being next to it. So whether somebody agrees with that or not, that would be an argument that our members would hold true to in terms of defending their lifestyle that we have. So in closing, I'd just like to say that in support of Senator Sullivan, we're doing a good thing here. We like the concise draft that Mr. Leonard, along with all the participants, has drawn up and would hope that this would move out of committee and onto the floor for debate. Thank you. [LR112]

SENATOR CARLSON: Okay. Thank you, Pete. Questions? Senator Price. [LR112]

SENATOR PRICE: Thank you, Mr. Chairman. And thank you, Pete, for coming by and all that. And obviously it's not a rural/urban thing, just a scenario. But in looking at some of the other bills, we had a livestock-friendly bill that Senator Schilz was bringing up... [LR112]

PETE McCLYMONT: Um-hum. [LR112]

SENATOR PRICE: ...where we want to make livestock-friendly counties. And so if we had a livestock operation move in to somewhere where there's a acreage, then the same thing would follow through. The acreage person was there first...the same...it's applied the same way, correct? [LR112]

PETE McCLYMONT: I would completely agree. It can't be one-sided. [LR112]

SENATOR PRICE: Okay. All right. Great. Thanks. [LR112]

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SENATOR CARLSON: Any other questions? To carry your example one step further and ask a question on it: So you move in next to his feedlot, and then you don't like his fence. Your option is--you're within your right to build another fence 5 feet in or whatever it is, whatever you want. But he would have no part in the expense of that fence.

[LR112]

PETE McCLYMONT: Correct. [LR112]

SENATOR CARLSON: Correct. That's the way that that law would be interpreted.

[LR112]

PETE McCLYMONT: And as Mr. Leonard pointed out in his testimony, it's not unusual, even in ranch country, to see two fences straddling a property line. So, you know, that does exist now--not very often, but it does exist. [LR112]

SENATOR CARLSON: Well, there could be another possibility too. If we get away from the feedlot, but we've got a cornfield and some cattle that are in there on stalks once a year and an acreage, and the owner of the acreage comes to me--because I own the land where I've got cattle in there now in the fall of the year--and he wants a fence, and he tells me: You know, I don't really...I don't want that barbed-wire fence. And so we're trying to...we're agreeing initially on where the...how the fence is and how it's going to be. And he says: That's a \$1,000 fence; I want this \$3,000 fence. Then, if it's agreeable, I might say: You know what? I might want to put a cabin out here on this side sometime; I'll just split that with you. That's perfectly okay under this law too. [LR112]

PETE McCLYMONT: Um-hum. [LR112]

SENATOR CARLSON: Yeah. Okay. Any other questions? Okay, thanks for your testimony. [LR112]

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CRAIG HEAD: Good afternoon, Senator Carlson, members of the committee. My name is Craig Head. That's C-r-a-i-g H-e-a-d, and I'm the state director of government relations for the Nebraska Farm Bureau. And I appreciate the chance to come and testify, I guess, in a neutral capacity today on behalf of the organization. I just want to start off by saying we appreciate Senator Sullivan introducing LB667 last year and Senator Carlson and all the assistance legal counsel has provided us as we kind of negotiated through the issue. I'm in kind of a unique spot today. As an organization, we don't have a lot of direct policy in this area, and when the senator introduced the bill last year, it prompted us to start kind of a lot of work in terms of finding out where our members want to be at. And that'll culminate next week with our annual meeting. So in terms of the direct drafts that Rick has developed, we don't have any official position on those yet but will next week as we look through the issues. And that gets back to...so in terms of that, I'm not going to say much more there. But I do want to go back to what Rick had mentioned earlier, because we have had several of our committees look at the current fence law and the fence policies. In one of the recurring themes that came up in about every conversation we had was not as much the 50/50 issue, but it was the issue of, based on the type of fence being constructed, do I have some cap in terms of my exposure in what I would owe? Because we're saying we should have some responsibility in sharing the burden of that fence, but several examples were given across the state of different members. One actually happened to be out in the western part of the state, where they had a neighbor who put in an elk fence, which is a lot different than a, you know, five barbed-wire fence that we would perceive to take care of cattle. And the question was, you know, in this particular case they did exactly the example that you had mentioned earlier. They already had a division fence; the neighbor did not ask them to tear that fence down and try and put a new fence. They went 2 feet off the property line and put up the elk fence. But the concern would be if that had been somebody different, had they come in and wanted to do that type of fence, where does my exposure end? On the same end, back to the other example you pointed out about an acreage site, we had the same question raised by folks who say:

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I've got an acreage site. They come out in the country; they don't want to see the tractor rolling up and down. They want a privacy fence put up. So am I, as a producer...if I'm a row-crop operation, there is no fence there. They come to me and want to proceed with that. An argument could be made as you look at the definition of what a lawful fence is today that there could be a compelling reason that they could require that fence to be put in place. So from our standpoint, I'm just raising this because it was an observation that continued to come up. And I think as part of this conversation that was one of the things that we just wanted to throw in, because I know we have not talked about definitions of "lawful fence," but it might be an area that we would want to explore at some point, to look at to try and start addressing that issue, because that is one that continues to come up time and time again in our conversations. So with that, I probably haven't been very much help today, but I did want to raise that issue because it's one that I know is first and foremost on a lot of people's minds. [LR112]

SENATOR CARLSON: Okay. Thank you, Craig. Questions? Senator Price. [LR112]

SENATOR PRICE: Senator Carlson, thank you. And to go further along with the analogy that we've been going on here today with, if I have a property with a...and where the property owners have agreed to go above and beyond a lawful fence, and then the fence is damaged, is the party--do both parties have to pay for the repair of it or only the one who damaged it? And if it's the one who damaged it, do they have to repair it to the full state as it was at or only to a lawful fence? So if a five-strand barbed-wire is a lawful fence--\$1,000. But you have a \$4,000 fence. I damaged it; I just replace \$1,000, because I went to a lawful standard? Or is it already inherent in the law that you would have to be to what it was before? [LR112]

CRAIG HEAD: That's a good question, and I'm not sure I'm qualified to answer that question. But... [LR112]

SENATOR PRICE: Well, that's for--food for thought to make sure that we...make sure

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that the--that's covered. Maybe it's already covered somewhere else in statute, but I (inaudible) to see. If you're a row farmer and an acreage comes out and they put up a fence, and it's one of these wonderful, nice 6-foot privacy fence, now you might not be able to operate your machinery in the same way you did, where you were able to run your row all the way to the end. And you're turning, and something happens--mistakes happen--and that fence is damaged. Well, now how much are you liable for? To the lawful standard? Or to what it was? [LR112]

CRAIG HEAD: Well, growing up I've run into a few fences. But generally you fix them and run (laugh) as a farm kid. But that doesn't answer your question--I know that. [LR112]

SENATOR PRICE: That didn't stick to the tape. [LR112]

CRAIG HEAD: Yeah, that's a little difference of scenario. But, yeah, that's a very good question. [LR112]

SENATOR PRICE: I would like to see that we cover that. [LR112]

SENATOR CARLSON: Um-hum. Good point. Okay. Other... [LR112]

CRAIG HEAD: All right, thank you. [LR112]

SENATOR CARLSON: ...well, wait a minute... [LR112]

CRAIG HEAD: Oh, okay. [LR112]

SENATOR CARLSON: ..you may not be done. [LR112]

CRAIG HEAD: All right. [LR112]

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SENATOR CARLSON: Other questions? Okay. Thank you. [LR112]

CRAIG HEAD: Okay, thank you. [LR112]

DAVID WRIGHT: Hello, everyone. My name is David Wright, D-a-v-i-d W-r-i-g-h-t, and I'm the current president of Independent Cattlemen of Nebraska. I would like to thank the senator, Carlson, for having these hearings, and I'd especially like to thank Senator Sullivan for bringing this issue forward. I have a unique situation: I ranch in Holt County; I have brothers-in-law that farm in Antelope County, and they farm a lot. I mean, we're talking 40, 50, 30 quarters. And I own a business in Antelope County--a Main Street business--and I live on 3 acres--an acreage--right outside of Neligh, Nebraska. So I can just about touch everything you want to talk about. And we're in favor of the simplified version that Senator Sullivan is putting forth. And Mr. Leonard and I have spoken before about fencing laws and herd laws, and I think that's the thing that some people tend to miss. The testimony we had earlier about we are now three generations away from the farm or the ranch--this is what I do for a living. This is what I've done since I was 10 years old--raise cattle. I've watched mama cows run up and down a fence to get a calf on the other side. So when we talked about this earlier, about having shared responsibility and the benefit to society from that, I can...I mean that's the direction that I think we need to go with this argument. When the law was passed, where it said "just proportion," my in-laws, the farmers, the one in particular, does not care for a fence. And he took advantage to tear out every fence he possibly could and then stated: It's your responsibility to maintain this. Yet from a livestock standpoint, I've seen a bull get whipped in the pasture, and he'll go lay down in a corner somewhere where he can be by himself, and I've watched him jump the fence. I've watched cows crawl through a fence. So there's got to be a shared--it's my opinion--it needs to be a shared responsibility. Just because this is a domesticated animal, which...some of us think of a domesticated animal as being a cat or a dog--this animal will defend itself. And it will go anywhere it has to go if it needs nourishment or if it needs water; it's just a hair under a

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wild animal. As for the acreages, on our acreage, I find interesting that my neighbor right next to me--he put in a decorative PVC fence. And I offered to pay for half of it, and he said no he wanted to pay for all of it, because he liked the look of it. And then back to when you were talking about--Senator Price, when you were talking about damage, and I can see this point: If you have two bulls fighting, and they tend to tear out fence, which--they tend to tear out a lot of fence, if the fight gets going right, or even if an animal gets out on the highway and it gets hit, that's why we have insurance; that's why we carry liability insurance--for such situations, to cover such instances. So I don't have a lot to say, but I think there...we need to get...if we get back to saying that there is value for both parties, then you're going to be able to bring parties together to negotiate what the value is. If you stay with the just proportion, then you get one segment that tends to think they're entitled to not: I'm no longer responsible; I can wash my hands of the situation. As long as we can keep them engaged, then we're going to have compromise, and we're going to meet in the middle somewhere, and, you know, people will work out a situation. So... [LR112]

SENATOR CARLSON: Okay. [LR112]

DAVID WRIGHT: Sorry I'm not more prepared. [LR112]

SENATOR CARLSON: Okay. Well, no, thank you for your testimony. Questions of Mr. Wright. Okay. [LR112]

DAVID WRIGHT: Thank you. [LR112]

SENATOR CARLSON: But repeating--you did favor the simpler version. [LR112]

DAVID WRIGHT: Yes. [LR112]

SENATOR CARLSON: Okay. [LR112]

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DAVID WRIGHT: Yes, anything that tries to show shared responsibility is a plus as far as we're concerned. [LR112]

SENATOR CARLSON: Equally shared responsibility. [LR112]

DAVID WRIGHT: Yes. [LR112]

SENATOR CARLSON: Okay. All right. Thank you. Other testifiers. Senator Sullivan, you want to close? [LR112]

SENATOR SULLIVAN: Thank you very much. I won't take much of your time, but I do appreciate your having this hearing today. And in the early days of my first session down here, I mentioned to Senator Louden that I was going to introduce fencing legislation, and he said: Good luck. And you've seen in the testimony and some of your questions and comments that this potentially can be a complicated issue. But I'm asking you to take my suggestion in amending LB667 to simple details--three things basically: (1) that there is a public interest in maintaining fences. And secondly, defining--in my estimation--"just proportion" means "share and share alike in the equal maintenance of a division fence." And when we talk about "lawful fence," there is in statute quite a...in Section 34-115, lawful fences are defined; and it's not just a simple barbed-wire fence, that there are--it gives about seven different outlines, seven different details of what constitutes a lawful fence. So we have some things in place that already make that definition. And thirdly, in this whole process of simplifying LB667, to eliminate any reference to zoning or types of land use--essentially, division fence: equal maintenance by both landowners. So thank you very much. [LR112]

SENATOR CARLSON: Okay, any questions? Yes, Senator Price. [LR112]

SENATOR PRICE: Thank you, Mr. Chairman. Senator Sullivan, I just had one question.

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And I'm not sure that you're going to want to answer it, but it's something that will be looked into then. And that is, in the simplified version, 3430, page 2, line 1 going into line 2--are you with me? [LR112]

SENATOR SULLIVAN: On the...Section 1? [LR112]

SENATOR PRICE: Right. Section 1. [LR112]

SENATOR SULLIVAN: Yes. Um-hum. [LR112]

SENATOR PRICE: I find it curious that we say the Legislature finds that the "encouragement" and "compel." When we use "encourage" and "compel," that's kind of like saying: You're going to do it because I told you so, but I'm kind of asking you. But no, you're telling me. For your interest, I would like that to be looked at. Do we want to have both those words? We're basically compelling--we're not encouraging; we're compelling. [LR112]

SENATOR SULLIVAN: Okay. [LR112]

SENATOR PRICE: And I wonder why do we... [LR112]

SENATOR SULLIVAN: Have to do both? [LR112]

SENATOR PRICE: ...are trying to butter it up, when we're just basically saying: You're going to do it because I told you to. [LR112]

SENATOR SULLIVAN: Okay. [LR112]

SENATOR PRICE: All right. [LR112]

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SENATOR SULLIVAN: Point well taken. [LR112]

SENATOR PRICE: All right, thank you. [LR112]

SENATOR CARLSON: Any other questions? You use the terminology, "share and share alike." So Senator Sullivan, I'm going to introduce a bill next session; I want you to remember "share and share alike" when I come up with my bill. [LR112]

SENATOR SULLIVAN: Well, I'll take that into consideration. [LR112]

SENATOR CARLSON: Okay. All right. Thank you. Thank you for coming and testifying, and with that, we close the hearing on LR112. Thank you for coming. [LR112]