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COMMITTEE ON AGRICULTURE
February 15, 2005
LB 317, 286, 706, 531

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 15, 2002, in Room 2102 at the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 317, LB 286, LB 706, and LB 531. Senators present: Bob Kremer, Chairperson; Philip Erdman, Vice Chairperson; Carroll Burling; Ernie Chambers; Doug Cunningham; Deb Fischer; Don Preister; and Roger Wehrbein. Senators absent: None.

SENATOR KREMER: It's past 1:30. We're waiting for some of our committee members yet. I think we need to get started. I guess I'd like to apologize first for the inadequacy of the room. We use the other room as long as Appropriations is not using it, but they were going to use it today and we found out at the last minute they didn't. But we felt it would be harder to move everyone so I hope everyone can get in and we apologize if the seating is not very good, so try and accommodate for each other if you would. I'm Bob Kremer, Chair of the Ag Committee from Aurora. And I will introduce the rest of the members that are here now. On my far right is Deb Fischer from Valentine; Senator...hello, what's your name? (Laugh) Don Preister; that happened to Senator Bromm today. He couldn't remember his staff so Senator Don Preister from Omaha. Next to me is Rick Leonard who is the research analyst. And to my left is Senator Phil Erdman from Bayard. He's the Vice Chairman of the committee. And we have Barb Koehlmoos filling in for us today and thank you for that. And Senator Doug Cunningham from Wausa. And our page is David Solheim from Norfolk. And so if you need anything passed out, why, please give them to him and he will do that or if you need a glass of water or something like that. Ask you to please turn off your cell phones so the aren't disturbing anyone if they go off. Please try to keep your comments concise. And we have four...do we have four bills today?

RICK LEONARD: Yes.

SENATOR KREMER: And so we need to get through all them. And let's see. Please sign, fill out the sign-in paper. I think they're probably laying here on this front desk and have that ready when you come up. And if you don't have it ready, why, go ahead and give your testimony and then you

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can fill it out and drop it in, but put it in the box. State your name and spell it. You don't need to spell it for us, but the transcribers that listen to it, they don't always know who the testifiers are so please spell your name. And we will take the proponents first, then the opponents, and the neutral testimony. So I will be introducing the first bill, LB 317, so I will turn the proceedings over to Senator Erdman and I will introduce the first bill.

SENATOR ERDMAN: Thank you, Mr. Chairman. Can we see a show of hands of those wishing to testify on...in support of LB 317? One, two, three, four, five, six.

SENATOR CUNNINGHAM: Seven.

SENATOR ERDMAN: Seven? Thank you, Senator Cunningham. Those wishing to testify in opposition to LB 317? I see one, two, three, four, five, six, seven as well...eight, one in the back. We would ask that when you do testify not to be repetitive. We do want to hear what you have to say and try to confine your remarks to the actual proposal before us. Mr. Chairman.

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SENATOR KREMER: Thank you, Senator Erdman. My name is Bob Kremer and spell that K-r-e-m-e-r, and I'm here to introduce LB 317. I could make this very short because the only thing the bill does it deals with the permitting process of tractors in Nebraska. Right now any tractor under 40 horsepower does not have to have a permit to be sold in Nebraska. And that raises that minimum from 40 to 100 horsepower. Under the Nebraska law which was first enacted in 1919, only permitted tractor bottles may be sold in Nebraska. The law essentially requires that the endorsement of the Nebraska Board of Tractor Testing Engineers before a permanent permit is issued by the Department of Agriculture. Originally this bill applied to all tractor models, and I'll give you just a little history. In 1950 it changed to include only agriculture tractors, exempted all the tractors less than 20 horsepower. In the mid eighties the U.S. became fully participating partner in the OECD test scheme which approved the results from any other official OECD test

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stations worldwide accepting in lieu of testing completed here. In 1989 it changed to exempt agriculture tractors under 40 horsepower. In 1998 by rule of the Board of Tractor Testing Engineers redefined the model so that a performance test on the basic tractor would also cover all derivatives of that model. Thus the manufacturer no longer had to test separately to permit all transmission options, but could choose one representative transmission option that they wanted to use in the performance test. And also it no longer required drawbar tests on tractors tested here for the purpose of meeting the Nebraska permitting requirement of models under 100 horsepower. So anything under 100 horsepower did not have to have the drawbar test. Then in 2001 and 2003 there was bills introduced and then in 2003 we introduced LB 212 that eliminated the requirement for...was a proposal to eliminate the requirement for the testing in Nebraska. We recognize the importance of the third-party verification. It allows purchasers access to accommodate information to make informative buying decisions. It protects the manufacturer investment in approved tractor performance. It is because of all this that we felt like it would be best to really even have a national requirement rather than just a state requirement because Nebraska holds the burden for all this. And after we introduced that bill and because of a lot of the testimony, we were under the understanding that probably the lab could go on as it was even without that permitting because people felt it was really important. But we felt like there was a chance that the lab would close down if that went forward. So we called the meeting and I guess I'd like to explain a little bit all the hours and hours that we put forth to try to make sure that the lab didn't close down. And I guess I've been a little surprised just recently reading some papers and things that people are still saying that I'm trying to close down the Nebraska testing lab. And I think the university people would know that we're trying to work together to see what we can do on that. And I'd like to bring you up just a little speed what all we have done then to try to make sure that it stayed open. After we realized that there might be a possibility that some of the manufacturers would not test the tractors in our lab, we called a meeting over at the university and we had the three major tractor manufacturers there. We had the friends of the tractor testing lab who was opposed to the bill be part of that. We had the dealers association there. We had some of the farm organizations

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there, sat down with the manufacturers and said, would you test if you were not required to? One of the manufacturers said they thought they would, two thought they wouldn't. So at that time we put an amendment on the bill to delay the operative date for three years seeing what we could get done on a national level. We wrote to all the congressional delegation and our senators. We wrote to all the manufacturers, the manufacturers association and the dealers association, talked to Farm Bureau to see if they would help get something going to where it could be on a national level. And all of those that I remember at that meeting felt like it would be better if it was a national law rather than just the state of Nebraska carrying the burden of that because it has made it so some of our dealers cannot sell some tractors in Nebraska. Some of the farmers cannot purchase tractors in Nebraska and they go across the border to do that. Then last year the bill was not prioritized and, you know, we didn't even get through half of our priority bills so it never did get up. I was asked to reintroduce the same bill this year and I said I didn't feel comfortable doing that. I thought I'd like to wait a year and see what we could do on a national level. But then thinking that with that bill before us was really some incentive for something to get done on the national level, the editor of the...the machinery editor for the Farm Journal magazine went to work and had several articles in the paper about how the lab was going to go away. And it got response from all over the United States and they sent us a pile of letters of people saying how important this lab is. And I think that's very true. And if it's important to the other states, I wish they'd get onboard and help us out and have it on a national level and each state have the same playing field that we do here in Nebraska. So we said that we would introduce something that we would make sure the...I guess I'd go back a little bit. We did meet with the University of Nebraska and some other people and say, is there any other way that we could just reassure that the lab would stay open and that we could get some relief to our machinery dealers in Nebraska. And we really did not come up with anything. So...and we did offer to introduce this bill that would exempt tractors under 100 horsepower. The bill, LB 212, that was introduced before did have a section in there that raised the minimum from 40 to 60. And if I remember right, the university even said that they would be agreeable to the 60, 70 the maximum in there someplace, but

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we did go 100 which maybe pushed it a little bit. Some of the reasons for the 100 horsepower was that tractors under 100 horsepower are usually primary utility tractors and are rarely used for cultivation application. An, in fact, the Board of Tractor Testing Engineers no longer requires drawbar testing for those under 100 horsepower like I'd mentioned before. Many tractors under 100 horsepower are even marketed primarily for nonagriculture users and also exempt from the tractor lab is nonagriculture tractors. It's only tractors they use in agriculture. The Nebraska permit law applies to agriculture tractors under 40 percent and then anything under that is not subject to the tax. The main manufacturing competing in the utility tractors is Kubota. And I thought it was kind of interesting that Farm Journal magazine talking about how important it was to have all the tractors third-party tested, the next page had an article on the Kubotas and how great a tractors they were and they aren't tested in Nebraska. It's the tractors in this range that account for the majority of the lost sales because it seems like by Omaha there's a lot of nonagriculture tractors used for other purposes and they cannot buy them in Nebraska so they go across into Iowa to purchase the tractors. I think it's a loss of revenue to Nebraska. If a person...if I bought a tractor that was not tested in Nebraska and brought it back here and a year later tried to sell it, if it's still the current model, I could not sell it. So these are some of the rationale behind it. I guess I would appreciate it if people didn't come up and say that I'm trying to close down the tractor testing lab. Keep your remarks to whether it's appropriate the 100 horsepower or if it should be something less. We're open to work with you any way that we possibly can. We think the lab is fantastic and I've always been a supporter of it. I remember coming as a young boy with my dad to see...to watch them test the tractors. And I think it's good for our university, for our students, and we want to make sure that it stays open, but at the same time come up with some relief from our dealers that we are restricted from selling some. So still our goal is and we have gotten letters back from John Deere, Case IH, and I think AGCO from the manufacturers dealers association, from the manufacturers association and the dealers association, all saying that they would work with us. Farm Bureau of Nebraska, Farm Bureau had originally sent out letters to all the state Farm Bureaus to say help us get onboard that we can get some on a national

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level and things tried change it a little bit with Nebraska. But the Illinois Farm Bureau at their convention in January did introduce some legislation through the Farm Bureau that all the states would do what they could to help get a requirement on a national level. And that's our goal. Our goal is to again I'll say is not to...is to make sure the lab stays open but still gives some relief. If the 100 horsepower isn't right, please tell us but we'd appreciate it if you'd try to direct your remarks to that. So I'll answer any questions that you might have.

SENATOR ERDMAN: Thank you, Senator Kremer. Before we have questions, Senator Chambers from Omaha has joined us as has Senator Burling from Kenesaw. Any questions for Senator Kremer? Seeing none, thank you for your opening. Again, I had a show of hands. There were seven in favor and eight opposed. If we could allocate the time appropriately, approximately a half hour to each side, that would give each person over three minutes to tell their case. That would help us with our proceedings today. It is 1:47 and so we'll begin the proponent testimony. And again if you can make your case succinctly, that will help to ensure others get a chance to testify as well. First proponent. As you come forward, if you could make sure that you drop a sign-in sheet in the box that would help us as well to make sure we have a record of who was here.

DAVE HARDIES: (Exhibit 1) I have a handout, just set it here for when he comes back. Good afternoon, Senators. My name is Dave Hardies, the last name is spelled H-a-r-d-i-e-s. I work for Omaha Tractor Incorporated in Omaha, Nebraska. We're a Bobcat and a Kubota dealership with a few complementary short lines as well. My job is selling the Kubota products to primarily acreage and homeowners, landscapers, turf care professionals, contractors, small businesses, hospitals, schools, and municipalities. As you notice, I didn't mention farmers. Their use of these tractors is to haul firewood, remove snow, maintain driveways, mow grass, weeds, trim brush, move dirt on job sites as well as backyards, maintain athletic fields, and many other uses. Kubota has marketed compact and utility tractors, turf care products, and light industrial products in the United States for over 35 years since 1969. They currently market 98 different models of tractors with unique engine and transmission combinations.

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Of these 98 models, 41 of them are over 40 PTO horsepower. Hence, I cannot sell them to an agricultural usage here in the state of Nebraska. But only one of them is over 100 horsepower. And all of them are OECD tested in Japan as the agreement...the OECD agreement states. Of over 900 Kubota dealers in the United States, only 6 are located here in the state of Nebraska and one of those is a turf only dealer. Because of numbers like this and model changes every four to five years, Kubota and other manufacturers like them can't justify the expense of the permit to market tractors they've already paid to have the OECD tests done. This permit would allow 5 Kubota dealers in the state of Nebraska to market tractors and over 900 dealers outside of the state of Nebraska can market in the state of Nebraska without any penalty. If I were allowed to sell the larger tractors in Nebraska, it would mean an additional 6 to 12 tractors for our dealership per year. That translates into an additional \$10,000 to \$20,000 in sales tax income alone because like I stated before, most of my customers are not farmers so hence they do not qualify for the ag sales tax exemption. On top of that, would also generate increased income and property taxes through just the business of doing business here in the state of Nebraska. Last year Kubota set up a new dealer in Council Bluffs, Iowa. He can sell the larger tractors into Nebraska without having to worry about the Nebraska test permit requirement. Unfortunately for me, he can also sell the smaller tractors into Nebraska which means additional tax loss for the state of Nebraska that goes over to the state of Iowa. And I know that all of you senators hate to see tax revenues leaving the state of Nebraska and going to other states.

SENATOR ERDMAN: Thank you, Dave. Any questions for Mr. Hardies? Seeing none, thanks for your testimony today.

DAVE HARDIES: Thank you

SENATOR ERDMAN: Next testifier in support of LB 317. Don't be shy.

JERRY SEDIVY: I'm not shy, I'm nervous. (Laughter)

DAVE HARDIES: I know the feeling.

SENATOR ERDMAN: Take your time, take a deep breath, and

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tell us what you want to tell us.

JERRY SEDIVY: (Exhibits 2, 3, 4) My name is Jerry Sedivy. It's spelled S-e-d-i-v-y. I'm from Walthill, Nebraska. And I guess I want to thank the members of the committee for the opportunity I have today to express my feelings about the Nebraska tractor permit situation. My dealership is located in northeast Nebraska at Walthill. We are in the center of the Omaha Reservation 25 miles from Sioux City, Iowa; 31 miles from Onawa, Iowa. The tractor sales permit system directly affects my dealership because of the customers I have in South Dakota and Iowa and because of competing dealerships in those states. First of all, not in my notes here, I'm a Farmtrac dealer. I'm the only one in the whole state of Nebraska right now. I have been asking Farmtrac to help me get permits for the tractors that they build that I cannot sell here legally. I've been in the business in Farmtrac a little over two years now, and I haven't received any permits yet even though I've asked several times. Other dealers have been approached about being Farmtrac dealers, but since we don't have permits for the tractors, they're reluctant to take on the line. It's a fantastic line of tractors, but we're really hindered right now at getting more dealers. And I can't sell the tractors I need to sell because of the permit system and the situation I'm in right now. I am in favor of the passage of LB 317 because it would make Nebraska more evenly matched with its neighbors in terms of farm equipment sales. I have some things to pass out. I'd like each person to take at least a small look at that. I'm presenting two pieces of literature for tractor models my company builds to illustrate my perspective of the unfair disadvantage the permit system puts my dealership in. The tractors are Farmtrac Model 545 and a Farmtrac 555. These tractors are obviously direct descendants of Ford tractors that were built between 1965 and into the early 1990s. Due to the rules of the permit system at this time, I can legally sell the Model 545 to a Nebraska customer because it is a 37 PTO horsepower tractor. But I cannot legally sell the 555 because it is a 44 horsepower tractor. Over 90 percent of the parts used to build the two models are interchangeable. The clutch, transmission, differential, hydraulic lift and steering system are identical. The sheet metal, fuel tank, electrical systems and roll bar are the same too. The size of the pistons and the type of brakes are the main

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differences. It is absurd to me to have to tell a Nebraska customer that he can't have a 555 when the two models are side by side on the lot. But if he wants one, he can go to the dealership at Merrill, Iowa, approximately 50 miles away and get one. The sad part for Nebraska is that there's no sales tax for farm tractors in Iowa, thus raises an interesting point. These days many tractors in this class are not purchased by farmers. They're going to schools, municipalities, landscapers, construction companies, golf course and acreage people who are commonly professional types and many times are retired. Customers buying tractors now are almost always want accessories for them which includes cabs, loaders, and implements. They will buy them from the same place they get the tractor, of course. If the customer doesn't need to depreciate the purchase for tax purposes, Nebraska will never know he bought the tractor and equipment. Now imagine time has passed and the tractor is up for sale again. It still is not legal for a dealership to purchase or trade it and resell it in Nebraska. If the dealership is unaware of the tractor's history, it could easily and unknowingly break the law. You should see the look of disbelief on the faces of nonfarm customers when I tell them what is going on. Unfortunately, I get to see that look a lot. Going back to the sales and property tax issues, one could see how these out-of-state purchases could affect the Nebraska tax revenue situation. Now we can also add Internet sales to the mix. A tractor like the Farmtrac 555 four-wheel drive with a loader and cab would be in the range of \$32,000 with the potential sales tax assessment of \$3,140 at 5.5 percent. I believe, I might be wrong, but I think the cost of a permit for a tractor that has been tested at an OECD test facility somewhere in the world would be about \$2,500. Can Nebraska afford losing sales like that? Our dealers association has been portrayed in the media by people at the tractor test lab as attempting to bring about the collapse of the test lab. I cannot speak for other dealers, but in my opinion, that portrayal is incorrect. I do not want the test lab to close because it is a very important facility. I think that in 2005 tractor testing is no longer a single state issue, but an international issue. The tractor test issue should be raised from the single state level to at least the national level. Congress should be lobbied to have tractors built or sold in the U.S. tested, and if no OECD test facility is available in the country of the tractor's origin, Nebraska's

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lab could do it. The burden of keeping the test lab operating would then be lifted off the backs of the Nebraska farm equipment dealers and the entire country would benefit from it. I am doing what I need to do at my dealership to survive and grow. I have looked at all the options that are legally available to me in order to achieve my goals. One of those options is opening a branch office in another state. It is not a new idea, but it has been done for many years by other dealers and manufacturers who have company stores outside the Nebraska border. I don't like the thought of the extra accounting and paperwork involved with that type of operation, but at some point it might be necessary. I know about a tractor that was sold to a private school in Nebraska which was a Kubota model without a Nebraska permit. When I questioned one of the maintenance men about it, he revealed they have a sister school in Des Moines, Iowa. There's another tractor by Pierce, Nebraska, that is a SAME model without a permit that was purchased out of state. The owner claims it's one of the best tractors he's ever had. He also owns a Kubota that never had a permit. He wanted to trade it to me, but I didn't. These tractors are coming into Nebraska and no one has an accurate way to account for them. Then I have some notes that I wrote last night. My background is that my father started in 1954 as a Ford tractor dealer. He managed that one till '66 and then he bought into a partnership in the Ford and Oliver dealership. So I kind of grew up in this business and I'm not an old person, but through the years I keep seeing dealerships all over my part of the country drop and they're not getting replaced. These are dealerships I remember that no longer exist and were not replaced. I'm just going to go by the town and number of dealerships I remember there. There were two in Verdigre, three in Creighton, two in Plainview, three in Hartington, one in Belden, one in Newcastle, two in Ponca, one in Jackson, one in Dakota City, one in Winnebago, two in my hometown of Walthill, two in Lyons, one in Oakland, three in Tekamah, two in Bloomfield, one in Hubbard, two in Emerson, one in Beemer, one in Wayne, and one in West Point. I told my dad about this this morning and he doubled that list in about five seconds. Of course, that was before my time and I'm not blaming all these dealerships disappearing on tractor permit. That's not what I'm doing. I'm trying to illustrate how difficult it is to keep a dealership going in this state. And then when it's time to close it up, there's

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no one taking it over. They're gone. So right at this time when I drove down here this morning, I come on Highway 77, I counted only three new tractor full-line dealerships on the entire road coming down here in 100 miles. There's nobody left. There were no new openings in the last ten years that I can remember. And in my area, there's only two dealers in the 30-mile radius--one in South Sioux City and one in Pender, Nebraska. Otherwise, I'm the only dealer, actually the only one as far as I can see clear to Omaha that specializes in tractors in the class that we're talking about today. So you can go 80 miles in any direction, there's nobody that's doing what we're trying to do. This is an incredibly important thing for me. And in our little town, it's only 800 people. But I service two reservations and I have customers coming from as far away as Arizona and Hawaii even for parts. But if I'm not there, our whole part of the country is going to have one less major thing in it.

SENATOR ERDMAN: Jerry, can I interrupt you?

JERRY SEDIVY: You bet.

SENATOR ERDMAN: We're running...we're getting pretty long in the time here. I want to make sure that there's time for questions if there are any. If you'd like to wrap up, that will help us.

JERRY SEDIVY: I'm finished.

SENATOR ERDMAN: Okay. I didn't mean to interrupt. I just wanted to make sure...

JERRY SEDIVY: No problem. I was at the end so.

SENATOR ERDMAN: Okay, all right.

JERRY SEDIVY: I just appreciate the time.

SENATOR ERDMAN: You bet. Is there any questions for Mr. Sedivy? I don't see any. We appreciate your testimony today.

JERRY SEDIVY: Thank you.

SENATOR ERDMAN: Next testifier in support. There are

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approximately 17 minutes left on the proponent side.

PAM HOGE: (Exhibit 5) I also have a handout. My name is Pam Hoge, the last name is H-o-g-e, and I'm from Plymouth, Nebraska.

SENATOR ERDMAN: Thank you, Pam.

PAM HOGE: I'm here today to urge your approval of LB 317 which would increase the horsepower rating from 40 to 100 before a permit is required to sell a tractor in Nebraska. I would just join with the previous dealers in their concerns about not being able to sell these tractors. We're missing out on sales. Along with what the last testifier just said about ag equipment dealers disappearing, it's because our customer base is disappearing, which makes it more important for us to have new outlets for sales. And this tractor range that our manufacturer offers between 40 and 85 horsepower opens us to a new range of customers that would help us stay in business. I'm going to skip through a little bit of what I've given you, trying to highlight on something that maybe hasn't been mentioned. It's my understanding that the Nebraska tractor test lab is the only OECD approved test facility in the USA. And according to one member of the OECD Coordinating Committee that I spoke with, possibly the only one in North America. It provides a valuable service to tractor manufacturers with global markets and almost all major tractor manufacturers have those today. According to the Nebraska test lab web site, OECD codes require testing in the country of manufacture which means any tractors manufactured here for export to OECD countries are going to have to be tested here. Increasing the permit requirement from 40 to 100 would not affect the value of the lab or of the service it provides to manufacturers. I spoke with several people in tractor engineering and marketing management with our manufacturer and they all assured me they will continue to use the Nebraska tractor test lab. They value the service it provides and they appreciate having a neutral site to have the test performed. It's important for legislation to keep up with technology. Tractors are more powerful today than in 1920 or even in 1959 when the first standard code for official testing was approved by the OEEC, the forerunner of the OECD. The Nebraska test lab reports from models tested in 1960 show an average PTO horsepower of just over 54 with

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75 percent of the tractors testing at over 40 horsepower. When the minimum horsepower was set at 40 in 1986, the average horsepower was 79 with only 16 percent of the models testing over 100 horsepower. By 2000, the average horsepower was up to 197 with 79 percent of those being over 100 horsepower. To me this indicates that the intention in 1986 was to test most tractors and setting the bar at 40 accomplished that. Today, setting the bar at 100 would have the same effect. Our dealership was founded in 1940 and we are now the only ag dealer in our county where there were once another four or five. Manufacturers don't give franchises to dealers without knowing that they have facilities to support what they sell with service and parts. We're being told repeatedly that product and brand considerations are only part of farmers' equipment buying decisions. Dealer service, facilities, availability, and integrity are factors too. We can control those factors. We ask that you approve LB 317 and give us more control over the products we can offer as well.

SENATOR ERDMAN: Thank you, Pam. Any questions for Ms. Hoge? Seeing none, thanks for your testimony and your research. Next testifier in support. There are approximately 13 minutes left.

TIM KAYTON: I'll be quick.

SENATOR ERDMAN: All right.

TIM KAYTON: My name is Tim Kayton, that's spelled K-a-y-t-o-n. Thank you, Senators, for hearing us today. I'm involved, I'm a fourth generation farm equipment dealer from northeast Nebraska speaking today in favor of LB 317. However, I do feel the law should be removed completely and not just 100 horsepower. A few years ago we had a customer that was a farmer/contractor. He wanted to buy a certain tractor that we had in our lease fleet. He currently had one that he'd been running for about a year and a half to two years. He liked it. He saw we had one in our lease fleet and asked to purchase it. We misinterpreted the law and how it is stated and sold it to him. Thousands of hours later on the tractor, we had a disagreement with this contractor as far as on some machine work that was done on it. The customer informed us that we needed to buy the tractor back from him because we shouldn't have sold it to

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him in the first place. Obviously his attorney knew the law a little better than we did. About a year to a year and a half later we finally settled out of court and we have the tractor now. And consequently, ended up buying the other one that he owned also from him. The disheartening thing about it was he could have gone out the next day and gone 100 miles and bought the same tractor back but I couldn't sell it to him. Today's farmers are inundated with information from farm publications to the Internet. They usually know more about the machinery before it's out than what the dealers do. If their dealership can't provide the equipment they want because they do know what they want, they can go to their neighboring dealers. We currently sell equipment on almost every state in the country. Consumers know what they want and know where to get it. As Nebraska dealers, we feel like we're being a little bit penalized because we can service the tractor, we can do warranty work on the tractor, we just can't sell it. We have to send them on to a neighboring dealer. We're not trying to shut the UNL tractor test facility down. But I guess maybe I'm saying after 85 years maybe it's time to reinvent themselves. We've all had to. We've all had to change. If it wasn't for change, would we be raising 220 bushel corn or would we still be raising 60 bushel corn? I would strongly encourage you to support LB 317. Any questions?

SENATOR ERDMAN: Thank you, Tim. Any questions for Mr. Kayton? I don't see any. Thanks for your testimony. Ten minutes remaining on the proponent side. Next testifier in support.

LARRY DINKEL: (Exhibit 6) Good afternoon, Senator Kremer and members of the Ag Committee. My name is Larry Dinkel spelled D-i-n-k-e-l. I have some handouts. Thanks, David.

DAVID SOLHEIM: No problem. Good to see you.

LARRY DINKEL: Don't let that scare you. They're not all that thick, new information in there. I am co-owner of Dinkel Implement located in Norfolk and Scribner. Dinkel Implement has been in Norfolk over 50 years, and during that time we've experienced many changes: fewer customers, farm equipment suppliers merging, more government regulations, of course. To be successful, we must be able to fill the needs and choices of our customers. To be able to offer my

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customers a choice of tractors is why I'm here today asking you all to support LB 317 that raises the minimum horsepower requirement for a permit to sell a tractor in the state of Nebraska to 100. Some of the testifiers ahead of me did very well in explaining that. I am very much in favor of the Nebraska tractor test lab. Some examples I've included in there that we use almost every day to...by our sales people to offer to prospective customers to show them how well we do versus our competition and that's being an independent test lab like it is, is extremely important to us. If we didn't test well I suppose it wouldn't be as important, but we do test well. The brands we have available at our dealership are New Holland and Kubota. I have models of tractors listed there that are currently we are unable to offer for sale. Our customers and consumers are using the Internet more and more to find tractors to fit their needs. If their choice is unavailable in Nebraska, it's not difficult for them to locate a dealer out of the state who can sell whatever they've chosen to sell that to them and deliver it to them. This particular customer may not understand that as if I can't sell that model of tractor, I'm not probably going to be having parts on hand or have service people trained to take care of it properly so the consumer is not doing himself any favors. I understand that LB 317 would allow some brands of tractors I've probably never heard of to come into Nebraska and be sold here. But I'm willing to let the marketplace dictate and allow our farm consumers to spend their own money. Again, I ask you to support LB 317. That will give our farm consumers more choices. Thank you.

SENATOR ERDMAN: Thanks, Larry. Any questions for Mr. Dinkel? I don't see any. Next testifier in support. Come on up. Is there anyone else wishing to testify in support? I thought I saw seven. We're at six. All right. This will be the last one.

ANDREW GOODMAN: (Exhibit 7) My name is Andrew Goodman, A-n-d-r-e-w G-o-o-d-m-a-n. I'm executive vice president of the Iowa-Nebraska Equipment Dealers Association. I'll abbreviate my comments in the interest of time. Current law Section 2-2710 in Nebraska states that any person selling a current tractor model for use in Nebraska without a permit issued by the department for such a tractor model shall be required to repurchase any such tractor model sold in

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Nebraska for which a permit has not been issued. Most farm tractors sold in the United States have been OECD tested, but not all of them have a permit allowing them to be sold by an individual or business domiciled in Nebraska. This does not stop these tractors from being sold in Nebraska. In the 1980s, the Iowa-Nebraska Equipment Dealers Association assisted and supported the University of Nebraska Tractor Test Lab in becoming an OECD certified test station, which included passage of Nebraska state legislation. We have continually supported the lab and will continue to do so. We believe that any current model farm tractor sold for use in the state of Nebraska should be required to be OECD tested by the manufacturer prior to retail delivery. We are also on record as being supportive of federal legislation to require OECD testing of farm tractors. In 1920, the year after the Nebraska tractor test law was passed by the Nebraska Legislature, the average horsepower of tractors tested was 20. Today, most farmland in Nebraska is farmed with tractors in excess of 100 horsepower. Subsequent to legislation in 1986 that established a minimum horsepower requirement of 40 for a permit, there have been no negative results regarding tractors under 40 horsepower. We support LB 317 to raise the minimum horsepower required for a permit to sell a tractor in the state of Nebraska to 100. We believe the positive effects of this legislation will be to allow utility tractors that can now be sold in other states to be sold and serviced and supported by equipment dealers in the state of Nebraska. This will not undermine our commitment that all tractors be OECD tested and that Nebraska dealers will serve their local communities with integrity. It will also not undermine our commitment to existing Uniform Commercial Code regulations that were adopted in 1938 and consumer laws that protect the people of Nebraska. And I would entertain any questions from the committee.

SENATOR ERDMAN: Thank you, Andrew. Any questions for Mr. Goodman? I do not see any. Thanks for your testimony today. Is there anyone else in case I missed somebody? There's three minutes left. Seeing none, that will end the proponent testimony. We will now take opponent testimony on LB 317. Again, we'll try to abide by the same time restrictions of approximately half an hour. It's 2:15 so the first opponent to LB 317 can come forward.

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KEITH OLSEN: Senator Kremer and members of the Agriculture Committee, I'm Keith Olsen, O-l-s-e-n. I'm a farmer from Grant, Nebraska, and today I'm representing Nebraska Farm Bureau. And I'm here to offer our testimony opposing LB 317. Last year at our annual delegate session, we adopted policy stating that we support the Nebraska tractor testing lab and state that Farm Bureau will work with manufacturers, equipment dealers, and the university to ensure that the lab stays open. And that this policy also states that tractors should be tested before sold in the state. I know this has been a contentious issue and I appreciated the testimony given by the proponents. But as an organization, our number one concern is that we maintain the laboratory in Nebraska. And we are willing to work with whoever to make sure that that does happen. You know, the question has been asked is the 100 horsepower the proper threshold and I can't answer that because I don't know. There are a number of farm tractors that are still being sold that are under the 100 horsepower for loaders, for mowers, for hay equipment, et cetera. But, you know, the issue being we can have additional discussion on, but we do support the lab and want to keep it open and be willing to answer any questions that any of the committee may have.

SENATOR ERDMAN: Thank you, Keith. Any questions of Mr. Olsen? Senator Kremer.

SENATOR KREMER: Do you feel like if we exempt it up to 100 horsepower that it would close the lab?

KEITH OLSEN: From the information we have, somewhere around \$53,000 a year would be lost to the lab. And I doubt if they have that kind of excess revenue at this time. I know the figure is 100 percent accurate, that's the figure we were told. And, you know, it would hurt.

SENATOR KREMER: Would you support some other horsepower, go up 60?

KEITH OLSEN: You know, I don't know what the proper number is. We'd be willing to discuss a different figure.

SENATOR KREMER: Okay.

SENATOR ERDMAN: Thank you, Senator Kremer. Senator

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Fischer.

SENATOR FISCHER: A lot of the proponents are saying that this won't close the lab because you're going to have new dealerships open up. There's going to be, you know, different types of tractors coming in from manufacturers that are going to need to be tested since that will open it up. What's your comments on that?

KEITH OLSEN: Well, you know, I don't...definitely if we didn't have a permit process there would be more tractors sold in Nebraska. But if we didn't have the permit process, I think the lab would be at risk. I really feel that a question mark. I've been in contact with various manufacturers. Some have indicated they would test. Others say they wouldn't. Until you take action and we find out what the reaction will be, we can't answer those questions. But we've got a world-renowned lab here in Nebraska and we want to make sure we maintain that lab.

SENATOR ERDMAN: Thank you, Senator Fischer. Senator Kremer.

SENATOR KREMER: The Illinois Farm Bureau did introduce a resolution at the national. Do you know what has become of that or if it's...to get a national lab?

KEITH OLSEN: It was adopted at our national convention in Charlotte in January. It basically state that we have a national standard for tractors in the United States. Whether that will happen or not it will take some member of Congress, a senator or representative, to make that happen. I don't know if there's anyone out there that is willing to make it a national standard or not.

SENATOR KREMER: And since we are the only OECD lab in the United States, it would be assumed that we would be able to benefit from a national test then, requirement then I should say.

KEITH OLSEN: We would hope that if that were to happen that would be the case. But there's concern that once it becomes a federal standard some other university may want to become a...create a lab. And so there's a concern would there be someone to challenge or take the place of the tractor

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testing lab we have in Nebraska. If we could assure that we can maintain the lab in Nebraska, then I think it would be easier to may sell another...a national testing program.

SENATOR ERDMAN: Thank you, Senator Kremer. Any other questions for Mr. Olsen? Keith, just so I'm clear, the policy that the Farm Bureau has is that you would support all tractors that are sold in Nebraska to be tested. Is that accurate?

KEITH OLSEN: That's our current policy, yes.

SENATOR ERDMAN: So that's actually in violation of the current state law that says that there's an exemption under 40.

KEITH OLSEN: Well, you know, I'm sure when our delegates, you know, when they say tractor they're talking farm tractors.

SENATOR ERDMAN: Okay, thanks. Next testifier in opposition to LB 317.

JERRY PARKIN: Senator Erdman, members of the committee, I think my sheet is in there I hope. My name is Jerry Parkin, last name is P-a-r-k-i-n. I represent John Deere and we do manufacture tractors. Senator Kremer, I will state for the record that you support keeping the Nebraska tractor test lab open.

SENATOR KREMER: Thank you.

JERRY PARKIN: So hopefully that will end all that. Our preference at John Deere is to leave the current law the way it is and leave the lab the way it is. We think that the 40 horsepower range has been appropriate and has worked well for us and has worked well for Nebraska. Given the fact that there has been a lot of talk about the lab over the past several years and a lot of discussion about different approaches to keeping the lab open and still at the same time making all tractors available to Nebraskans, I understand that there's likely to be some change. And I guess our feeling is that if the committee feels there's a need to change the horsepower level, I would ask you to please look at a 60 horsepower level rather than a 100

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horsepower level. There are a lot of agriculture tractors in that 60 to 100 horsepower range that are used on farms, used on farmsteads, used by hobby farmers and sundowners and weekenders. And we think it's important that those tractors continue to be permitted in the state of Nebraska. Tractors remain the primary farm tool and that's why they were originally tested under the tractor test law in Nebraska. I know the question has been raised, well, why not combines, why not sprayers? Combines and sprayers have generally one purpose on the farm. The combine is there to combine a crop. The sprayer is there to spray or to spread fertilizer. Tractors are a multipurpose tool and that's why the testing is done there. Forty percent of the tractors sold in Nebraska are under 100 horsepower, and that's why we think that at least getting the level to 60 rather than 100 would be appropriate. There are probably 10 percent of the tractors sold in Nebraska are in that 60 to 100 horsepower range. And we feel that those people that are buying in that range are a lot of times the people who need the test data the most because they are the weekenders and the hobby farmers who probably don't have the technical sophistication that a large production agriculture farmer has. I want you to know that we do sympathize with the dealers in the state that do have manufacturers who will not test or will not buy the permits in Nebraska. We don't sympathize with those manufacturers so I think that they ought to step up and buy the permits that are required and we would hope that they would do so. The last statement I would like to make is that we are working on a federal law that would take this test to the federal level and require a federal testing of tractors before they're sold in the United States. No guarantee on that. Anybody that's worked with the Congress knows the difficulty in getting something adopted. I think the current Secretary of Agriculture may give us a leg up that we didn't have with the prior Secretary of Agriculture. If we can get that done on the federal level, and our lobbyists in Washington are working with the American Farm Bureau Federation lobbyists and trying...right now we're in the process of trying to get language developed. The goal is to make it seamless so that the tractor testing continues in Nebraska, in Lincoln at the Nebraska tractor test lab. We don't want it in Fresno, California, or we don't want it in Boulder, Colorado. You know, I hate to say this being an Iowa stater, but we don't want it in Ames, Iowa. Keep it in Lincoln. It's a tractor test lab that has worked and that's

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what we'd prefer to see. We also prefer to see it where there's not additional testing required. It's the current system, the current strategies, the current protocols for testing. Mr. Chairman, I'd be glad to answer any questions.

SENATOR ERDMAN: Thank you, Jerry. Any questions of Mr. Parkin? Senator Fischer.

SENATOR FISCHER: Yeah, how many John Deere dealerships are there in the state and how many sites are there in the states?

JERRY PARKIN: Senator Fischer, I don't know the answer to that right offhand. I can certainly find out. Mr. Goodman may have a better answer on that than I do.

SENATOR FISCHER: I'm from Valentine...

JERRY PARKIN: Yes.

SENATOR FISCHER: ...Nebraska, and we do have a dealership in Ainsworth that's 45 miles away and there's also one in Winner, South Dakota.

JERRY PARKIN: Um-hum.

SENATOR FISCHER: Now does the one in Winner, South Dakota, have to go through the testing or can they sell tractors up there to us?

JERRY PARKIN: They can sell tractors to you as long as they've been tested, excuse me, not tested, permitted...

SENATOR FISCHER: In Winner, South Dakota?

JERRY PARKIN: ...as long as they've been permitted I believe they can.

SENATOR KREMER: The dealers in South Dakota she said.

SENATOR FISCHER: The dealers in South Dakota, in Winner, South Dakota.

JERRY PARKIN: Oh, excuse me, in Winner, South Dakota, the Grossenbergers (phonetic)?

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SENATOR FISCHER: Yes.

JERRY PARKIN: No. I mean if they do they would have to pay...you'd still have to pay sales tax in Nebraska if that's the case. I mean a dealer can sell a tractor in his area of responsibility and Winner, I don't believe, and again Mr. Goodman may know more on this, but I don't believe they have an area of responsibility that gets into Nebraska. Does that prevent a customer from going to the Winner dealer? No.

SENATOR FISCHER: They have a large number of ranchers in our area who drive to Winner.

JERRY PARKIN: I'm sure they do. But those tractors that are sold by the Winner dealer are the same tractors that are sold by the Ainsworth dealer. They had been tested and they had been permitted, and we do have a permit for that specific model.

SENATOR FISCHER: Is that because John Deere does all the testing?

JERRY PARKIN: We do the testing at the Nebraska tractor test lab, yes.

SENATOR FISCHER: Correct. What's the benefit or is there a benefit to that dealership in South Dakota over the...in Winner, South Dakota, over the one in Ainsworth, Nebraska?

JERRY PARKIN: Not that I'm familiar with. I can't think of any benefit.

SENATOR FISCHER: Okay, thank you.

SENATOR ERDMAN: Thank you, Senator Fischer. Senator Cunningham.

SENATOR CUNNINGHAM: Yes. Do you have any models of tractors that are not tested that are sold in South Dakota?

JERRY PARKIN: There are some models we have not tested. A lot of those are the low number of tractors sold, orchard variety tractors, for example, are not tested. And I'm not

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sure if a lot of those are sold in South Dakota or not. I really don't know, Senator.

SENATOR CUNNINGHAM: I mean would you have any regular farm and ranch tractors that aren't tested that might be sold in South Dakota?

JERRY PARKIN: I'm not aware of any, but that doesn't mean there aren't. You know, the under 40 horsepower obviously we don't take to the permit requirement. But I'm just not familiar with that 40 and up where we may have some that have not been tested. That may be something that Mr. Bashford can respond to because he's probably got the list on that.

SENATOR CUNNINGHAM: Okay, thank you.

SENATOR ERDMAN: Thank you, Senator Cunningham. Any further questions? Senator Kremer.

SENATOR KREMER: Good to see you, Jerry, and I want to say that you have been excellent to work with. And I think we really have the same goals and I appreciate your willingness to try to get something done on the federal level and appreciate you coming to testify and good to see you in Memphis and...

JERRY PARKIN: Thank you. We appreciate it and appreciate your support and we look forward to working with you and with Mr. Goodman and the Farm Bureau and others.

SENATOR KREMER: Okay. Who was your best, biggest competitor in this 40 horsepower range that maybe is not tested? Are there...

JERRY PARKIN: Kubota is a huge competitor. Mahindra, which is an Indian tractor, is becoming a significant force or they're looking to become a significant force in the United States. There's a huge amount of growth in the zero, obviously zero, but up to about 60 horsepower range with a lot of competition because that's where the sales are being made. Twenty-one percent growth in under 40 horsepower tractors sold in the last year so.

SENATOR KREMER: This isn't a fair question, but does that

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make you feel bad when they can't sell...your competitor can't sell them here in Nebraska?

JERRY PARKIN: Not terribly (laugh).

SENATOR KREMER: That wasn't fair, was it? I'm sorry.

JERRY PARKIN: Well, it was a good question.

SENATOR KREMER: Okay.

JERRY PARKIN: Thank you, Senator. Thank you members of the committee.

SENATOR KREMER: Thank you for your cooperation. We appreciate it.

SENATOR ERDMAN: Thank you, Senator Kremer. Thank you, Mr. Parkin. Next testifier in opposition. There's approximately 20 minutes left.

ANDY WELLENSIEK: Good afternoon. My name is Andy Wellensiek, W-e-l-l-e-n-s-i-e-k. I live in Cook, Nebraska, which is about 45 miles southeast of Lincoln down Highway 2. I have a degree, bachelor of science degree from the University of Nebraska-Lincoln in mechanized systems management. I'm a farmer. I farm with my dad and my uncle. We raise primarily corn and soybeans, and we also have a cow-calf operation and finish hogs. I'm here today because I heard about LB 317 and I'm opposed to it. I think the 40 horsepower minimum is adequate right now. You know, the 100...I really don't even believe that the 60 horse minimum limit would be adequate. And so I definitely don't believe the 100 horse is adequate. You know, I realize that tractors and implements are becoming larger. You know, farmers are becoming larger. You know, currently our operation, our family operation is trying to expand, you know, work me into the operation. I have a younger brother that's going to Southeast Community College in Beatrice and so we can try and bring him back to the farm. We...in our daily operations, this 40 to 100 horsepower tractor is vital. You know, we do...we grind feed, we shred, mow roads, mow hay, we'll bale hay, we feed livestock, we do dirt work. We have a tractor that has a loader on it. You know, some farmers even plant and do tillage work with their

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tractors, some of these hobby farmers, you know. They'll go out on the farm and they'll disk or plow or whatever with these smaller tractors. You know, it's not only the farmer that uses this size of tractor, but the contractors and municipalities, acreage owners, they also use these tractors, you know, push snow, till gardens, dig posthole, the list is endless. I believe that the main goal of the tractor test laboratory is to keep the advertisement honest. You know, I believe when it gets all down to it, that's what they're there for, you know, to make sure what's advertised is what's actually there. You know, we currently...we just purchased a big round baler and I was reading the owner's manual the other day and it said the tractor...you need a tractor that can supply 60 PTO horsepower to make a bale. Well, you know, if this law went into effect and they didn't test these tractors, you know, I guess how much faith can I put into the advertisement? You know, can I buy a 60 horsepower tractor and make it work or do I have to spend more money and buy an 80 horse tractor to make the...to bale hay? You know, I guess I have a lot more faith in the system if the tractors are third-party tested. You know, it's just a better gut feeling I guess. To my understanding, you know, the tractor test laboratory doesn't use any taxpayer money or my taxes aren't going into there, but I'm getting a great benefit from it. You know, they generate fees from just testing tractors. In conclusion, I feel that the 40 horse tractor is an adequate minimum and so I oppose LB 317. Thank you.

SENATOR ERDMAN: Thanks, Andy. Any questions for Mr. Wellensiek? Senator Kremer.

SENATOR KREMER: You mentioned that municipalities use these small tractors. You realize they do not have to be tested in order to be purchased by...

ANDY WELLENSIEK: Well...you know, I realize that they don't have to be tested, but I almost think that they should be tested. You know, what if they buy a piece of equipment that requires a or, I don't know, so many gallon permit of hydraulic flow and, you know, that tractor can't produce that flow? You know, what...

SENATOR KREMER: Yeah, I realize that, but they could purchase another tractor that's not been tested without any

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problem is what I'm saying so.

ANDY WELLENSIEK: Yes.

SENATOR KREMER: A different model, I mean like a Kubota or something they could still purchase that now if it's not tested so.

ANDY WELLENSIEK: Yeah, they can. I agree.

SENATOR ERDMAN: Thank you, Senator Kremer. Any further questions? Seeing none, thanks for your testimony, Andy.

ANDY WELLENSIEK: Thank you very much.

SENATOR ERDMAN: Next testifier in opposition. There's approximately looks like 13 minutes on the opponent side.

GARY HELLERICH: (Exhibit 8) Could I have a drink of water, please. And I have a handout. Chairman Kremer and members of the Agriculture Committee, I am Gary Hellerich, H-e-l-l-e-r-i-c-h. Thank you for permitting me the time to present comments to this committee. As I said, I'm Gary Hellerich and I reside near Valparaiso in northwestern Lancaster County. I wish to state that I am opposed to LB 317. Why is it important to me to have tractor test data available for tractors under 100 horsepower? As many of you know, tractors below 100 horsepower are not the large tillage type that are used today. This horsepower class represents a group of tractors that are used on most farms and ranches throughout the country. Availability of performance data is of extreme importance to all who purchase these units. It is very important that new tractor buyers to have access to unbiased testing to make an informed decision as to which tractor to buy, lease or rent. You must also keep in mind the needs of the used before, new to us owners. These groups of tractor buyers need to have performance data available also. Let me provide you with an example. Just recently my own farming operation needed to replace one of our tractors. I had decided to update to a model that was somewhere in the late eighties or early nineties time period. I went to the Nebraska test lab reports to determine which tractors would fit into the range that I needed. I also had the data for the current model that I was presently using. This information provided gave

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me a basis for making a sound, well-informed decision as to which tractors I should be considering for my operation. I wish to also provide an example of using engine operational characteristics to make a purchasing decision for an irrigation power unit. Water and oil temperature rises can be used as an indicator of engine life. The greater degree of temperature change that is observed during the testing procedure the shorter the engine life. This is very important for irrigation engines that are under a constant load. Consideration must also be given to the possibilities that all OECD testing stations adopting a similar policy of testing only 100 horsepower or greater tractors. Where would we be able to get unbiased data if all OECD labs were closed such as we have recently seen in Canada? We need the tractor test lab to continue with its work of testing 40 horsepower tractors and greater. You can realize how important the test facilities are worldwide as they receive about 1,400 hits per day on their web site--people wanting information. As Ottman Degrell, who is in charge of the DLG tractor test lab near Frankfurt, Germany, recently stated: What happens with the Nebraska tractor test lab and tractor testing in the U.S. will have an impact of OECD tractor testing around the world. The Nebraska lab not only helps protect farmers in the U.S., but by extension in other countries throughout the world. Again, I want to state my opposition to LB 317 and urge you not to advance this bill out of committee. Thank you. Questions?

SENATOR ERDMAN: Thank you, Gary. Any questions for Mr. Hellerich? Gary, I have one quick question. The tractor that you purchased, was that a tractor below 100 horsepower or was it above?

GARY HELLERICH: Below 100 horsepower, correct.

SENATOR ERDMAN: Okay, thanks.

GARY HELLERICH: Yeah.

SENATOR ERDMAN: Next testifier in opposition.

JOHN HANSEN: Mr. Vice Chairman and members of the committee, for the record my name is John K. Hansen. I am president of Nebraska Farmers Union, appear before you today as their president and also their lobbyist. Hansen,

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H-a-n-s-e-n. And we are here to oppose LB 317. We have been supporting the Nebraska tractor test lab for, oh, about 85 years. We continue to believe that it provides a valuable public policy benefit. It gives our consumers the impartial information that they need, and we believe it ought to continue to be the status quo. We think that 40 is a good level. We certainly are opposed to 100, and we feel also that it is not wise to hack away at the financial strain of the Nebraska tractor test lab by raising it to 100. It just cuts way too many tractors out of the test, lowers the financial viability of the tractor test lab itself, in addition to shorting our consumers the information they need to make informed decisions. With that, I close my testimony. I'd be glad to answer any questions you might have.

SENATOR ERDMAN: Thank you, John. Any questions of Mr. Hansen? I can't even get one out of Senator Chambers even though he's smiling. Thanks, John.

JOHN HANSEN: Thank you.

SENATOR ERDMAN: Next testifier in opposition. I have approximately seven minutes.

NED MEIER: How many more are there wanting to testify? Will provisions be made for them to testify or are we cutting it off at half an hour?

SENATOR ERDMAN: We're going to try to abide by the same time limits for both sides. There is an...

NED MEIER: I've got an hour and a half worth if you really want to know.

SENATOR ERDMAN: But there is an opportunity for those who don't get a chance to testify to sign the sheet at the desk over there if they did not get a chance to testify. Go ahead.

NED MEIER: My name is Ned Meier. I'm president of the Supporters of the Nebraska Tractor Testing Lab. I guess we need to maybe start off with a little different note here. We're all celebrating our anniversary this year. We have been at this for ten years. This is the tenth anniversary

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of this type of legislation that we're dealing with and what has been presented to the Agriculture Committee. I think I have heard a lot of people talking here pertaining to keeping the lab open. I certainly support that aspect of it, but my approach is different. I am here to protect the Nebraska tractor testing law and what it stands for and actually what it tries to accomplish. The original Nebraska tractor testing law was to verify advertising claims of manufacturers and also to maintain a supply of parts. Those were the two issues that were brought in the original law. The supplying of parts may be outdated. We seem to have a pretty good handle on supplying parts except I do get frustrated when they don't have exactly what I want exactly when I want it, but they do a reasonably good job. One of the side benefits from the tractor testing lab has been mentioned is providing unbiased third-party information for people to make well-informed and educated decisions. I would like to go down and I would like to give you an example. Other people have given some examples, but I took a list of about seven tractors which had a horsepower of 60 horsepower that have been tested. One of the things that they test is for fuel economy. In that sample that I took that had 60 horsepower, the lowest and the highest efficiency, one was 20 percent better than the other--same horsepower, their fuel efficiency, one was 20 percent better than the other. To put that in terms if you put it in relationship to \$2 a gallon fuel, the one would have an equivalent rate of \$2 per gallon where the other one would have an equivalent rate of \$1.67 per gallon. How many of you would travel how far to buy fuel at 30 cents under what you have to pay for it now? This is the essentially the effect that this increased efficiency on these two particular tractors would have. Hydraulic horsepower--the tractor lab measures hydraulic horsepower. In the same range the extremes, one had 10 hydraulic horsepower, the other had 19. That is a 91 percent difference in the amount of hydraulic power available in a list of tractors, all of which who have 60 horsepower. If you happen to need a tractor that needed the 19 horsepower hydraulic horsepower, you could either buy this one or you could increase in size up to a tractor that has 88 horsepower that has the same hydraulic horsepower output. That is a difference of buying a tractor 28 horsepower larger to achieve the same thing. At \$500 a horsepower, that would be equal to a difference of approximately \$14,000. In the fuel situation that I had

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before, if I could reduce my fuel consumption this year or expense by 20 percent, that would be \$10,000 in my pocket that I wouldn't have to spend and that's a sizable amount. Lift capacity--the lowest one was 2,500 pounds of lift. The highest one was 4,500 pounds of lift. That is a 75 percent difference in the amount of hydraulic lift in the same horsepower tractors. And that is a significant issue to me when I went back to farming. My father just had four-row equipment. I wanted to go to eight-row equipment. I went into a dealer, I bought a new tractor and I bought an eight-row planter. He assured me that it would lift it. It would not. I'm not sure that that dealer tried to mislead me. I just don't think that he had the information necessary to determine whether it was happen. We do have that information now. The other thing is sound. The difference in here is 95 DBA to 88 DBA. That is a huge difference in sound level. One is a sound level that inflicts hearing damage if you are subjected to that. The other one is down to the threshold where you can possibly live with it if you don't have extended periods of exposure. The area of gray market--this was an advertisement that was placed in farm magazines and it was put in the farm magazines by Yanmar. Yanmar is a world manufacturer of tractors and they are distributed all over the world. Their definition of a gray market tractor is a tractor that was designed and manufactured for use in a foreign company and is imported for resale in the United States without consent of the owner of the trademark. And they are putting this in the paper to warn dealers, to warn people that possibly will purchase this equipment. They do not stand behind it. They do not want it done. The reason that they do it is because there are different safety issues involved. And the bottom sentence it says on here as a result of these safety issues in order to protect the Yanmar trademark and reputation, Yanmar does not support gray market tractors, will not supply replacement parts for gray market units, and will not provide warranty. We got back to this issue part of the reason for the Nebraska tractor law was to make sure that there were parts available. Yanmar has taken the position and willing to put an advertisement in papers warning of this potential as far as ag tractors are concerned. And if they are willing or see that as that big of a problem, that is only the tip of the iceberg when it comes to gray market tractors and all the other tractors that possibly will come in if you lower this horsepower rating from 100 down to 40.

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Kubota seems to be the one that has bowed their neck on this. They have their tractors tested. All they would have to do is submit to a certificate, get them certificated and they would be able to sell their tractors in Nebraska. Currently they have an M-series that just happens to fit the 40 to 100 horsepower range in which that we are talking about here. Their tractors are all tested. All they have to do is submit a certificate. All of the complaints that we've heard here today is that we can't sell our tractors would actually be eliminated. It's a very simple matter. And seven tractors it would be about \$14,000. That's what we're talking about here, that amount of money. This whole issue deals with \$14,000. Our organization is making the offer that we will pay the certificate fee for one of those tractors if these dealers, Kubota or the Iowa-Nebraska Dealers Association will pick up the other six. If that is the big issue here that we can't sell tractors because they aren't...don't have a permit, we personally are willing to pay the permit fee for one of those tractors if they'll just go a little ways and supplement the rest of them. There are tremendous supporters of Nebraska tractor test. We got 2,000 signatures at the Husker Harvest Days. Farm Bureau, I'm so proud of them that they have changed their position and come out on this. Farmers Union has always been a supporter of it. We have tremendous articles in papers, Farm Journal and Great Plains Journal have talked about this. So I submit to you gentlemen that we have a situation here that is better than anything that we could ever have. I submit to you don't change it. You cannot improve the situation by changing it to allow other tractors to be sold. All they have to do is submit to the same type of thing that the manufacturers that have chosen to abide by it do it. And we don't need special legislation to permit Kubota to sell their tractors when the rest of them have agreed to abide by the law. Is there any questions?

SENATOR ERDMAN: Thank you, Ned. Before we ask for questions, Senator Fischer is a member of the committee so we're gentlemen and lady.

NED MEIER: Madam, I'm very sorry. That was a cardinal sin. You're absolutely right about that. I will go home and tell my wife and she will reprimand me for that.

SENATOR FISCHER: She'll take care of you.

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NED MEIER: Yes, she will. (Laughter) You don't have to worry about it. I apologize.

SENATOR ERDMAN: Any questions for Mr. Meier? What is the cost of that permit that you volunteered to...is it \$2,000 per...

NED MEIER: \$2,100 is my indication. And I just spoke with Dr. Bashford. He said that if the people would submit or apply for that application, they could be selling tractors in this state by the end of the week.

SENATOR ERDMAN: And the tractors that you're referring to have already been tested at...

NED MEIER: That's correct.

SENATOR ERDMAN: ...an OECD facility.

NED MEIER: That is correct.

SENATOR ERDMAN: And the \$2,100 pays the permit for Nebraska to certify it.

NED MEIER: Kubota has a list of seven tractors that are M-series tractors that range from 45 to 98 horsepower. These are the horsepower that have been verified by OECD tests. The only thing they have to do is apply and get a permit. If that's such a big issue, we will help them with that. You can solve this whole thing. You don't need national testing facilities. You can test them here. And all of the things that these companies if we had a national system, they would have to submit to this type of thing. Why don't you just submit to it at Nebraska, solve all of that? We don't need a federal bureaucracy to do what we're already doing a very good job of here right now.

SENATOR ERDMAN: Any other questions for Mr. Meier? I think Mr. Sedivy would appreciate it if you'd pay for one of the Farmtrac ones, too, but you can talk to him later.

NED MEIER: Thank you very much.

SENATOR ERDMAN: Thank you, Ned. That is the end of the

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opponent testimony. There is time available for those wishing to testify in a neutral capacity, those wishing to bring forward information on the proposal.

LEONARD BASHFORD: (Exhibit 9) My name is Leonard Bashford, it's B-a-s-h-f-o-r-d. I'm not particularly a stranger to this committee I don't think. I do have some handouts I'd like to hand out.

SENATOR ERDMAN: Leonard, when you get done there we'll have you enter a sign-in sheet, but...

LEONARD BASHFORD: I've got one.

SENATOR ERDMAN: You already put one in? All right, that's fine.

LEONARD BASHFORD: I've got one someplace. I don't know where it is, but I'll find it. Here it is. I got it. In the essence of time and that sort of thing, I have written comments. And Senator Kremer, in his introductory remarks, reviewed a little bit about the history of the tractor test lab starting back in 1920. And based on that, I will skip most of the first page in the essence of time. But I will start down at the bottom of the first page of my handout material. First of all for those of you who are new to the committee, I'm a professor of ag engineering in the department of biological systems engineering at the university, and I presently serve as director of the Nebraska tractor test lab. There have been two previous bills, LB 230 introduced in the First Session of the 98th Legislature and LB 1119 introduced in the Second Session of the 97th Legislature that would have raised the power level from 40 to 90 horsepower. And I think Senator Kremer alluded to that in his opening remarks. At hearings for these bills, I testified in support of the concept of raising the power level from 40 horsepower. However, I believed then, as I do now, that the proposed power level of 90 horsepower was too high and suggested a 60 horsepower level as being more appropriate. This bill, LB 317, increases the power level from 40 to 100 horsepower. Again, I support the concept of increasing the power level from 40 horsepower, but do not support increasing the power level to 100 horsepower. Tractors under 100 horsepower may not be the primary tractor used in production agriculture for heavy

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drawbar work, but they are used extensively where PTO power, 3-point lift capacity, hydraulic flow and power, and sound are still very important operating parameters. Had the power level been at 100 horsepower over the last seven years, there would be 97 tractor models for which there would be no performance information available. The influence of the Nebraska statute on worldwide testing of tractors is significant. And I refer you to an attached table. There's a table attached to this material, and if you could follow through this table a little bit, I will highlight some of the information that is on this table. Since 1998, and the reason I picked 1998, that was the year that we made the change, the definition of a model. We went to tractors under 100 horsepower would no longer be required to have a drawbar test so that's the basis or the reason, foundation why I picked that 1998 as that year. In column one of the handout, there have been 471 OECD approvals worldwide for performance codes. Okay. Eighty of these approvals were from the Nebraska test laboratory. That means there were 391 approvals for tractors tested at other official test stations. And of these 391 tractors tested, 119 have permits to sell in Nebraska. This indicates that 42 percent of those tractors tested worldwide, which includes Nebraska, have approval to sell in Nebraska. And there were an additional 26 tractor models tested at the lab using the limited test for which OECD approvals were not obtained. So in the last seven years, the lab has provided performance information for 225 tractor models. Looking at columns 2 and column 3 of the table, the breakdown of all OECD approvals for tractors greater than 100 horsepower in column 2 and for tractors less than 100 horsepower are in column 3. And this illustrates that there are more approvals for tractors less than 100 horsepower than for tractors greater than 100 horsepower. And I still believe that raising the power level from 40 to 60 horsepower is more appropriate than raising it from 100. And I will concentrate the rest of my comments relative to the table of these two power levels. In column 2 for tractors greater than 100 horsepower, 75 of the 207 approvals are from the tractor test lab or 36 percent of those tests were done here. Now 48 of the 132 tractors tested at other test stations are legal to sell in Nebraska or 36 percent of those tractors that are tested at other test stations greater than 100 horsepower can be sold in Nebraska. As a total, you look at the total picture, 59 percent of tractors

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tested worldwide with power levels greater than 100 horsepower are legal to sell in Nebraska. If we go to column 4, which is tractors less than 100 horsepower and greater than 60 horsepower, in that area power range, there were 167 approval and only 5 approvals came from Nebraska. But out of this remaining 162 approvals, 58 of these tractor models or 36 percent of them are legal to sell in Nebraska. In other words, 36 percent of those tractors tested at other test stations between the power levels of 40 and 100 or 60 and 100 have opted to go through the permit procedure to sell in Nebraska. Now if we look at column 5, which is tractors in the 40 to 60 horsepower range, there were 67 approvals, and these are official approvals, none of those came from our laboratory. In this power range, the U.S. manufacturers chose only to use the limited test in order to obtain a permit to sell. And out of the 67 approvals, 13 models, or only 19 percent of those tested at other test stations, are legal to sell in Nebraska. Again, you know, that means about 34 percent of the tractors tested worldwide, and including tractors at Nebraska, are legal to sell. These data are not surprising as to market emphasis of the larger tractors given the makeup of production agriculture in Nebraska and the Midwest. This could indicate that for Nebraska manufacturers are not putting the same emphasis on marketing tractors less than 60 horsepower as they are for tractors with power levels greater than 60 horsepower. Increasing the power level from 40 to 60 could have the potential of increasing the number of tractor models available to the Nebraska consumer. And I say could have because we have always been told by the U.S. manufacturers that if there is a market for a tractor in Nebraska the model will be permitted to sell. There are currently approvals pending for 41 additional tractor models less than 100 horsepower and only 11 of these are less than 60 horsepower. And as a sideline, I presented this table yesterday to the U.S. OECD Coordinating Committee in Louisville and there were representatives there from Challenger, AGCO, Massey Ferguson, Fendt, Case IH, New Holland, John Deere, McCormick, and Kubota. The general comment from the manufacturers was that there is not the market in Nebraska for the 40 to 60 horsepower tractor. An interesting comment from the Kubota representative was that he had no idea that there was that many models between 60 and 100 horsepower available for sale in Nebraska. Now so I mean that kind of is my table and my emphasis I think for

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this 60 horsepower probably being a level certainly that we could approach. I have attached some information to my handout. I've attached a brochure for some of you that may not be familiar with our laboratory. It's one we provide all visitors and we insert in our mailouts. Our organizational chart is inside this brochure and how we fit into the worldwide tractor test scheme. The tractor test laboratory has a web page identified in the brochure. All test reports prepared by the lab since 1998 can be accessed from our web page. These reports can be printed from our web site and are free. There's no cost. I have also attached four test reports for your review. One tractor...two of these test reports are for tractors tested at our laboratory, one tractor greater than 100 horsepower, and one report for a tractor less than 100 horsepower so you can see the differences. The other two reports are summaries of the official OECD reports from two tractors, one tested at the German test station and one tested at the Turkey test station. As you will notice, our effort is to make all reports seamless as to point of origin. During the year 2004, our web site conservatively had 141,000 visitors. During the month of December 2004 alone, we had visitors to our web site from 69 different countries. And also in 2004 we provided tours to 516 people from nine different countries and many states of the U.S. The tractor test program brings recognition to the University of Nebraska and the state of Nebraska. The law provides the legitimacy to worldwide tractor performance testing. Our product and our only product is information. This information has value and can only come from an independent lab such as ours and is free. This is a real bargain to any potential tractor buyer. The data we provide is performance data that the user can expect from a particular tractor model. Tractors are sold by power. These dollars spent for horsepower can only be compared among models of the different manufacturers when the buyer knows what usable power is being purchased for the dollar outlay. Consumers are assured that these performance data are obtained without bias to tractor color or any favored criteria, but are obtained using a worldwide test standard so that tractor performance can be compared no matter what country or origin of manufacturer. And also there's one more handout. These are my prepared remarks, but I'm handing out...I've attached a copy of an article that appeared in the February issue of the Farm Journal and I've got a copy of this issue that discusses issues relative

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to preserving performance testing of tractors. And there's a sidebar to this article that describes this public forum that's going to be held in Louisville tomorrow at the National Farm Machinery Show. And it briefly describes the effort being made by the National Farm Bureau to nationalize the testing requirement. It also mentions that the Iowa-Nebraska Equipment Dealers Association as being the push behind LB 317. I plan to attend and participate in this forum and also understand that Mr. Andrew Goodman of the Iowa-Nebraska Equipment Dealers Association will also be participating in the forum. I haven't heard any specifics as to how the discussion of this forum will be captured and distributed. I certainly will know more after tomorrow. I will prepare and provide a written report on my perspective of the forum to Vice Chancellor Alan Moeller and any information relative to the direction and focus of the results of this forum may be useful information to this committee as you deliberate on what action to take relative to this bill. So after tomorrow, Senator Kremer, we will hopefully get an idea of what direction this nationalization effort might be taking. So that concludes my remarks, Senator Erdman.

SENATOR ERDMAN: Thank you, Dr. Bashford. Questions?
Senator Cunningham.

SENATOR CUNNINGHAM: Yes, Doctor. So I understand it right, like Kubota tests at the OECD lab in...

LEONARD BASHFORD: Japan.

SENATOR CUNNINGHAM: ...Japan.

LEONARD BASHFORD: Correct.

SENATOR CUNNINGHAM: So did you say if you test at that lab, now you do OECD tests here for the United States?

LEONARD BASHFORD: We are the OECD test station for the U.S. and Japan also has an...

SENATOR CUNNINGHAM: So you get the same, I mean basically the same type of thing.

LEONARD BASHFORD: We all follow the same codes so whether a

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test was done in Japan or the U.S. the standard...the method of test would be the same, right.

SENATOR CUNNINGHAM: Okay, so what is it that they have to do in your lab to get a permit here?

LEONARD BASHFORD: Kubota would have to apply for permit to sell. And what that means, they would have to furnish us with an approved OECD test report and their advertising literature. So what we do when we compare the performance report from the test station to their advertising literature and we say do they meet their advertised claims? And if they do, they can get a permit to sell. The cost for review of the report...oh, also then we would prepare from that OECD report a summary report like this. The OECD report is about a 20- to 30-page report and so but we summarize just the performance information and put it on a three-page report and put it on our web site.

SENATOR CUNNINGHAM: So is that the same information available, I mean 20- or 30-page report available from the OECD (inaudible).

LEONARD BASHFORD: I'm not sure how you'd get a copy of that permit. If they...anybody wanted a copy of that permit I mean the OECD report, they'd probably have to get it from the Japan test station.

SENATOR CUNNINGHAM: But I mean could they do that?

LEONARD BASHFORD: Yes, sure they could.

SENATOR CUNNINGHAM: So basically for the \$2,100 you're giving them a consolidated report.

LEONARD BASHFORD: We're making the information available to the public, yes, putting it on our web site, that's right. And then they also pay the state of Nebraska Department of Agriculture \$50 for the permit.

SENATOR CUNNINGHAM: So I mean...

LEONARD BASHFORD: For \$2,150 they could have a permit to sell that particular model in the state of Nebraska.

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SENATOR CUNNINGHAM: But what I'm trying to find out is the farmer can find out anyway whether it went through the Nebraska test lab or not. He can find out the horsepower information and the drawbar power information. He can find out all of that without it being done at the Nebraska test lab.

LEONARD BASHFORD: If he could access the OECD.

SENATOR CUNNINGHAM: But if he couldn't access yours, he could probably find a way to access it.

LEONARD BASHFORD: I'm not sure we can. I'm not sure that the reports for the other OECD test stations are accessible or they have a web page to do that. We're the only test station I'm aware of in the world that puts summaries of our reports on the web page and makes them available for free.

SENATOR CUNNINGHAM: Okay, thank you.

LEONARD BASHFORD: This information can be purchased from the OECD headquarters in France.

SENATOR CUNNINGHAM: Thank you.

SENATOR ERDMAN: Thank you, Senator Cunningham. Senator Kremer and then Senator Fischer.

SENATOR KREMER: Do you have to read Japanese in order to figure it out?

LEONARD BASHFORD: No, sir. The language of the OECD are English and French. So if you can read English or French, you can read the report.

SENATOR KREMER: Dr. Bashford, did you come back from Louisville...

LEONARD BASHFORD: Last night.

SENATOR KREMER: ...and then go back again?

LEONARD BASHFORD: Tonight, yes, sir.

SENATOR KREMER: We thank you very much for coming. I think

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we changed the schedule for this hearing three different times to try to accommodate you and we still missed so.

LEONARD BASHFORD: That's what I understand.

SENATOR KREMER: I don't know so...

LEONARD BASHFORD: Not a problem.

SENATOR KREMER: So I'm sorry and I appreciate the good information that you've given to us and we really think that the lab is a class facility. And I would offer the committee would ever like to go, I'm sure you'd be willing to show us through the lab and...

LEONARD BASHFORD: Absolutely.

SENATOR KREMER: ...I know you're proud of it and gotten some new machinery in the last few years, too, in some of the testing.

LEONARD BASHFORD: Yes, yes. In fact, Senator Cunningham, we're waiting for you to come out and ride in that new test car, sir. I think you indicated one time...

SENATOR CUNNINGHAM: We were there last year but I haven't ridden in the new one I guess. I haven't ridden in any.

SENATOR KREMER: Well, we'll look forward to getting the report back and what your opinion is on a national level and...

LEONARD BASHFORD: Yeah. And like I said, I'm not sure how they're going to distribute the information. But after tomorrow we should be able to find out how that's going to happen so that the information could be made available to your committee so.

SENATOR KREMER: Okay.

SENATOR ERDMAN: Thank you, Senator Kremer. Senator Fischer.

SENATOR FISCHER: Thank you for coming today especially you must just be getting lots of air miles.

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LEONARD BASHFORD: Hopefully. That's one of the benefits of traveling.

SENATOR FISCHER: A previous testifier said that 40 percent of tractors sold are under 100 horsepower. Do you have any way to judge that?

LEONARD BASHFORD: No, I don't. That information could be available from the association of equipment manufacturers. They put out the percent of tractors sold.

SENATOR FISCHER: Well, it was also said that 10 percent was 60 to 100 so that's...

LEONARD BASHFORD: I don't...yeah, I don't know about those numbers. I couldn't verify those anyway.

SENATOR FISCHER: What's the horsepower on all these tractors in here?

LEONARD BASHFORD: These here?

SENATOR FISCHER: Um-hum.

LEONARD BASHFORD: I don't know.

SENATOR FISCHER: Pretty darn big, you got some dualies there.

LEONARD BASHFORD: Well, these obviously are big. People like big, you know, that's for sure. These are fairly big tractors. They're all over 100 horsepower I'm sure. In fact, this one CAT may be over 500 horsepower if I'm not mistaken.

SENATOR FISCHER: Thank you.

SENATOR ERDMAN: Thank you, Senator Fischer. Senator Kremer.

SENATOR KREMER: There was an article I think in the Farm Journal again about a year ago and it showed how farmers love their utility tractors. I think there was 13 tractors listed and I think eight of those could not be sold in

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Nebraska.

LEONARD BASHFORD: That's possible, I don't know.

SENATOR KREMER: So we were trying to accomplish something here together in a way that's meaningful and I don't know if we're gaining any ground or not, but I appreciate your even offer the 60 horsepower may be something that is more in line.

LEONARD BASHFORD: The 60 would offer make available I think a lot of the tractors like the one gentleman had the former foreign tractor, I forget the Farmtrac what it was called, certainly that would be covered in that power range for sure.

SENATOR KREMER: Thank you very much.

SENATOR ERDMAN: Thank you, Sir. Hold on, we got another question for you. Senator Fischer.

LEONARD BASHFORD: I can't get out of this chair.

SENATOR FISCHER: Just relax. You think 60 horsepower if you put the threshold there would the tractor testing facility be able to still be able to maintain itself financially?

LEONARD BASHFORD: Yes. The business in the 60 horsepower range we have done very few tractors in the 40 to 60 horsepower range in the last eight years. (inaudible) real fast. The 40 to 60 horsepower range there's only been 13 permitted to sell from other test stations and we've only tested 10 of them so we're talking about 23 tractors in seven years. So that's the loss if you went to 60 horsepower.

SENATOR FISCHER: So in possibly looking at a compromise, the 60 would not jeopardize the facility at all.

LEONARD BASHFORD: I don't think so at all, no.

SENATOR FISCHER: Thank you.

SENATOR ERDMAN: Thank you, Senator Fischer. Senator Kremer

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has another question for you.

SENATOR KREMER: We've got...you came all the way back. We want to make it worthwhile for you. How about in the range from 60 to 70 then because I think of those eight that were not being sold in Nebraska I think they were right in that 70 to 80. Do you know how many you might have in the next ten horsepower or something?

LEONARD BASHFORD: Senator, I'd have to look at that.

SENATOR KREMER: I'm sorry, okay.

LEONARD BASHFORD: Certainly, you know, I concentrated on the 40 to 60 because that wanted to be my effort.

SENATOR KREMER: Okay, thank you, that wasn't a fair question so.

LEONARD BASHFORD: But we could certainly find that information out for you obviously.

SENATOR KREMER: Well, I was just trying to...if we could find a ground someplace in there is what we're trying to do so okay, thank you very much.

SENATOR ERDMAN: Thank you, Senator Kremer. You are not permitted to ask any more questions. Dr. Bashford, I had one question in regards to... (Laughter) I said you weren't allowed. I can ask questions. In regards to how the fee is set for a permit, it's currently \$2,100. \$2,050 goes to the tractor testing lab and \$50 goes to the Department of Ag for the actual permit. How is that amount arrived at?

LEONARD BASHFORD: Well, that's been \$2,100 was established a number of years ago. And I'm not quite sure I guess how it came about. But I think it was in effect before I took over as director of the lab.

SENATOR ERDMAN: And that's done through the university?

LEONARD BASHFORD: Well, usually the tractor test lab and the U.S. OECD Coordinating Committee jointly set the fees. We don't unilaterally set fees. We discuss with the tractor manufacturers, you know, what these fees should be. And, of

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course, they're set to keep the lab financially viable so that's how the fees are arrived at. It's not a simple matter to put one of these reports, one of these summary reports. It comes out as three pages or so, but believe me there's a lot of effort that goes into getting these reports together and printing them and making them available.

SENATOR ERDMAN: Okay.

LEONARD BASHFORD: The manufacturers have not complained about the fee, in general they haven't.

SENATOR ERDMAN: It takes a couple for us to write a two-page legislative bill, too, so we know what you're talking about. Seeing no more questions, we thank you for your testimony.

LEONARD BASHFORD: It's all right.

SENATOR ERDMAN: Is there anyone else wishing to testify in a neutral capacity? Seeing none, Senator Kremer, you are recognized to close.

SENATOR KREMER: I think I'll waive closing. Great discussion and thank you all for coming so.

SENATOR ERDMAN: Thank you, Mr. Chairman, and that will close the hearing on LB 317 and I will turn the Chair back to Senator Kremer.

SENATOR KREMER: We'll give you a little break while we clear the room. We have three more bills so if you want to converse, go out in the hall.

AT EASE

SENATOR KREMER: Senator McDonald, you are to open. Welcome. LB 286.

LB 286

SENATOR McDONALD: Thank you. On LB 286, well, this bill is on fence viewing, probably not as exciting as crane viewing, but for some it's an important issue.

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SENATOR KREMER: How about tractor viewing?

SENATOR McDONALD: Tractor viewing, now that's an important one. Well, Senator Kremer and members of the Agricultural Committee, I'm Senator Vickie McDonald, representing Legislative District 41, and I'm here today to introduce LB 286. And LB 286 is merely a very simple bill. It just amends Section 34-110, to increase the fee paid to fence viewers. The current fee paid to fence viewers is \$30, plus expenses for each dispute. LB 286 increases the fee paid to each fence viewer, to \$35 per day, plus expenses for every day the fence viewers must meet to resolve the fence dispute. This is the same amount paid to the county district court jurors for each day of jury duty. Parties involved in the fence dispute are responsible for the cost of fence viewing; LB 286 does not change that. Fence disputes may take more than one day and more than one meeting to resolve. Thirty-five dollars per day is much fairer than \$30 per dispute. Thank you.

SENATOR KREMER: Thank you. Any questions for Senator McDonald? I've heard of a lot of exciting activities but fence viewing I've never heard too much about, so is there anything you'd like to explain?

SENATOR McDONALD: Well, for some areas, fence disputes, fence viewing is...

SENATOR KREMER: So this is just a mediator to try to resolve the conflicts between who builds the fence or maintains it and...

SENATOR McDONALD: Repairs...maintains it, repairs it. We're getting a lot of absentee farm owners, and many of those don't realize the responsibility in keeping those fence up, and sometimes there's a dispute between who pays for the fence repair and who maintains the fence.

SENATOR KREMER: Is there a law that if you stand looking at your fence, usually it's the half on the left side is your fence? Is that disputable or is that not accurate then?

SENATOR McDONALD: You know, I think maybe you might speak to some people that are following me if there are others

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that are testifying. I'm bringing this bill on behalf of the county clerks that are dealing with this. Before I became knowledgeable of fence viewing, I really didn't know what a fence viewer was.

SENATOR KREMER: I thought you were the expert, so okay.

SENATOR McDONALD: I'm not the expert, but I'm learning.

SENATOR KREMER: Okay. Any questions for Senator McDonald? Thank you. First testifier as a proponent, please. Well, this is... Anyone a proponent? Anyone wishing to testify as an opponent? How about neutral? You really draw quite a...

SENATOR McDONALD: No. Everybody is out the door because we're not viewing those tractors.

SENATOR KREMER: Would you like to close? No, I couldn't even ask anyone else that question, you know that?

SENATOR McDONALD: You know what, I think maybe Senator Fischer might have some...could shed some light on that. She might understand. I think she's had an issue with fence viewing in your area. So maybe we should turn it over to Senator Fischer for some comments.

SENATOR KREMER: Senator Fischer, would you have some comments, please.

SENATOR FISCHER: Why don't I wait until we go into Executive Session when all the committee is here.

SENATOR KREMER: Oh. That sounds good. Okay, very good. Are you wanting to close?

SENATOR McDONALD: No. I'll waive closing.

SENATOR KREMER: Okay. We would ask you then to open on LB 706.

LB 706

SENATOR McDONALD: (Exhibit 10) Senator Kremer and members

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of the Agricultural Committee, I'm Senator Vickie McDonald representing District 41, and I'm here to introduce LB 706. I want to preface my introductory remarks by letting you know that I do not intend to pursue passage of LB 706 this session. There are problems with fence viewers statutes as they are currently written. This is a duty that was handed over to the county clerks with the passage of LB 882 in 1994. The difficulties county clerks are experiencing include, finding qualified citizens willing to serve as fence viewers to settle disputes between their neighbors. As more and more people move to rural Nebraska and live on acreages, and so on, the nonagricultural residents are coming into conflict with their farming and ranching neighbors over their responsibilities for constructing and maintaining fences, whether they have livestock or not. Current law provides for an appeal to district court that does not provide for an appeal procedure. If someone wants to appeal a fence viewing decision, the clerks are responsible for taking the filing fee, preparing the appeal transcript, and filing everything with the district court. These are not common duties of county clerks. I will be followed by several county clerks, I hope, that will speak specifically about these problems. Since they have the knowledge in this particular area, I encourage you to direct your questions about the appeals procedures to them. I view LB 706 as a suggestion for one possible way to address the problems with the fence viewer statutes. LB 706 eliminates fence viewing committees appointed by the county clerks as a method to resolve fence disputes, and transfer resolutions of fence disputes to the Nebraska Department of Agriculture Farm Mediation Service. Landowners must request, in writing, mediation service for fence disputes. The mediator will examine the fence and meet with both parties. The mediator's decision is final when filed with the county clerk. A mediation agreement signed by both parties is a binding, legal contract. Mediators will be entitled to fees, not to exceed actual costs, which will be borne equally by both parties in the dispute. Although the department is not taking a position on LB 706, at my request they have prepared a memorandum identifying issues that will need to be resolved before LB 706 could advance. And these issues include, is this mediation or arbitration? Their personnel are trained mediators and would require additional training to arbitrate fence disputes. There is an extra cost for that training that would be passed on to the

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landowners. Under federal law, federal funds pay for a percentage of the Nebraska Farm Mediation Services and could only be used toward mediation between landowners and production agriculture, and the dispute would cause a financial impact, if unresolved, or the dispute would be involved in one of the USDA programs that the service operates under. If neither landowner meets the eligibility criteria, the entire cost of mediation will be paid by the landowners. Who would LB 706 serve? Does it include acreage owners, industrial landowners, city or small town landowners, in addition to farmers and ranchers? LB 706 raises a lot of questions and may not be the solution to the fence viewing issues I have mentioned earlier. I'm going to ask you to hold LB 706 rather than advance it or kill it. I plan to introduce an interim study resolution asking your committee to conduct an interim study on fence viewing, with the intent of developing legislation for introduction in 2006. We need a method for rural landowners to resolve fence disputes without going to court. The current method may have worked during most of the last century, but it's cumbersome and it doesn't work well for rural Nebraska or the county clerks today. Thank you.

SENATOR KREMER: Thank you, Senator McDonald. Any questions? Seeing none, we are ready for the first proponent.

SENATOR McDONALD: Thank you.

SENATOR KREMER: And you have a proponent here, too. There not...

SHERRY SCHWEITZER: (Exhibits 11-13) Yes. You have a few of them. I do have a handout here. Now that I know everything I need to know about tractor testing, you will find out everything there is to know about fence viewing.

SENATOR KREMER: If a tractor goes through the fence, then who's at fault?

SHERRY SCHWEITZER: That's true. Good afternoon. My name is Sherry Schweitzer. I am the Seward County clerk, and I'm also the cochairman of the legislative committee for county clerks. Fence viewing might be something new to you. It was new to me, too, in the year 2000, when I was told I had

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to orchestrate a fence viewing. What do I know about fences? I soon learned that fences were part of my job. Not sure why, but here is what the statutes tell me: A landowner must send a written request to an adjacent landowner to ask him to fix his portion of the fence. If the neighbor does not comply, the complaining landowner must request, in writing, to the county clerk to commence a fence viewing. He gives me a deposit for the fence viewing costs, and that initiates the process. By law, I should have a fence-viewing board in place. I can tell you that right now most county clerks do not. The board shall be made of three people who own agricultural land and three people who own agricultural land and livestock. I am to pick three people out of this six-member board to go and view the fence. Now statutes don't say what part of the fence a person is to take care of, and I grew up on a farm but I didn't know myself. I had to go ask my father, who is a farmer, and he explained it to me like this: The landowner stands on his property, faces the fence; the portion to his right is his responsibility, likewise the other landowner does it on his property. That's how you know what side of the fence you need to take care of. Next, I must notify the landowners of the date and time when the fence viewing is going to take place. I and the fence viewers then go and view the fence; that is remeasure the fence so that we can mark the halfway point. I usually use red spray paint on a fence post. Then with another can of spray paint, we mark the places that need fixing. Then we allow a time for each landowner to air their allegation. This time is usually spent by the landowners arguing about whose cows got out in whose pasture, and whose fault it was, and whose part of the fence they crossed. Then I assist the fence-viewing board in writing down specifics about the fence repairs. They decide who pays for the fence viewing. I type up an order, have them stop in my office to sign it, and send it out to the landowners. A time period is usually given for the landowners to fix it. In both of my fence viewings, the time to fix the fence has lapsed with no repairs being made. I've given extensions, warned them that another person would be brought in to fix it at their cost, even sent the fence viewers out a second time because one owner said that the repairs were done; one owner said they weren't. I even had to file the costs as a special assessment on the property because of lack of payment. If the landowner does not like the final order of the viewers, he can appeal it to district

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court within 10 days. We then get called into court, along with our fence-viewing board. If we are unable to assign fence viewers, we can assign this job to the county sheriff, and all this is for \$30. Senators, this is not a fun thing. We are not professional mediators here. We issue car titles, marriage licenses, and carry out elections. I know county clerks do a wide variety of things, but this is really outside our realm. You'll hear a few stories from other county clerks about their occurrences; you'll hear that some are settled quietly and some not. Our main concern here is not that we think we're too busy or that we just don't want to do it; it's really that we just don't feel like we're doing an adequate job. It's important to these landowners, and even though we're assisting these fence-viewing boards as best as we can, we are not professional mediators, and that is exactly what this is all about. It's about a subject of which we have no knowledge about, dealing with people who don't really want to be there, and trying to make everybody happy--and it isn't working. LB 706 recommends this process as a project for a mediator. We think the Department of Agriculture's Farm Mediation Center is the perfect fit. They have professional mediators and work with the agricultural sector daily. We realize not everything is in place for this department to take on this responsibility, yet we feel that it's a step in the right direction. The County Clerks Association supports the concept of LB 706. I also would like to have entered into record, I have letters from the Cherry County clerk, the Jefferson County clerk, and the Gage County clerk that I would like. They were not able to be here today. I also have a letter from the Nebraska Association of County Officials, who supports the concept also. And I'll accept any questions.

SENATOR KREMER: Okay. Thank you; they will be entered into the record. Any questions for Sherry? Seeing none. Thank you very much. Next proponent? Kind of give us a good summary, if it's the same as somebody else said, why we'll accept a ditto.

JOYCE OAKLEY: Good afternoon, Senator Kremer and members of the Agricultural Committee. I'm Joyce Oakley, I'm Nemaha County clerk. I was appointed deputy 17 years ago, and elected county clerk in 2003, so I've been in the county clerks office about 20 years. Proximately a year ago, I was

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served notice that I would be appointing a fence viewing committee to resolve a fence dispute in Nemaha County. Preceding the notice that I received, one of the landowners had been arrested and jailed with third degree assault charges filed against him because of the fence dispute. I had the county sheriff accompany the committee to the site, due to the distraught landowner and to protect the appointed fence viewing committee. The order that was written by the fence viewers was not satisfactory to the landowner, so we appealed to district court with the case being filed against me as county clerk, and also against the other landowner. The petition against me was dismissed before the case went to trial because I had no interest in the lawsuit. I ask that you support LB 706, removing from the county clerks the responsibility of appointing a fence viewing committee and to provide these responsibilities to the Farm Mediation Act. Thank you. Are there any questions?

SENATOR KREMER: Thank you very much. Any questions? We're learning something new here, too. You didn't know you had that job when you took it, did you?

JOYCE OAKLEY: I didn't when I took office, but...

SENATOR KREMER: Okay. Next proponent, please.

MARY EICKHOFF: (Exhibit 14) I have a handout here, too. Good afternoon. My name is Mary Eickhoff, it's E-i-c-k-h-o-f-f, and I'm the Richardson County clerk, and I'm completing my 19th year in Falls City at the courthouse. I've only had one fence viewing experience, and that was 10 years ago. And if things can happen, they can happen in Richardson County first, because I called all over the state to see if anybody had a fence viewing and if I could get any information, and I had no help. So I kind of started out on my own. But anyway, my experience with that fence viewing wasn't a bad experience. I appointed the six persons to the panel and drew from the hat three to decide on that controversy. The panel and the disputing parties met at a certain time arranged by me, and reviewed the situation which ended with a survey being done, with each landowner paying half of the cost. The parties involved were civilized and didn't cause any trouble. However, I did have some trouble with getting the costs that were incurred to be paid by the requesting party. I made a note in my file, the

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next time I did something like this, to get the money as a bond up front, so it won't happen again. But LB 706 will put the responsibilities for fence viewing with the proper department, which may be able to offer more expertise to the landowners requesting this process. Thank you.

SENATOR KREMER: Thank you, Mary. Any questions? Thank you. Anyone else wishing to testify as a proponent? Anyone wish to testify as an opponent? Neutral capacity? Senator McDonald, would you like to close?

SENATOR McDONALD: As I said before, I think we're just going to use this as an interim study. I think there's more information that needs to be done, plus we need to get acceptance from the State Department of Agriculture to allow this to be on their mediation side of the issue. We're never too young to learn. We find out there's all kind of issues in rural Nebraska that many of us didn't even realize there was a problem, so. Once we find out there's a problem, we try to solve it, and hopefully this will solve that problem.

SENATOR KREMER: Sounds a lot like introducing a bill, doesn't it. You didn't know there were problems until you got it introduced.

SENATOR McDONALD: That's right. Thank you.

SENATOR KREMER: Okay. Well, thank you very much. That will close the hearing on LB 706. And we open the hearing on LB 531. Senator Fischer is here to introduce the bill. Welcome, Senator Fischer.

SENATOR FISCHER: They're just dropping like flies, aren't they?

SENATOR KREMER: The cream of the crop is still here.

LB 531

SENATOR FISCHER: Thank you, Senator Kremer, members of the Agriculture Committee. For the record my name is Deb Fischer, F-i-s-c-h-e-r, and I represent the 43rd District in the Nebraska Unicameral. Today, I'm

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introducing LB 531. The purpose of this bill is to authorize the Nebraska Department of Agriculture to develop and implement components of a National Animal Identification System and to provide protection to Nebraska livestock producers from public disclosure of confidential information. To give a little background, the purpose of a National Animal Identification System, or NAIS, is to, one, enhance foreign animal disease surveillance, control, and eradication to the benefit of producers, and ultimately, consumers; two, to facilitate epidemiological investigations; three, improve biosecurity protection for Nebraska livestock, and livestock nationwide; and, four, help ensure the integrity of maintaining a safe food supply, both in the U.S. and abroad in international trade negotiations. LB 531 does not make animal identification mandatory. While it recognizes mandatory animal ID is a possibility in the future, the bill does not in any way attempt to distinguish between the merits of a voluntary or mandatory animal identification system. Rather, it seeks to provide protection to producer information regardless of the voluntary or mandatory nature of any future premise or animal identification system. Others have recognized the importance of this growing issue. U.S. Congressman Tom Osborne has introduced legislation in the House related to animal identification and the development of animal identification plans. The proposal includes provisions to ensure that information provided by producers as part of an animal ID system would be kept confidential. Nebraska livestock producers already have the option of participating in NDA's premise identification program, the first part in developing a national ID system. With many of the components of a National Animal Identification System still under development, LB 531 provides the state with the flexibility to respond to the developing system as it deems appropriate. Agricultural, and particularly livestock producers protect information about their operations like most people protect information about their money in the bank. They don't feel comfortable in having that information available for public viewing. Ensuring that the information producers provide in good faith to NDA is not going to be available to anyone, is a critical element in encouraging producers to be proactive in participating in an animal or premise ID system. LB 531 would provide protection from public disclosure to those who have already voluntarily chosen to provide information as part of NDA's

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existing premise identification program, and extend that protection to all producers who participate in a premise or animal identification system in the future. This bill does provide for two exemptions to the confidentiality of information: when the provider of information authorizes disclosure, or when disclosure is necessary to carry out disease surveillance. These exceptions allow for disclosure under extreme circumstances when the information must be accessible in a short period of time. However, they are intended to be very narrow in scope so that the information will not be made available upon the whim of an individual or an activist group. LB 531 is a progressive, forward-thinking piece of legislation, designed to not only put the state of Nebraska in a position to be ready to move forward in the new world of animal identification, but also to take measures to encourage producers to participate in an animal ID system by recognizing their concerns that producers have related to the development of the National Animal ID System. Thank you, and I would be happy to answer any questions.

SENATOR KREMER: Thank you, Senator Fischer. Any questions? Seeing none, we're ready for the first proponent, please.

SCOTT REYNOLDS: Chairman Kremer, members of the Ag Committee, my name is Dr. Scott Reynolds, R-e-y-n-o-l-d-s. I'm a veterinarian and in private practice in Broken Bow. I also am a cow/calf producer. I serve on the executive committee of the Nebraska Cattlemen, and I'm here today representing Nebraska Cattlemen. I'm here to provide testimony in support of LB 531. I would like to begin by thanking Senator Fischer for authoring LB 531, and also to the senators in the room, Senators Burling, Cunningham, Erdman, and Kremer, for cosponsoring this bill. On December 30, 2003, the Ag Secretary, Ann Veneman, announced that the USDA would initiate an animal identification system with trace-back capabilities within 48 hours. Before that day, and certainly since then, the U.S. animal industry has been working toward an animal identification system that would provide for effective and efficient disease surveillance prevention and eradication. Currently, livestock producers have the opportunity to voluntarily participate in a premise identification system, with plans for the individual identification system is forthcoming. At our December 2004 Annual Convention of

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Nebraska Cattlemen, members passed a resolution urging cattle producers to participate in the premise identification system. However, at that same convention, NC members called for beefing up the confidentiality issues regarding the identification system to ensure that the producers' information is protected and used only, I reiterate, only for disease surveillance purposes. LB 531 provides for this protection. LB 531, Section 2, stipulates that information provided by a producer to the Department of Agriculture for participation in a premise registration and/or other uniform systems of animal identification that cannot be subject to public inspection. LB 531 does allow the department to disclose information provided that, one, the person providing the information gets permission to release that information, and two, the information is necessary for purposes of disease surveillance to carry out investigations relative to incidents of animal diseases. LB 531, Section 3, validates the confidentiality of the information, yet allows the Department of Ag to take prudent action, provided that stipulations of Section 2 are met. Why is this LB 531 necessary? First of all, producers need assurance that their information which they provide voluntarily is not subject to public inspection. More producers will participate in such a program if they're assured and this is realized. In addition, producers need to participate in an animal identification program in order to strengthen the ability to slow and eradicate harmful animal diseases. Also, the animal identification program is designed for animal disease surveillance only; any other use goes beyond intended rules and regulations of the program. LB 531 provides for assurance that information from the animal identification program will only be used for appropriate situations. Lastly, LB 531 provides the Department of Ag protection, so that records which they oversee, will not be available to public scrutiny based on the whims of an activist group or individuals. Nebraska Cattlemen understand and support the animal identification system that is designed to keep our herds safe and healthy from foreign animal diseases. An effective and a secure system that maintains producers' information, maintains its confidentiality, is needed to ensure that that goal is seen. I urge the committee to pass LB 531. Thank you for this opportunity to provide testimony, and I'd be glad to take any questions.

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SENATOR KREMER: Thank you, Dr. Reynolds. Any questions? Is there any penalty if someone discloses some information that they're not required to do?

SCOTT REYNOLDS: I do not know the answer to that, Senator Kremer.

SENATOR KREMER: Okay. Maybe somebody else in the department will know the answer. Okay. Thank you, Dr. Reynolds.

SCOTT REYNOLDS: Thank you.

SENATOR KREMER: Next proponent?

JOHN McFADDEN: Senator Kremer, Agriculture Committee, I'm John McFadden, M-c-F-a-d-d-e-n. I'm a rancher from Taylor, Nebraska, in the 43rd Legislative District. I'm an immediate past board member of the Nebraska Farm Bureau Federation, and I'm here on behalf of Farm Bureau and support LB 531. Also note that I served five years on the National Cattlemen Beef and Promotion board. I also want to thank Deb Fischer, here, for bringing forth this legislation foreword. One of the responsibilities I had during my time on Farm Bureau was chairing the Western Issues Advisory Committee. One of the biggest issues we had in our committee was to discuss over the past several years, is the issue of animal identification and the future of animal ID. In general, Farm Bureau supports the establishment and implication of animal identification program capable of providing support for animal disease control and eradication. LB 531 tries to do a couple of things that we think have merit when it comes to this issue. Number one, it would address one of the major concerns we hear repeatedly from members when we are talking about animal ID, and that is making sure the information they provide as part of an ID system is kept confidential within the collecting entity. In this case, we're talking about the Nebraska Department of Agriculture. Secondly, it is our hope by providing protection for that information, it will build confidence among producers that hopefully will translate into greater voluntary participation in the animal ID system. Our members can voluntarily register their operations right now through the Nebraska Department of Agriculture's premise ID registration, basically taking the

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first step in being part of a forthcoming animal control ID system. We would much rather see animal ID be voluntary program, than for it is to be a mandatory program. But we do know that if things move along too slowly in this arena, we would certainly see mandatory animal ID in the future. This bill does not promote mandatory ID, animal ID, nor do we support mandatory ID at this time. It promotes voluntary participation by providing appropriate protection to producers in addition to putting the state Department of Ag in a position to meet whatever obligations it might be given under a national system. We think it is important that producers be interactive in this area, given the benefits to the livestock industry, to producers, and ultimately consumers. If we can develop a cost effective system for animal ID, surveillance, and control, and if that can be done in a voluntary fashion, that's all the better. Given where we're at in the terms of development of a nationwide ID system, and the implications of implementing this program at the state level, LB 531 looks to be a very good first step to be put in the state livestock industry, in a position to develop with the issues, and we encourage the committee to advance this bill to General File. Thank you.

SENATOR KREMER: Thank you, John. Any questions? Senator Erdman.

SENATOR ERDMAN: John, thanks for your testimony. Let's talk globally here a little bit.

JOHN McFADDEN: Okay.

SENATOR ERDMAN: The information in the animal ID system will include specific animal identification, as well as issues regarding location and other things, to be able to track the animal appropriately.

JOHN McFADDEN: Yes.

SENATOR ERDMAN: Do you think that it is important for the owner of that animal to have some proprietary right to that information that's on that tag?

JOHN McFADDEN: Well, yes...

SENATOR ERDMAN: In other words, you have an ownership in

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what's on that, and you should be compensated for that information somehow.

JOHN McFADDEN: It would be nice if the next person would do it, I guess. But that's...yes, compensation for establishing the system would be helpful.

SENATOR ERDMAN: Okay. And I ask this because I have individuals in my district who are intimately involved in the development of animal ID programs, and one of the discussions that we continually have is, as we set up the system there's going to be a lot of people who are going to benefit, and we need to make sure that we have the appropriate safeguards on those who are providing the information. I think LB 531 that Senator Fischer introduced is a part of that. But my concern is that we're going to go to a great length and potentially great expense as producers to put information into the system, to make sure that the system is sound, and never be rewarded for putting that information in there. In other words, I can raise cattle, I can take them to a feedlot, and we can have an agreement on what information is shared, and then somebody buys that animal for slaughter, and then the feedyard...or the processor or somebody gets this information for free. But then they use and can figure out how to best use that for their own benefit without any compensation to the farmer for their expense or their efforts. And I just want to make sure that as we go through this discussion, that we're aware of those issues, because the last thing I want to do is have agriculture pay for everybody else's benefit.

JOHN McFADDEN: That would be wonderful, but I guess one of our long range things is we're hoping that the person, the ultimate consumer, the person with the knife and fork in his hand, will probably appreciate it enough they will pay a little more for it, I guess, that's... And another part, interesting thing, myself and I know many of my neighbor producers, we do have our own herd identification programs, so as far as going with a national system, it's just buying the tag that goes along with it, I guess, as far as...I'm already keeping the records now.

SENATOR ERDMAN: Okay. Thanks, John.

SENATOR KREMER: Thank you, John. Any other questions?

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Seeing none, next proponent, please.

JOY PHILIPPI: (Exhibit 15) That's a copy of testimony for you. Thank you. Good afternoon, Senator Kremer and members of the Ag Committee. My name is Joy Philippi, P-h-i-l-i-p-p-i. I'm a pork producer from Bruning, which is located in Thayer County. I am also one of the past presidents of the Nebraska Pork Producers Association, and I represent that group today as I speak in support of LB 531. Besides being actively involved with the state association, I also serve as the vice president of the National Pork Producers Council, and I chair the committee that's addressing animal identification issues. I've represented the pork industry in development of this program on the national level for the past two years. The Nebraska Pork Producers Association applauds the efforts of Senator Fischer and the other cosponsors of LB 531. This bill not only recognizes the need for an animal identification system, but also highlights the fact that reported data must be held in confidential data bases, with limited release, and that to be determined by the Department of Agriculture. Recognizing the fact that the National Animal Identification System, including premises registration, would allow for swift trace-back in the event of an animal disease emergency. The Nebraska Pork Producers Association has established two policies. One is supporting the establishment of a mandatory NAIS system, and the second one is to encourage producer premises registration as soon as technology is available to them. The first policy was passed into national policy last year, at the National Pork Producer's Council Annual Meeting, with the second policy being offered this next year in March. We also expect that that will pass with very limited debate or discussion. This bill will help expedite our efforts to address the confidentiality issue and expedite the participation in our premises registration system here in the state. LB 531 also grants expanded authority to the Nebraska Department of Agriculture to hold the data in a confidential manner. Producers believe that allowing our state animal health officials swift access to this data, and the authority to notify other necessary government agencies, is essential to control a possible animal health emergency. Pork producers have experienced working with the Nebraska Department of Agriculture. A high level of trust is already established between NDA and the Nebraska pork industry, as we've worked

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together and successfully eradicated pseudorabies from the state of Nebraska. We have also participated in the mandatory identification program for sows and boars, and we understand the need for premises registration and we believe that the Nebraska Department of Agriculture will work with us, just as they have in the past. Again, it's been very successful working with them. Confidential premise registration is one of the issues that's been laid out in front of producers, and they're not sure where that should go. Animal health has always been a number one priority for our producers. Confidentiality of our information is very important when it comes to the issue of biosecurity. We must also admit that these things changed in the last few years. The Department of Homeland Security has recognized agriculture as a critical infrastructure in HSPD 9. Any attack on the food production system in the United States would most likely provide unrecoverable economic hardships on our nation if we were not prepared for a swift response. Continued assessment of industry vulnerability has directed pork producers to lead the charge for the swift establishment of a National Animal Identification Plan which will protect our herds, as well as our livelihoods. The Nebraska Pork Producers Association appreciates the fact that Senator Fischer and the other bill cosponsors and the members of this committee place a high priority on livestock production here in the state. It's partnerships like these that help us protect our state's critical infrastructure. Thank you for your attention to this issue, and I encourage you to advance LB 531, and I'd be willing to answer any questions at this time.

SENATOR KREMER: Any questions for Joy? Senator Erdman has a question.

SENATOR ERDMAN: Thank you, Senator Kremer. Joy, in your capacity of working on the National Pork Producers Council, what type of information would be included in the mandatory system? Would it be location, animal identification, or how far-reaching are we talking about, as far as the proposals that you've heard of?

JOY PHILIPPI: A mandatory system?

SENATOR ERDMAN: Right. You're talking about putting in the information, the state proposal that we're going to have, a

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database?

JOY PHILIPPI: We believe a mandatory system is best on all levels. There are differences in opinion on that, but we have already been using mandatory sow and boar identification, so it would just be the adding in the market hogs. I hope that explains where we've come from on that. And the state and national have always agreed on that policy.

SENATOR ERDMAN: Okay. Sure. And then further, on this proposal as we go to a national system, for other animals and stuff, do you have discussions about what type of information would be included in these databases? Would it be...

JOY PHILIPPI: Right.

SENATOR ERDMAN: How far-reaching, I guess, would that information be?

JOY PHILIPPI: That information that we've discussed would be the situation of the premises data would be all that is necessary to go back to the last premise of residence. When it came to the animal identification itself, in our business we'd be able to use groups and lots, and that would also go back to the last premise. That would include contact information as necessary. It would probably not, in the national program, need to have things like antibiotics and things like that in there. That's unnecessary information. All we need in there is the things that we have to have in case we had an animal disease outbreak, that type of thing.

SENATOR ERDMAN: Mainly to locate, go go back to the premise that the animal was, to ensure that we're quarantining or taking care of any potential problems.

JOY PHILIPPI: Right. Right. But what we would anticipate is you would be able to, through the system, from the time the animal was born, take it on. But the only reported location would be the last one that went in to the database at the time of slaughter. But that information, producers would keep that information; it would be in their old records. And like if I bought some hogs from you, some nursery pigs from you, and we got to the packer and there

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was a problem, we had to track back, you would have the information up and to that point, that type of thing.

SENATOR ERDMAN: So, essentially, the information would stop at the packer as far as identification?

JOY PHILIPPI: That would be where you would probably discover some type of a problem. That's what we have anticipated all the way along. We do not see any reason that that has to be passed on to consumers; there's no reason for that at this point.

SENATOR KREMER: Thank you, Senator Erdman. Any other questions for Joy? Thank you for your testimony. Anyone else wish to testify as a proponent? Welcome.

RICHARD JANING: For the record, my name is Richard Janing, J-a-n-i-n-g. I'm representing the Nebraska State Grange. Nebraska State Grange is in support of LB 531. You've heard a lot of the problems that are coming up in the animal ID program; it's something that's a necessary part of livestock production in the future. The producer confidence is one of the things that we're going to have to attain first, and LB 531 will do that, where the information is held confidential. A lot of producers are going to feel a lot more free to give the information if they know, like the possibility of bioterrorism, for example, that their information would be held confidential.

SENATOR KREMER: Richard. Anyone have any questions for Richard? We don't hear from the Grange very often, so thank you very much for coming.

RICHARD JANING: Thank you.

SENATOR KREMER: Next proponent.

VERN JANTZEN: Chairman Kremer, members of the committee, good afternoon. My name is Vern Jantzen, J-a-n-t-z-e-n. I'm a dairy farmer from Plymouth, Nebraska. I'm also the state secretary for the Nebraska Farmers Union. President Hansen has another meeting that he had to attend, and so he asked me to come before this committee this afternoon and state our support for LB 531. As you know, in light of recent events in terms of livestock diseases in other

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countries and the significance that it has on our production system here in the United States, as well as terrorist activities that are possible and have happened in the past, there is a great deal of discussion and proposals in place in terms of identification of both premises and animals in the United States, and that will affect Nebraska as we have a very large livestock industry. And I guess our position as a group is to be in favor of having that information, if it is collected, held in a public manner by a public agency so that it is confidential and is released only as necessary, as outlined in this bill. We think this bill is a step in the right direction, and that's why we support it at this time. Any question?

SENATOR KREMER: Thank you, Vern. Any questions for Vern? Seeing none, thank you for your testimony. Next proponent. How many other proponents do we have? This will be the last proponent. How about opponents? Anybody in opposition? Okay. Greg, welcome.

GREG IBACH: (Exhibit 16) Good afternoon, Senator Kremer and members of the Ag Committee. My name is Greg Ibach, I-b-a-c-h, and I'm the assistant director for the Nebraska Department of Agriculture. I'm here to testify in favor of LB 531. LB 531, as stated by others, authorizes the Department of Agriculture to define premises where livestock are located to develop a premises registration system for Nebraska and to implement other state components of a national uniform system of animal identification. This bill specifically instructs us to carry out these duties within the framework established for the National Animal Identification System currently being developed by USDA and the animal industry partners. We believe it is important to follow NAIS standards so our system is compatible nationally. We have worked to achieve that with our current premises system, and we appreciate this specific statutory language that clarifies our authority. LB 531 also expressly states how the Nebraska Department of Agriculture is to handle information that a producer provides to our department for premises registration, and potentially under a uniform animal identification system. Our intent always has been and will continue to be to handle all information submitted to the system in a manner consistent with statutory obligation. We welcome the clarification this legislation provides regarding the handling of premises and

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animal identification records provided to us. With that, I'll answer any questions.

SENATOR KREMER: Any questions? Could you bring us up to date a little bit on where we're at on the premise ID? Do you have any idea what percentage of the livestock operations have submitted their...or have gotten their number?

GREG IBACH: We...it's a voluntary registration process, and so far we have, I think, we're a little bit over 350 producers that have opted to register their premises with the Department of Agriculture. And so as a percentage of our total livestock producers, that's a fairly small amount of producers that have so far elected to register their premises. We just began the process last fall. The Department has been active on going to producer meetings, participating in producer conferences and conventions to maybe inform producers of the opportunity, as well as explain the purposes and intent of premises registration. And it seems like each time we are able to get in front of producers and help answer their questions and address their concerns, there are misperceptions of what premises registration involves, we always get a few more producers to sign up. So I think education is a key component to our success over time.

SENATOR KREMER: How many have been identified ready of premises, do you have any idea?

GREG IBACH: How many have registered their premises?

SENATOR KREMER: Yes.

GREG IBACH: About 350.

SENATOR KREMER: Three hundred fifty, okay, so that's all. You know, without any penalty for somebody disclosing some information, it usually doesn't amount to much, but is there anything that we should do as far as a penalty or anything like that?

GREG IBACH: This legislation, again, has been requested by the industry, and we were involved with answering some of the industry's questions as this was developed. We do like

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the express statutory definitions that it does give us. So I don't know if there was a reason why penalty clauses were left out of it. There are, in the Department of Revenue, in some of its statutes, there are some penalty clauses, therefore if their department employees would release information, there's civil penalties in some of their statutory provisions. So that might give you some place to look there. Currently, in the department, there wouldn't be anything like that. It would be probably an interdepartmental, you know, disciplinary action, and if it was an appointed person subject to the Governor's discretion there.

SENATOR KREMER: Okay. Well, I think it's a work in progress, and we're taking small steps, I think, to get where we want to go. With the BSE case, such as in Washington, the news media were wanting information constantly every day. Would something like this be a hindrance, or would it...how do you think that would fit into that, would you be able to...?

GREG IBACH: To have some confidentiality requirements? In some ways, I don't know that it would make that big a difference. Currently, when we're, like, we just recently announced that we were testing two herds for tuberculosis, and until our investigation is done there, we maintain that information as confidential information until we reach the conclusion of an investigation. With other investigations we do in the department, it's the same way. And so, you know, in the heat of the Washington State investigation, we would still maintain that confidentiality until we knew facts. And we would also work with USDA in an investigation of the magnitude, and so we would also be partially under their jurisdiction, as well.

SENATOR KREMER: You could disclose that you knew where they come from and say that you're working with the people, and you could say that, because of traceability that you were able to find out very quickly where they came from...

GREG IBACH: Well, you know...

SENATOR KREMER: ...but not have to tell who it was until it was completely done.

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GREG IBACH: Down the road, hopefully, that the investigation won't take weeks and months; that we will have a complete system of premises registration and animal identification in place so that within a matter of hours we will be able to satisfy the concerns of the media and the general public. And I think that will go a long ways toward ensuring consumer confidence and also protecting the health of the herds.

SENATOR KREMER: Any other questions for Greg? Senator Erdman?

SENATOR ERDMAN: If an employee of the department now would release information in regards to an investigation, the discipline is what?

GREG IBACH: It would probably have to...there's probably somebody that might be more, better able to answer this question, and, Chris, if I answer it incorrectly, would you come to my aid here, but I think we would have to follow the state employees discipline manual and those provisions that go along with that.

SENATOR ERDMAN: It's my recollection, we have a bill this year, LB 588, that deals with that same provision in the revenue, dealing with releasing confidential information. And I believe it's a Class IV felony and immediate dismissal, and then there are other civil penalties as well, that could come out of that based on the information that was released. And that might be something that we need to look at, but I think that's the language you were referring to earlier, because the issue of releasing information on legal contracts and other things at the Department of Revenue, in addition to, if you would release somebody's personal tax information or information about them, it is pretty serious, and I think that this should rise to that same level. That's all I've got for you.

GREG IBACH: Okay.

SENATOR KREMER: Okay. Any other questions for Greg? Thank you, Greg. Appreciate your coming. Anyone else wishing to testify as a proponent? Any opponents? Anyone neutral? Okay, we have a neutral testifier.

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MICHAEL JACOBSON: (Exhibit 17) My name is Michael Jacobson, from Gordon, Nebraska.

SENATOR KREMER: Please spell your name.

MICHAEL JACOBSON: J-a-c-o-b-s-o-n. I'm a third generation rancher/farmer with a BA in chemistry. My family raises registered black Angus cattle that are tagged, tattooed, and branded. We've been in the business for over 50 years. I have no opposition to this bill, as long as it stays voluntary. What worries me is that a few years ago I lobbied for LB 835, which was the Packer Disclosure Act, for Senator Dierks. And I think the feds picked it up, and if the USDA would pick up on these rules or make up their own rules, that would be a problem for me because I don't want anything to do with USDA for the reasons of accreditability that are defined by the complaint that's filed by the Ranchers-Cattlemen Action Legal Fund v. USDA, that's filed in federal court in Montana in an attempt to enjoin the importation into the United States of all live cattle of Canadian origin, and edible bovine meat products derived from cattle of Canadian origin. I apologize for not making copies of all the complaint, but I'd like to enter this into evidence. But it shows what the people are up against with the FDA. A few of the examples that they cite in there is that they will not...the failure to institute the country of origin. Canada doesn't test like the United States does. They slaughter downed cattle and, even though my daughter works for the FBI, we've had run-ins with the USDA out there, and so that's my concern is that USDA will take over the rules of Nebraska here.

SENATOR KREMER: Okay. Thank you for the testimony. Any questions? Seeing none, thank you very much for coming.

MICHAEL JACOBSEN: Thank you.

SENATOR KREMER: Anyone else wish to testify in a neutral capacity? Senator Fischer, would you like to close?

SENATOR FISCHER: Senator Kremer and members of the committee, first of all I would like to thank all of the ag groups that have come today to support this bill. I think it's always important for agriculture in this state, and I'm encouraged to see that we are working together on

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this. I'm interested in looking at the penalties, Senator Erdman, and I don't know if that needs to be spelled out here or not, because I believe that anything we can do for producers to know that that confidentiality is sacred, it would be beneficial. Another point the last gentleman is concerned about, the federal regulations, here in Nebraska we can't do anything about that. We could only work with what we have, and if and when any federal regulations come down in regard to an animal ID system, we will have to follow them. I want to reiterate, this bill is voluntary; it is not mandatory. But I also want to make it clear that we will have no control at the state level on what the federal government will require of us in the future. And with that, I will close.

SENATOR KREMER: Okay. Any questions? Okay. Thank you, Senator Fischer, appreciate it. That will end our hearing on LB 531 and the hearings for today. (Also Exhibit 18)